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**HUMAN RIGHTS VIOLATIONS  
OF PEOPLE WITH  
VARIATIONS OF SEX  
CHARACTERISTICS**

# **INTERSEX GENITAL MUTILATIONS**

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NGO Report to the 8th Periodic Report of Austria on the Convention against  
Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

## Intersex Genital Mutilations: Human Rights Violations of Persons With Variations of Sex Anatomy

NGO REPORT TO THE 8TH PERIODIC REPORT OF AUSTRIA ON THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT)

PUBLIC VERSION

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## *Executive Summary*

Intersex individuals are born with sex characteristics (sexual anatomy, reproductive organs, hormonal structure and/or levels and/or chromosomal patterns) that do not fit the typical definition of male or female. The term 'intersex' is an umbrella term for the **spectrum of variations of sex characteristics (VSC) that naturally occur within the human species**. The term intersex acknowledges the fact that, physically, sex is a spectrum and that people with variations of sex characteristics beyond male or female exist. Sex characteristics are exhibited from the moment of birth, whether we are intersex or not. However, the fact that someone has an intersex body can become apparent at different times in their life: at birth, during childhood, in puberty or even in adulthood. Depending on the specific life circumstances and the strength of taboos in their social environment, a person might learn that they have an intersex body at a very early age or later in life. Some intersex people never find out at all.

While intersex children may face problems throughout the world, in (Western) high-income countries, the most pressing issue is the ongoing practice of **Intersex Genital Mutilation (IGM)**, which presents a distinct and unique issue constituting significant human rights violations.

IGM practices include **non-consensual, non-vital, medically unnecessary, irreversible, cosmetic genital surgeries, and/or other harmful medical interventions** that would not be considered for non-intersex children. These procedures are performed **without any evidence of their benefit to the children** involved and are **only justified by societal and cultural norms and beliefs**.

IGM practices cause **lifelong severe physical and psychological pain and suffering**, including post-traumatic stress disorder, depression, nerve pain, body dysphoria, inability to experience physical pleasure, potential mismatch in gender identity, and the loss of sensation in genitalia later in life. **Despite overwhelming evidence** on this matter (**Section 2.3.1**) and the call by this committee to end these practices (**Section 2.1**), **all the typical forms of IGM are still practised in Austria to this date (Section 2.2)**.

For more than 30 years, intersex people/people with variations of sex characteristics, NGOs, human rights and bioethics bodies have criticised IGM practices as harmful and traumatising, as a **fundamental human rights violation**, as **torture or cruel, inhuman or degrading treatment**, as a form of genital mutilation and child sexual abuse, and called for legislation to end them.

The **UN Committees CAT, CRC, CEDAW and CRPD**, the **UN Special Rapporteur on Torture (SRT)**, the **UN High Commissioner for Human Rights (UNHCHR)**, the **World Health Organisation (WHO)**, the **EC Union of Equality**, the **Council of Europe (COE)**, the **EU Parliament**, and **Yogyakarta Principles** and national Ethics Bodies (e.g., **Swiss National Advisory Commission on Biomedical Ethics NEK-CNE**) have all repeatedly criticised IGM practices as a serious human rights violation, and have called for legislative remedy the situation, initiation of a process of reconciliation, and acknowledgement by society of suffering inflicted, and for access to redress and justice for victims (**Appendix A**).

**The Austrian Government, Health Departments and Medical Bodies violate their obligation to prevent torture and ill-treatment (Art. 1, 2, 16 CAT), to ensure impartial investigations, access to redress mechanisms, and the right to fair and adequate compensation and rehabilitation for victims (Art. 12, 13 and 14 CAT), and to train and inform medical staff adequately (Art. 10 CAT) (Section 2.3, 2.4 and 2.5).**

On the 9th of June 2021, the **Equal Treatment Committee of the Austrian Parliament** spoke out **unanimously in favour of protecting intersex children from non-consensual and non-vital medical interventions**. Sadly, despite the fact that a **draft law has already been developed**, the legal prohibition of IGM in Austria is still pending because the enactment of that law it is currently being obstructed by the **Austrian People's Party (ÖVP)**. While the ÖVP refuses to make any official statements on the reasoning for its political inaction, the rapporteurs have knowledge that the party is collaborating with the doctors Stefan Riedl and Alexander Springer **who are opposed to this ban**.

