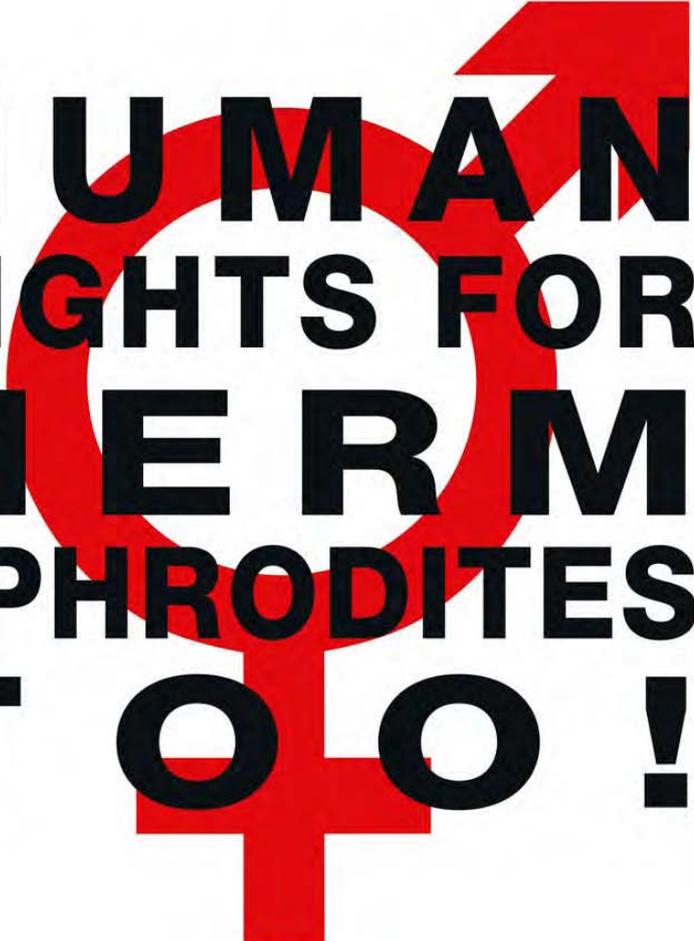


Intersex Genital Mutilations Human Rights Violations Of Children With Variations Of Reproductive Anatomy



**HUMAN
RIGHTS FOR
HERM
APHRODITES
TOO !**

NGO Report (for LOI)
to the 4th Report of Kenya on the
International Covenant on Civil and Political Rights
(CCPR)

Compiled by:

StopIGM.org / Zwischengeschlecht.org (International Intersex Human Rights NGO)

Markus Bauer
Daniela Truffer

Zwischengeschlecht.org
P.O.Box 2122
CH-8031 Zurich

info_at_zwischengeschlecht.org
<http://Zwischengeschlecht.org/>
<http://stop.genitalmutilation.org/>

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Executive Summary

Infanticide and abandonment of intersex children, intersex genital mutilation and other harmful practices on intersex children and adults amounting to cruel, inhuman or degrading treatment are still current in Kenya, despite criticism and recommendations by intersex advocates and expert bodies, including the High Court, the Kenya National Commission on Human Rights (KNCHR) and the Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding the Intersex Persons in Kenya.

Kenya is thus in breach of its obligations under CCPR to (a) take effective legislative, administrative, judicial or other measures to **prevent inhuman treatment and involuntary experimentation on intersex children** causing severe mental and physical pain and suffering, and (b) **ensure equal access to justice and redress**, including fair and adequate **compensation** and as full as possible **rehabilitation** for victims, as stipulated in the Covenant in conjunction with the **General comment No. 20**.

This Committee has repeatedly recognised IGM practices to constitute a serious violation of the Covenant in Concluding Observations, invoking **Articles 3, 7, 9, 17, 24 and 26**.

In total, UN treaty bodies **CRC, CAT, CCPR, CEDAW and CRPD** have so far issued **48 Concluding Observations** recognising **IGM as a serious violation of non-derogable human rights**, 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**), the Inter-American Commission on Human Rights (**IACHR**), the African Commission on Human and Peoples' Rights (**ACHPR**) and the Council of Europe (**COE**) recognise IGM as a **serious violation of non-derogable human rights**.

