

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



NGO Report (for Session)
to the 5th and 6th Report of Germany on the
Convention on the Rights of the Child (CRC)

Compiled by:

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

Markus Bauer, Daniela Truffer

Zwischengeschlecht.org

P.O.Box 1318

CH-8031 Zurich

info_at_zwischengeschlecht.org

<https://Zwischengeschlecht.org/>

<https://StopIGM.org>

August 2022

This NGO Report online:

<https://intersex.shadowreport.org/public/2022-CRC-Germany-NGO-Intersex-StopIGM.pdf>



Executive Summary

Despite a new 2021 “Law on the Protection of Children with Variants of Sex Development”, **all typical forms of IGM practices are still widespread in Germany today**, facilitated and paid for by the State party via the public health care system, and **practiced with impunity**. Latest available statistics indicate about **1,900 involuntary, non-urgent interventions annually**. Survivors of IGM continue to be **denied access to justice and reparations** due to lack of effective legal prohibition and the **statutes of limitations**.

This Committee has consistently recognised IGM practices to constitute a harmful practice under the Convention in Concluding Observations.

Germany is thus in breach of its **obligations** under CRC to (a) take effective legislative, administrative, judicial or other measures to **prevent harmful practices on intersex children** causing severe mental and physical pain and suffering of the persons concerned, and (b) **ensure equal access to redress and justice**, including fair and adequate **compensation** and as full as possible **rehabilitation** for victims, as stipulated in **CRC art. 24 para. 3** in conjunction with the **CRC-CEDAW Joint general comment No. 18/31** “on harmful practices”.

In total, UN treaty bodies **CRC, CEDAW, CAT, CCPR** and **CRPD** have so far issued **67 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 procedures** that would not be considered for “normal” children, without evidence of benefit for the children concerned. **Typical forms of IGM** include “masculinising” and “feminising”, “corrective” genital surgery, sterilising procedures, imposition of hormones, forced genital exams, vaginal dilations, medical display, involuntary 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, and less sexual activity.

For more than **25 years**, intersex people have denounced IGM as **harmful** and **traumatising**, as western **genital mutilation**, as **child sexual abuse** and **torture**, and called for **remedies**.

This **Thematic NGO Report** was compiled by the international intersex NGO **Zwischengeschlecht.org / StopIGM.org**. It contains **Suggested Recommendations (p. 21)**.

**NGO Report (for Session) to the 5th and 6th Report of Germany on the
Convention on the Rights of the Child (CRC)**

Table of Contents

IGM Practices in Germany (p. 5, 11-21)

Executive Summary	3
A. Introduction	5
1. Intersex, IGM and Human Rights in Germany	5
2. About the Rapporteurs	5
3. Methodology	6
B. Precedents.....	7
1. 2011 Concluding Observations on Intersex (CAT/C/DEU/CO/5, para 20)	7
2. 2015 Concluding Observations on Intersex (CRPD/C/DEU/CO/1, paras 37-38)	7
3. 2017 Concluding Observations on Intersex (CEDAW/C/DEU/CO/7-8, paras 23-24)	8
4. 2021 Concluding Observations on Intersex (CCPR/C/DEU/CO/7, paras 20-21)	9
5. 2021 List of Issues (LOI) (CRC/C/DEU/Q/5-6, paras 7(c), 18(d))	9
6. 2022 Replies to List of Issues (LOI) (CRC/C/DEU/RQ/5-6, paras 160-161)	10
C. IGM in Germany: State-sponsored and pervasive, Gov fails to act.....	11
1. Germany’s commitment to “protect intersex children from violence and harmful practices” .	11
a) UNHRC45 Statement, 01.10.2020.....	11
b) UNHRC48 Statement, 04.10.2021	11
2. IGM practices in Germany: Still pervasive, no effective protections.....	11
3. 2019 Follow-up study on IGM underlines persisting practice.....	12
4. Insufficient 2021 Law introducing § 1631e BGB aimed at prohibiting IGM.....	13
5. Medical guidelines prescribing IGM practices remain in force.....	15
6. Statutes of limitations and lack of effective prohibition	15
7. IGM Practices: Known German Case Law	16
a) Criminal Law: 0 cases.....	16
b) Civil Law: 1 successful adult case, 2 adult settlements.....	17
c) Victim’s Compensation Law (OEG): 4 failed Cases	18
d) Compensation Fund	20
D. Suggested Recommendations	21
Annexe 1 – IGM Practices in Germany as a Violation of CRC	22
1. The Treatment of Intersex Children in Germany as Harmful Practice and Violence	22
a) Harmful Practice (art. 24(3) and JGC No. 18)	22
b) Violence against Children (art. 19 and GC No. 13)	23
2. Required Legislative Provisions to Ensure Protection from IGM Practices, Impunity	23
3. Obstacles to Redress, Fair and Adequate Compensation, and Rehabilitation	24
Annexe 2 – “IGM in Medical Textbooks: Current Practice”	25
IGM 1 – “Masculinising Surgery”: “Hypospadias Repair”	25
IGM 2 – “Feminising Surgery”: “Clitoral Reduction”, “Vaginoplasty”	27
IGM 3 – Sterilising Surgery: Castration / “Gonadectomy” / Hysterectomy.....	29
“Bad results” / “Gonadectomy, Feminising Genitoplasty”	31

A. Introduction

1. Intersex, IGM and Human Rights in Germany

Germany has been reviewed by CAT (2011), CRPD (2015), CEDAW (2017) and CCPR (2021) with all Committees **recognising** IGM in Germany as constituting a **harmful practice, cruel, inhuman or degrading treatment or torture**, and a **violation of integrity** respectively.

IGM practices were **not mentioned in the 2019 State Report**. IGM practices were mentioned in the List of Issues (para 7, 18). In its Replies to LOI the German Government admitted that the available data indicate that IGM continues without change (para 160), and mentioned the insufficient **new 2021 “Law on the Protection of Children with Variants of Sex Development”** introducing § 1631e BGB aimed at prohibiting IGM, or, according to the German Government, *“aims to provide better protection for children’s right to gender self-determination”* (para 161).

Nonetheless, **Germany continues to deny** the serious nature of the violations constituted by IGM practices, and **refuses to take effective legislative, administrative, judicial or other measures**, including prohibition under Criminal Law, to protect intersex children from cruel, inhuman or degrading treatment, for example during the 2021 interactive dialogue with CCPR.

This NGO Report demonstrates that the persisting **harmful medical practice on intersex persons in Germany** – advocated, facilitated and **paid for by the State party**, and practiced with **impunity** –, as well as the ongoing **denial of access to justice and reparations** for IGM survivors, constitute **serious breaches** of Germany’s obligations under the Convention.

2. About the Rapporteurs

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

- **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 relevant UN treaty bodies, often in collaboration with local intersex advocates and NGOs,³ substantially contributing to the so far 67 Treaty body Concluding Observations recognising IGM as a serious human rights violation.⁴

StopIGM.org includes members from Germany and has been active in Germany since 2007, supporting intersex persons suing IGM perpetrators, publicly confronting individual perpetrators and hospitals, documenting the ongoing practice, raising awareness in the media, collaborating with members of parliament on parliamentary questions on the federal and on the Länder level, and testifying before the German National Ethics Council, calling

1 <https://Zwischengeschlecht.org/> English homepage: <https://StopIGM.org>

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

3 <https://intersex.shadowreport.org>

4 <https://stopigm.org/post/IAD-2016-Soon-20-UN-Reprimands-for-Intersex-Genital-Mutilations>

for effective remedies to end the practice, and previously reported on IGM in Germany to CRC, CCPR, CAT, CRPD and CEDAW.

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 first submitted a thematic report to a UN Treaty body, leading to the first ever recommendations on intersex in 2009.