This **thematic NGO report to the 8th Austrian state report** was compiled by the Austrian National Association of Intersex People **Verein Intergeschlechtlicher Menschen Österreich VIMÖ** and their Peer Counselling Centre for Variations of Sex Characteristics **VARGES** in collaboration with **academic partners**.

It contains **Concluding Recommendations** (Section 3).

## Introduction

From a biological perspective, intersex people are born with variations of sex anatomy, including 'atypical' genitals, 'atypical' sex hormone producing organs, 'atypical' response to sex hormones, 'atypical' genetic make-up, and/or 'atypical' secondary sex markers. Since 2006 [62], the associated diagnoses are subsumed under the term "Disorders/Differences of Sex Development (DSD)". However, this terminology emphasises a medical model of intersex bodies and characterises them as 'disordered' and in need of 'fixing' [75, 83]. Additionally, this medically preferred terminology is a strategy used by medical professionals to uphold a narrow, binary conception of gender and take epistemic authority on the subject away from the intersex movement which argues for their right to self-determination [23, 41, 61, 83].

In contrast to this medicalized view, the rapporteurs of this report position intersex bodies, in line with other human rights activist movements, as **a mere difference in physical characteristics from the majority population** [14]. This difference is posited as **in itself not harmful or debilitating** as the medical model suggests [13, 55], but rather experienced as something that simply constitutes *a* difference, which does not need to be qualified per se. Many people active in self-representation and activist movements around intersex human rights embrace the label 'intersex' as an identity in and of itself. There are also many individuals who describe themselves as women with variations of sex characteristics or men with variations of sex characteristics. In this report, we follow their lead and argue for the right of people to be given **autonomy over their own bodies and choices in how they wish to live without having these decisions forcefully taken from them by medical practitioners or parents.**

This is particularly the case in Austria. Widespread medical practice around **Intersex Genital Mutilation (IGM)**, which include **non-consensual, non-vital, medically unnecessary, irreversible, cosmetic genital surgeries, and/or other harmful medical interventions** that

would not be considered for non-intersex children. These procedures are performed without any evidence of benefit to the children and are only justified by societal and cultural norms and beliefs.<sup>1</sup>

IGM practices cause well-known, lifelong severe physical and psychological pain and suffering, including post-traumatic stress disorder, depression, nerve pain, body dysphoria, the inability to experience physical pleasure, a potential mismatch in gender identity, and loss of sensation in the genitals later in life. Despite **overwhelming evidence** on this matter (Section 2.3.1) and the prior call by this committee to end these practices, **all the typical forms of IGM are still practised in Austria to this date** (Section 2.2).

These practices are, by and large, not based on any sort of medical necessity but rather on narrow and normative conceptions of gender and human bodies. For example, the assumption that both gender and/or sex are structured along a binary both physically and psychologically [88, 75] while, in fact, human bodies show a wide variation of expression of sex characteristics that are slotted into two categories with some level of arbitrariness [45]. Another assumption governing the decision to conduct IGM from medical professionals is related to **cultural stereotypical functional norms on sexuality and expressions of gender** deemed as adequate, such as being able to stand while urinating or prioritising penetrative sex [23]. These practices are further rooted in eugenics [94] and tied to racism and white supremacist ideologies [58, 76, 90]. Whereas in other medical contexts, professionals adhere to high standards of their bioethical norms, in the case of intersex people, **these appear to be largely deemed irrelevant and are not applied rigorously** [84].

