

Intersex Genital Mutilation in Malta: Update to LOIPR Report

Dear Human Rights Committee

Despite a pioneering formal prohibition introduced in 2015, **all typical forms of Intersex Genital Mutilation are still practised in Malta**, facilitated and **paid for by the State party** via the **public health system**, perpetrated both **domestically** and in **contractual hospitals overseas**. A 2018 amendment eventually also introduced sanctions for IGM, described by the Government as *“equalis[ing] the penalties applicable to intersex genital mutilation to the penalties applicable to female genital mutilation”*, a claim also repeated in the State Party Report (para 115). However, this is **not the case**. Also, there is **no de facto access to redress** for victims.

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1. LOIPR and State Party Report (CCPR/C/MLT/3, para 115)

In its Replies to the LOIPR’s questions on non-discrimination, the State Party Report included a section on *“Discrimination against LGBT persons”*, and therein explicitly referred to **“intersex genital mutilation”**, claiming to have equalised *“the penalties applicable to intersex genital mutilation to the penalties applicable to female genital mutilation”*:

“Reply to paragraph 6 of the list of issues

[...]

Discrimination against LGBT persons

115. 2015: *The Gender Identity, Gender Expression and Sex Characteristics (GIGESC) Act* was adopted, granting the right to the recognition of one’s gender identity and the right to bodily integrity and physical autonomy (Act XI of 2015).

- *Three amendments have since been affected to the Gender Identity, Gender Expression and Sex Characteristics Act:*
 - *the first to ensure that the provisions of the Act fully apply to adopted persons (Act XX of 2015);*
 - *the second to ensure that the effects of the Act extend to persons in detention (regardless of nationality), as well as to depathologise all sexual orientations, gender identities and gender expressions (Act LVI of 2016); and*
 - *the third to conform the penalties applicable to intersex genital mutilation to the penalties applicable to female genital mutilation (Act XIII of 2018).”*

While **Malta** has to be commended for being the first State to **formally outlaw** IGM practices in the **GIGESC Act 2015**, and in **2018 amending the law to include sanctions** including prison terms, it is important to note that in fact the **prison terms for IGM are only half of those for FGM**, and regarding **extraterritorial protections, for IGM there are none** (see below, p. 7-8).

2. Malta’s UN commitments to “protect intersex children from violence and harmful practices”, “investigate abuses”, “ensure accountability” and “access to remedy”

a) UNHRC45 Statement, 01.10.2020

On occasion of the **45th Session of the Human Rights Council** the **State party** initiated a public “*Joint Statement led by Austria on the Rights of Intersex Persons*” calling to “**protect [...] intersex adults and children [...] so that they live free from violence and harmful practices. Governments should investigate human rights violations and abuses against intersex people, ensure accountability, [...] and provide victims with access to remedy.**”¹

b) UNHRC48 Statement, 04.10.2021

On occasion of the **48th Session of the Human Rights Council** the **State party** supported a public follow-up statement reiterating the call to end harmful practices and ensure access to justice:

*“Intersex persons also need to be protected from **violence** and States must **ensure accountability** for these acts. [...]*

*Furthermore, there is also a need to take measures to protect the **autonomy** of intersex children and adults and their rights to health and to **physical and mental integrity** so that they*

1 Statement supported by Malta (and 34 other States) during the 45th Session of the Human Rights Council on 1 October 2020, <https://www.dfat.gov.au/international-relations/themes/human-rights/hrc-statements/45th-session-human-rights-council/joint-statement-led-austria-rights-intersex-persons>

live free from violence and harmful practices. Medically unnecessary surgeries, hormonal treatments and other invasive or irreversible non-vital medical procedures without their free, prior, full and informed consent are harmful to the full enjoyment of the human rights of intersex persons.

*We call on all member states to take measures to combat violence and discrimination against intersex persons, develop policies in close consultations with those affected, ensure accountability, reverse discriminatory laws and provide victims with access to remedy.”*²

c) UNHRC54 Statement, 04.10.2023

On occasion of the 54th Session of the Human Rights Council the State party supported a public follow-up statement reiterating the call to prohibit harmful practices and inhuman treatment and to ensure access to justice:

“4. Because their bodies are perceived as different, intersex persons, including children, face stigma, misconception and violence, such as forced, coercive, irreversible and non-vital medical interventions. These include so-called “normalising” surgeries that can have life-long negative impacts on their physical and mental health. These harmful practices should be urgently stopped. Human rights of intersex persons need to be respected, so that they can live free from violence, cruel, inhuman, or degrading treatment and harmful practices. [...]