Intersex people are born with **Variations of Reproductive 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.

This **Thematic NGO Report** has been compiled by the international intersex NGO **StopIGM.org**. It contains **Suggested Questions (opposite p. 5)**.

Suggested Questions for the LOI

The Rapporteurs respectfully suggest that in the LOI the Committee asks the Kenyan Government the following questions with respect to the rights of intersex people:

Intersex genital mutilation (arts. 2, 3, 7, 24, 26)

- **Please provide data on non-urgent, irreversible surgical and other procedures on intersex minors, and on infanticide and abandonment of intersex children.**
- **Does the State party plan to stop this practice? If yes, what measures does it plan to implement, and by when? Has the State party already implemented the recommendations of the Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding the Intersex Persons in Kenya, in particular recommendations 6, 7, 12b), 12d)? If not, by when does the State party plan to implement them?**
- **Please indicate which criminal or civil remedies are available for intersex people who have undergone involuntary sterilisation or unnecessary and irreversible medical or surgical treatment when they were children, and whether these remedies are subject to any statute of limitations?**
- **Please indicate which means of rehabilitation are available for intersex people who have undergone involuntary procedures?**
- **Please indicate which means of psychosocial support, including peer support, are available for intersex children and their families?**

A. Introduction

1. Intersex, IGM, Infanticide and Human Rights in Kenya

In countries all over the world, including in Africa, **UN treaty bodies including CCPR** are regularly denouncing intersex genital mutilation and other harmful practices on intersex children and adults as a **serious violation of non-derogable human rights**.^{1 2}

“*[C]orrective surgeries*” and “*medical examination and tests*” on intersex babies and the duty of the Kenyan Government to protect them, including by “*work[ing] towards an appropriate legal framework*”, by convening the Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding the Intersex Persons in Kenya and by drafting an unnamed “*draft policy to address the plight and challenges faced by intersex persons in Kenya*” are mentioned in the **State report** (para 173). However, the State report remains silent on other harmful practices on intersex children and adults identified by intersex advocates and expert bodies as amounting to **cruel, inhuman or degrading treatment**, namely **infanticide** and **abandonment**.

This NGO Report documents such practices and acts in Kenya and the **Government’s failure** to effectively prevent them, despite calls by local intersex advocates and expert bodies.

2. About the Rapporteurs

This NGO report has been prepared by the international intersex NGO *StopIGM.org*:

- **StopIGM.org / Zwischengeschlecht.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 end IGM Practices and other human rights violations perpetrated on intersex people, according to its motto, “*Human Rights for Hermaphrodites, too!*”³ According to its charter,⁴ StopIGM.org works to support persons concerned seeking redress and justice, and regularly reports to UN treaty bodies on IGM practices.⁵ Some of our reports and resulting Concluding Observations have been quoted and/or referenced in reports by the *Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding the Intersex Persons in Kenya*⁶ and the *Kenya National Commission on Human Rights (KNCHR)*.⁷

1 Currently there are **48 UN Treaty body Concluding Observations** explicitly condemning IGM practices as a **serious violation of non-derogable human rights**, see:

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

2 **CAT, CRC, CRPD, SPT, SRT, SRSG VAC, COE, ACHPR, IACHR** (2016), “End violence and harmful medical practices on intersex children and adults, UN and regional experts urge”,

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>

3 <http://Zwischengeschlecht.org/>, English pages: <http://stop.genitalmutilation.org/>

