

Intersex Genital Mutilations Human Rights Violations Of Persons With Variations Of Sex Anatomy



**HUMAN
RIGHTS FOR
HERM
APHRODITES
TOO !**

**NGO Report
to the 6th and 7th Periodic Report of Denmark
on the Convention against Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment (CAT)**

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Intersex Awareness Day, 26 October 2015

This NGO Report online:

<http://intersex.shadowreport.org/public/2015-CAT-Denmark-NGO-Zwischengeschlecht-Intersex-IGM.pdf>



Executive Summary

Intersex people are born with **variations of sex anatomy**, including atypical genitals, atypical sex hormone producing organs, atypical response to sex hormones, atypical genetic make-up, atypical secondary sex markers. While intersex children may face several problems, in the “developed world” the most pressing are the ongoing **Intersex Genital Mutilations**, which present a distinct and unique issue constituting significant human rights violations.

IGM Practices include **non-consensual, medically unnecessary, irreversible, cosmetic genital surgeries, and/or other harmful medical treatments** that would not be considered for “normal” children, without evidence of benefit for the children concerned, but **justified by societal and cultural norms and beliefs**.

Typical forms of IGM Practices include “masculinising” and “feminising”, “corrective” genital surgery, castration and other sterilising procedures, imposition of hormones, forced genital exams, vaginal dilations and medical display, human experimentation and denial of needed health care.

IGM Practices cause known **lifelong severe physical and psychological pain and suffering**, including loss or impairment of sexual sensation, painful scarring, painful intercourse, incontinence, urethral strictures, impairment or loss of reproductive capabilities, lifelong dependency of artificial hormones, significantly elevated rates of self-harming behaviour and suicidal tendencies, lifelong mental suffering and trauma, increased sexual anxieties, less sexual activity, dissatisfaction with functional and aesthetic results.

Since 1950, IGM has been practised systematically and on an industrial scale all over the “developed world”, and **all typical IGM forms are still practised in Denmark today**. Parents and children are misinformed, kept in the dark, sworn to secrecy, kept isolated and denied appropriate support. .

For more than 20 years, intersex people, NGOs, human rights and bioethics bodies have criticised IGM as harmful and traumatising, as a fundamental human rights violation, as **torture or cruel, inhuman or degrading treatment**, as a form of genital mutilation and child sexual abuse, and called for legislation to end it.

The UN Committees **CAT**, CRC, CEDAW and CRPD, the UN Special Rapporteur on Torture (**SRT**), the UN High Commissioner for Human Rights (UNHCHR), the World Health Organisation (WHO) and the Council of Europe (COE) have all repeatedly criticised IGM Practices as a serious human rights violation, and have called for legislative remedy (**CAT**, **SRT**, COE, NEK-CNE), initiation of a process of coming to terms with past and current practices, and acknowledgement by society of suffering inflicted (Swiss National Advisory Commission on Biomedical Ethics NEK-CNE), and for access to redress and justice for victims (**CAT**, CRC, CRPD, WHO, NEK-CNE).

The **Danish Government, Health Departments and Medical Bodies violate the obligation to prevent torture and ill-treatment** (Art. 1, 2, 16 CAT), **to ensure impartial investigation, access to redress, and the right to fair and adequate compensation and rehabilitation for victims** (Art. 12, 13 and 14 CAT), **and to train and inform medical staff** (Art. 10 CAT) (**A, B**).

This Thematic NGO Report to the 6th and 6th Danish state report was compiled by the Danish intersex person and advocate **Ditte Dyreborg** in collaboration with the international intersex NGO **Zwischengeschlecht.org / StopIGM.org**.

It contains **Concluding Recommendations** (**C**).

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Introduction

Denmark will be considered for its 6th and 7th periodic review by the Committee against Torture in its 56th Session in 2015. Unfortunately, human rights violations of intersex children and adults weren't mentioned in the State Report nor in the LoIPR. However, this NGO Report demonstrates that the current **medical treatment of intersex infants and children in Denmark are pervasive**, constituting a breach of Denmark's obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In Denmark, doctors in public, university and private clinics are regularly performing **IGM Practices**, i.e. non-consensual, medically unnecessary, irreversible cosmetic genital surgeries, sterilising procedures, and other harmful treatments on intersex children, which have been described by survivors as genital mutilation and torture, which are known to cause severe, lifelong physical and psychological pain and suffering, and which have been **repeatedly recognised by this Committee and other UN bodies as constituting torture or ill-treatment**.