*8. We call on all States to increase efforts to combat violence, harmful practices and discrimination on the basis of sex characteristics, address their root causes, and implement protective laws and policies in close consultations with those affected, in order to ensure the full realization of human rights of intersex persons.”*³

d) UNHRC55 Intersex Resolution A/HRC/55/L.9 co-sponsored by Malta, 21.03.2024

On occasion of the 55th Session of the Human Rights Council, HRC adopted a Resolution promoted by Malta recognising “*violence and harmful practices against intersex persons [...] including medically unnecessary or deferrable interventions [...] performed without the full, free and informed consent of the person*”, and urging States to “*combat*” such “*violence*”.⁴

3. IGM practices persist, insufficient protections, Government fails to act

To this day **all forms of IGM practices remain widespread and ongoing** in Malta (CRC/C/MLT/CO/3-6, paras 28-29), both domestic and overseas, persistently **advocated, prescribed and perpetrated** in domestic state funded University Children’s Hospitals and contractual hospitals **overseas**, reportedly in the **UK** (see also CRC/C/GBR/CO/5, paras 46-47; CRPD/C/GBR/CO/1, paras 10(a)-11(a), 38-41; CAT/C/GBR/CO/6, paras 64-65; CRC/C/GBR/CO/6-7, para 35(d)), **Belgium** (see also CCPR/C/BEL/CO/6, paras 21-22; CRC/C/BEL/CO/5-6, paras 25(b)+26(e); CEDAW/C/BEL/CO/8, paras 23(c)+24(c), 45(c), 46(c)) and **Italy** (see also CRC/C/ITA/CO/5-6, para 23; CRPD/C/ITA/CO/1, paras 45-46), **advocated**

2 Statement supported by Malta (and 52 other States) during the 48th Session of the Human Rights Council on 4 October 2021, <https://www.bmeia.gv.at/oev-genf/speeches/alle/2021/10/united-nations-human-rights-council-48th-session-joint-statement-on-the-human-rights-of-intersex-persons/>

3 Statement supported by Malta (and 55 other States) during the 54th Session of the Human Rights Council on 4 October 2023, https://finlandabroad.fi/web/geneve/current-affairs/-/asset_publisher/h5w4iTUJhNne/content/general-debate-item-8/384951

4 <https://undocs.org/A/HRC/55/L.9>

and paid for by the State party via the public health system, as well as by private health insurances.

Despite **previous Concluding Observations** by CRC (CRC/C/MLT/CO/3-6, paras 28-29), and longstanding public **criticism and appeals by intersex organisations and human rights bodies**,^{5 6 7 8 9} the **Government fails to take appropriate action**.

Accordingly, the **Malta Association of Urology** endorses the current 2024 ESPU/EAU “*Paediatric Urology*” Guidelines prescribing all forms of IGM.

Currently practiced forms of IGM in Malta include:

a) IGM 3 – Sterilising Procedures:

**Castration / “Gonadectomy” / Hysterectomy /
Removal of “Discordant Reproductive Structures” / (Secondary) Sterilisation
Plus arbitrary imposition of hormones**¹⁰

The “**Malta Association of Urology (MAU)**” endorses the current **2024 Guidelines of the European Association of Urology (EAU)**,¹¹ which include the current ESPU/EAU “*Paediatric Urology*” **Guidelines 2024**¹² of the European Society for Paediatric Urology (ESPU) and the European Association of Urology (EAU) which stress:¹³

“The issue of whether gonads should be removed and the timing of such surgery remains controversial and has been altogether questioned in some forms of DSD. Patients with, for example, CAIS benefit from the presence of testicles and the resultant aromatisation of the naturally occurring testosterone to oestrogens. The risk of malignant gonadal transformation in this subcategory is low (1.5%) with cases of malignancy first appearing after the second decade of life, thus allowing for the safe deferral of gonadectomy until after puberty [1279, 1280].”