3. Methodology

This thematic NGO report is an update to the **2020 CRC NGO Report for LOI**.⁵ It is based on the **2021 CCPR NGO Report for Session**.⁶

5 <https://intersex.shadowreport.org/public/2020-CRC-Germany-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

6 <https://intersex.shadowreport.org/public/2021-CCPR-Germany-NGO-Intersex-StopIGM.pdf>

B. Precedents

1. 2011 Concluding Observations on Intersex (CAT/C/DEU/CO/5, para 20)

Intersex people

20. *The Committee takes note of the information received during the dialogue that the Ethical Council has undertaken to review the reported practices of routine surgical alterations in children born with sexual organs that are not readily categorized as male or female, also called intersex persons, with a view to evaluating and possibly changing current practice. However, the Committee remains concerned at cases where gonads have been removed and cosmetic surgeries on reproductive organs have been performed that entail lifelong hormonal medication, without effective, informed consent of the concerned individuals or their legal guardians, where neither investigation, nor measures of redress have been introduced. The Committee remains further concerned at the lack of legal provisions providing redress and compensation in such cases (arts. 2, 10, 12, 14 and 16).*

The Committee recommends that the State party:

(a) Ensure the effective application of legal and medical standards following the best practices of granting informed consent to medical and surgical treatment of intersex people, including full information, orally and in writing, on the suggested treatment, its justification and alternatives;

(b) Undertake investigation of incidents of surgical and other medical treatment of intersex people without effective consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation;

(c) Educate and train medical and psychological professionals on the range of sexual, and related biological and physical, diversity; and

(d) Properly inform patients and their parents of the consequences of unnecessary surgical and other medical interventions for intersex people.

2. 2015 Concluding Observations on Intersex (CRPD/C/DEU/CO/1, paras 37-38)

Protecting the integrity of the person (art. 17)

37. *The Committee is concerned about: (a) the use of compulsory and involuntary treatment, in particular for persons with psychosocial disabilities in institutions and older persons in residential care; (b) the lack of data on involuntary placement and treatment; (c) the practice of carrying out forced sterilization and coercive abortions on adults with disabilities on the basis of substituted consent; and (d) the lack of implementation of the 2011 recommendations of the Committee against Torture (see CAT/C/DEU/CO/5, para. 20) regarding upholding the bodily integrity of intersex children.*

38. *The Committee recommends that the State party take the measures, including of a legislative nature, necessary to:*

(a) Repeal section 1905 of the German Civil Code and explicitly prohibit in law sterilization without the full and informed consent of the individual concerned, eliminating all

exceptions, including those based upon substituted consent or court approval;

(b) Ensure that all psychiatric treatments and services are always delivered with the free and informed consent of the individual concerned;

(c) Investigate human rights violations in psychiatric and older persons care settings in all Länder;

(d) Implement all the recommendations of the Committee against Torture (ibid.) relevant to intersex children.

3. 2017 Concluding Observations on Intersex (CEDAW/C/DEU/CO/7-8, paras 23-24)

Harmful practices

23. The Committee welcomes the adoption of legislative and other measures to combat harmful practices, including the forty-seventh Criminal Law Amendment Act (2013) prohibiting female genital mutilation and the establishment of an inter-ministerial working group on intersexuality/transsexuality. Nevertheless, the Committee is concerned about:

[...]

(d) The lack of clear legislative provisions prohibiting the performance of unnecessary medical procedures on infants and children of indeterminate sex until they reach an age at which they are able to provide their free, prior and informed consent;

(e) Inadequate support and the lack of effective remedies for intersex persons who have undergone medically unnecessary surgical procedures at a very early age, often with irreversible consequences, resulting in long-term physical and psychological suffering.

24. In the light of joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices, the Committee recommends that the State party:

[...]

(d) Adopt clear legislative provisions explicitly prohibiting the performance of unnecessary surgical or other medical treatment on intersex children until they reach an age at which they can provide their free, prior and informed consent; provide the families of intersex children with adequate counselling and support; and ensure that the German Medical Association provides information to medical professionals on the legal prohibition of unnecessary surgical or other medical interventions for intersex children;

(e) Ensure the effective access to justice, including by amending the statute of limitations, of intersex persons who have undergone unnecessary surgical or other medical treatment without their free, prior and informed consent; and consider the proposal of the German Ethics Council to establish a State compensation fund.

4. 2021 Concluding Observations on Intersex (CCPR/C/DEU/CO/7, paras 20-21)

Intersex persons

20. *The Committee is concerned about reports that intersex children have sometimes been subjected to invasive, medically unnecessary and irreversible medical procedures aimed at assigning them a sex. It is also concerned that such actions are often based on a stereotyped vision of gender roles, involve humiliating and painful procedures and are carried out before the affected persons are of an age to give their free and informed consent. It is further concerned that victims of such practices face significant barriers to accessing remedies, despite suffering lasting physical and psychological harm, including owing to statutes of limitations impeding child victims from seeking redress when they are adults, difficulties accessing health records and compensation not being available. The Committee commends the State party for introducing the Law on the Protection of Children with Variations in Sex Development in 2021. It nevertheless remains concerned by reports that the Law does not specifically restrict all problematic practices, establish criminal liability or effectively address all barriers to access to remedies for victims (arts. 2–3, 7, 17, 24 and 26).*

21. *The State party should take all steps necessary to ensure that all acts relating to the assignment of a sex to intersex children performed without their free and informed consent are specifically prohibited, except in cases where such interventions are absolutely necessary for medical reasons and the best interests of the child have been duly taken into account. This should include the consideration of amendments to the Law on the Protection of Children with Variations in Sex Development of 2021 within the five-year period allocated for its review, if necessary. The State party should also ensure that all victims have access to remedies, including through a revision of the application of statutes of limitation for violations in childhood, taking steps to ensure that all victims have access to their health records and considering the establishment of a dedicated compensation fund.*

5. 2021 List of Issues (LOI) (CRC/C/DEU/Q/5-6, paras 7(c), 18(d))

7. *Please describe the measures taken:[...]*

(c) *To take legislative measures to prevent the unnecessary medical or surgical treatment of intersex children.*

[...]

Data, statistics and other information

18. *Please provide, if available, updated statistical data, disaggregated by age, sex, ethnic origin, national origin, geographical location and socioeconomic status, for the past three years, on the following: [...]*

(d) *Cases of unnecessary medical or surgical treatment of intersex children;*

6. 2022 Replies to List of Issues (LOI) (CRC/C/DEU/RQ/5-6, paras 160-161)

Reply to paragraph 18 (d) of the list of issues

160. *Despite revisions to the medical guidelines emphasising the right of self-determination of intersex children, a study by Berlin's Humboldt University expresses doubts that the number of cosmetic operations on the genitals of children with congenital variations in physical sex characteristics at German hospitals had changed significantly between 2005 and 2014. [20] A follow-up study conducted by the University of Bochum in 2018 came to a similar conclusion. [21]*

161. *The Act on the Protection of Children with Variants of Sex Development, which came into force on 22 May 2021, aims to provide better protection for children's right to gender self-determination.*

[20] Klöppel, Zur Aktualität kosmetischer Operationen „uneindeutiger“ Genitalien im Kindesalter, Bulletin Texte 42, Zentrum für transdisziplinäre Geschlechterstudien, Humboldt-Universität zu Berlin, pp. 56 et seq.

[21] Hoenes, Januschke, Klöppel, Sabisch, Häufigkeit normangleichender Operationen „uneindeutiger“ Genitalien im Kindesalter, Bulletin Texte 44, Fakultät Sozialwissenschaft, Gender Studies, 2019, p. 19.