The Danish State not only does nothing to prevent this abuse, but in fact directly finances it via the public health assurances and via funding the public university clinics and paediatric hospitals, thus violating its duty to prevent torture and inhuman or degrading treatment (Art. 2 and 16). To this day the Danish Government refuses to take appropriate legislative, administrative and other measures to protect intersex children (Art. 14), and refuses survivors the right to an impartial investigation and to redress and compensation (Art. 12, 13). Also, the Government refuses to provide adequate education and training of medical personnel on the prohibition of torture (Art. 10).

This NGO report has been prepared by Danish intersex person and advocate *Ditte Dyreborg* in collaboration with the international intersex NGO *Zwischengeschlecht.org / StopIGM.org*:

- **Ditte Dyreborg** is a Danish intersex person and advocate familiar with IGM Practices who has been working to improve the well-being and human rights of intersex people in Denmark, Scandinavia and Europe, and to raise awareness on intersex issues for more than a decade.
- **Zwischengeschlecht.org / StopIGM.org**, founded in 2007, is an international Human Rights NGO based in Switzerland. It is led by intersex persons, their partners, families and friends, and works to represent the interests of intersex people and their relatives, raise awareness, and fight IGM Practices and other human rights violations perpetrated on intersex people, according to its motto, "*Human Rights for Hermaphrodites, too!*"¹ According to its charter,² *Zwischengeschlecht.org* works to support persons concerned seeking redress and justice, and has continuously collaborated with members of parliament and other bodies in order to call on Governments and Clinics to collect and disclose statistics of intersex births and IGM practices, and to prevent them.

This NGO report complements the thematic NGO report for Austria also submitted for the 56th session, which contains all the general information on Intersex, IGM Practices and why they are in breach of the Convention against Torture. **This report only contains an additional country-specific chapter documenting the pervasiveness of IGM Practices in Denmark, and Concluding Recommendations**. For all general

1 <http://zwischengeschlecht.org/>, English pages: <http://StopIGM.org/>

2 <http://zwischengeschlecht.org/post/Statuten>

and information and detailed arguments why IGM Practices are a serious breach of the Convention, the Rapporteurs refer the Committee to the aforementioned report for Austria.

IGM Practices are a special and emerging human rights issue. In order to assess the current practice at national level, some general knowledge of the most pressing human rights violations faced by intersex people can be crucial, for which we again refer to the detailed report for Austria.

The rapporteurs are aware that **IGM Practices are a global issue, which can't be solved on a national level alone.** However, this report illustrates why **Denmark** is a State Party to which it would be timely and most appropriate to issue strong recommendations.

A. IGM Practices in Denmark

1. Lack of Protection, IGM Practices Remain Pervasive

In **Denmark**, like e.g. in Switzerland (see CAT/C/CHE/CO/7, para 20; CRC/C/CHE/CO/2-4, paras 42-43) and Germany (see CAT/C/DEU/CO/5; para 20; CRPD/C/DEU/CO/1, paras 37-38), there are **no legal or other protections** in place to ensure the rights of intersex children to physical and mental integrity, autonomy and self-determination, and to prevent non-consensual, medically unnecessary, irreversible surgery and other harmful treatments a.k.a. IGM Practices.

At the same time, **IGM Practices are widespread and ongoing**, including

- **Masculinising Genital Surgeries** ^{3 4 5}
- **Feminising Genital Surgeries** ⁶
- **Sterilising Procedures** ⁷

3 The **Hypospadias Guidelines** issued by the Odense University Hospital (Author: Per Wit-tenhagen, Department of Nephrology, Odense University Hospital, Odense) recommend: [own translation]

“Surgery:

Reference to paediatric urology in Skejby.

Outpatient examination is usually done at 6-8 months of age.

Final decision on the method of operation can usually be done at 6 months of age.

Surgery at 12 to 15 months of age or pre-school age.”

