

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



**HUMAN
RIGHTS FOR
HERM
APHRODITES
TOO !**

NGO Report
to the 7th and 8th Report of Germany
on the Convention on the Elimination of
All Forms of Discrimination against Women (CEDAW)

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Executive Summary

Germany is in breach of its obligations under the Convention on the Elimination of All Forms of Discrimination against Women to **(a) take effective legislative, administrative, judicial or other measures to prevent involuntary, non-urgent surgery and other medical treatment of intersex persons based on prejudice, and (b) to ensure access to redress, and the right to fair and adequate compensation and rehabilitation for victims** (Arts. 1, 5 and 12, General Recommendations No. 19 and 31).

This Committee has already recognised IGM practices to constitute a harmful practice and General Recommendation No. 31 as applicable in 2016 Concluding Observations (CEDAW/C/CHE/CO/4-5 paras 38-39; CEDAW/C/FRA/CO/7-8, paras 17e-f+18e-f; CEDAW/C/NLD/CO/6 paras 21-22, 23-24), as does CRC in so far 8 Concluding Observations.

In addition, **CAT** and **CRPD** have already considered IGM in **Germany** as constituting at least **ill-treatment** (see CAT/C/DEU/CO/5; para 20) and **violation of the integrity of the person** (see CRPD/C/DEU/CO/1, paras 37-38). In total, UN treaty bodies **CEDAW, CRC, CAT and CRPD** have so far issued **20 Concluding Observations on IGM**, typically obliging State parties to enact legislation to **(a) end the practice and (b) ensure redress and compensation, plus (c) access to free counselling**. Also the UN Special Rapporteurs on Torture (**SRT**) and on Health (**SRH**), the UN High Commissioner for Human Rights (**UNHCHR**), the World Health Organisation (**WHO**) and the Council of Europe (**COE**) recognise IGM practices as a serious human rights violation.

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

IGM Practices cause known **lifelong severe physical and mental 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 in the “developed world”, and **all typical IGM forms are still practised in Germany today**. Parents and children are misinformed, kept in the dark, sworn to secrecy, kept isolated and denied appropriate support.

This **NGO Report** is compiled by the international intersex NGO **StopIGM.org / Zwischen-geschlecht.org**. It contains **Concluding Recommendations**.

NGO Report to the 7th and 8th Report of Germany on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

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Introduction

Background and State Report

IGM practices are known to cause severe, lifelong physical and psychological pain and suffering, and have been repeatedly **recognised by multiple UN treaty bodies including CEDAW** as constituting a harmful practice, violence and torture or ill-treatment. However, in the combined 7th and 8th German State Report, as well as in the State party's Reply to the List of Issues, Germany denied any "*information on cases of medical or surgical treatment where the intersex person has not effectively given their consent*" (Reply para 31), and refused to undertake effective measures, including legislation, to protect intersex children from the daily mutilations. This NGO Report demonstrates that the current **harmful medical practice on intersex persons in Germany** – advocated, facilitated and paid for by the State party – constitutes a serious breach of Germany's obligations under the Convention.

About the Rapporteurs

This NGO report has been prepared by the international intersex NGO *StopIGM.org / Zwischengeschlecht.org* with a German constituency:

- **StopIGM.org / Zwischengeschlecht.org** is an international intersex human rights NGO based in Switzerland, working to end 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 StopIGM.org works to support persons concerned seeking redress and justice and regularly reports to UN treaty bodies.

StopIGM.org has been active in Germany since 2007, supporting intersex persons suing IGM perpetrators, publicly confronting individual perpetrators and hospitals, documenting the ongoing practice, collaborating with members of parliament on parliamentary questions on the federal and on the Länder level, and testified before the German National Ethics Council, calling for effective remedies to end the practice.

In personal capacity co-founder Daniela Truffer is also a member of the German intersex self-help group XY-Women, serving as a first contactor for 7 years, and of the German Association of Intersex People, serving as chair when it submitted a thematic report to this Committee, leading to the first ever UN recommendations on intersex in 2009.

Methodology

This thematic NGO report is an updated, abridged and localised version of the **2016 thematic CEDAW NGO Report for France**³ and of the **2015 thematic CRPD NGO Report for Germany**⁴ by partly the same rapporteurs. It complements our **2016 CEDAW PSWG NGO Report for Germany**,⁵ and our **2016 PSWG Germany Oral Statement**.⁶

1 <http://Zwischengeschlecht.org/> English pages: <http://StopIGM.org/>

2 <http://zwischen-geschlecht.org/post/Statuten>

3 <http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

4 http://intersex.shadowreport.org/public/2015-CRPD-LoI-Germany_NGO-Report_Zwischengeschlecht_Intersex-IGM.pdf

5 <http://intersex.shadowreport.org/public/2016-CEDAW-Germany-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

6 <http://intersex.shadowreport.org/public/PSWG-CEDAW66-Germany-NGO-Statement-StopIGMorg->

