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**Human Rights Committee
UNOG-OHCHR
CH-1211 Geneva 10**

NGO submission by OII Germany (Organisation Intersex International Germany) for the List of Issues for the seventh periodic report of Germany on the International Covenant on Civil and Political Rights

21th of July 2017

OII Germany would hereby like to draw the Committee's attention to the situation of intersex people in Germany and suggest to add questions to the list of issues that address the human rights violations intersex people still face in Germany.

Yours Sincerely

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1. Intersex genital mutilation – Harmful medical practices are still performed in Germany (violating ICCPR Article 1, Article 7, Article 17, Article 24 and Article 26)

In 2011, the UN Committee against Torture called, in its review on Germany, to ensure the application of "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" and to properly inform intersex individuals and their parents about consequences of unnecessary surgical and other medical treatment. The Committee further asked to investigate incidents that lacked informed consent and to provide redress and adequate compensation. Finally, the Committee urged Germany to provide adequate training for medical and psychological professionals on the range of sexual and related biological and physical diversity.¹

In 2013 the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Juan Mendez reaffirmed the Committee's against Torture recommendations by calling upon all states to repeal laws permitting intrusive and irreversible treatments, "including forced genital-normalizing surgery [and] involuntary sterilization [...] when enforced or administered without the free and informed consent of the person concerned" and to provide special protection to individuals who are part of marginalized groups.²

Since December 2016 comprehensive and sound quantitative data on cosmetic genital surgeries performed on children throughout Germany is available, based on a retrospective statistical data assessment from the DRG-statistics (hospital statistics based on case flat rates) on **feminising and masculinising genital surgeries carried out in German hospitals between 2005 and 2014 on children between the age of 0 and 10.**³

¹ CAT/C/DEU/CO/5, para. 20

² A/HRC/19/41, para. 56

³ Ulrike Klöppel: Zur Aktualität kosmetischer Operationen „uneindeutiger“ Genitalien im Kindesalter. Berlin 2016, https://www.gender.hu-berlin.de/de/publikationen/gender-bulletins/texte-42/kloepfel-2016_zur-aktualitaet-kosmetischer-genitaloperationen (10.1.2017)

The data shows that the relative **frequency of feminising as well as masculinizing genital surgeries in childhood did not drop between 2005 and 2014**. But in the same period a significant change of underlying diagnoses took place: Whereas the relative frequency of ‘classic’ intersex diagnoses such as ‘pseudo-hermaphroditism’ decreased, the frequency of other diagnoses that make up the spectrum of variations of sex characteristics and which are summed up in the category ‘unspecified malformation of the female/male genitalia’ remained constant or even increased. The biological phenomena themselves have not changed. The above figures clearly show, that what is happening is only a veiling shift of diagnostics and not a change of the actual surgical practice.

Despite these alarming results the German government does not acknowledge the need for a comprehensive ban of non-life saving, genital surgeries on intersex infants and children. The position of the German government is even more incomprehensible considering the fact that in its 2016 report on the implementation of the rights of the child in Germany the Children’s Commission of the German Bundestag has made very clear that intersex children’s individual bodies and their developing individual identities have to be accepted by society from the very beginning. In its report the Commission emphasises the necessity to legally ban all non-life saving genital and sex altering surgeries on children, unless they are able to give their free and personal consent. Non-clinical, independent counselling should be mandatory for intersex children and adolescents and their families.⁴

2. Discrimination and lack of access to health and to justice (selection, violating ICCPR Article 2, Article 14, Article 17, Article 24 and Article 26)⁵

- There is a substantial lack of follow-up research and long-term evaluation on health implications of surgeries and hormonal treatment that have been and are performed on intersex individuals. This is worrying for intersex people of all ages and especially for elderly intersex people.
- So far intersex issues are not mandatorily included in trainings in the field of care of the elderly or nursing education, which leaves intersex people in a very vulnerable position.
- When it comes to the accessibility to particular services (e.g. availability of preventive check-ups for certain conditions or general health services) is related to the sex/gender of the individual seeking the service, intersex people very often face prejudice and discrimination and might not have access to the service they seek.
- There is a substantial lack of non-medicalized, professional (peer) counselling for intersex people, with only 3 possibilities in Germany up to this date.
- Intersex people who have been subjected to harmful medical practices face huge obstacles when seeking redress and compensation