4 <http://zwischeneschlecht.org/post/Statuten>

5 <http://intersex.shadowreport.org/>

6 CRC/C/ZAF/CO/2, in part based on our 2016 CRC South Africa NGO Report,

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

CAT/C/CHE/CO/7, based on our 2015 CAT Switzerland NGO Report,

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

CRC/C/CHE/CO/2-4, based on our 2014 CRC Switzerland NGO Report,

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

CEDAW/C/CHE/CO/4-5, based on our 2016 CEDAW Switzerland NGO Report,

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

7 CRC/C/NZL/CO/5, in part based on our 2016 CRC New Zealand NGO Report,

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

In addition, the Rapporteurs would like to acknowledge the work of the **Intersex Persons Society of Kenya (IPSK)**⁸ and **SIPD Uganda**.⁹ And we would like to acknowledge the work of **John Chigiti**¹⁰ and **Teresia Mumbua Matheka**.¹¹ We would like to acknowledge the work of the **Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding the Intersex Persons in Kenya**¹² and the **Kenya National Commission on Human Rights (KNCHR)**.¹³

3. Methodology

This thematic NGO report is a country-specific addition to the thematic CCPR NGO Reports for Switzerland (2019), Mexico (2019) and Belgium (2019) by partly the same rapporteurs. It is further based on desk research and some personal communications, and on publications by the *Intersex Persons Society of Kenya (IPSK)*, *SIPD Uganda* and the reports by the *Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding the Intersex Persons in Kenya* and the *Kenya National Commission on Human Rights (KNCHR)*.

8 <https://www.intersexkenya.org/>

9 <http://sipduganda.org/wp-content/uploads/2019/03/SIPD-Baseline-Survey-on-Intersex-in-East-Africa.pdf>

10 <https://uk.reuters.com/article/uk-kenya-intersex/kenya-takes-step-towards-recognising-intersex-people-in-landmark-ruling-idUKKCN0JJ1M520141205>

11 Teresia Mumbua Matheka: 'Speaking the Unspeakable! Interrogating the Rights and Legal Recognition of Intersex Persons in Kenya', University of Zimbabwe, 2014,

<https://pdfs.semanticscholar.org/6cdf/8caa1cbae9998ea64a50af306d0f6c4608b0.pdf>

12 <http://www.klrc.go.ke/images/TASKFORCE-REPORT-on-INTERSEX-PERSONS-IN-KENYA.pdf>

13

https://www.knchr.org/Portals/0/GroupRightsReports/Equal%20In%20Dignity%20and%20Rights_Promoting%20The%20Rights%20Of%20Intersex%20Persons%20In%20Kenya.pdf?ver=2018-06-06-161118-323

B. IGM and Infanticide in Kenya, Insufficient Government Initiatives

1. Background: Medical IGM, Infanticide and Harmful Stereotypes

In “developed regions” with universal access to paediatric health care **1 to 2 in 1000 newborns** are at risk of being submitted to medical **Intersex Genital Mutilation (IGM)**, i.e. non-consensual, unnecessary, irreversible, cosmetic genital surgeries, and/or other harmful medical treatments that **would not be considered for “normal” children**, practiced without evidence of benefit for the children concerned, but justified by societal and cultural norms and beliefs, and often **directly financed by the state** via the public health system.¹⁴

In **regions without universal access to paediatric health care**, there are reports of **infanticide**¹⁵ of intersex children, of **abandonment**,¹⁶ of **expulsion**,¹⁷ of **massive bullying** preventing the persons concerned from attending school (recognised by CRC as amounting to a harmful practice),¹⁸ and of **murder**.¹⁹

Both in “developed” and “developing” regions, **harmful stereotypes and prejudice** framing intersex as “**inferior**”, “**deformed**”, “**disordered**”, “**degenerated**”, “**taboo**” or a “**bad omen**” remain widespread, and to this day inform the current harmful **western medical practice**, as well as other practices including **infanticide** and **child abandonment**.

14 For references and general information, see 2014 CRC NGO Report Switzerland, p. 13-20,

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

15 For Nepal, see CEDAW/C/NPL/Q/6, para 8(d). See also 2018 CEDAW Joint Intersex NGO Report, p. 13-14,

<http://intersex.shadowreport.org/public/2018-CEDAW-Nepal-NGO-Intersex-IGM.pdf>

For example in South Africa, see 2016 CRC South Africa NGO Report, p. 12,

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

For South Africa, see also <https://mg.co.za/article/2018-01-24-00-intersex-babies-killed-at-birth-because-theyre-bad-omens>