A. Intersex Genital Mutilations in Germany as a violation of CEDAW

1. IGM Practices:

Involuntary, unnecessary medical interventions based on prejudice

IGM practices include non-consensual, medically unnecessary, irreversible, cosmetic genital surgeries, and/or other similar medical treatments, including imposition of hormones, performed on children with variations of sex anatomy,⁷ without evidence of benefit for the children concerned, but justified by “*psychosocial indications [...] shaped by the clinician’s own values*”, the latter informed by societal and cultural norms and beliefs, enabling clinicians to withhold crucial information from both patients and parents, and to submit healthy intersex children to risky and harmful invasive procedures that would not be considered for “normal” children, “*simply because their bodies did not fit social norms*”.⁸

Typical forms of IGM include “feminising” or “masculinising”, “corrective” genital surgery, sterilising procedures, imposition of hormones (including prenatal “therapy”), forced genital exams, vaginal dilations, medical display, human experimentation, selective (late term) abortions and denial of needed health care, causing lifelong severe physical and mental **pain and suffering**.⁹

In a response to international IGM doctors advocating involuntary non-urgent surgeries on intersex children in a 2016 medical publication,¹⁰ two bioethicists underlined the **prejudice** informing the current medical practice:

*“The implicit logic of [the doctors’] paper reflects what bioethicist George Annas has called a ‘monster ethics’ [6], which can be summed up this way: babies with atypical sex are not yet fully human, and so not entitled to human rights. Surgeons make them human by making them recognizably male or female, and only then may they be regarded as entitled to the sexual and medical rights and protections guaranteed to everyone else by current ethical guidelines and laws.”*¹¹

2. Intersex is NOT THE SAME as LGBT

Unfortunately, there are several **harmful misconceptions about intersex** still prevailing in public, notably if intersex is counterfactually described as being the same as or a subset of LGBT, e.g. if intersex and/or intersex status are represented as a sexual orientation (like gay or lesbian), and/or as a gender identity, as a subset of transgender, as the same as transsexuality,¹² or as a form of sexual preference.

[DTruffer.pdf](#)

7 See “What is Intersex?”, 2016 CEDAW NGO Report France, p. 39-44.

<http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

8 For references, see “What are Intersex Genital Mutilations (IGM)?”, 2016 CEDAW NGO Report France, p. 45.

<http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

9 See “Most Frequent Surgical and Other Harmful Medical Interventions”, 2016 CEDAW NGO Report France, p. 47-50. <http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

10 Pierre Mouriou et al, “Surgery in disorders of sex development (DSD) with a gender issue: If (why), when, and how?”, Journal of Pediatric Urology (2016), [http://www.jpurology.com/article/S1477-5131\(16\)30012-2/](http://www.jpurology.com/article/S1477-5131(16)30012-2/)

11 Ellen Feder and Alice Dreger, “**Still ignoring human rights in intersex care**”, Journal of Pediatric Urology (2016), [http://www.jpurology.com/article/S1477-5131\(16\)30099-7/](http://www.jpurology.com/article/S1477-5131(16)30099-7/)

12 E.g. the **Swiss Federal Government** in 2011 in answers to parliamentary questions consistently described intersex as “*True and Untrue Transsexualism*”, e.g. 11.3286, http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20113286

The underlying reasons for such misconceptions include **lack of awareness**, third party groups **instrumentalising** intersex as a means to an end for their own agenda, and State parties **trying to deflect** from criticism of involuntary intersex treatments.

Intersex persons and their organisations have spoken out clearly against instrumentalising intersex issues,¹³ maintaining that Intersex Genital Mutilations present a distinct and unique issue constituting significant human rights violations, which are different from those faced by the LGBT community, and thus need to be adequately addressed in a separate section as specific intersex issues.

3. IGM practices in Germany: Pervasive and unchallenged

In **Germany** (see CAT/C/DEU/CO/5; para 20; CRPD/C/DEU/CO/1, paras 37-38), same as in the neighbouring states of *Switzerland* (see CEDAW/C/CHE/CO/4-5, paras 38-39; CRC/C/CHE/CO/2-4, paras 42-43; CAT/C/CHE/CO/7, para 20), *France* (see CEDAW/C/FRA/CO/7-8, paras 17e-f + 18e-f; CRC/C/FRA/CO/5, paras 47-48; CAT/C/FRA/CO/7, paras 32–33), *Austria* (see CAT/C/AUT/CO/6, paras 44-45), and in many more State parties,¹⁴ 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**
- **no measures** in place to ensure **data collection and monitoring** of IGM practices
- **no legal or other measures** in place to ensure the **accountability** of IGM perpetrators
- **no legal or other measures** in place to ensure **access to redress and justice** for adult IGM survivors (see also below p. 14-15)

To this day, as evidenced in the Reply to the List of Issues (paras 28+30: “*The Inter-Ministerial Working Group on Intersexuality/Transsexuality (IMAG)*” tasked to “*deal[...] with the [...] questions [regarding intersex] in detail*”, “*has no information on cases of medical or surgical treatment where the intersex person has not effectively given their consent*”), the **German government** simply refuses to recognise the human rights violations and suffering caused by IGM practices, and undeviatingly **refuses** to “*take effective legislative, administrative, judicial or other measures*” to protect intersex children, but instead continues with endless “*discussions*” (paras 28, 30, 34) and “*careful examination*” (para 31) without consequences.