Further, regarding “*when and whether to pursue gonadal or genital surgery*”,¹⁴ the Guidelines refer to the “*ESPU/SPU standpoint on the surgical management of Disorders of Sex Development (DSD)*”,¹⁵ which advocates “gonadectomies”:

5 CRC/C/MLT/CO/3-6, paras 28-29

6 Public Statement by the Third International Intersex Forum, Malta 2013,

<https://stopigm.org/post/Public-Statement-by-the-Third-International-Intersex-Forum-Malta-2013>

7 “‘Human rights for hermaphrodites too’, international organisation tells Malta”, Times of Malta, 15.05.2019,

<https://timesofmalta.com/articles/view/human-rights-for-hermaphrodites-too-international-organisation-tells.710086>

8 Massimo Costa, “Intersex surgery on infants still carried out in Malta, despite ban, report indicates”, MaltaToday, 04.02.2020,

https://www.maltatoday.com.mt/news/national/100178/intersex_surgery_on_infants_still_carried_out_in_malta_despite_ban_report_indicates

9 John Paul Cordina, “Intersex children need stronger protections, report suggests”, Newsbook, 04.02.2020,

<https://newsbook.com.mt/en/intersex-children-need-stronger-protections-report-suggests/>

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

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

11 <https://uroweb.org/guidelines/endorsement/>

12 <https://d56bochluxqz.cloudfront.net/documents/full-guideline/EAU-Guidelines-on-Paediatric-Urology-2024.pdf>

13 Ibid., p. 96

14 Ibid., p. 95

15 P. Mouriquand, A. Caldamone, P. Malone, J.D. Frank, P. Hoebeke, “The ESPU/SPU standpoint on the surgical management of Disorders of Sex Development (DSD)”, Journal of Pediatric Urology vol. 10, no. 1 (2014), p. 8-10, [http://www.jpurology.com/article/S1477-5131\(13\)00313-6/pdf](http://www.jpurology.com/article/S1477-5131(13)00313-6/pdf)

“Testes are either brought down in boys or removed if dysgenetic with tumour risk or in complete androgen insensitivity syndrome or 5 alpha reductase deficiency. Testicular prostheses can be inserted at puberty at the patient’s request.”

b) IGM 2 – “Feminising Procedures”: Clitoris Amputation/“Reduction”, “Vaginoplasty”, “Labiaplasty”, Dilatation¹⁶

The “Malta Association of Urology (MAU)” endorses the current **2024 Guidelines of the European Association of Urology (EAU)**,¹⁷ which include the current **ESPU/EAU “Paediatric Urology” Guidelines 2024**¹⁸ of the European Society for Paediatric Urology (ESPU) and the European Association of Urology (EAU). In **chapter 3.18 “Disorders/Differences of sex development”**,¹⁹ despite admitting that “Surgery that alters appearance is not considered urgent”²⁰ and that “adverse outcomes have led to recommendations to delay unnecessary [clitoral] surgery to an age when the patient can give informed consent”,²¹ the ESPU/EAU Guidelines nonetheless explicitly **refuse to postpone non-emergency surgery**, but in contrary **insist to continue with non-emergency genital surgery** (including partial clitoris amputation) on young children based on “*social and emotional conditions*” and **substituted decision-making by “parents and caregivers implicitly act[ing] in the best interest of their children”**²² and making “*well-informed decisions [...] on their behalf*”, and further **explicitly refusing “prohibition regulations”** of unnecessary early surgery,²³ referring to the 2018 ESPU Open Letter to the Council of Europe (COE),²⁴ which further invokes **parents’ “social, and cultural considerations”** as justifications for early surgery (p. 2).

Apparently, the only “feminising” genital “corrective” surgery **practiced domestically** is the surgical construction of a vagina in case of “*congenital absence of vagina (Meyer-Rokitansky Syndrome)*”, which is mostly done during or after adolescence, see the “*Malta Plastic Surgery SAC Curriculum 2014*”²⁵, p. 166-167.

