



Intersex Genital Mutilation in Germany

Dear Committee on the Rights of the Child

1. Precedents.....	1
2. Data: IGM widespread and ongoing, no access to justice.....	1
3. Insufficient Draft Law.....	3
4. Suggested Questions for LOI.....	4

1. Precedents

The 2019 **State Report did not mention IGM practices**, despite several Concluding Observations explicitly criticising IGM in Germany as a serious violation of non-derogable human rights, namely as

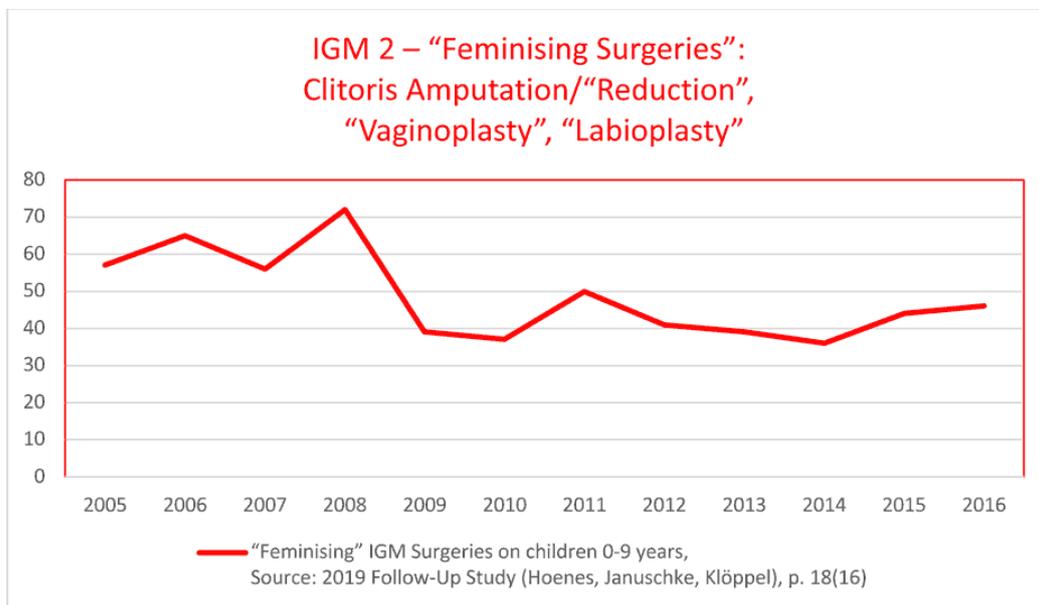
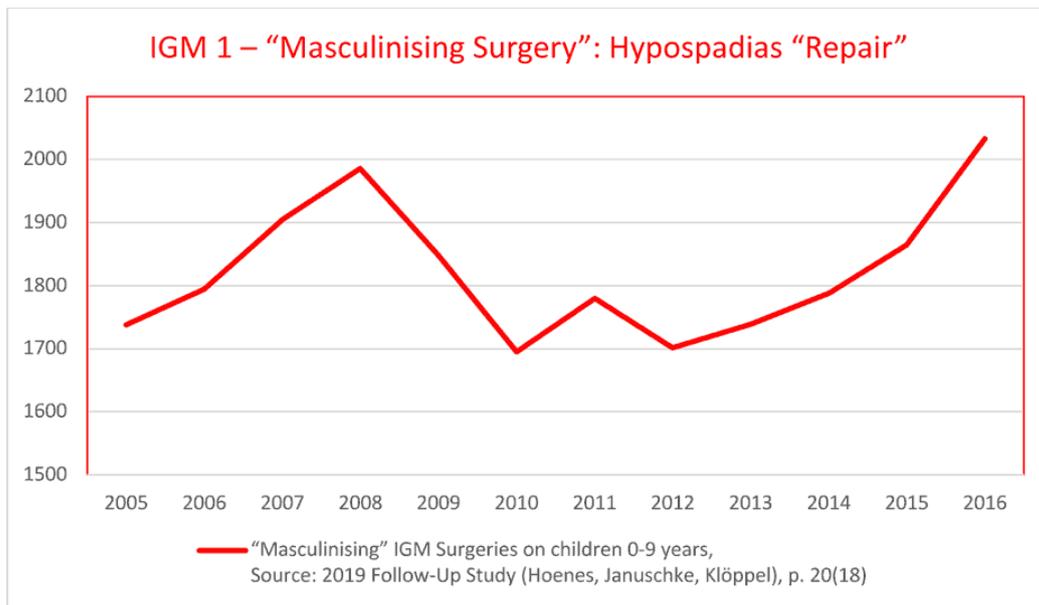
- **cruel, inhuman or degrading treatment** (CAT 2011: CAT/C/DEU/CO/5, para 20)
- a violation of the **integrity of the person** and **inhuman treatment** (CRPD 2015: CRPD/C/DEU/CO/1, paras 37-38)
- a **harmful practice**, explicitly referring to the CRC-CEDAW Joint General Comment No. 18/31 on harmful practices (CEDAW 2017: CEDAW/C/DEU/CO/7-8, paras 23-24)