For example in Uganda, Kenya, Rwanda, see "Baseline Survey on intersex realities in East Africa – Specific focus on Uganda, Kenya, and Rwanda" by SIPD Uganda, relevant excerpts and source:

[http://stop.genitalmutilation.org/post/Africa-Intersex-Survey-Documents-Intersex-Genital-Mutilation-Infanticide-](http://stop.genitalmutilation.org/post/Africa-Intersex-Survey-Documents-Intersex-Genital-Mutilation-Infanticide-Abandonment-Expulsion-Uganda-Kenya-Rwanda)

[Abandonment-Expulsion-Uganda-Kenya-Rwanda](http://stop.genitalmutilation.org/post/Africa-Intersex-Survey-Documents-Intersex-Genital-Mutilation-Infanticide-Abandonment-Expulsion-Uganda-Kenya-Rwanda) ; for Uganda, see also 2015 CRC Briefing, slide 46,

http://intersex.shadowreport.org/public/Zwischengeschlecht_2015-CRC-Briefing_Intersex-IGM_web.pdf

For Kenya, see also <http://www.bbc.com/news/world-africa-39780214>

For Mexico, see 2018 CEDAW NGO Joint Statement,

<http://stop.genitalmutilation.org/post/CEDAW70-Mexico-Joint-Intersex-NGO-Statement-05-07-2018>

16 For example in Uganda, Kenya, Rwanda, see "Baseline Survey on intersex realities in East Africa – Specific focus on Uganda, Kenya, and Rwanda" by SIPD Uganda, relevant excerpts and source:

<http://stop.genitalmutilation.org/post/Africa-Intersex-Survey-Documents-Intersex-Genital-Mutilation-Infanticide-Abandonment-Expulsion-Uganda-Kenya-Rwanda>

For example in China, see 2015 Hong Kong, China NGO Report, p. 15,

<http://intersex.shadowreport.org/public/2015-CAT-Hong-Kong-China-NGO-BBKCI-Intersex.pdf>

17 For example in Uganda, Kenya, Rwanda, see "Baseline Survey on intersex realities in East Africa – Specific focus on Uganda, Kenya, and Rwanda" by SIPD Uganda, relevant excerpts and source:

<http://stop.genitalmutilation.org/post/Africa-Intersex-Survey-Documents-Intersex-Genital-Mutilation-Infanticide-Abandonment-Expulsion-Uganda-Kenya-Rwanda>

18 For example in Nepal (CRC/C/NPL/CO/3-5, paras 41–42), based on local testimonies, see

<http://stop.genitalmutilation.org/post/Denial-of-Needed-Health-Care-Intersex-in-Nepal-Pt-3>

19 For example in Kenya, see <https://76crimes.com/2015/12/23/intersex-in-kenya-held-captive-beaten-hacked-dead/>

2. Medical IGM, Infanticide and Abandonment in Kenya

While to date there seems **no quantitative data** available on harmful practices amounting to cruel, inhuman or degrading treatment of intersex children in Kenya, namely IGM and infanticide, it is **undisputed that these practices persist**, as indicated in personal testimony from intersex persons and parents, as well as in official and media reports:

a) Medical IGM

The **2018 Report of the Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding the Intersex Persons in Kenya** (hereafter: **Taskforce Report**)²⁰ identifies “*Surgical procedures at instance of Birth*” as a main issue for intersex children (p. 190).

Also, the Taskforce Report states:

“Of the 112 [intersex] key informants interviewed, 34 (29%) indicated that they had undergone surgery.” (p. 170)

The Taskforce Report further states regarding IGM surgeries:

“Parents and caregivers who had their children undergo corrective surgeries reported having mixed feelings on the decision to have surgery, the procedures themselves and the outcomes thereof.” (p. 173)

“A significant portion of these respondents [parents indicating that they had no choice] complained that their intersex children had been subjected to ‘corrective’ surgeries without being afforded adequate information on the nature of the surgery and other alternative pathways, if any.” (p. 174)