All other “feminising” IGM surgeries, namely **clitoral “reduction” and “vaginoplasty”** including on intersex infants diagnosed with Congenital Adrenal Hyperplasia (CAH), are traditionally **referred to contractual hospitals overseas**, reportedly to the **UK**,²⁶ **Belgium**,²⁷ and arguably also to **Italy**.²⁸ ²⁹ This is also in general terms officially admitted by the Maltese

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

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

17 <https://uroweb.org/guidelines/endorsement/>

18 <https://d56bochluxqnz.cloudfront.net/documents/full-guideline/EAU-Guidelines-on-Paediatric-Urology-2024.pdf>

19 Ibid., p. 91

20 Ibid., p. 95

21 Ibid., p. 95

22 Ibid., p. 95-96

23 Ibid., p. 96

24 https://www.espu.org/images/documents/ESPU_Open_Letter_to_COE_2018-01-26.pdf

25 Specialist Advisory Committee (SAC) (2014), HST Training Programme and Curriculum Plastic, Reconstructive and Aesthetic Surgery,

<https://healthservices.gov.mt/en/regcounc/msac/Documents/Malta%20Plastic%20Surgery%20SAC%20Curriculum%202014.pdf>

26 See 2017 CRPD UK NGO Report, p. 9,

<https://intersex.shadowreport.org/public/2017-CRPD-UK-NGO-Coalition-Intersex-IGM.pdf>

27 See 2018 CRC Belgium NGO Report, p. 7,

<https://intersex.shadowreport.org/public/2018-CRC-Belgium-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

28 P. 9, https://health.ec.europa.eu/document/download/0916019a-3dd5-4326-93b6-84d44a07d62f_sv?filename=ev_20170309_frep_en.pdf

Government,³⁰ as well as more specifically indicated in the “*Malta Plastic Surgery SAC Curriculum*”³¹ by the **Association of Surgeons of Malta (ASM)** and the **Ministry for Health**,³² which on p. 167 explicitly states, “*surgical correction of epispadias, female genital anomalies and ambiguous genitalia be inaccessible to many trainees*”, but nonetheless notes trainees

“*Should demonstrate ability to formulate treatment plan for*

- *ambiguous genitalia – incidence, causes, associated features, investigations – chromosome profile, testosterone / sex steroid profile and approach to parents.*”

c) IGM 1 – “**Masculinising Surgery**”: **Hypospadias “Repair”**”³³

The “**Malta Association of Urology (MAU)**” endorses the current **2024 Guidelines of the European Association of Urology (EAU)**,³⁴ which include the current **ESPU/EAU “Paediatric Urology” Guidelines 2024**³⁵ of the European Society for Paediatric Urology (ESPU) and the European Association of Urology (EAU). In **chapter 3.7 “Hypospadias”**,³⁶ the **ESPU/EAU Guidelines’ section 3.7.5.3 “Age at surgery”** explicitly promotes, “*The age at surgery for primary hypospadias repair is usually 6-18 (24) months.*”³⁷ – despite admitting to the “*risk of complications*”³⁸ and “*aesthetic[...]*” and “*cosmetic*” justifications.³⁹

Also, the **Association of Surgeons of Malta (ASM)** and the **Ministry for Health**⁴⁰ advocate and train **cosmetic hypospadias “repair” surgery** in the “*Malta Plastic Surgery SAC Curriculum 2014*”,⁴¹ which offers under “*Genitourinary Reconstruction*” a “**Module 1: Hypospadias and allied conditions**” (p. 163-165) aimed at:

“*Objective: Acquire competence in the management of hypospadias and allied conditions including management of the family in addition to all aspects of the surgical management and complications.*”

The language of the Curriculum is telling, describing hypospadias as a “*deformity*” and a person with repeat “*failed*” hypospadias surgeries, which the doctors have given up as hopeless cases, as “*hypospadias salvage/cripple patient*” (p. 164).