Online, <http://ekstern.infonet.regionsyddanmark.dk/Files/Dokument277505.htm>

4 The **Hypospadias Guidelines** issued by the Aarhus University Hospital, Skejby (Author: Consultant Urological Surgeon Gitte Hvistendahl, Department of Urology K, Aarhus University Hospital, Skejby) also refers to surgical “hypospadias repair” on children

Online, <http://e-dok.rm.dk/edok/Admin/GUI.nsf/Desktop.html?open&openlink=http://e-dok.rm.dk/edok/enduser/portal.nsf/Main.html?open&unid=XC2CC0807FC3D1A17C12576F0003F49B5&level=AAUH&dbpath=/edok/editor/AAUHAN.nsf/&windowwidth=1100&windowheight=600&windowtitle=S%F8g>

5 see below footnote 7

6 see below footnote 7

7 The **Disorder of Sexual Differentiation / DSD Guidelines** issued by the Aarhus University Hospital, Skejby (Authors: Niels H. Birkebæk, Trols M. Jørgensen, Henning Olsen, Jens M. Hertz) recommend: [own translation]

“Operating techniques and age of operation if the condition is detected at birth):

The following is a “rough” overall scheme for recommended surgical management:

Virilised XX individual (46, XX DSD):

<i>Feminizing genitoplasty with short urogenital sinus</i>	<i>at 3 months</i>
<i>with high confluence</i>	<i>at 15-18 months</i>

Undervirilised XY individual (46 XY DSD):

<i>Peno-scrotal / scrotal / perineo-scrotal hypospadias</i>	<i>at 12-15 months</i>
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True hermaphrodite, gonadal dysgenesis (Ovotesticular DSD)

Female phenotype

<i>Removing the gonads if testes / ovotestes</i>	<i>at 1 week – 1 month</i>
<i>Clitoroplasty + vaginoplasty</i>	<i>at 12-15 months</i>

Currently, **all major Danish public University or Federal State Children's Clinics, as well as private Children's Clinics** employ doctors advocating, prescribing and performing IGM Practices, e.g.

- **Rigshospitalet (part of University Hospital Copenhagen)**⁸
- **Aarhus University Hospital, Skejby**⁹
- **Odense University Hospital (OUH)**¹⁰

Male phenotype:

Laparoscopy and cystoscopy

+ remove ovotestes / string gonad,

possibly Fowler Stevens operation

at 1 week - 1 month

Removing the vagina, uterus,

possibly surgery of abdominal testes

at 3 months

Reconstruction of the penis

at 12 to 15 months

Possibly corrective surgery after puberty.”

Online, <http://e-dok.rm.dk/edok/Admin/GUI.nsf/Desktop.html?open&openlink=http://e-dok.rm.dk/edok/enduser/portal.nsf/Main.html?open&unid=XAD45CFBFAAB6165DC1257489003A1EB9&dbpath=/edok/editor/AAUHBO.nsf/&windowwidth=1100&windowheight=600&windowtitle=S%F8g>

8 A publication out of the Rigshospitalet states:

“Clitoral operations had been performed in 27 CAH females [...] Age at first clitoral operation was 4.4 years (range 0.8–25 yrs).”

T. H. Johannsen, C. P. L. Ripa, E. Carlsen, J. Starup, O. H. Nielsen, M. Schwartz, K. T. Drzewiecki, E. L. Mortensen, and K. M. Main, Long-Term Gynecological Outcomes in Women with Congenital Adrenal Hyperplasia due to 21-Hydroxylase Deficiency, *International Journal of Pediatric Endocrinology* 2010; 2010: 784297, online: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2963122/>

9 see above footnotes 4 and 7

10 see above footnote 3

2. The Treatment of Intersex Persons in Denmark as Torture

a) Infliction of Severe Pain or Suffering

It is well established that IGM Practices generally inflict lifelong, severe pain and suffering (see p. 41_44).

b) Intention

It is generally established that surgery on intersex persons is **always intentionally performed** and not merely the result of negligence, and that it does not detract from the intention if doctors perform surgery **for well-meant purposes**.

c) Purpose of Discrimination

It is generally established that on the basis of their “indeterminate sex,” intersex children are singled out for experimental harmful treatments that would be “*considered inhumane*” on “normal” children. Thus intersex children are penalised **compared to “normal” infants**, even where the perpetrator has benign intentions, see p. 45. The evidence from Danish clinics, medical publications and guidelines prove this also to be true in **Denmark**.

d) Involvement of a State Official

In **Denmark** with its **public and mandatory health assurances** paying for the medical ill-treatment of intersex persons, it is self-evident that, even if it takes place in a Private Clinic, it is directly attributable to the state, and was committed at the very least with the **acquiescence** of a person acting in an official capacity; and even more so in the case of public University Clinics and Federal State Clinics. As is the **failure of the State to exercise due diligence** to protect this group of citizens from torture.

e) Lawful Sanction

Non-consensual unnecessary surgery performed on an intersex child or adult does not constitute a sanction in **Denmark**. It is therefore not covered by the exception clause.