“[...] reports of exploitation by uninformed doctors who conduct surgeries without approval and informed consent of parents [...]; mismanaged surgeries due to miss-diagnosis or wrong treatment by doctors who were reported to sometimes conduct up to 7 surgeries on one person. As a consequence, some intersex persons reported having scars that have not healed and suffer incontinence, forcing them to use diapers through to adulthood.” (p. 187)

The Taskforce Report also describes non-surgical medical IGM practices, namely medical display:

“doctors’ continuously using the intersex as specimens, which intersex persons find intrusive” (p. 187)

“In addition, many intersex persons reported feeling that they were treated as “specimens” of curiosity due to too much exposure to the doctors, nurses, student interns, who often posed many unnecessary, intrusive and embarrassing questions.” (p. 170)

Further, the Taskforce Report also discusses involuntary “*hormonal interventions*” (p. 196)

Also, the **2018 Report of the Kenya National Commission on Human Rights (KNCHR)** (hereafter: **KNCHR Report**)²¹ states:

20 <http://www.klrc.go.ke/images/TASKFORCE-REPORT-on-INTERSEX-PERSONS-IN-KENYA.pdf>

21

https://www.knchr.org/Portals/0/GroupRightsReports/Equal%20In%20Dignity%20and%20Rights_Promoting%20The%20Rights%20Of%20Intersex%20Persons%20In%20Kenya.pdf?ver=2018-06-06-161118-323

“Two of the people interviewed had received this surgery as children and said that they regretted it, with one of the individuals testifying that they were still “angry” about the operation.” (p. 41)

The KNCHR Report further interviewed 2 paediatric surgeons at Kijabe Hospital, who offensively promote IGM 1 “Hypospadias Repair” as “*routine and non-controversial surgeries*”, and vehemently oppose a legal ban also on all other forms of IGM practices (p. 47). Accordingly, the Kijabe Hospital offers surgery for “*hypospadias*” on its homepage on “*Surgical Services*” under “*Pediatric Surgery*”.²²

A medical publication by 3 other doctors from Kijabe Hospital documents cases of intersex children submitted to IGM 1 “*hypospadias repair*”, IGM 2 “*reduction clitoroplasty*” and IGM 3 “*hysterectomy*”.²³

There are also news articles indicating that IGM practices continue, for example in People Daily Online (25.11.2019):²⁴

“Kenya National Commission on Human Rights (KNCHR) officer Amos Wanyoike, regretted that surgical operations on intersex persons [...] are usually rushed [...] Access to justice has also been an issue [...]”

b) Infanticide and Abandonment

Infanticide and abandonment of intersex children based on superstition as well as expulsion of mothers of intersex children refusing to do so have been identified by African intersex advocates as the main issues in rural communities, for example in the **2015-2016 “Baseline Survey on intersex realities in East Africa – Specific focus on Uganda, Kenya, and Rwanda” by SIPD Uganda**,²⁵ which is also referenced in the Taskforce Report (p. 30, 44, 110-111) and in the KNCHR Report (p. 13, 14, 39, 78, 89, 96).

The Baseline Survey elaborates (p. 6-7):

“Women who give birth to intersex children are often considered to be witches or victims of witchcraft, and the intersex children are considered a bad omen to the family, which should be gotten rid of. The ridding takes the form of murders or abandonment. Many women are abandoned by their husbands and in-laws due to the news of such a birth. Most mothers of intersex children dump and abandon their intersex children for dead in pit latrines and lonely forest areas and run from their homes for fear of possible prejudice-driven crimes towards them by family or community members. It’s so unfortunate that the general East African society has always responded with denial, hostility and at best, silence, on these matters pertaining to sexual development and related health and rights concerns.”