29 Miriam Dalmas (2017), Consultant Public Health Medicine at Ministry for Health, Structures and processes for cross-border care referral, slide 5,
https://web.archive.org/web/20190701104709/https://ec.europa.eu/health/sites/health/files/ern/docs/20170309_rt3_05_dalmas_pres_en.pdf

30 Ibid.

31 Specialist Advisory Committee (SAC) (2014), HST Training Programme and Curriculum Plastic, Reconstructive and Aesthetic Surgery,

<https://healthservices.gov.mt/en/regcounc/msac/Documents/Malta%20Plastic%20Surgery%20SAC%20Curriculum%202014.pdf>

32 <https://healthservices.gov.mt/en/regcounc/msac/Pages/training-programmes.aspx>

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

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

34 <https://uroweb.org/guidelines/endorsement/>

35 <https://d56bochluxqnz.cloudfront.net/documents/full-guideline/EAU-Guidelines-on-Paediatric-Urology-2024.pdf>

36 Ibid., p. 29

37 Ibid., p. 31

38 Ibid., p. 31

39 Ibid., p. 30-31

40 <https://healthservices.gov.mt/en/regcounc/msac/Pages/training-programmes.aspx>

41 Specialist Advisory Committee (SAC) (2014), HST Training Programme and Curriculum Plastic, Reconstructive and Aesthetic Surgery,

<https://healthservices.gov.mt/en/regcounc/msac/Documents/Malta%20Plastic%20Surgery%20SAC%20Curriculum%202014.pdf>

Further, the **Ministry for Health** advocates in its *“Factsheet: World Birth Defects Day 2019 – Hypospadias”* (p. 3):⁴²

“Management

Urologic referral is advised and is most important for patients in whom there is a potential functional issue. Management revolves around surgical correction of the defect, according to Keays & Dave (2017), surgical intervention for hypospadias can be performed at any age, however, most authors recommend operative intervention at 6 to 18 months. The American Academy of Pediatrics suggests this period to limit psychological stress and subsequent behavioural problems which can be seen in toddlers undergoing genital surgery. [10]

Surgery for hypospadias is elective and the decision to operate is based on severity, family preference and surgeon’s advice. [...]”

What’s more, a **2024 study**⁴³ **on the implementation of the prohibition** of IGM practices within the GIGESC Act notes:

“In fact, there has been a huge delay in GIGESCA’s implementation due to a lack of definitional and terminological consensus between human rights experts and medical experts. As a result, the protocol has not been finalized, and thus, the full remit of the act is not yet set. [...] In Malta, this debate has really centered on whether hypospadias [10] should or should not be included within the definition of ‘intersex’.” (p. 8)

And a healthcare professional interviewed for the study openly **admits** that hypospadias continues to be surgically “corrected” domestically in Malta:

“Hypospadias (is) quite common in Malta. When it’s severe, like scrotal or perianal, they should work up for ambiguous genitalia but instead, if testes are present, then it has to be a boy and proceed with hypospadias repair. (Respondent 7—healthcare)” (p. 14)

4. How the Maltese GIGESC Act fails Intersex Children

In 2015, Malta passed the **Gender Identity, Gender Expression and Sex Characteristics Act (GIGESC Act)**,⁴⁴ which under **art. 14** explicitly makes it **“unlawful”** to perform **IGM practices**, but concerning IGM practices initially included no sanctions at all. A 2018 amendment⁴⁵ eventually introduced **sanctions**, namely **“punishment of imprisonment not exceeding five years, or [...] a fine (multa) of not less than five thousand euro (€5,000) and not more than twenty thousand euro (€20,000)”** (GIGESC art. 14.(2)).

The Maltese Government claims this newly introduced sanctions would **“equalise the penalties applicable to intersex genital mutilation to the penalties applicable to female genital mutilation”**.⁴⁶ However, this is **not true**, as the **sanctions for FGM are actually double** (**“imprisonment for a term of five to ten years”** with no possibility to get off with a fine) and included in the **Criminal Code** (art. 251E).⁴⁷

42 https://healthservices.gov.mt/en/dhir/Documents/Facts%20Sheets/World%20Birth%20Defect%20Day%202019%20Many%20Defects_One%20Voice.pdf

43 Claudia Bartolo Tabone, Fae Garland, Mitchell Travis (2023), “Cultural Awareness of Intersex in Malta: Invisibility, Stigma and Epistemic Injustice”, Soc. Sci. 2024, 13, 150, <https://www.mdpi.com/2076-0760/13/3/150>