C. IGM in Germany: State-sponsored and pervasive, Gov fails to act

1. Germany's commitment 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 supported a public statement 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.*"⁷

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 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."*⁸

2. IGM practices in Germany: Still pervasive, no effective protections

Nonetheless, in Germany, as well as in many more State parties,⁹ there are

- **no effective 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 IGM**
- **no measures** in place to ensure **systematic data collection and monitoring** of IGM
- **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

7 Statement supported by Germany (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>

8 Statement supported by Germany (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/>

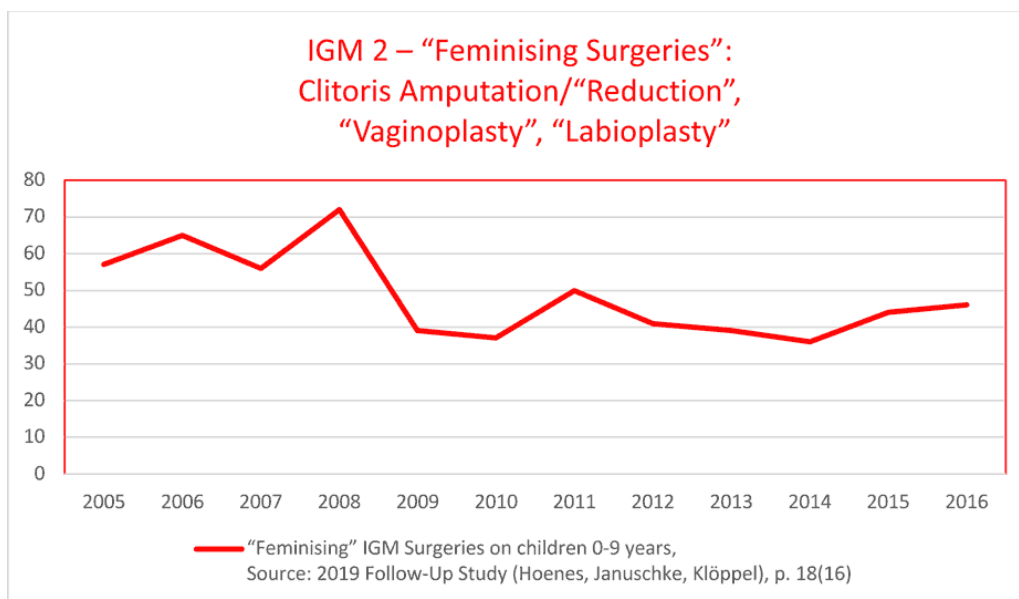
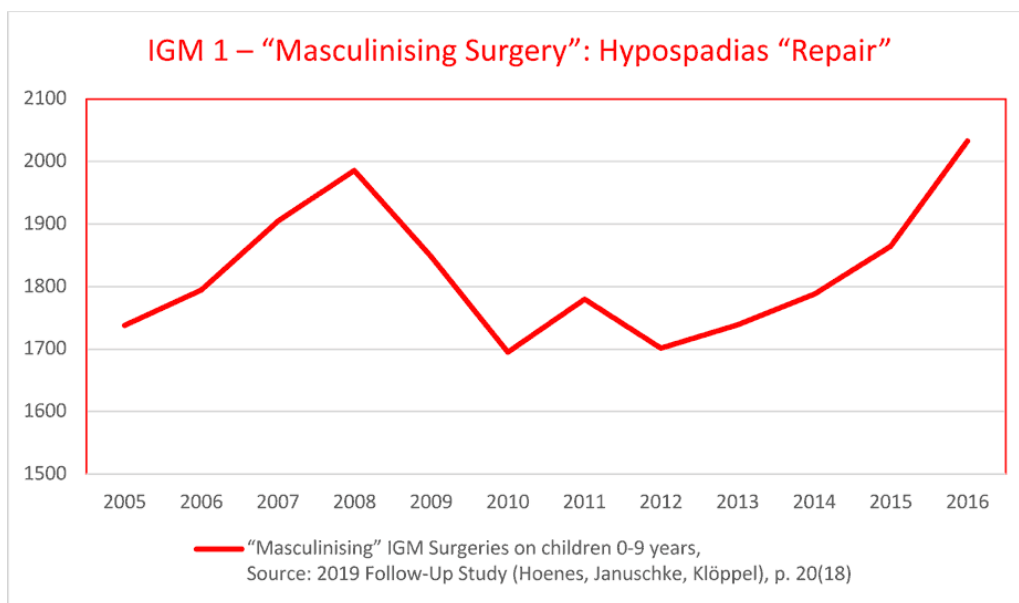
9 See <https://stopigm.org/post/IAD-2016-Soon-20-UN-Reprimands-for-Intersex-Genital-Mutilations>

Despite adopting a new Law aimed at prohibiting IGM practices which entered in force on 12 May 2021, to this day the **German government refuses** to “take effective legislative, administrative, judicial or other measures” to protect intersex children, **denying survivors of IGM practices access to justice and redress.**

3. 2019 Follow-up study on IGM underlines persisting practice

In 2016, two studies using **partial data from the “Diagnosis Related Groups (DRG)”** of intersex surgeries in German hospitals financed by the Public Health System reported **on average 1,700 IGM procedures every year** (see also our 2020 NGO Report for LOI, p. 1-2).

To summarise, the new **2019 “Follow-up study” on IGM practices**¹⁰ (also mentioned in the Replies to LOI, para 160) commissioned by the Federal Government again using partial data from the “Diagnosis Related Groups (DRG)” reported on average **almost 1,900 “masculinising” and “feminising” surgeries every year on intersex children 0-9 years alone:**



10 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)”**¹¹ 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	-

4. Insufficient 2021 Law introducing § 1631e BGB aimed at prohibiting IGM

After 25 years of **endless “discussions” and “careful examination”** without any actual consequences, the current German government has to be commended for **finally adopting a Law** aimed at prohibiting IGM practices in March 2021 (see also Replies to LOI, para 161) – **insufficient** as it may be:

In January 2020, the **Ministry of Justice and Consumer Protection (BMJV)** presented a **preliminary Draft Law (RefE)** aimed at prohibiting IGM practices (“*Draft Law for the protection of children from sex-modifying surgical interventions*”).¹² However, it **failed to provide adequate protections** for intersex children¹³ (see also our NGO Report for LOI, p. 3).

In November 2020, the **German Federal Government** presented an amended “*Draft Law for the protection of children with variants of sex development*” (DS 19/24686, 25.11.2020),¹⁴ which in March 2021 was again amended by the **Committee on Legal Affairs and Consumer Protection** (DS 19/27929, 24.03.2021)¹⁵ and eventually **adopted** by the **German Federal Parliament (Bundestag)** on 25.03.2021¹⁶ and **published** in the Federal Law Gazette on 21.05.2021 as “**Law on the Protection of Children with Variants of Sex Development of 12 May 2021**”:¹⁷

Basically, this **new Law** introduces in **Art. 1** a new **§ 1631e** in the **Civil Law (BGE)** which in **some cases limits parental consent** to unnecessary surgery on intersex children (§ 1631e (1)-(3)), and requires them to seek **authorisation by the Family Court** (§ 1631e (3)-(5)):

“Parental custody does not include the right to consent to treatment of a child who is incapable of giving consent and has a variant of sex development, or to carry out such treatment oneself, which, without any further reason for the treatment being added, is carried

11 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

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

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

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

15 <https://dserver.bundestag.de/btd/19/279/1927929.pdf>

16 <https://www.bundestag.de/dokumente/textarchiv/2021/kw12-de-geschlechterentwicklung-kinder-830122>

17 https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/Bgbl_Varianten_der_Geschlechtentwicklung.pdf?__blob=publicationFile&v=3

out solely with the intention of aligning the child's physical appearance with that of the male or female sex." (Civil Law (BGB), § 1631e (1))

Further, the Law obliges medical practitioners, *"where treatment has been carried out on the internal or external sex characteristics, [to] keep the patient's file until the day on which the person treated reaches the age of 48 years."* (§ 1631e (6))

Also, in **Art. 6 on "Evaluation"** of the new Law stipulates a **review and possible amendments within five years:**

"The Federal Government shall review the effectiveness of the provisions of Articles 1 and 3 of this Act within five years of their entry into force and shall submit a report thereon to the German Bundestag."

However, this **new Law**

- 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 **lack of criminalisation or adequate sanctions** and the **lack of addressing the statutes of limitation**, as well as the failure to establish a **national register** for relevant medical records, was also **criticised by several experts** at a hearing by the Federal Committee on Legal Affairs and Consumer Protection on 13.01.2021.^{18 19 20}

After the adoption of the new Law, its **shortcomings and loopholes** were again **widely criticised** by **intersex NGOs**^{21 22 23 24} and **legal experts**.²⁵

The **lack of sanctions** was also highlighted by **doctors** involved in IGM practices.²⁶

"[...] Olaf Hiort - a professor at the University Hospital in Luebeck - said he hoped [the German ban] would 'curb uncontrolled operations'.