What’s worse, this comes **after the State party had already been reprimanded** by both **CAT in 2011** and **CRPD in 2015** for IGM practices, with both Committees calling for legislative measures to ensure access to redress.

At the same time, as vaguely admitted by the “Inter-Ministerial Working Group (IMAG)” (“*the total number of procedures seems not to have changed significantly*”),¹⁵ in Germany all forms of

13 For references, see 2016 CEDAW NGO Report France, p. 40, fn 49:

<http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

14 See <http://stop.genitalmutilation.org/post/IAD-2016-Soon-20-UN-Reprimands-for-Intersex-Genital-Mutilations>

15 BMFSFJ (ed.): „Situation von trans- und intersexuellen Menschen im Fokus“. Sachstandsinformation, p. 18:

IGM practices remain widespread and ongoing, persistently **advocated, prescribed and perpetrated** by state funded University and Regional Children’s Clinics, and **paid for** by the German Public Health Insurances, as corroborated by two 2016 studies using **partial data from the “Diagnosis Related Groups (DRG)”** of intersex surgeries in German hospitals financed by the Public Health System:

Study 1: Ulrike Klöppel: Zur Aktualität kosmetischer Operationen „uneindeutiger“ Genitalien im Kindesalter. ZtG Texte 42:

https://www.gender.hu-berlin.de/de/publikationen/gender-bulletins/texte-42/kloepfel-2016_zur-aktualitaet-kosmetischer-genitaloperationen

Study 2: Anike Krämer (M.A.), Prof. Dr. Katja Sabisch, Dr. med. Jörg Woweries: Varianten der Geschlechtsentwicklung – die Vielfalt der Natur. Kinder- und Jugendarzt. 47. Jg. (2016) Nr. 5/16:

<http://www.vlsp.de/files/pdf/kraemer2016.pdf>

Both studies do not provide any data on procedures in individual Länder or clinics, citing “privacy concerns”.

a) IGM 3 – Sterilising Procedures:

**Castration / “Gonadectomy” / Hysterectomy /
Removal of “Discordant Reproductive Structures” / (Secondary) Sterilisation¹⁶**

Study 1¹⁷ documents ongoing gonadectomies on children 0-9 and 10-19 years with a limited selection of “intersex diagnoses” 2005-14. On intersex persons raised as **girls**, gonadectomies were more frequent (58:25). In girls and boys **Q99.1 “46, XX true hermaphrodite”** was the most frequent diagnosis.

Tab. 18

Gonadektomien (5-652 & 5-653)											
Intersex, weiblich registriert, 0-9 Jahre											
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-14
gesamt	2,5	0	4,5	3	0	0	0	1	0	2	19
Intersex, weiblich registriert, 10-19 Jahre											
gesamt	2,5	6,5	4	8	0	2,5	2,5	3,5	5,5	3	38

Figure 1: Intersex Gonadectomies on Females by Age Group, p. 52(48)

b) IGM 2 – “Feminising Procedures”: Clitoris Amputation/“Reduction”, “Vaginoplasty”, “Labioplasty”, Dilatation¹⁸

According to **Study 1**, “feminizing surgeries” on intersex children 0-9 years were **rising**, with the five-year-average increasing from 70 to 79 procedures per year:

<https://www.bmfsfj.de/blob/112092/46d6be33eb8f2b5d2ee81488da03029c/situation-von-tans--und-intersexuellen-menschen-im-fokus-data.pdf>

16 For general information, see 2016 CEDAW NGO Report France, p. 47:

<http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

17 Ulrike Klöppel: Zur Aktualität kosmetischer Operationen „uneindeutiger“ Genitalien im Kindesalter. ZtG Texte 42: https://www.gender.hu-berlin.de/de/publikationen/gender-bulletins/texte-42/kloepfel-2016_zur-aktualitaet-kosmetischer-genitaloperationen

18 For general information, see 2016 CEDAW NGO Report France, p. 48.

<http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

Tab. 12

Feminisierende Operationen													
Q52, weiblich registriert, 0-9 Jahre													
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	MW/2005-7	MW/2012-14	%
5-705	2,5	7,0	5,0	6,0	7,5	6,5	3,0	7,5	7,0	4,5	4,8	6,3	31,03
5-706	1,5	7,5	4,0	4,5	1,5	4,0	7,5	3,0	4,0	4,5	4,3	3,8	-11,54
5-713	1,5	1,5	4,5	3,0	1,5	7,0	7,5	4,5	13,0	4,5	2,5	7,3	193,33
5-716	9,0	19,5	8,5	9,0	8,0	8,0	19,0	10,5	12,0	10,0	12,3	10,8	-12,16
5-718	42,5	48,5	48,0	41,0	44,0	34,0	40,0	52,5	46,0	54,0	46,3	50,8	9,71
Fem OPS	57,0	84,0	70,0	63,5	62,5	59,5	77,0	78,0	82,0	77,5	70,3	79,2	12,56

Figure 2: “Feminising” IGM Surgeries on children 0-9 years, p. 42(38)

Study 1 documents 164 cases of “clitoral surgery” on intersex children 0-9 years. After 2008, when for the first – and still last – time an IGM surgeon was sentenced in the last instance to pay damages for a non-consensual procedure on an adult person, “clitoral surgery” decreased in the five-year-average from 20 to 11 procedures per year ...