44 <https://legislation.mt/eli/cap/540/eng/pdf>

45 ACT No. XIII of 2018, para 31, <https://legislation.mt/eli/act/2018/13/eng/pdf>

46 Ministry for European Affairs and Equality (2018), “LGBTIQ Strategy & Action Plan 2018-2022”, p. 7, available at <http://www.lgbtiq.gov.mt/>

47 <https://legislation.mt/eli/cap/9/eng>

Similarly, **regarding IGM there are no extraterritorial protections**, while regarding FGM “*extraterritoriality [is] in force, we aim to ensure that if female genital mutilation is done to girls when they go abroad, the crime will be prosecuted in Malta*”.⁴⁸

Thus, the GIGESC Act **fails** to meet the stipulation of the General Comment No. 20 explicitly obliging State parties to “*guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.*” (para 15).

Further, **in the case of FGM, not only those who perform the actual deed are guilty** under the law, but also “[w]hosoever aids, abets, counsels, incites, procures or coerces a female to excise, infibulate or otherwise mutilate the whole or any part of her own genitalia, shall be guilty of an offence and shall be liable, on conviction, to the punishment laid down under this article.” (Criminal Code, art. 251E.(6)) On the other hand, **in the case of IGM the only ones punishable** under the law are the “*medical practitioners or other professionals*” who **perform the actual mutilation domestically** (GIGESC art. 14.(1)+(2)), whereas doctors who **refer children to be submitted to IGM in foreign hospitals** (as it is often the case in Malta) are **a priori exempt from prosecution**, same as whosoever aiding, abetting, counselling, inciting, procuring or coercing intersex children to be submitted to IGM.

What’s more, according to statements of the Maltese Government, the law as it is **exempts IGM 1 “hypospadias repair”**,⁴⁹ the most frequent IGM practice performed in Malta itself (see also p. 6-7), as “*whether cases of hypospadias are covered by the above prohibition may fall to be determined later by the courts.*”⁵⁰ For other IGM practices, Malta is **sending children overseas** for surgery, reportedly to the UK,⁵¹ Belgium,⁵² and arguably also to Italy^{53 54} – **which the law does not prohibit and punish either.**

Also, so far, the **GIGESC Act is not enforced**, as the aforementioned **2024 study**⁵⁵ on the implementation of the prohibition of IGM practices within the GIGESC Act notes, further highlighting how **healthcare practitioners openly dismiss the human rights** of intersex children:

“In fact, there has been a huge delay in GIGESCA’s implementation due to a lack of definitional and terminological consensus between human rights experts and medical

48 Helena Dalli, Minister for European Affairs and Equality (04.02.2019),

<https://eige.europa.eu/news/female-genital-mutilation-illegal-malta-girls-are-not-safe>

49 Piet de Bruyn (2017), Report: Promoting the human rights of and eliminating discrimination against intersex people, COE Doc. 14404, p. 14, para 47,

<https://pace.coe.int/pdf/08de8813d993b8b15cba4b65234f8a91499ca0f4e2a077ae1533425bb86123b5/doc.%2014404.pdf>

50 Ibid.

51 See 2017 CRPD UK NGO Report, p. 9,

<https://intersex.shadowreport.org/public/2017-CRPD-UK-NGO-Coalition-Intersex-IGM.pdf>

52 See 2019 CCPR Belgium NGO Report, p. 15,

<https://intersex.shadowreport.org/public/2019-CCPR-Belgium-NGO-Intersex-StopIGM.pdf>

53 P. 9, https://health.ec.europa.eu/document/download/0916019a-3dd5-4326-93b6-84d44a07d62f_sv?filename=ev_20170309_frep_en.pdf

54 Miriam Dalmas (2017), Consultant Public Health Medicine at Ministry for Health, Structures and processes for cross-border care referral, slide 5,

https://web.archive.org/web/20190701104709/https://ec.europa.eu/health/sites/health/files/ern/docs/20170309_rt3_05_dalmas_pres_en.pdf