He noted, however, that while there was now a ban, 'there is no penalty'."

18 German Institute for Human Rights (DIMR),

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

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

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

21 <https://im-ev.de/wp-content/uploads/2021/03/2021-03-26-PM-Verbot-von-Operationen.pdf>

22 <https://blog.zwischengeschlecht.info/post/2021/04/18/Das-deutsche-Intersex-Gesetz-und-die-Schweiz>

23 <https://oiigermany.org/ein-steiniger-weg-fuer-menschenrechte/>

24 <https://oiieurope.org/a-good-first-step-germany-adopts-law-banning-igm/>

25 <https://www.lto.de/recht/justiz/j/gesetz-zum-verbot-geschlechtszuweisender-operationen-bei-intergeschlechtlichen-kindern-in-kraft-menschenrechte/>

26 <https://www.reuters.com/article/us-germany-lgbt-health-idUSKBN2BI2MC>

Nonetheless, during the **2021 interactive dialogue with CCPR** the German delegation **counterfactually claimed:**²⁷

*“Yes, on the question of the **statute of limitations**, I had forgotten that yesterday, that was actually discussed during the legislative process. The **time limits have been extended** and it is now available for those affected up **to the age of 48** to investigate or ask questions about it and to deal with it.”*

However, according to the Law, only the **period for keeping medical records** was extended to 48 years, but **not** the statutes of limitations.

Accordingly, in its 2021 Concluding Observations **CCPR** once more obliged Germany to **“ensure that all victims have access to remedies, including through a revision of the application of statutes of limitation for violations in childhood, taking steps to ensure that all victims have access to their health records and considering the establishment of a dedicated compensation fund”** (CCPR/C/DEU/CO/7, paras 20-21).

5. Medical guidelines prescribing IGM practices remain in force

Despite the new Law, the **German Urological Association (“Deutsche Gesellschaft für Urologie (DGU)”)** still endorses the **2022 Guidelines of the European Association of Urology (EAU)**,²⁸ which include the current **ESPU/EAU “Paediatric Urology” Guidelines 2022**²⁹ of the European Society for Paediatric Urology (ESPU) and the European Association of Urology (EAU) which **promote all forms of IGM practices**, in particular **IGM 3: “removal of testes”**,³⁰ **IGM 2: 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”**,³¹ and **IGM 1: “The age at surgery for primary hypospadias repair is usually 6-18 (24) months.”**³²

6. Statutes of limitations and lack of effective prohibition: Main obstacles preventing access to justice for IGM survivors

Generally, the **statutes of limitation** prevent survivors of early childhood IGM Practices to call a court, because IGM survivors often do not find out about their medical history until much later in life, which in combination **refusal of hospitals to provide access to medical records** and severe trauma caused by IGM Practices regularly prove to amount to an insurmountable obstacle.³³

This is **well-known to and publicly admitted by the Government** at least regarding Civil Law, referring to **“claims”** of intersex advocates for **“prolongation of limitation periods for asserting**

27 Reply by Tanja Florath (Officer, EU Department, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth BMFSFJ), 12.10.2021. See transcript of original German reply,

<https://blog.zwischengeschlecht.info/post/2021/11/03/Intersex-Genitalverstümmelung-UNCCPR-befragt-Deutschland>

See also Session video at 0:05:52, <https://media.un.org/en/asset/k1y/k1ytpbjd08>

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

29 <https://d56bochluxqnz.cloudfront.net/documents/full-guideline/EAU-Guidelines-on-Paediatric-Urology-2022.pdf>

30 For details and relevant quotes, see 2022 CRC Ukraine Intersex NGO Report for Session, p. 2-3,

<https://intersex.shadowreport.org/public/2022-CRC-Ukraine-NGO-Intersex-StopIGM.pdf>

31 For details and relevant quotes, see *ibid.*, p. 3-4

32 For details and relevant quotes, see *Ibid.*, p. 5

33 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.

civil claims under medical malpractice law".³⁴

Also the fact that the **lack of effective legislative prohibition of IGM practices** constitutes yet another insurmountable obstacle to IGM survivors seeking redress has been **publicly admitted by the Federal government**,³⁵ as well as by **various Social Courts** (see below).

7. IGM Practices: Known German Case Law

As already mentioned in our 2020 NGO Report for LOI (p. 3), **the lack of access to justice, redress and compensation** for survivors of IGM practices in Germany is **well known and near total**. The following updated and expanded section demonstrates that also in 2022 this is still true:

a) Criminal Law: 0 cases

No survivor of IGM practices ever succeeded in successfully 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. This is also confirmed by a practical case:

Case 1: Survivor of IGM practices with acknowledged disability grade (GdB) of 50% and unable to work due to IGM. Born 1972, at age 5 the person concerned was submitted to a **non-consensual full clitoridectomy**, and from 1979-1983 to **involuntary human experimentation with "Androcur"** (the risky, meanwhile discredited preparation best known for its application for "chemical castration" of sex offenders). On 24.06.2022 the person concerned filed a **criminal complaint on the grounds of genital mutilation (§ 226 a) StGB)** against involved doctors to the State prosecutor's office. However, on 25.07.2022 the State prosecutor's office **rejected** the complaint due to **expiration of the statutes of limitations** and further stated that § 226 a) of the Criminal Code was not applicable in this case.³⁶

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).

Already 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.³⁷

34 Interministerial Working Group (2016), "Focus on the situation of trans- and intersexual people". Status information of the BMFSFJ. Accompanying material to the Interministerial Working Group on Inter- & Transsexuality - Volume 5, Berlin, p. 17, <https://www.bmfsfj.de/blob/112092/f199e9c4b77f89d0a5aa825228384e08/imag-band-5-situation-von-trans-und-intersexuellen-menschen-data.pdf>

35 The **Coalition Agreement 2018-21** of the current Government explicitly promises: "*We will make it clear by law that [...] medical interventions on [intersex] children are **only permissible** in cases that cannot be postponed and in order to avert danger to life.*"

CDU, CSU und SPD (2018): Coalition Agreement for 19th Legislative Term, p. 21, lines 797-799.

https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag_2018.pdf?file=1

36 Az. 7200 Js 66 I 22, 25.07.2022

37 at 52-54

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

On occasion of the adoption of the new insufficient Law § 1631e BGB, its **lack of criminalisation or adequate sanctions** and the **lack of addressing the statutes of limitation** has again been **widely criticised** by intersex NGOs and legal experts (see above, p. 14).

b) Civil Law: 1 successful adult case, 2 adult settlements

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 for surgeries they were submitted to as **adults of 18 years** or older.

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

Case 1: The first case in Cologne 2007-2009 filed by Christiane Völling concerned the removal of ovaries and uterus without informed consent and resulted in a surgeon being sentenced to pay **100’000 Euros damages**.^{39 40 41}

Case 2: Case filed 2012 in Munich.⁴² In the meantime the claimant agreed to a **settlement** as the person couldn’t afford to continue a costly, lengthy Civil Law suit.