Tab. 16

Operationen an der Klitoris (5-713)													
VG, weiblich registriert, 0-9 Jahre													
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	MW/2005-7	MW/2012-14	%
AGS	18	15,5	10,5	15	13	7	10,5	4,5	3	4,5	14,7	4,0	-72,73
Inter (ohne AGS)	4,5	0	5	3	1	0	0	0	0	1	3,2	0,3	-89,47
Q52	1,5	1,5	4,5	3	1,5	7	7,5	4,5	13	4,5	2,5	7,3	193,33
gesamt	24	17	20	21	15,5	14	18	9	16	10	20,3	11,7	-42,62

Figure 3: “Clitoral Surgery” on intersex children 0-9 years, p. 48(44)

... however with the notable exception of the age group < 1 year, where the numbers not only stayed steady ...

Diagramm 6

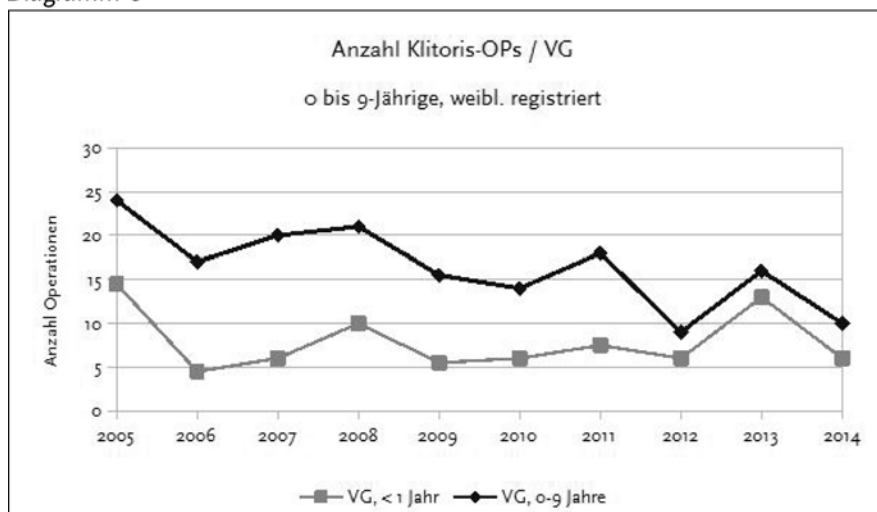


Figure 4: “Clitoral Surgery” 0-9 years vs. <1 year, p. 49(45)

... but after 2011, after the questionable “Opinion on the Situation of Intersex People” of the German National Ethics Council, procedures on <1 year olds became most frequent in young

children, surpassing procedures on girls 1-5 years according to **Study 2**, additionally suggesting rising numbers in early school age, allegedly with the “consent” of the children concerned:

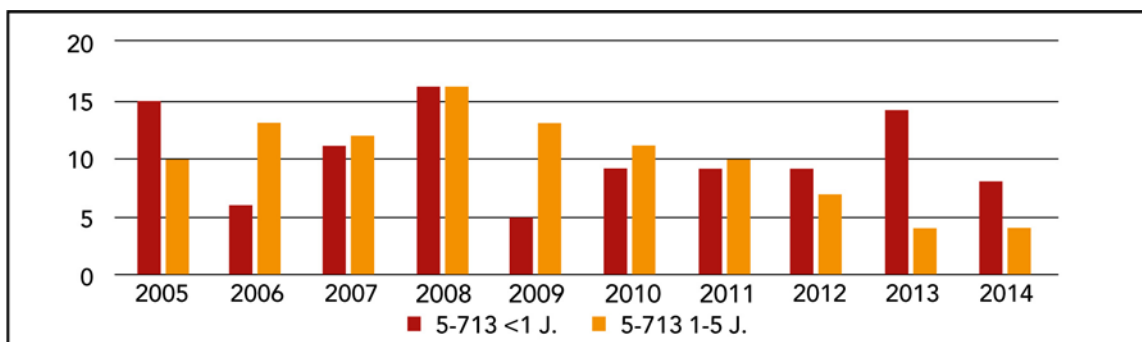


Abb. 2: DRG 5-713 Operation an der Klitoris

Figure 5: “Clitoral Surgery” 1-5 years vs. <1 year, p. 320

c) IGM 1 – “Masculinising Surgery”: Hypospadias “Repair”¹⁹

According to **Study 2** Q54 “Hypospadias” remains the most frequent IGM practice by far, with over 1’400 procedures every year on children 0-9, even when discarding procedures of the “First degree (Q54.0)” and counting only the second and third degree (Q54.1-3). In addition, Q55 “Other congenital malformations of male genital organs” shows the biggest increase in procedures:

Tab. 20

Maskulinisierende Operationen													
VG, männlich registriert, 0-9 Jahre													
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	MW 2005-7	MW 2012-14	%
E29.1	0	0	0	0	0	0	0	0	0	0	0,0	0,0	#
E34.5	0	1	2	0	1	0	0	0	0	2	1,0	0,7	-33,33
Q56.0	1,5	0	0	0	0	0	0	0	0	0	0,5	0,0	-100
Q56.1	4	0	3,5	1	2,5	0	0	1	0	5	2,5	2,0	-20
Q56.2	0	0	1	0	0	1	0	0	0	0	0,3	0,0	-100
Q56.3	0	0	0	0	0	0	0	0	0	0	0,0	0,0	#
Q56.4	0	0	3	0	0	3	0	0	0	0	1,0	0,0	-100
Q99.0	0	0	3	0	0	0	0	0	0	0	1,0	0,0	-100
Q99.1	0	0	0	0	0	0	0	0	0	0	0,0	0,0	#
Inter (ohne AGS)	5,5	1	12,5	1	3,5	4	0	1	0	7	6,3	2,7	- 57,89
Q53.2	6	9,5	10	7,5	10,5	4,5	13,5	13,5	6	4,5	8,5	8,0	-5,88
Q54	1402,5	1475	1507	1626	1484	1394,5	1429	1359,5	1460,5	1476	1461,5	1432,0	-2,02
Q55	121	101,5	151	144,5	148	174	204,5	175,5	162,5	183,5	124,5	173,8	39,63
gesamt	1535	1587	1680,5	1779	1646	1577	1647	1549,5	1629	1672,5	1600,8	1617,0	1,01

Figure 6: “Masculinising” IGM Surgeries on children 0-9 years, p. 55(51)

19 For general information, see 2016 CEDAW NGO Report France, p. 48-49.

<http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

d) Prenatal “Therapy”²⁰

Also prenatal “Therapy” with Dexamethasone is still advocated and practiced in Germany, for example in the official guideline “AWMF 174/013”²¹ “*S1-Leitlinie – Stellungnahme zur pränatalen Therapie des Adrenogenitalen Syndroms mit 21-Hydroxylase-Defekt (AGS) in Deutschland*”, despite openly admitting that the “therapy” is “*no evidence based protocol*” (p. 3) and “*experimental*” (p. 6).

4. IGM in Germany as a harmful practice and gender based violence

a) Article 5 in conjunction with General recommendation No. 31

Article 5 (a) of the Convention stipulates “To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.

This Committee has repeatedly recognised IGM practices to constitute a harmful practice under the Convention during previous Sessions (CEDAW/C/CHE/CO/4-5 paras 38-39; CEDAW/C/FRA/CO/7-8, paras 17e-f+18e-f; CEDAW/C/NLD/CO/6 paras 21-22, 23-24).

In addition, the Committee on the Rights of the Child (CRC) has consistently recognised IGM practices to constitute a **harmful practice**, referring to the CEDAW-CRC Joint general comment No. 31/18 on harmful practices (2014), for example in CRC/C/CHE/CO/2-4, paras 42-43; CRC/C/CHL/CO/4-5 paras 48-49; CRC/C/FRA/CO/5 paras 47-48; CRC/C/GBR/CO/5 paras 45-46; CRC/C/ZAF/CO/2 paras 37-38.

JGR No. 31/18 clearly stipulates the right of victims of IGM practices to “**equal access to legal remedies and appropriate reparations**” (para 55 (q)), and specifically to ensure that “children subjected to harmful practices have equal access to justice, including by addressing legal and practical barriers to initiating legal proceedings, such as the **limitation period**” (para 55 (o)).

And the Committee against Torture (CAT) recognised IGM practices in **Germany** to constitute at least **ill-treatment**, in CAT/C/DEU/CO/5 para 20, urging Germany “*to undertake legislative, administrative and other necessary measures to ensure the bodily integrity of intersex people*”, and “*to investigate cases of medical or surgical treatments of intersex persons without their informed consent, and to undertake legislative measures to ensure redress for victims, including adequate compensation*”, as well as in other countries, for example in CAT/C/CHE/CO/7 para 20; CAT/C/DNK/6-7 paras 42-43; CAT/C/CHN-HKG/CO/4-5 paras 28-29; CAT/C/FRA/CO/7 paras 32-33.