Further, the Human Rights Committee included IGM practices in its LOIPR for Germany, inter alia referring to art. 7 **inhuman treatment** and **involuntary medical or scientific experimentation**, asking about involuntary “sterilizing, feminizing, and masculinizing procedures”, “plans to **ban such procedures**” and “measures taken to address **obstacles in access to justice and redress** for individuals who were subjected to such surgical or other interventions as children, including **statutes of limitations**” (CCPR 2018: CCPR/C/DEU/QPR/7, para 13).

2. Data: IGM widespread and ongoing, no access to justice

A 2019 “**Follow-up study**” on IGM practices¹ commissioned by the Federal Government using **partial data from the “Diagnosis Related Groups (DRG)”** of intersex surgeries in German hospitals financed by the Public Health System, reports on average **almost 1,900 “masculinising” and “feminising” surgeries every year on children 0-9 years alone:**

1 Josch Hoenes, Eugen Januschke, Ulrike Klöppel (2019), “Häufigkeit normangleichender Operationen ‘uneindeutiger’ Genitalien im Kindesalter. Follow Up-Studie”, <https://omp.ub.rub.de/index.php/RUB/catalog/view/113/99/604-4>



While the “Follow-up study” fails to document sterilising procedures, **partial figures published by the “Statistisches Bundesamt (Destatis)”²** show that also **IGM 3 continues:**

DRG-Statistik 2016 - Vollstationäre Patientinnen und Patienten in Krankenhäusern¹
Operationen und Prozeduren (OPS Version 2016)
1.3 Operationen und Prozeduren auf Ebene des 4-stelligen OPS-Schlüssels und Altersgruppen
1.3.3 Weiblich

OPS-Schlüssel ²	Ins-gesamt ³			
		unter 1	1 - 5	5 - 10
5-622 Orchidektomie	173	1	4	-
5-624 Orchidopexie	3	1	1	-
5-625 Exploration bei Kryptorchismus	1	-	1	-
5-626 Operative Verlagerung eines Abdominalhodens	1	-	1	-
5-627 Rekonstruktion des Hodens	1	-	-	-
5-629 Andere Operationen am Hoden	1	-	-	-
5-630 Operative Behandlung einer Varikozele und einer Hydrocele funiculi spermatici	4	1	-	-
5-631 Exzision im Bereich der Epididymis	481	-	-	-
5-633 Epididymektomie	1	-	-	-
5-634 Rekonstruktion des Funiculus spermaticus	1	-	-	-
5-636 Destruktion, Ligatur und Resektion des Ductus deferens	1	-	-	-
5-639 Andere Operationen an Funiculus spermaticus, Epididymis und Ductus deferens	1	-	-	-
5-640 Operationen am Präputium	9	-	1	-

² Statistisches Bundesamt (Destatis) (2017), “DRG-Statistik 2016. Operationen und Prozeduren auf Basis des 4-stelligen OPS der vollstationären Patientinnen und Patienten in Krankenhäusern”, p. 50,
https://www.statistischebibliothek.de/mir/servlets/MCRFileNodeServlet/DEHeft_derivate_00048786/5231401167014_korr16012018.pdf

On the other hand, **the lack of access to justice, redress and compensation** for survivors of IGM practices in Germany is **well known and near total**.