Case 3: Case filed 2011 in Nuremberg⁴³ by Michaela Raab concerning involuntary partial clitoris amputation and gonadectomy (castration), with a **first instance verdict on 17.12.2015** sentencing the Erlangen University Clinic to **pay damages**.^{44 45} After the defendants lodged an appeal, the case rested **3 years without activity** in the **second instance** at the Higher Court (OLG),⁴⁶ Eventually, a court date was set for **07.02.2019** to “appraise the facts” and “attempt a settlement”. In the end, Michaela Raab, **worn down and tired** after 8 years of legal proceedings and **without the necessary funds** to continue a costly, lengthy Civil Law suit, accepted a settlement of 40,000 Euros, as reported in a local newspaper:⁴⁷

“Michaela Raab demanded 250,000 euros plus a pension through lawyer Paul Haubrich - and has now settled for 40,000 euros in a settlement before the Higher Court. The representatives

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

39 OLG Köln 03.09.2008, Az. 5 U 51/08

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

40 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

41 DPA (2009), Christiane Völling: Hermaphrodite wins damage claim over removal of reproductive organs,

<https://zwischenengeschlecht.org/pages/Hermaphrodite-wins-damage-claim>

42 LG München, Az. 9 O 27981/12.

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

44 Sentence LG Nürnberg-Fürth, 17.12.2015, Az. 4 O 7000/11.

45 StopIGM.org (2015), <https://stopigm.org/post/Nuremberg-Hermaphrodite-Lawsuit-Damages-and-Compensation-for-Intersex-Genital-Mutilations>

46 OLG Nürnberg, Az. 5 U 53/16.

47 Ulrike Löw (2019), “‘Penis-Amputation’: Intersexuelle verklagt Uni-Klinik Erlangen” (“‘*Penis amputation*’: *Intersex woman sues Erlangen University Hospital*”), nordbayern.de,

<https://www.nordbayern.de/region/nuernberg/penis-amputation-intersexuelle-verklagt-uni-klinik-erlangen-1.8603872>

of the university hospital (annual budget 2017: 769 million euros, 7586 employees, 1194 of them doctors) say the insurance would not cover the period in question. More than 40,000 euros could not be financed. Theoretically, Michaela Raab is free to reject the settlement and continue to fight with the clinic. But after the OLG comes the BGH [Federal Supreme Court] - and the financial risk of litigation is incalculable for Michaela Raab.”

c) Victim’s Compensation Law (OEG): 4 failed Cases

The Victims Compensation Law (Opferentschädigungsgesetz, OEG) was introduced with the **stated intent** “to create a financial compensation in cases of the state failing its mission to prevent crimes”.⁴⁸

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 below Case 2)

Another case, originally initiated in Hamburg in 2009 (!), has been **dragging on for 12 years**, with court after court concluding that non-consensual full clitoridectomy and medical experimentation with “Androcur” would constitute “*state of the art*” **legal medical interventions “serv[ing] the well-being of the patient”**, and that – contrary to CAT/C/DEU/CO/5, para 20; CRPD/C/DEU/CO/1, paras 37-38; CEDAW/C/DEU/CO/7-8, paras 23-24; CCPR/C/DEU/CO/7, paras 20-21 – “[a]lso a human experiment and torture [or CIDT] is not to be assumed”, and the right to compensation under OEG definitively **rejected by the highest instance in 2021** (see below Case 4).

Case 1:⁴⁹ Survivor of IGM practices with acknowledged disability grade (GdB) due to IGM, unable to work. **Right to compensation denied by court** in 2012, on the grounds of lacking “hostile intent” (“*feindselige Absicht*”) of perpetrating doctors, referring to lack of “*own financial interests of treating clinicians*”.⁵⁰

Case 2: Survivor of IGM practices with acknowledged disability grade (GdB) of 80% due to IGM, unable to work. **Right to compensation denied by court** in 2012, on the grounds of lacking “hostile intent” (“*feindselige Absicht*”) of perpetrating doctors. As mentioned above (D.2.), in addition the court explicitly stated, for the plaintiff to be eligible for compensation “*there would have to be laws [against IGM practices] in place. However, there aren’t.*”⁵¹

48 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, Working Paper Nr. 5, at 22-24 (p. 19-21 in PDF) http://hlcmr.de/wp-content/uploads/2015/01/Working_Paper_Nr.5.pdf

49 Although this person is personally known to the rapporteurs, here the case details are taken from: 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 9, 11 (i.e. 6, 8 according to page numbers within document) http://hlcmr.de/wp-content/uploads/2015/01/Working_Paper_Nr.5.pdf
(All other cases are based on personal interviews.)

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

51 SG Bayreuth, 01.08.2012, Az. S 4 VG 5/11 (unpublished); see also relevant quote in Nürnberger Nachrichten

Case 3: Survivor of IGM practices with acknowledged disability grade (GdB) of 60% due to IGM, unable to work. **Right to compensation denied by court** in 2014, on the grounds of lacking “*hostile intent*” (“*feindselige Absicht*”) of perpetrating doctors.⁵²

Case 4: Survivor of IGM practices with acknowledged disability grade (GdB) of 50% and unable to work due to IGM. Born 1972, at age 5 the person concerned was submitted to a **non-consensual full clitoridectomy**, and from 1979-1983 to **involuntary human experimentation with “Androcur”** (the risky, meanwhile discredited preparation best known for its application for “chemical castration” of sex offenders). On **29.10.2009** the person concerned first submitted an informal **application for OEG compensation**, together with the application for disability grade. On **25.06.2010** the person followed-up with a formal application to the State Ministry for Work, Social Affairs, Family and Intergration (BASFI) Hamburg.⁵³ On **19.03.2012** the lawyer of the person concerned explicitly informed the State ministry of the recent **CAT Concluding Observations for Germany** on IGM (CAT/C/DEU/CO/5, para 20).

Right to compensation denied by State ministry in 2013, on the grounds of lacking “*hostile intent*” (“*feindselige Absicht*”), stating the deeds in question, including **non-consensual full clitoridectomy** and **human experimentation with “Androcur**, would **not constitute a punishable criminal offense**.⁵⁴

On **02.04.2013** the person concerned lodged an **appeal** at the **Social Court Hamburg**.⁵⁵ There, the **case rested for over 69 months**.

On **19.12.2018** the **Social court eventually denied compensation**,⁵⁶ arguing the non-consensual full clitoridectomy and medical experimentation with “Androcur” would constitute a **legal medical therapy for intersex children** still recommended today, which would “*serve the well-being of the patient*”, further directly **contradicting the CAT Concluding Observations** on intersex interventions in Germany, considered as inhuman treatment under CAT arts. 2, 10, 12, 14 and 16 (CAT/C/DEU/CO/5, para 20):

“At the beginning of the 70’s of the last century an early correction of the external genital at Prader stage III was recommended. Even today, surgery in the first two years of life is recommended. It is only since a few years that the choice of the timing of surgery has been controversially discussed in science. Since the surgery corresponds to the state of science, i.e. serves the well-being of the patient, an assault in the sense of the OEG is not given. Also a human experiment and torture [or CIDT] is not to be assumed.” (p. 3-4)

Accordingly, in its conclusion the Social Court Hamburg reiterated, the IGM practices in question would **not constitute “punishable medical interventions”**, but again “*objectively [...] serve [the]*

(04.11.2013) <https://web.archive.org/web/20131114044728/http://www.nordbayern.de/nuernberger-nachrichten/region-bayern/schmerzliche-suche-nach-dem-eigenen-geschlecht-1.3257295>

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

53 Az. FS 53123-17770/10-OEG (unpublished).

54 State Ministry for Work, Social Affairs, Family and Intergration (BASFI) Hamburg, 19.03.2013, Az. FS 53123-17770/10-OEG (unpublished)

55 SG Hamburg, Az. S 12 VE 46/14

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

https://zwschengeschlecht.org/public/Hamburg-Intersex-OEG-Urteil-19-12-2018_S-12-VE_46-14_web.pdf

well-being” of the person concerned:

“The plaintiff has not become a victim of violence in the sense of the OEG, because neither the surgery at the age of five nor the treatment with Androcure nor the bladder puncture are punishable medical interventions, which objectively, i.e. from the point of view of a reasonable third party, did not serve their well-being.” (p. 8)

On **21.01.2019** the person concerned lodged an appeal against this decision at the **Higher Social Court Hamburg** (Landessozialgericht LSG Hamburg), which on **13.07.2021** **rejected the appeal**,⁵⁷ again ruling the *“full clitoris amputation”* (*“clitoridectomy”*) would have **lacked “hostile intent”** (*“feindselige Absicht”*), would **not constitute “torture and other cruel, inhuman or degrading treatment”**, but would essentially be *“covered by a curative mandate of the treating doctors”*.

On **13.08.2021** the person concerned therefore lodged an appeal at the **Federal Social Court** (Bundessozialgericht BSG).⁵⁸ However, in its ruling of 16.12.2021, the Federal Social Court **rejected the appeal**.⁵⁹ Therefore, after **12 years** of legal struggle, the right to compensation under OEG was definitively **rejected by the highest instance**.