To this day, UN treaty bodies issued **20 Concluding Observations on IGM practices**, considering them as harmful practice (CRC art. 24 para 3 in conjunction with JGR No. 31/18, CEDAW art. 5 (a)), ill-treatment (CAT art. 2, 12 and 16), or a violation of physical and mental integrity (CRPD art. 7).²²

20 For general information, see 2014 CRC NGO Report Switzerland, p.75-76,

http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

21 http://www.awmf.org/uploads/tx_szleitlinien/174-

[013l_S1_Adrenogenitales_Syndrom_mit_21_Hydroxylase_Defekt_AGS_2015-verlaengert.pdf](http://www.awmf.org/uploads/tx_szleitlinien/174-013l_S1_Adrenogenitales_Syndrom_mit_21_Hydroxylase_Defekt_AGS_2015-verlaengert.pdf)

22 CAT/C/DEU/CO/5, para 20; CRC/C/CHE/CO/2-4, paras 42-43; CRPD/C/DEU/CO/1, paras 37-38;

Clearly, due to their nature, IGM practices in Germany also fall within the scope of article 5 (a) CEDAW and JGR No. 31/18.

b) Article 1 in conjunction with General recommendation No. 19

In addition, due to their nature, IGM practices clearly also constitute a form of **gender-based violence**, and thus also article 1 of the convention in conjunction with the Committee's **General recommendation No. 19** applies, which further underline the right to life (para 7 (a)) and the right to protection from ill-treatment (CIDT) (para 7 (b)). In CEDAW/C/NLD/CO/6 paras 22-23 this Committee considered art. 1 and GR 19 as applicable for intersex women.

As **selective abortions** of intersex fetuses is also practiced in Germany, also GR 19 para 7 (a) applies.

Regarding ill-treatment (GR 19 para 7 (b)), since 2011 the Committee against Torture (**CAT**) has repeatedly examined IGM practices, including in Germany, and consistently considered them as constituting **at least ill-treatment**.²³

Thus, also art. 1 CEDAW in conjunction with GR 19 apply.

c) Article 12 in conjunction with General recommendation No. 19

States parties are required by article 12 to take measures to ensure equal access to health care, and GR 19 particularly underlines the right to the highest standard attainable of physical and mental health (para 7 (g)).

IGM practices per se are detrimental to the health of survivors. Additionally, one specific form of IGM practices is denial of needed health care (see p. 50).

In addition, the **Special Rapporteur on Health** has identified intersex children as a “*vulnerable group*” and IGM practices as a “*painful and high-risk procedure with no proven medical benefits*”,²⁴ and IGM 2 “*clitoral reduction*” as constituting “*a form of female genital mutilation*”.²⁵

Thus, also art. 12 CEDAW in conjunction with GR 19 applies.

5. Lack of Independent Data Collection and Monitoring

With no comprehensive statistics available on intersex births, let alone surgeries and costs, and **perpetrators, governments and health departments colluding to keep it that way as long as anyhow possible**, persons concerned as well as civil society **lack possibilities to effectively highlight and monitor** the ongoing mutilations. What's more, after realising how IGM practices are increasingly in the focus of public scrutiny and debate, perpetrators of IGM practices respond

CAT/C/CHE/CO/7, para 20, CRC/C/CHL/CO/4-5, paras 48–49; CAT/C/AUT/CO/6, paras 44–45; CAT/C/DNK/CO/6-7, paras 42–43; CAT/C/CHN-HKG/CO/4-5, paras 28–29; CRC/C/IRL/CO/3-4, paras 39–40; CRC/C/FRA/CO/5, paras 47–48; CAT/C/FRA/CO/7, paras 32–33; CRPD/C/CHL/CO/1 paras 41–42; CRC/C/GBR/CO/5, paras 45–46; CRC/C/NPL/CO/3-5 p. 10–11, paras 41–42, CEDAW/C/FRA/CO/7-8, paras 17e-f+18e-f; CRPD/C/ITA/CO/1, paras 45–46; CRC/C/ZAF/CO/2 paras 37–38; CRC/C/NZL/CO/5 paras 25 + 15; CEDAW/C/CHE/CO/4-5 paras 38–39; CEDAW/C/NLD/CO/6 paras 21–22, 23–24.

23 CAT/C/FRA/CO/7, paras 32–33; CAT/C/CHE/CO/7, para 20; CAT/C/DEU/CO/5; para 20; CAT/C/AUT/CO/6, paras 44–45; CAT/C/CHN-HKG/CO/5, paras 28–29; CAT/C/DNK/CO/6-7, paras 42–43

24 A/64/472, para 49 incl. fn 67

25 A/HRC/32/33, para 56

by suppressing complication rates, as well as refusing to talk to journalists “on record”.²⁶

As documented in the **2015 thematic CRPD NGO Report for Germany** (p. 17)²⁷ since 1996 the German government has been regularly called upon to collect and disclose statistics on IGM practices. And CAT and CRPD have urged Germany to “*investigate cases*”.

Nonetheless, to this day the **German government** simply claims to have “*no information on cases of medical or surgical treatment where the intersex person has not effectively given their consent*”, as once more documented in the Reply to the List of Issues (paras 28+30).

However, the Joint general recommendation No. 31 CEDAW / Joint general comment No. 18 CRC “on harmful practices” (2014) clearly **stipulates comprehensive data collection and monitoring** (paras 37-39).