- **Criminal Law: 0 cases.** No survivor of IGM practices ever succeeded in filing criminal charges due to the statutes of limitation.
- **Civil Law: 1 successful adult case.** No survivor of childhood IGM practices ever succeeded in filing civil charges. Only 1 survivor of IGM practices so far succeeded in winning civil damages – but only for those surgeries she was submitted to as an adult at 18 years, as for all the previous surgeries she was submitted to as a child the statutes of limitations had expired.^{3 4}
- **Victim's Compensation Law (OEG): 0 successful cases.** 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.^{5 6 7 8 9}

3. Insufficient Draft Law

In 2020 the **German Federal Government** presented a **Draft Law** explicitly aimed at preventing IGM practices (DS 19/24686, 25.11.2020).¹⁰ However, same as the 2020 preliminary Draft Law (RefE) by the Ministry of Justice (BMJV),¹¹ this Draft Law again¹²

- only **partially restricts IGM 2 and IGM 3**, while in turn **explicitly allows**, among other things, the most frequent unnecessary interventions, i.e. **IGM 1**
- fails to **criminalise or adequately sanction** IGM practices
- fails to address **obstacles to access to justice and redress**, namely the **statutes of limitation**
- fails to implement **minimal requirements** as stipulated in UN Conventions, inter alia **CRC art. 24(3)** in conjunction with the **CRC-CEDAW Joint General Comment No. 18/31** on harmful practices

Particularly the **insufficient protections** and the **lack of addressing the statutes of limitation** was also **criticised by several experts** at a hearing by the Federal Committee on Legal Affairs and Consumer Protection on 13.01.2021.^{13 14 15}

3 OLG Köln 03.09.2008, Az. 5 U 51/08

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

4 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

5 OLG Nürnberg, Az. 5 U 53/16.

6 SG Trier, 07.02.2012 Az. S 6 VG 10/ 11 Tr. (unpublished)

7 SG Bayreuth, 01.08.2012, Az. S 4 VG 5/11 (unpublished)

8 SG Nürnberg, 16.07.2014, Az. S 15 VG 9/12 (unpublished)

9 SG Hamburg, 19.12.2018, Az. S 12 VE 46/14,

http://zwischen-geschlecht.org/public/Hamburg-Intersex-OEG-Urteil-19-12-2018_S-12-VE_46-14_web.pdf

10 <https://dip21.bundestag.de/dip21/btd/19/246/1924686.pdf>

11 https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RefE_Verbot_OP_Geschlechtsaenderung_Kind.pdf?__blob=publicationFile&v=2

12 See <https://stopigm.org/german-draft-law-fails-intersex-children/>

13 German Institute for Human Rights (DIMR),

https://www.bundestag.de/resource/blob/816910/9ef1eb47e5d5954c6164ee9dec3a3bb8/stellungnahme-kittel_dim-data.pdf

14 Dr Ulrike Klöppel, <https://www.bundestag.de/resource/blob/816514/8705e20395ba739e8881d13bca030aff/stellungnahme-kloepfel-data.pdf>

15 Dr Konstanze Plett, <https://www.bundestag.de/resource/blob/816780/9f83fb0ab7d697f86581f5eb87293a44/stellungnahme-plett-data.pdf>

4. Suggested Questions for LOI

We would like to urge the Committee to include harmful practices on intersex children in the LOI, for example:

Harmful practices

Please inform the Committee about the measures taken to:

- Prevent the unnecessary medical or surgical treatment of intersex children and provide adequate counselling, support and access to effective remedies for victims subjected to such treatment during childhood, including the statute of limitations.

Please provide disaggregated data on:

- Intersex children who have received non-urgent and irreversible surgical and other procedures.

Thank you for your consideration and kind regards,

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