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

d) Compensation Fund

A longstanding demand is a **compensation fund for IGM survivors** unable to pursue legal avenues, for example due to the statutes of limitations. In 2012 the **German Ethics Council** recommended to **establish a compensation fund**.⁶⁰

This all is **well-known to and publicly admitted by** the Government confirming already in 2016, *“Other claims touch on the question of the establishment of a compensation fund for people who have had sex-assigning surgeries in the past”*.⁶¹

Also, in 2017 **CEDAW** explicitly obliged Germany (CEDAW/C/DEU/CO/7-8, paras 23-24) to *“consider the proposal of the German Ethics Council to establish a State compensation fund”*.

What’s more, in 2021 **CCPR** once more obliged Germany to *“ensure that all victims have access to remedies, including through a revision of the application of statutes of limitation for violations in childhood, taking steps to ensure that all victims have access to their health records and considering the establishment of a dedicated compensation fund”* (CCPR/C/DEU/CO/7, paras 20-21).

However, to this day the Government refuses to undertake any actual steps, again ...

57 LSG Hamburg, 13.07.2021, Az. L 3 VE 1/19 (unpublished)

58 BSG, Az. B 9 V 32/21 B

59 BSG, Az. B 9 V 32/21 B, 16.12.2021

60 Stellungnahme “Intersexualität”, 14. Februar 2012 (BT – Drs. 17/9088), S. 176

Interministerial Working Group (2016), “Focus on the situation of trans- and intersexual people”. Status information of the BMFSFJ. Accompanying material to the Interministerial Working Group on Inter- & Transsexuality - Volume 5, Berlin, p. 17, <https://www.bmfsfj.de/blob/112092/f199e9c4b77f89d0a5aa825228384e08/imag-band-5-situation-von-trans-und-intersexuellen-menschen-data.pdf>

D. Suggested 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 this Committee's previous recommendations on IGM practices).

Harmful practices: Intersex genital mutilation

While welcoming the recent adoption of the Law on the Protection of Children with Variants of Sex Development (12 May 2021), the Committee remains concerned about irreversible and invasive medical procedures being performed on intersex children before they are able to provide fully informed and free consent, which can cause severe suffering, and the lack of redress and compensation in such cases.

Recalling joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices and target 5.3 of the Sustainable Development Goals, the Committee urges the State party to:

Strengthen the measures to prohibit the performance of unnecessary medical or surgical treatment on intersex children where those procedures may be safely deferred until children are able to provide their informed consent, and provide reparations for children who received unnecessary treatment, including by extending the statute of limitations. This should include the consideration of amendments to § 1631e BGB within the five-year period allocated for its review.

Provide families with intersex children with adequate counselling and support.

Systematically collect data with a view to understanding the extent of these harmful practices so that children at risk can be more easily identified and their abuse prevented.

Annexe 1 – IGM Practices in Germany as a Violation of CRC

1. The Treatment of Intersex Children in Germany as Harmful Practice Violence

a) Harmful Practice (art. 24(3) and JGC No. 18)⁶²

Article 24 para 3 CRC calls on states to abolish harmful “*traditional practices prejudicial to the health of children*”. While the initial point of reference for the term was the example of Female Genital Mutilation/Cutting (FGM/C), the term consciously wasn’t limited to FGM/C, but meant to include all forms of harmful, violent, and/or invasive traditional or customary practices.⁶³

This Committee has repeatedly considered IGM as a harmful practice, and the CRC-CEDAW Joint General Comment No. 18/31 on harmful practices as applicable.⁶⁴

Also **CEDAW** has repeatedly considered IGM as a **harmful practice**, and the CRC-CEDAW Joint General Comment/Recommendation No. 18/31 on harmful practices as applicable.⁶⁵

Harmful practices (and inhuman treatment) have been identified by intersex advocates as the **most effective, well established and applicable human rights frameworks** to eliminate IGM practices and to end the impunity of the perpetrators.⁶⁶

The **CRC-CEDAW Joint General Comment/Recommendation No. 18/31 “on harmful practices”** “*call[s] upon States parties to explicitly prohibit by law and adequately sanction or criminalize harmful practices, in accordance with the gravity of the offence and harm caused, provide for means of prevention, protection, recovery, reintegration and redress for victims and combat impunity for harmful practices*” (para 13).

Particularly, the Joint General Comment/Recommendation further underlines the need for a “**Holistic framework for addressing harmful practices**” (paras 31–36), including “**legislative, policy and other appropriate measures that must be taken to ensure full compliance with [state**

62 For a more extensive version, see 2017 CRC Spain NGO Report, p. 12-13,

<https://intersex.shadowreport.org/public/2017-CRC-Spain-NGO-Brujula-Zwischengeschlecht-Intersex-IGM.pdf>

63 UNICEF (2007), Implementation Handbook for the Convention on the Rights of the Child, at 371

64 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/IRL/CO/3-4, paras 39-40; CRC/C/NPL/CO/3-5, paras 41-42; CRC/C/GBR/CO/5, paras 46-47; CRC/C/NZL/CO/5, paras 25+15; CRC/C/ZAF/CO/2, paras 39-40+23-24; CRC/C/DNK/CO/5, paras 24+12; CRC/C/ESP/CO/5-6, para 24; CRC/C/ARG/CO/5-6, para 26; CRC/C/ITA/CO/5-6, para 23; CRC/C/BEL/CO/5-6, paras 25(b)+26(e); CRC/C/MLT/CO/3-6, paras 28-29; CRC/C/AUS/CO/5-6, para 31(b); CRC/C/PRT/CO/5-6, paras 28(b); CRC/C/AUT/CO/5-6, para 27(a)-(b), CRC/C/LUX/CO/5-6, paras 13+19; CRC/C/TUN/CO/4-6, paras 26, 14(c)+15(c); CRC/C/CHE/CO/5-6, para 29(b)+(c); CRC/C/CZE/CO/5-6, para 28; CRC/C/NLD/CO/5-6, para 23; CRC/C/GRC/CO/4-6, para 28(c); CRC/C/ISL/CO/5-6, para 26(b)+(c); CRC/C/CYP/CO/5-6, para 25(b); CRC/C/HRV/CO/5-6, para 26(b)+(c); CRC/C/CHL/CO/6-7, para 22; CRC/C/CAN/CO/5-6, para 29; CRC/C/ZMB/CO/5-7, para 26(c)

65 CEDAW/C/FRA/CO/7-8, paras 18e-f+19e-f; CEDAW/C/CHE/CO/4-5, paras 24-25, 38-39; CEDAW/C/NLD/CO/6, paras 21-22, 23-24; CEDAW/C/DEU/CO/7-8, paras 23-24; CEDAW/C/IRL/CO/6-7, paras 24-25; CEDAW/C/CHL/CO/7, paras 22-23, 12(d)-13(d), 14(d)-15(d); CEDAW/C/LUX/CO/6-7, paras 27b-c+28b-c; CEDAW/C/MEX/CO/9, para 21-22; CEDAW/C/NZL/CO/8, paras 23(c)-24(c); CEDAW/C/AUS/CO/8, paras 25(c)-26(c); CEDAW/C/LIE/CO/5, paras 35+36(c); CEDAW/C/NPL/CO/6, paras 18(c)-19(c)

66 Daniela Truffer, Markus Bauer / Zwischengeschlecht.org: “Ending the Impunity of the Perpetrators!” Input at “Ending Human Rights Violations Against Intersex Persons.” OHCHR Expert Meeting, Geneva 16–17.09.2015, online: http://StopIGM.org/public/S3_Zwischengeschlecht_UN-Expert-Meeting-2015_web.pdf

parties’] obligations under the Conventions to eliminate harmful practices” (para 2), as well as

“Data collection and monitoring” (paras 37–39)

“Legislation and its enforcement” (paras 40–55), particularly:

“adequate civil and/or administrative legislative provisions” (para 55 (d))

“provisions on regular evaluation and monitoring, including in relation to implementation, enforcement and follow-up” (para 55 (n))

“equal access to justice, including by addressing legal and practical barriers to initiating legal proceedings, such as the limitation period, and that the perpetrators and those who aid or condone such practices are held accountable” (para 55 (o))

“equal access to legal remedies and appropriate reparations in practice” (para 55 (q)).