The most efficient way to protect intersex people from this systemic torture in the form of IGM lies in **implementing legislative measures prohibiting these practices** [49]. However, the state of Austria has failed to implement such measures to date. Particularly, given that **the Federal Ministry of Justice of Austria has already drafted a law concerning this matter** (Section 2.1 and Appendix A.2), it is **only the political (un)will at a governmental level** that prevents the prohibition and eradication of this long-standing human rights violation systemically perpetrated against intersex people/people with variations of sex characteristics in Austria.

**Austria will be considered for its 8th periodic review by the Committee against Torture in that committee's 79th Session in 2024 (15 Apr 2024 – 10 May 2024).** This thematic NGO Report demonstrates that, despite updated guidelines, the medical (mis)treatment of intersex infants and children in Austria continues to infringe on Austria's obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>1</sup> For a detailed description of IGM (including a historical overview) see the 2015 thematic NGO report [65]

In our sources, the rapporteurs draw heavily on the **2015 CAT Austrian Thematic NGO Report on Intersex and IGM practices**<sup>2</sup> [65], which was updated and supplemented with information on the current state of legislation, medical practices, research and recent statistics illustrating the development and frequency of these practices. Since the last reporting period, we have noted a higher level of awareness within the general public as well as among political stakeholders; however, this awareness has so far not led to actionable change, indicating that IGM continues to be conducted with only very minor decline in the absolute numbers. And with the full knowledge and acquiescence of the Austrian government.

<sup>2</sup> available at: <https://vimoe.at/wp-content/uploads/2020/08/2015-VIMOE-Report.pdf>, last accessed 2023-03-04

The rapporteurs are aware that IGM practices are a global issue and cannot be resolved solely on a national level. However, this report illustrates why it is timely and appropriate to issue strong recommendations to Austria as a State Party.

### *Outline of the Report*

The report is structured as follows: **Section 2** presents a review of developments in Austria since the last report (**Section 2.1**), the continued prevalence of IGM practices in Austria including a discussion of why establishing concrete numbers of IGM is difficult (**Section 2.2.1**) and a working estimate of those numbers (**Section 2.2.2**). Subsequently, **Section 2.3** details why IGM constitutes torture, with subsections addressing the key points under the CAT (**Sections 2.3.1 –2.3.5**), why the treatment of intersex persons in Austria also classifies as ill-treatment (**Section 2.4**), as well as why survivors of IGM intervention are denied redress and compensation under Austrian law (**Section 2.5**). Finally, in **Section 3**, the report issues clear recommendations to bring IGM to an end in Austria and ensure that victims receive fair redress. Lastly, the **Appendix (A)** presents a comprehensive list of IGM practices in different national and international human rights mechanisms.



## *IGM Practices in Austria*

This report now illustrates the pervasiveness and scale with which IGM practices in Austria occur and how they contribute to the inhumane treatment of intersex people/people with variations of sex characteristics. The specific aim lies on contextualising the status quo in comparison to the prior report [65]. We provide an overview of the last ten years regarding the difficulties in collating reliable data and an estimate of the scale of torture. This is followed by a discussion as to how the specific procedures constitute torture and medical ill-treatment. Afterwards, we show how the Austrian government specifically and actively refuses to prohibit these torturous practices while simultaneously offering no path of redress for the profound harms or fair and adequate compensation for victims of IGM.

### *2.1 Chronological Review of Austrian Activities since 2015*

In 2015 the **Austrian National Association of Intersex People VIMÖ**, in collaboration with the international intersex NGO **Zwischengeschlecht.org / StopIGM.org**, submitted a thematic report to the sixth periodic review of Austria by the CAT. The thematic report documented how the medical treatment of intersex infants and children in Austria constitutes a breach of Austria's obligations under the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** and called for (1) a **ban of IGM** and other interventions violating intersex persons' integrity and autonomy, (2) the **investigation** of such non-consensual and non-vital treatments and adequate compensation to those subjected to this form of torture, and (3) the **full inclusion of education and information** on the prohibition against torture into the training of medical personnel [65].

In the **Concluding Statements of their 56th session in Geneva** (see **Appendix A.1**), the Committee reprimanded Austria for allowing such practices, classifying them as a cruel, inhuman and degrading treatment within the meaning of the UN Convention against

Torture and it echoed the recommendations put forward in the NGO thematic report [101].