⁴ “Irreversible Entscheidungen, welche die Selbstbestimmung des Kindes sein Leben lang beschränken und beeinträchtigen können, entziehen sich der Entscheidungsbefugnis von Eltern und medizinischem Personal. Genitale und geschlechtsangleichende Operationen an nicht einwilligungsfähigen Kindern müssen, außer das Kind schwebt in Lebensgefahr, verboten und die Betroffenen vor Kastration geschützt werden. An das Verbot von Operationen sollte eine außerklinische Beratung und Begleitung von Kindern und Jugendlichen und ihrer Familie verbindlich gekoppelt sein”, Deutscher Bundestag. Kommission zur Wahrnehmung der Belange der Kinder (Kinderkommission): Stellungnahme der Kinderkommission des Deutschen Bundestages zur Umsetzung der Kinderrechte in Deutschland. Kommissionsdrucksache 18. Wahlperiode 18/13. Berlin, 22. Juni 2016, p. 6-7

⁵ For more details see: OII Germany: CEDAW Shadow Report. With reference to the combined Seventh and Eighth Periodic Report from the Federal Republic of Germany on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Compiled by Organisation Intersex International Germany. 2017. http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/DEU/INT_CEDAW_NGO_DEU_26315_E.pdf

3. List of issues

OII Germany would therefore like suggest the following questions for the List of Issues:

- Is the State party willing to legally ban all practices – including non-life saving genital surgeries and other medical treatment – which are performed to alter variations of sex characteristics, unless these procedures are wished for and consented to by the mature intersex individual themselves?
- How does the State party plan to ensure that refund policies of health insurance companies cover access to health care and preventive check-ups for everyone, including intersex people?
- How does the State party plan to ensure that intersex issues are included from a non-medicalized, de-pathologizing and human rights based perspective in existing and future professional counselling centers
- How does the State party plan to ensure redress and a fair and adequate compensation for survivors of these harmful medical practices?

Appendix:

A. Who are intersex individuals?

Intersex people are individuals whose sex characteristics do not conform to the normative male or female sex. Intersex variations are usually referred to by the medical establishment and by society as disorder/differences of sex development (DSD). Consequentially, intersex people are subjected to irreversible medical treatment to align their bodies with the societal expectation in regard to appearance and body function. These procedures include, but are not limited to: genital surgery performed without any pressing medical need, gonadectomies, which lead to a lifelong need for Hormone Replacement Therapy (HRT) and constitute forced or coercive sterilization, hormonal treatment to emphasize the assigned sex and long-term psychological intervention. Those people with variations of sex characteristics who have endured prenatal, surgical and hormonal treatment without their fully informed, free and prior consent, often face a lifetime of health issues as a result of these violations of their bodily integrity, including physical and psychological impairment. Intersex bodies can have health issues - as can male and female bodies-, but in general they are healthy bodies in and of themselves.⁶

B. Who is OII Germany

OII Germany was founded in 2008 and has worked on a national, regional and international level to end discrimination against intersex people and to ensure the right of bodily integrity and self-determination ever since. OII Germany was one of the driving forces behind establishing the International Intersex Forum in 2011 and co-formulated the charter of intersex human rights that was formulated by 30 intersex organizations at the 3rd International Intersex Forum in Malta, 2013 (*Malta Declaration*, for the full list of demands please see: <http://oiieurope.org/public-statement-by-the-third-international-intersex-forum/>).

OII Germany is regularly consulted by the German Institute for Human Rights, the Federal Antidiscrimination Agency and the Interministerial Working Group on Intersexuality and Transsexuality (IMAG). In 2015 OII Germany organised a briefing for the CRPD Committee on intersex

⁶ See also: UNOHCR: *Fact Sheet Intersex*, https://www.unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf (10.1.2017)



(Geneva, 27th of March 2015) and submitted a shadow report for the 66th session of the CEDAW. OII Germany is also part of an international intersex expert group working on the ICD revision.