Last but not least, the Joint General Comment explicitly stipulates: “Where **medical professionals or government employees or civil servants are involved or complicit in carrying out harmful practices, their status and responsibility, including to report, should be seen as an aggravating circumstance in the determination of criminal sanctions or administrative sanctions such as loss of a professional licence or termination of contract, which should be preceded by the issuance of warnings. Systematic training for relevant professionals is considered to be an effective preventive measure in this regard.**” (para 50)

Conclusion, **IGM practices in Germany** – as well as the **failure of the state party to enact effective legislative, administrative, social and educational measures** to eliminate them and to ensure effective access to remedies and redress for IGM survivors – clearly violate Article 24 CRC, as well as the CRC-CEDAW Joint General Comment No. 18/31 on harmful practices.

b) Violence against Children (art. 19 and GC No. 13)⁶⁷

Similarly, the Committee has also considered IGM practices as violence against children, and Art. 19 and the General Comment No. 13 also offer strong provisions to combat IGM practices.

2. Required Legislative Provisions to Ensure Protection from IGM Practices, Impunity of the Perpetrators (CRC art. 24(3) and JGC No. 18)

Article 24 para. 3 of the Convention in conjunction with the CRC-CEDAW Joint General Comment/Recommendation No. 18/31 “on harmful practices” (2014) underline state parties’ obligations to “**explicitly prohibit by law and adequately sanction or criminalize harmful practices**” (JGC 18/31, para 13), as well as to “**adopt or amend legislation with a view to effectively addressing and eliminating harmful practices**” (JGC 18/31, para 55), and specifically to ensure “**that the perpetrators and those who aid or condone such practices are held accountable**” (JGC 18/31, para 55 (o)).

Accordingly, with regards to IGM practices, and referring to Article 24 para 3 and the CRC-CEDAW Joint General Comment/Recommendation No. 18/31, CRC repeatedly recognised the obligation for State parties to “[e]nsure that the State party’s legislation prohibits all forms of harmful practices [including intersex genital mutilation]”,⁶⁸ as well as to “ensure that no-one

67 For a more extensive version with sources, see 2016 CRC UK Thematic NGO Report, p. 57,

https://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

68 CRC/C/ZAF/CO/2, 27 October 2016 paras 39–40

is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to children concerned”,⁶⁹ and to “[u]ndertake investigation of incidents of surgical and other medical treatment of intersex children without informed consent and **adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation**”.⁷⁰

3. Obstacles to Redress, Fair and Adequate Compensation, and Rehabilitation (CRC art. 24(3) and JGC No. 18)

Article 24 para. 3 of the Convention in conjunction with the CRC-CEDAW Joint General Comment/Recommendation No. 18/31 “on harmful practices” clearly stipulate the right of victims of IGM practices to “**equal access to legal remedies and appropriate reparations**” (JGC 18/31, 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*” (JGC 18/31, para 55 (o)).

However, also in **Germany** the **statutes of limitation** prohibit survivors of early childhood IGM practices to call a court, because persons concerned often **do not find out** about their medical history until much later in life, and **severe trauma** caused by IGM practices often prohibits them to act in time even once they do.⁷¹ So far there was no case of a victim of IGM practices succeeding in going to an German court.

69 CRC/C/CHE/CO/2-4, 26 February 2015, para 43

70 CRC/C/DNK/CO5, 26 October 2017, para 24

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

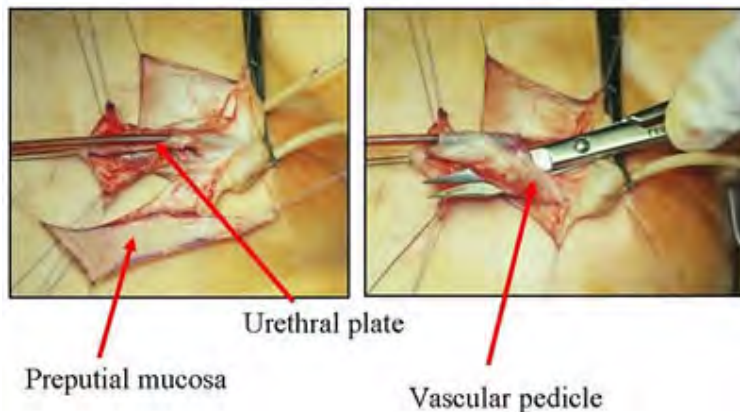
Annexe 2 – “IGM in Medical Textbooks: Current Practice”

IGM 1 – “Masculinising Surgery”: “Hypospadias Repair”

“Hypospadias,” i.e. when the urethral opening is not on the tip of the penis, but somewhere on the underside between the tip and the scrotum, is arguably the most prevalent diagnosis for cosmetic genital surgeries. Procedures include dissection of the penis to “relocate” the urinary meatus. Very high complication rates, as well as repeated “redo procedures” — “5.8 operations (mean) along their lives ... and still most of them are not satisfied with results!”

Nonetheless, clinicians recommend these surgeries without medical need explicitly “for psychological and aesthetic reasons.” Most hospitals advise early surgeries, usually “between 12 and 24 months of age.” While survivors criticise a.o. impairment or total loss of sexual sensation and painful scars, doctors still fail to provide evidence of benefit for the recipients of the surgeries.

Onlay island flap urethroplasty



Onlay / Duckett - results

- Elbakry (BJUI 88: 590-595, 2001): 42% complications
 - 5 breakdowns (7%)
 - 17 fistulae (23%)
 - Urethral strictures (9%)
 - Urethral diverticulæ (4%)
- Asopa / Duckett tube
 - 3.7% (El-Kasaby J Urol 136: 643-644, 1986)
 - 69% (Parsons BJU 25: 186-188, 1984)
 - 15% (Duckett - 1986)



Hypospadias - Procedures for cripple hypospadias

- No standardized procedures
- Personal experience of the surgeon
- Importance of a uro-endocrine approach of complex cases to increase the healing abilities of the penile tissues



Official Diagnosis "Hypospadias Cripple"
= made a "cripple" by repeat cosmetic surgeries

Treatment of isolated fistulae

- Rectangular skin incision around the fistula orifice, often lateral
- Dissection and excision of the fistula tract
- Urethral suture
- Multilayer cover with well-vascularized tissue (tunica vaginalis, dartos, dorsal subcutaneous flap ...)
- Problem: coronal fistula +++: Prefer redo urethroplasty
- Suprapubic diversion ? Elbakry



Bad cosmetic result



infection

Hypospadias - Conclusions

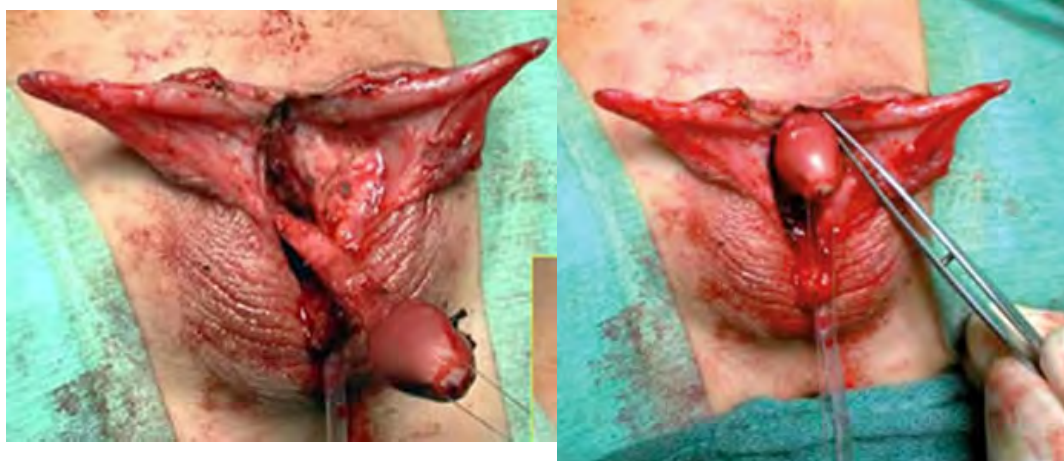
- Hypospadias surgery remains a surgical challenge
- Long-term results are poorly reported
- Essential joint uro-endocrine approach
- Psychological consequences poorly assessed
- Informing parents is crucial: 50% of all hypospadias will require further surgical attention during their life.
- Research: Essential role of the placenta / Penile growth factors / healing factors / blood supply ...