In Kenya intersex advocates of the **Intersex Persons Society of Kenya (ISPK)** have been

22 <https://kijabehospital.org/services-specialities/surgical-services>

23 P.M Nthumba, L.L. Carter, Jr, , D. Poenaru (2008), Ambiguous genitalia in rural Africa and the complexities of management: Which way forward?, East and Central African Journal of Surgery, Vol. 13, No. 1, March-April 2008, pp. 51-59, <http://www.bioline.org.br/request?js08009>

24 Anne Sabuni, “Don’t rush surgeries on intersex children, rights lobby urges”, People Daily Online, 25.11.2019, <https://www.pd.co.ke/news/dont-rush-surgeries-on-intersex-children-rights-lobby-urges-14351/>

25 <http://sipduganda.org/wp-content/uploads/2019/03/SIPD-Baseline-Survey-on-Intersex-in-East-Africa.pdf>

speaking out in public:

*“[...] Director James Karanja says cases of intersex children being murdered have greatly reduced since the state intervened, but there are still a few times they have had to intervene. “Intersex children face various challenges from birth because they are considered a curse or bad omen. Therefore, killing at birth or getting starved to death, sacrificed during raids to appease the gods, or death due to hormonal deficiency happened to be the only way out. In respect to death, many of these are not recorded, especially with home births. In hospitals, death would be recorded as malaria or pneumonia,” he explains.”*²⁶

The Taskforce Report (p. 42) further references a 1964 anthropological study which already described the issue:

“[...] an intersex child was perceived as an unfortunate occurrence and a freak, with some people in the community indicating that if they had such a baby, they would kill it. Others saw the killing of such intersex children as a cultural and religious duty.”

Also, a **side event during the 61st Ordinary Session of the African Commission on Human and Peoples’ Rights (ACHPR)**²⁷ hosted by the University of Pretoria Centre for Human Rights, Iranti-org and SIPD Uganda in November 2017 and referenced in the Taskforce Report (p. 29-30, 104, 107) highlighted “*infanticide*”.

Also, the Taskforce Report identifies “*Infanticide/killed as Taboo Babies*” as a main issue for intersex children at birth (p. 190), and further the Taskforce’s own interviews confirmed cases of parents pressured to “*downright infanticide*” (Taskforce Report, p. 167).

As a root cause of infanticide, the Taskforce Report (p. 184) identified that

“94% of respondents from the Mwananchi questionnaire survey (both online and face to face) expressed their feeling that intersex children were a taboo, a curse on their parents and community and not natural nor to be accepted and treated as such.”

The Taskforce Report (p. 183) further observed that also professionals viewed intersex children as “*a taboo, a curse to the society and outcasts. In that respect, the professionals shared the same basic and erroneous misunderstanding with that expressed by the general public (94%).*”

Other root causes of infanticide identified by the Taskforce are “*denial, shame and regret, confusion and perplexity, hatred and self-loathing*” (p. 166).

Also, the KNCHR Report states:

“While we were not able to locate concrete cases of intersex infanticides, all of the intersex advocates and organizations we spoke with said that intersex infanticide is a known phenomenon. One intersex Kenyan we spoke with said that “in their culture” intersex infants are usually killed at birth. [...] A less sinister, but no less tragic death befalls many intersex infants who die from lack of adequate medical care.” (p. 14)

26 Sandra Wekesa, “Intersex: Progress, but still taboo”, People Daily Online, 06.11.2019,

<https://www.pd.co.ke/lifestyle/the-inclusion-of-the-intersex-in-the-2019-census-is-a-mark-of-progress-from-archaic-traditions-that-included-infanticide-and-abandonment-12371/>

27 https://www.up.ac.za/faculty-of-law/news/post_2592164-centre-for-human-rights-iranti-org-and-sipd-uganda-host-panel-discussion-on-intersex-human-rights-in-africa

The KNCHR Report elaborates:

“It is very disturbing that the biggest threat in an intersex child’s life is usually their own family. All of the people we interviewed from this report said that intersex children, particularly in rural areas, are often killed after they are born because they are viewed as a curse on their house and their community. The existence of intersex infanticide in Kenya was also corroborated by Justice Matheka in her report on intersex rights. When Justice Matheka was working as a magistrate she came across the case of a woman who was charged with criminal neglect of her intersex child. When the child’s mother and grandmother were asked why she had neglected the child, “they indicated their laxity in addressing the child’s problem was due to their previous experience with such children in the community where “a hermaphrodite is normally left to fate” (p.21).”²⁸

Further, the KNCHR Report summarises a 2017 BBC report²⁹ (p. 79-80):

“BBC reporters Helen Grady and Anne Soy interviewed a traditional midwife in Western Kenya who offered a rare insight into the treatment of intersex infants at birth. The midwife, Zainab, said that in 2012 she delivered a child with male and female sex organs and the father immediately demanded that she kill the child. [...] Seline Okiki, chairperson of the Ten Beloved Sisters, a group of traditional birth attendants also from western Kenya, says that it used to be common practice to kill intersex babies and that this practice is still happening, although now it is done in secret.”