In 2020, the **UN Committee on the Rights of the Child** (see **Appendix A.1**) urged Austria to ban non-emergency and non-consensual medical interventions and treatments on intersex children. The Committee explicitly stated that this was a "harmful practice", referring to the comments of the UN Committee against Torture (CAT) [104, 79].

2020 was also the year the European Commission (EC) **Union of Equality** adopted the **LGBTIQ Equality Strategy 2020–2025** (see **Appendix A.1**) which urgently calls for an end to harmful medical interventions on intersex people, which it explicitly refers to as "Intersex Genital Mutilation" [42].

In 2021 the **Human Rights Council** issued **Universal Periodic Review (UPR) recommendations** that required Austria to "strengthen the legislative framework to expressly prohibit any practice that modifies a person's sexual characteristics without well-founded medical reasons or without the full consent of that person" (139.128), "end harmful practices, including forced and coercive medical interventions, to ensure the bodily integrity of children with intersex variations" (139.130), "prohibit any practice that modifies a person's sex characteristics without irrefutable medical reasons and the full and informed consent of the person affected" (139.131), and "ensure that the human rights of intersex persons are respected, by developing a medical care protocol ensuring their participation in decision-making on medical interventions that affect them" (139.132).<sup>1</sup>

In 2023, 15 years after Austria ratified the UN Disability Rights Convention, the **UN Committee on the Rights of Persons with Disabilities** stated in their **Concluding observations on the combined second and third periodic reports of Austria** (see **Appendix A.1**) that it is "concerned about the continued performance of sex-reassignment surgery on intersex children" and recommended "that the State party enact a legal ban on non-live-saving sex-reassignment medical intervention on intersex children" [103, p. 6].

Meanwhile, the Austrian state has, in fact, legally recognised identities beyond 'male' and 'female' since 2019. In 2020, it even introduced the specific category of 'inter' as a legal gender, paving the way for social acceptance through legal recognition and identification [5, 8]. Hence, the medical argument made about the necessity of IGM for the well-being of intersex persons is further discredited by these socio-legal verdicts and advancements.

In **June 2021**, the Austrian National Council unanimously passed the **Resolution 1594/A(E)** (see **Appendix A.2**) on the "Protection of intersex children and adolescents from medically unnecessary

<sup>1</sup> available at: <https://upr-info-database.uwazi.io/en/>

treatment of their sex characteristics". Subsequently, the **Federal Ministry of Justice** (BMJ) established – with the involvement of civil society, psychotherapists and medical professionals – a working group to develop a draft for a law regulating the matter. The working group concluded its activities in **November 2021**.

Since then, a corresponding draft law has been pending in the lower house of parliament. Self-advocacy organisations, such as the **Association of Intersex People Austria (VIMÖ/OII Austria)**, demand a law for the protection of intersex children and adolescents and children and adolescents with variations of sex characteristics, respectively, and therewith also the implementation of the UPR recommendations 139.128, 139.130, 139.131 and 139.132, all of which Austria has adopted [79].

In **May 2023**, VIMÖ, together with 73 other organisations (among them several LGBTIQ+ and children's rights organisations) signed an open letter to the Minister of Health Johannes Rauch, the Minister of Justice Alma Zadić, as well as the Minister for Women, Family and Youth Susanne Raab pleading with them for the implementation a law prohibiting IGM [110].