6. Lack of legislative provisions, impunity of the perpetrators

Article 5 (a) of the Convention in conjunction with the Joint general recommendation No. 31 CEDAW / Joint general comment No. 18 CRC “on harmful practices” (2014) underline state parties’ obligations to “*explicitly prohibit by law and adequately sanction or criminalize harmful practices*” (JGR 31/18, para 13), as well as to “*adopt or amend legislation with a view to effectively addressing and eliminating harmful practices*” (JGR 31/18, para 55), and specifically to ensure “*that the perpetrators and those who aid or condone such practices are held accountable*” (JGR 31/18, para 55 (o)).

Accordingly, with regards to IGM practices, **this Committee** as well as the **Committee on the Rights of the Child (CRC)**, referring to Article 24 para 3 CRC and the Joint general recommendation No. 31 CEDAW / Joint general comment No. 18 CRC, already explicitly recognised the obligation for State parties to “*Ensure that [...] no child is subjected to unnecessary medical or surgical treatment during infancy or childhood; adopt legislation to protect the bodily integrity, autonomy and self-determination of intersex persons and provide families with intersex children with adequate counselling and support*”, as well as to “*Adopt legal provisions in order to provide redress to intersex persons affected by cases of surgical or other medical treatment without free, prior and informed consent by the intersex person or his/her parents under the guidance of the court*”.²⁸

As documented in the **2015 thematic CRPD NGO Report for Germany** (p. 18-19)²⁹ since 1996 the German government has been regularly called upon to undertake legislation to stop IGM practices, including by its own Conference of Ministers for Women’s Issues and Equality (GFMK). Also **CAT** and **CRPD** have urged Germany to ensure “*informed consent*” and to “*adopt legal provisions in order to provide redress to the victims of such treatment*”.

Nonetheless, to this day the **German government** undeviatingly **refuses** to “*take effective legislative, administrative, judicial or other measures*” to protect intersex children, but, as once

26 Personal communication by journalist SRF (Swiss National Radio and TV), 2013

27 http://intersex.shadowreport.org/public/2015-CRPD-LoI-Germany_NGO-Report_Zwischengeschlecht_Intersex-IGM.pdf

28 CEDAW/C/CHE/CO/4-5, para 25.

29 http://intersex.shadowreport.org/public/2015-CRPD-LoI-Germany_NGO-Report_Zwischengeschlecht_Intersex-IGM.pdf

more documented in the Reply to the List of Issues, instead continues with endless “*discussions*” (paras 28, 30, 34) and “*careful examination*” (para 31) without consequences.

Tellingly, the **Department of Justice (BMJV)** argues at the same time on the one hand legislation against IGM practice would be unnecessary, claiming **IGM would already fall under the prohibition** according to § 226a StGB (Female Genital Mutilation), §§ 223 ff. StGB (bodily harm) and to some extent § 1631c BGB (prohibition of sterilisation), and on the other hand, **legal prohibition would be harmful**, “*not in the best interest of the child*” and “*not helpful*” for “*parents in a difficult psychological decision situation*”, as “*counselling seems more necessary than prohibitions*”.³⁰

7. Obstacles to redress, fair and adequate compensation

The **statutes of limitation** prevent 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, which in combination with severe trauma caused by IGM Practices often proves to amount to a severe obstacle.³¹

As documented in the **2015 thematic CRPD NGO Report for Germany** (p. 20-22)³² the lack of access to redress and justice for survivors of IGM practices is **well known and near total**:

a) Criminal Law

No survivor of IGM practices ever succeeded in filing criminal charges.

In case of average early surgeries “*in the first two years of life*”, all statutes of limitations have long passed before survivors come of age.

To this day, persons concerned and their organisations in vain **call for a legal review of the statutes of limitations in cases of IGM practices**, referring to current and recent legal reviews regarding **adjournment or suspension of the statutes of limitation** in cases of child sexual abuse (§§ 176 ff. StGB), and female genital mutilation (§ 226a StGB).

In 2014, also the **24th Conference of Ministers for Women’s Issues and Equality (GFMK)** explicitly called for a “*legal ban of medically unnecessary surgical and pharmacological [...] interventions on intersex minors*,” explicitly referring to **the need of intersex children for similar protection against sterilisation (§ 1631c BGB) and female genital mutilation (§ 226a StGB)** that other children and girls already enjoy.³³

b) Civil Law

No survivor of childhood IGM practices ever succeeded in filing civil charges.

Only 3 survivors of IGM practices so far succeeded in filing civil charges – all of them only

30 BMFSFJ (ed.): „Situation von trans- und intersexuellen Menschen im Fokus“. Sachstandsinformation, p. 20-22: <https://www.bmfsfj.de/blob/112092/46d6be33eb8f2b5d2ee81488da03029c/situation-von-tans--und-intersexuellen-menschen-im-fokus-data.pdf>

31 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.