3. The Treatment of Intersex Persons in Denmark as Ill-Treatment

Even if it would be considered that the treatment of intersex people in Denmark does not constitute torture, it certainly constitutes cruel, inhuman and degrading treatment (Art. 16, see p. 46). Ill-treatment is equally prohibited by the Convention in absolute and non-derogable terms. According to the Committee’s General Comment 3, for CIDT also Article 14 applies.¹¹

4. Obstacles to Redress, Fair and Adequate Compensation

The **statutes of limitation** prohibit survivors of early childhood IGM Practices to call a court because persons concerned often **do not find out** about their medical history until much later in life, and **severe trauma** caused by IGM Practices often prohibits them to act in time once they do.¹²

Also the **Danish government** so far refuses to ensure that non-consensual unnecessary IGM surgeries on minors are recognised as **genital mutilation**, which would formally prohibit

¹¹ Committee against Torture (2012), General comment No. 3, CAT/C/GC/3, para. 1.

¹² Globally, no survivor of early surgeries **ever** managed to have their case heard in court. All relevant court cases (3 in Germany, 1 in the USA) were either about surgery of adults, or initiated by foster parents.

parents from giving “consent”. In addition, the state party **refuses to initiate impartial investigations**, as well as data collection, monitoring, and disinterested research. In addition, hospitals are often **unwilling to provide full access to patient’s files**.

This situation is not in line with state parties’ obligations under Articles 12–14 of the Convention.

B. Conclusion: Denmark is Failing its Obligations towards Intersex People under the Convention against Torture

The surgeries and other harmful treatments intersex people endure cause severe physical and mental pain and suffering. Doctors perform the surgery for the discriminatory purpose of making a child fit into societal and cultural norms and beliefs, although there is plenty of evidence on the suffering this causes. The State party is responsible for these violations amounting to torture or at least ill-treatment, committed by publicly funded doctors, clinics, and universities, as well as in private clinics, all relying on money from the mandatory health insurance, and public grants. Although in the meantime the pervasiveness IGM practices is common knowledge, Denmark nonetheless fails to prevent these grave violations both in public and in private settings, but allows the human rights violations of intersex children, adolescents and adults to continue unhindered.

Thus Denmark is in breach of its obligation to take effective legislative, administrative, judicial or other measures to **prevent acts of torture** (Art. 2 CAT). It is also in breach of its obligation to prevent **other forms of cruel, inhuman or degrading treatment** (Art. 16 CAT).

Also in Denmark, victims of IGM practices encounter severe obstacles in the pursuit of their **right to an impartial investigation** (Art. 12, 13 CAT), and to **redress, fair and adequate compensation, including the means for as full rehabilitation as possible** (Art. 14 CAT).

Also the state party’s efforts on **education and information regarding the prohibition against torture in the training of medical personnel** are grossly insufficient with respect to the treatment of intersex people (Art. 10 CAT).

C. Recommendations

The Rapporteurs respectfully suggest that the Committee recommends the following measures to the Danish Government with respect to the treatment of intersex children:

Regarding cases of non-consensual, medically unnecessary surgical and other procedures on intersex children and adults, which can entail irreversible consequences and can cause severe physical and psychological suffering, and regarding the lack of redress and compensation in such cases:

1. To prevent torture and cruel, inhuman or degrading treatment (Art. 1, 2, 16 CAT):

Take all effective legislative, administrative, judicial or other measures, including review of associated limitation periods, to ensure that no-one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to children concerned, and provide families with intersex children with adequate counselling and support.

2. To ensure that any intersex person who alleges they have been subjected to torture has the right to complain to, and to have their case promptly and impartially examined by competent authorities (Art. 13 CAT), and that in the legal system an intersex victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible (Art. 14 CAT):

Undertake investigation of incidents of surgical and other medical treatment of intersex people without effective consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation; facilitate disinterested, representative review, analysis, and outcome studies, in direct collaboration with intersex representatives and organisations; advance and facilitate the acknowledgement by society of the suffering experienced by intersex persons because of IGM Practices, including a historical appraisal of the human rights violations inflicted on intersex children and adults in society.

3. To ensure that education and information regarding the prohibition against torture are fully included in the training of medical personnel (Art. 10 CAT):

Ensure that all medical professionals know that non-consensual surgical and other procedures on intersex children and adults justified by psycho-social indications amount to the infliction of torture or CIDT and constitute a punishable offence, in direct collaboration with intersex representatives and organisations.



**STOP
Intersex
Genital
Mutilation!**

**by Ditte Dyreborg
and Zwischengeschlecht.org / StopIGM.org**