Source: Pierre Mouriquand: "Surgery of Hypospadias in 2006 - Techniques & outcomes"

IGM 2 – "Feminising Surgery": "Clitoral Reduction", "Vaginoplasty"

Partial amputation of clitoris, often in combination with surgically widening the vagina followed by painful dilation. "46,XX Congenital Adrenal Hyperplasia (CAH)" is arguably the second most prevalent diagnosis for cosmetic genital surgeries, and the most common for this type (further diagnoses include "46,XY Partial Androgen Insufficiency Syndrome (PAIS)" and "46,XY Leydig Cell Hypoplasia").

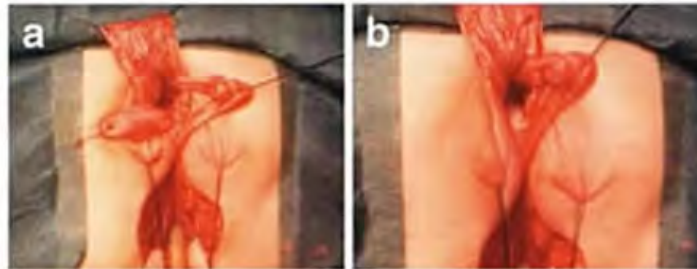
Despite numerous findings of impairment and loss of sexual sensation caused by these cosmetic surgeries, and lacking evidence for benefit for survivors, current guidelines nonetheless advise surgeries "*in the first 2 years of life*", most commonly "*between 6 and 12 months,*" and only 10.5% of surgeons recommend letting the persons concerned decide themselves later.



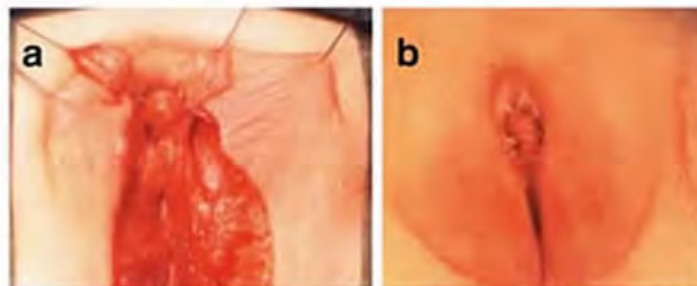
Source: Christian Radmayr: *Molekulare Grundlagen und Diagnostik des Intersex*, 2004



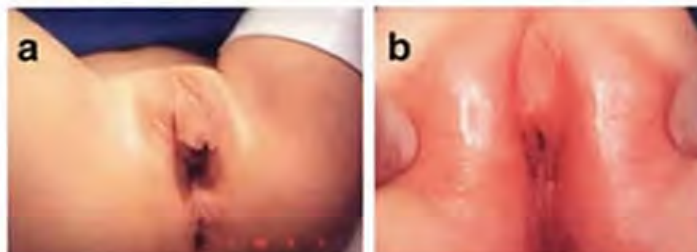
6a-c: Darstellung des Klitorisschaftes (a) sowie der Schwellkörper (b+c).



7a+b: Partielle Resektion der Corpora cavernosa clitoridis.



8a+b: Refixation der Corpora cavernosa clitoridis. "Materialknappheit" bei der Rekonstruktion der Corpora cavernosa clitoridis und der kleinen Labien.



9a+b: Klitorisreduktion und Rekonstruktion des Praeputium clitoridis bei Prader IV.

Source: Finke/Höhne: *Intersexualität bei Kindern*, 2008

Caption 8b: "Material shortage" [of skin] while reconstructing the prepuce clitoridis and the inner labia.



Source: Pierre Mouriouand: "Chirurgie des anomalies du développement sexuel - 2007", at 81: "Labioplastie"

IGM 3 – Sterilising Surgery: Castration / “Gonadectomy” / Hysterectomy

Removal of healthy testicles, ovaries, or ovotestes, and other potentially fertile reproductive organs. “46,XY Complete Androgen Insufficiency Syndrome (CAIS)” is arguably the 3rd most common diagnosis for cosmetic genital surgeries, other diagnoses include “46,XY Partial Androgen Insufficiency Syndrome (PAIS)”, male-assigned persons with “46,XX Congenital Adrenal Hyperplasia (CAH)”, and other male assigned persons, who have their healthy ovaries and/or uteruses removed.

Castrations usually take place under the pretext of an allegedly blanket high risk of cancer, despite that an actual high risk which would justify immediate removal is only present in specific cases (see table below), and the admitted true reason is “better manageability.” Contrary to doctors claims, it is known that the gonads by themselves are usually healthy and “effective” hormone-producing organs, often with “*complete spermatogenesis [...] suitable for cryopreservation.*”

Nonetheless, clinicians still continue to recommend and perform early gonadectomies – despite all the known negative effects of castration, including depression, obesity, serious metabolic and circulatory troubles, osteoporosis, reduction of cognitive abilities, loss of libido. Plus a resulting lifelong dependency on artificial hormones (with adequate hormones often not covered by health insurance, but to be paid by the survivors out of their own purse).

91 M.M. Bailez • Intersex Disorders



Fig. 91.6 An inguinal approach for gonadectomy in a CAIS patient with two palpable gonads

Source: Maria Marcela Bailez: “Intersex Disorders,” in: P. Puri and M. Höllwarth (eds.), *Pediatric Surgery: Diagnosis and Management*, Berlin Heidelberg 2009.

Table 1. Prevalence of type II GCT in various forms of DSD

Risk	Type of DSD	Prevalence %
High	GD in general	12*
	46,XY GD	30
	Frasier syndrome	60
	Denys-Drash syndrome	40
	45,X/46,XY GD	15-40
Intermediate	PAIS	15
	17 β -hydroxysteroid dehydrogenase deficiency	17
Low	CAIS	0.8
	Ovotesticular DSD	2.6
Unknown	5 α -reductase deficiency	?
	Leydig cell hypoplasia	?


GD = Gonadal dysgenesis; PAIS = partial androgen insensitivity syndrome; CAIS = complete androgen insensitivity syndrome.

* Might reach more than 30%, if gonadectomy has not been performed.

Source: J. Pleskacova, R. Hersmus, J. Wolter Oosterhuis, B.A. Setyawati, S.M. Faradz, Martine Cools, Katja P. Wolffenbuttel, J. Lebl, Stenvert L.S. Drop, Leendert H.J. Looijenga: "Tumor risk in disorders of sex development," in: *Sexual Development* 2010 Sep;4(4-5):259-69.

3 months old with scrotal hypospadias and right impalpable gonad

- Uterus and dysplastic gonad removed
- Hypospadias repaired
- Follow-up for surveillance of development testicular and/or renal tumors
- Testosterone required at puberty



Source: J. L. Pippi Salle: "Decisions and Dilemmas in the Management of Disorders of Sexual [sic!] Development (DSD)," 2007, at 20.

“Bad results” / “Gonadectomy, Feminising Genitoplasty”






Abb. 2 ▲ a, b Schlechte Korrekturergebnisse nach Feminisierung und c, d nach Hypospadiekorrektur



Caption: 2a,b: “*Bad Results of Correction after Feminisation, and*”, c,d: “*after Hypospadias Repair*” – Source: M. Westenfelder: “Medizinische und juristische Aspekte zur Behandlung intersexueller Differenzierungsstörungen,” *Der Urologe* 5 / 2011 p. 593–599.

PAIS

- Bilateral gonadectomy
- Skin Biopsy for genetics study of androgen receptors
- Female gender assignment
- Feminizing genitoplasty performed age 6 months



Source: J. L. Pippi Salle: “Decisions and Dilemmas in the Management of Disorders of Sexual [sic!] Development (DSD)”, 2007, at 20.