Also, the KNCHR Report (p. 15) alludes to the belief of intersex as a “curse” as a root cause for stigma (and hence, infanticide):

“Two myths that contribute to intersex stigma are 1) that intersex people are the product of a “curse” and 2) that they are all “gay” and/or “transgender”. Both of these myths need to be dispelled, in order to remove stigma from being intersex.”

3. The Case for an Explicit Prohibition of Medical IGM and Infanticide in Kenya

The 2017 Public statement by the African intersex movement³⁰ explicitly states:

“Demands

- *To put an end to infanticide and killings of intersex people led by traditional and religious beliefs.*
- *To put an end to mutilating and ‘normalising’ practices such as genital surgeries, psychological and other medical treatments through legislative and other means (such as education, policy and treatment protocol change). [...]*
- *To put an end to non-consensual sterilisation of intersex people.”*

Further, the Taskforce Report noted (p. 174):

28 The mentioned report by Justice Matheka: Teresia Mumbua Matheka: ‘Speaking the Unspeakable! Interrogating the Rights and Legal Recognition of Intersex Persons in Kenya’, University of Zimbabwe, 2014, <https://pdfs.semanticscholar.org/6cdf/8caa1cbae9998ea64a50af306d0f6c4608b0.pdf>

29 <https://www.bbc.com/news/world-africa-39780214>

30 <https://intersexday.org/en/statement-african-forum-2017/>

- *“Nearly all the intersex persons interviewed strongly opined that, even where any surgery is to be undertaken, all the necessary medical diagnostic tests must be conducted to establish the fact beyond doubt before the surgery, and that these must be thoroughly documented for their later reference, should they want to seek redress or remedy later in life.”*

Both the KNCHR Report (p. 45) and the Taskforce Report (p. 104, 63-65) explicitly recognise IGM to constitute a **harmful practice** and **torture or cruel, inhuman or degrading treatment**.

The KNCHR Report (p. 45) further explicitly states that IGM falls under **Section 14 of the Kenyan Children Act** (prohibition of traditional practices that are likely to negatively affect the child’s life), and the Taskforce Report (p. 11) further explicitly refers to **art. 27 (4) of the Constitution** of Kenya (protection from torture, cruel, inhuman and degrading treatment), as well as to the **National Coroners Service Act (No. 18 of 2017)** as a (potential) means to investigate and prosecute intersex infanticide (p. 141), and to the **African Charter on the Rights and Welfare of the Child (ACRWC)** (p. 103-104) protecting intersex children from harmful practices, including infanticide.

The Taskforce Report (p. 61) further explicitly refers to **CCPR art. 7**.

Also, the side event during the **61st Ordinary Session of the African Commission on Human and Peoples’ Rights (ACHPR)**³¹ hosted by the University of Pretoria Centre for Human Rights, Iranti-org and SIPD Uganda in November 2017, with KNCHR Commissioner Lawrence Mute participating in the panel, issued the following recommendations, as summarised by the Taskforce Report (p. 30):

“The deliberations led to the formulation of recommendations including: prohibition of intersex genital mutilation and other unnecessary medical interventions, and the investigation and prosecution of incidents of abandonment, abuse or infanticide against intersex children. [...]”