55 Claudia Bartolo Tabone, Fae Garland, Mitchell Travis (2023), “Cultural Awareness of Intersex in Malta:

Invisibility, Stigma and Epistemic Injustice”, Soc. Sci. 2024, 13, 150, <https://www.mdpi.com/2076-0760/13/3/150>

experts. As a result, the protocol has not been finalized, and thus, the full remit of the act is not yet set. [...] In Malta, [...] healthcare practitioners often appear impervious to, or even dismissive of, claims of human rights violations in this arena from supranational bodies such as the UN and the European Court of Human Rights (Garland et al. 2022)." (p. 8)

Further, the study notes regarding **“Medical Awareness of Law and Legal Obligations”**:

*“Further to this, when asked about their knowledge of GIGESCA, many of the respondents admitted that they either did not know much about the legislation, or nothing at all. [...] There is a sense then that while many intersex people may not know GIGESCA applies to them, similarly where healthcare practitioners lack the language to discuss this phenomenon and understand how it relates to their work, they may also not realise that GIGESCA applies to them. This is a matter, then, of both **protection and enforcement.**”* (p. 14)

*“[R]espondent 8 (healthcare) observed that ‘. . . it is useless making (sic) a law and then there is not awareness or training about it.’ [...] **More needs to be done to ensure that medical professionals understand the obligations placed upon them by GIGESCA. Reflection needs to be taken as to why the law has been so unsuccessful in interrupting medicines’ conception of intersex as disorder.**”* (p. 15)

What’s more, the study notes that the **intersex section** of the Act was **introduced “under the radar”** (p. 12) and remains little known by the general public to this day. Worse still, *“many intersex people may not know that GIGESCA applies to them”* (p. 14), creating a **barrier to the initiation of legal proceedings** for survivors of IGM practices:

*“The ‘success’ of the legislation is dependent on its use. [This] also presupposes the idea that its **constituent population is aware enough of the legislation to utilise it.** Our respondents felt that this was **not the case:***

*What I can tell you . . . is that **most of our clients know nothing of it [GIGESCA]** . . . (Respondent 10—healthcare)*

***Nothing. Zero . . . there haven’t been any legal queries from any intersex person.** Nothing. I mean, when you have all the conditions in place for a person to enjoy rights, speak to NGOs for advice and support, you know, and everything is in place favouring the situation, and there’s still a lack of engagement, then . . . it goes to show how invisible, how disenfranchised, how disempowered, how afraid people are. (Respondent 11—Law)”* (p. 11)

Conclusion, GIGESC art. 14 aimed at protecting intersex children from IGM practices on the one hand **fails to meet the minimal requirements set out by the Covenant**, particularly **arts. 7 and 26**, and the **General Comment No. 20**, particularly paras 14-15, and on the other hand so far, the law is simply **not enforced**, and there **have not been any court cases**.

5. Maltese Government and doctors consciously dismissing intersex human rights

The persistence of IGM practices in Malta is a **matter of public record**, same as the **criticism and appeals by intersex organisations and human rights bodies**.^{56 57 58 59 60}

56 CRC/C/MLT/CO/3-6, paras 28-29

57 Public Statement by the Third International Intersex Forum, Malta 2013,

<https://stopigm.org/post/Public-Statement-by-the-Third-International-Intersex-Forum-Malta-2013>

Maltese paediatric surgeons, despite **openly admitting to knowledge of relevant criticisms** by human rights and ethics bodies, nonetheless continue to **consciously refuse** to stop advocating, practicing and participating in IGM practices, and *“often appear impervious to, or even dismissive”*⁶¹ of human rights criticism.

Also, Maltese government bodies continue to ignore the full human rights implications of IGM, as evidenced by statements that **IGM 1 is exempt from the GIGESC Act**,⁶² and the **incorrect claim** the sanctions introduced in 2018 would *“equalise the penalties applicable to intersex genital mutilation to the penalties applicable to female genital mutilation”*.⁶³ (See also State Party Report, para 115.)

What’s more, when confronted by CRC with the shortcomings of the GIGESC Act in 2019, the **Maltese Government promised: “There will be an interministerial committee who will be following up the implementation of the law more closely, and this is currently being set up.”**⁶⁴

However, so far **no progress report** has been made public, and the mentioned **2024 study**⁶⁵ concludes: *“In fact, there has been a huge delay in GIGESCA’s implementation [...] and [...] the full remit of the act is not yet set.”*

6. Lack of Independent Data Collection and Monitoring

With no 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 intersex genital surgeries are increasingly in the focus of public scrutiny and debate, perpetrators of IGM practices respond by suppressing complication rates, as well as refusing to talk to journalists “on record”.