32 http://intersex.shadowreport.org/public/2015-CRPD-LoI-Germany_NGO-Report_Zwischengeschlecht_Intersex-IGM.pdf

33 at 52-54

http://www.gleichstellungsminkonferenz.de/documents/2014_10_13_Beschluesse_GESAMT_Extern.pdf

for surgeries they were submitted to as **adults of 18 years** or older. The first case in Cologne 2007-2009 resulted in a surgeon being sentenced to pay 100'000 Euros damages.^{34 35} Two more cases filed 2011 in Nuremberg³⁶ and 2012 in Munich³⁷ are currently (slowly) under way, with the Nuremberg case currently in the second instance after a first verdict sentencing the Erlangen University Clinic to pay damages.

All other survivors of IGM practices attempting to sue so far were prevented by the statutes of limitations.

Already in 2009 during an intersex hearing of the State Parliament of Hamburg, specialised local lawyer Dr. Oliver Tolmein stated: *“Interestingly, a great many [intersex] persons come to our lawyer’s office wanting to sue their doctors for damages [however, so far all were prevented by the statutes of limitations]”*.³⁸

c) Victim’s Compensation Law (Opferentschädigungsgesetz, OEG)

The Victims Compensation Law (OEG) was introduced with the **stated intent** *“to create a financial compensation in cases of the state failing its mission to prevent crimes”*.³⁹

So far, no survivor of IGM practices succeeded in winning any compensation, with the courts consistently denying compensation to IGM victims, including by explicitly stating that for the plaintiff to be eligible for compensation, *“there would have to be laws [against IGM practices] in place. However, there aren’t.”* (see Case 2 documented in the 2015 thematic CRPD NGO Report for Germany, p. 22)

d) State Party: Endless “Discussions” without Consequences

As documented in the **2015 thematic CRPD NGO Report for Germany** (p. 20-22)⁴⁰, since 1996 the German government has been regularly called upon to undertake legislation to to guarantee access to redress, including by its own Conference of Ministers for Women’s Issues and Equality (GFMK). Also **CAT** and **CRPD** have urged Germany to ensure *“informed consent”* and to *“adopt legal provisions in order to provide redress to the victims of such treatment”*.

Nonetheless, to this day the **German government** undeviatingly **refuses** to do so, but, as once more documented in the Reply to the List of Issues, instead continues with endless *“discussions”* (paras 28, 30, 34) and *“careful examination”* (para 31) without consequences.

This situation is clearly not in line with Germany’s obligations under the Convention.

34 OLG Köln 03.09.2008, Az. 5 U 51/08

http://www.justiz.nrw.de/nrwe/olgs/koeln/j2008/5_U_51_08beschluss20080903.html

35 LG Köln 12.08.2009, Az. 25 O 179/07

http://www.justiz.nrw.de/nrwe/lgs/koeln/lg_koeln/j2009/25_O_179_07schlussurteil20090812.html

36 LG Nürnberg-Fürth, Az. 4 O 7000/11. 1st day in court was 26.02.2015.

37 LG München, Az. 9 O 27981/12.

38 Wortprotokoll, at 11 http://kastrationsspital.ch/public/19_10_HH_Wortpr_Intersex.pdf

39 Franziska Brachthäuser, Theresa Richarz (2014): Zwischen Norm und Geschlecht – Erste Entwürfe möglicher nationaler Entschädigungs- und Schadensersatzansprüche intersexueller Menschen gegen die Bundesrepublik Deutschland, Humboldt Law Clinic Menschenrechte (HLCMR) Working Paper Nr. 5, at 22–24 (i.e. 19–21 according to pagination within document)

http://hlcmr.de/wp-content/uploads/2015/01/Working_Paper_Nr.5.pdf

40 http://intersex.shadowreport.org/public/2015-CRPD-LoI-Germany_NGO-Report_Zwischengeschlecht_Intersex-IGM.pdf

B. Recommendations

The Rapporteurs respectfully suggest that, with respect to the treatment of intersex persons in Germany, the Committee includes the following measures in their recommendations to the German Government (in line with CAT's and CRPD's previous recommendations to Germany, and this Committee's previous recommendations on intersex to France, Switzerland and the Netherlands):

Harmful practices: Intersex persons

The Committee remains seriously concerned about cases of medically unnecessary and irreversible surgery and other treatment of intersex children and adults without their informed consent, which can cause severe suffering, and the lack of redress and compensation in such cases.

In the light of its joint general comment No. 31 (2014) and No. 18 of the Committee on the Rights of the Child on harmful practices, the Committee recommends that the State party:

- (a) Ensure that no-one is subjected to unnecessary medical or surgical treatment during infancy or childhood, adopt legislation with a view to guarantee bodily integrity, autonomy and self-determination to persons concerned, and provide families with intersex children with adequate counselling and support;**
- (b) Undertake investigation of incidents of surgical and other medical treatment of intersex persons without informed consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation;**
- (c) Systematically collect disaggregated data on harmful practices in the State party and make information on the ways to combat these practices widely available, in direct consultation with persons concerned and their organisations;**
- (d) Educate and train medical professionals on the harmful impact of unnecessary surgical or other medical interventions for intersex children, and ensure that the views of intersex persons are fully considered by the interdisciplinary working groups established to review these procedures.**