The **2016 interagency statement “End violence and harmful medical practices on intersex children and adults”**³² signed by 4 UN treaty monitoring bodies, 4 UN rapporteurs, and 3 regional human rights bodies, including the **African Commission on Human and People’s Rights (ACHPR)** represented by KNCHR Commissioner Lawrence Murugu Mute, and referred to by the KNCHR Report (p. 46, 110-111) explicitly states:

“States must, as a matter of urgency, prohibit medically unnecessary surgery and procedures on intersex children. They must uphold the autonomy of intersex adults and children and their rights to health, to physical and mental integrity, to live free from violence and harmful practices and to be free from torture and ill-treatment. Intersex children and their parents should be provided with support and counselling, including from peers.”

31 https://www.up.ac.za/faculty-of-law/news/post_2592164-centre-for-human-rights-iranti-org-and-sipd-uganda-host-panel-discussion-on-intersex-human-rights-in-africa

32 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>

4. Relevant Taskforce Recommendations and Implementation Time Frames

The Taskforce Report lists the following recommendations (p. 191-202) and time frames (implementation matrix, p. 203-243) relevant to IGM practices, infanticide and abandonment. Note: According to the Implementation Matrix, the short-term recommendations should have been implemented by now, however, the Rapporteurs are not aware of any public report indicating this to be the case.

a) Short-Term Recommendations

Recommendation 7: *“The Ministry of Health to work with other regulatory agencies towards the protection against involuntary medical intervention and ensure effective remedy for persons otherwise affected.”*

Time frame: 6 months (from January, 2019)

State Body Responsible: [Ministry of Health], CAJ = National Council on the Administration of Justice, [K]MPDB = [Kenya] Medical Practitioners and Dentists Board
(Taskforce Report, p. 197 and 224)

Recommendation 6: *“Surgical and hormonal interventions for children in relation to their intersex status should only be carried out in case of medical emergency based on informed consent.”*

Time frame: 1 year (from January, 2019)

State Body Responsible: Ministry of Health, MPDB = Medical Practitioners and Dentists Board, KEPSA = Kenya Private Sector Alliance
(Taskforce Report, p. 196 and 224)

b) Medium-Term Recommendations

Recommendation 6: *“The Director of Medical Services in consultation with the relevant regulatory body (Kenya Medical Practitioners and Dentists Board, KMPDB) to develop a protocol on surgical and hormonal interventions that constitute medical emergencies.”*

Time frame: 2 years (from January, 2019)

State Body Responsible: MPDB = Medical Practitioners and Dentists Board, Ministry of Health, Level 5 and 6 Hospitals, Centre for Adolescent Health, Mathari Mental Hospital, KEMRI = Kenya Medical Research Institute, CRR = Centre for Reproductive Rights, Family Options, KELIN Kenya, KNCHR = Kenya National Commission on Human Rights, NGEC = National Gender and Equality Commission
(Taskforce Report, p. 196 and 224)

Recommendation 12d): *“Review of any laws, policies and programmes that discriminate or require intrusive and unnecessary procedures or medical interventions to ensure equal participation of intersex persons in all spheres of life.”*

Time frame: 2 years (from January, 2019)

State Body Responsible: Ministry of Sports, Culture and Heritage; Sports Federations: Athletics Kenya, Football Kenya Federation, Cricket Kenya, Kenya Hockey Union, National Olympic Committee of Kenya, Kenya Rugby Union; National Gender and Equality Commission; Ministry of Youth, Gender and Public Service; Ministry of Labour and Social Protection; Ministry of Education; KNCHR = Kenya National Commission on Human Rights; OAG = Office of the Attorney General; KLRC = Kenya Law Reform Commission
(Taskforce Report, p. 201 and 239)

c) Long-Term Recommendations

Recommendation 12b): *“Periodic reporting by State agencies and organs on the observance, protection and promotion initiatives to safeguard enjoyment of human rights and fundamental freedoms by intersex persons.”*

Time frame: 3 years (from January, 2019)

State Body Responsible: Office of the Attorney-General and Department of Justice, KNCHR = Kenya National Commission on Human Rights, National Gender and Equality Commission, [N]CAJ = National Council on the Administration of Justice, National Police Service, Kenya Prison Service, Department of Probation and Aftercare Services, Ministry of Sports, Culture and Heritage

(Taskforce Report, p. 201 and 237)