Also in Malta, there are no statistics on intersex births and on IGM practices available.

58 “‘Human rights for hermaphrodites too’, international organisation tells Malta”, Times of Malta, 15.05.2019, <https://timesofmalta.com/articles/view/human-rights-for-hermaphrodites-too-international-organisation-tells.710086>

59 Massimo Costa, “Intersex surgery on infants still carried out in Malta, despite ban, report indicates”, MaltaToday, 04.02.2020,

https://www.maltatoday.com.mt/news/national/100178/intersex_surgery_on_infants_still_carried_out_in_malta_despite_ban_report_indicates

60 John Paul Cordina, “Intersex children need stronger protections, report suggests”, Newsbook, 04.02.2020, <https://newsbook.com.mt/en/intersex-children-need-stronger-protections-report-suggests/>

61 Claudia Bartolo Tabone, Fae Garland, Mitchell Travis (2023), “Cultural Awareness of Intersex in Malta: Invisibility, Stigma and Epistemic Injustice”, Soc. Sci. 2024, p. 8, <https://www.mdpi.com/2076-0760/13/3/150>

62 Piet de Bruyn (2017), Report: Promoting the human rights of and eliminating discrimination against intersex people, COE Doc. 14404, p. 14, para 47,

<https://pace.coe.int/pdf/08de8813d993b8b15cba4b65234f8a91499ca0f4e2a077ae1533425bb86123b5/doc.%2014404.pdf>

63 Ministry for European Affairs and Equality (2018), “LGBTIQ Strategy & Action Plan 2018-2022”, p. 7, available at <http://www.lgbtiq.gov.mt/>

64 See transcript CRC81 Session, <https://stopigm.org/crc81-malta-questioned-about-intersex-genital-mutilation-by-un/>

65 Claudia Bartolo Tabone, Fae Garland, Mitchell Travis (2023), “Cultural Awareness of Intersex in Malta: Invisibility, Stigma and Epistemic Injustice”, Soc. Sci. 2024, 13, 150, <https://www.mdpi.com/2076-0760/13/3/150>

7. Suggested Questions for the dialogue

Intersex persons

We welcome the adoption of the GIGESC Act and its amendments, in particular to adapt the penalties for intersex genital mutilation to those of female genital mutilation. However, we are concerned about reports of ongoing deferreable procedures on intersex children, both domestic and overseas, and the lack of de facto access to justice and redress in such cases.

My questions:

- Please provide data on irreversible medical or surgical treatment of intersex children, and the number of investigations, prosecutions and the convictions handed down on the grounds of GIGESC Act art. 14.
- What are the criminal or civil sanctions for performing or aiding intersex genital mutilation and female genital mutilation, both domestic and overseas? What are the remedies available to victims, and are these remedies subject to any statutes of limitations?

8. Suggested Recommendations

The Rapporteurs respectfully suggest that, with respect to the treatment of intersex persons in Malta, the Committee includes the following measures in their recommendations to the Maltese Government (in line with this Committee's previous recommendations on IGM practices):

Intersex genital mutilation

The Committee welcomes the adoption of the GIGESC Act art. 14 and its amendments. It nevertheless remains concerned about reports that non-urgent surgical and other medical treatment continues, both domestic and overseas, and the lack of de facto access to redress and justice in such cases (arts. 2, 3, 7, 17, 24 and 26).

The State party should:

- (a) amend the GIGESC Act art. 14 to include extraterritorial protections and effectively equalise the penalties to those of female genital mutilation;**
- (b) address barriers to the de facto access to redress, including by making GIGESC Act art. 14 more well-known, and by extending the statute of limitations;**
- (c) provide families with intersex children with adequate counselling and community-based psychosocial and peer support;**
- (d) systematically collect disaggregated data on surgical and other medical treatment on intersex children.**

Thank you for your consideration and kind regards,

Daniela Truffer & Markus Bauer (StopIGM.org / Zwischengeschlecht.org)