The reasons as to why the draft law has not yet been enacted have not been transparently communicated to the public. In **2023** the SPÖ (Sozialdemokratische Partei Österreichs – Social Democratic Party of Austria) Spokesperson on Equity, Diversity and LGBTIQ Mario Lindner issued a parliamentary inquiry on the status of the draft law [10, 109]. The Austrian Minister of Health Johannes Rauch<sup>2</sup> and the Minister of Justice Alma Zadić<sup>3</sup> both stated in their formal response letters that the law is currently being obstructed by their coalition partner the ÖVP (Österreichische Volkspartei – Austrian People's Party) without specifying any reasons for the delay. The most recent parliamentary inquiry issued by Lindner on February 14 2024 still did not result in any progress. As Zadić's reply states: "The coalition partner has still not raised any specific substantive objections. Nor has any 'counter-proposal' been submitted by the coalition partner. From the perspective of the Federal Ministry of Social Affairs, Health, Care and Consumer Protection and the lead responsible Federal Ministry of Justice, once the coalition partner agrees, the draft law can be promptly introduced into the parliamentary process."<sup>4</sup>

While the ÖVP refuses to make any official statements on the reasons for obstructing the legal protection of intersex persons/persons with VSC and the prohibition of tortures and non-vital medical practices on them, the rapporteurs have obtained knowledge that the party is working together with the doctors Priv.-Doz.Dr.med.univ. Stefan Riedl<sup>5</sup> and Assoc.Prof.Priv.Doiz Dr.med.univ Alexander Springer.<sup>6</sup> **Both doctors are opposed to the legal ban of IGM proce-**

<sup>2</sup> Formal response from Minister of Health in 2023: [https://www.parlament.gv.at/dokument/XXVII/AB/15446/imfname\\_1588871.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/15446/imfname_1588871.pdf) (last accessed 2024-02-25)

<sup>3</sup> Formal response from the Minister of Justice in 2023: [https://www.parlament.gv.at/dokument/XXVII/AB/15453/imfname\\_1588980.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/15453/imfname_1588980.pdf) (last accessed 2024-02-25)

<sup>4</sup> Formal response from the Minister of Justice in 2024: [https://www.parlament.gv.at/dokument/XXVII/AB/16659/imfname\\_1610392.pdf](https://www.parlament.gv.at/dokument/XXVII/AB/16659/imfname_1610392.pdf) (last accessed 2024-03-04)

<sup>5</sup> Currently, the head of the 'Outpatient Clinic for Differences of Sex Development' ("Ambulanz für Varianten der Geschlechtsentwicklung") at the Vienna General Hospital (AKH Wien)

<sup>6</sup> Currently the head of the 'Special Outpatient Clinic for Pediatric Urology' ("Spezialambulanz für Kinderurologie") at the Vienna General Hospital (AKH Wien)

dures.

In 2017, the **Austrian Bioethics Commission** (see **Appendix A.3**) published their statements on "Intersexuality and Trans-identity"<sup>7</sup> where, drawing on experiences of IGM survivors reporting on the trauma and suffering inflicted upon them in the name of 'benevolent paternalism' by medicine, the bioethics commission emphasises the importance of the right to self-determination, the protection of individual privacy, and the protection of the physical integrity of intersex persons and criticises forcing people into rigid binary gender norms by means of medical interventions. It described such interventions as unnecessarily invasive and verging on abuse [19].

<sup>7</sup> Original title: "Intersexualität und Transidentität"

The **Austrian Ombudsman Board**, too, has repeatedly brought attention to the untenable situation regarding IGM. **First in 2017**, in their **Special Report 'Children and Their Rights in Public Institutions'**<sup>8</sup>. In this report, the Austrian Ombudsman Board demands (1) that "guidelines for healthcare provision for children with variations of sex characteristics must be developed in accordance with human rights, ensuring that their physical integrity, autonomy, and self-determination are preserved", (2) to "ensure that no child is subjected to invasive and irreversible gender-affirming surgeries and medical treatments unless they are emergency measures" and (3) that "independent, qualified support centers as well as peer counseling by individuals with personal experience for parents, minors, and healthcare personnel need to be established"<sup>9</sup> [114, p. 60]. In **December 2023**, the Ombudsman Board issued a press release highlighting the lack of action by the politicians on this subject [115].

<sup>8</sup> Original title: "Kinder und ihre Rechte in öffentlichen Einrichtungen"

<sup>9</sup> Translated from German by the rapporteurs

At the **48th session of the UN Human Rights Council on the 4th October 2021**, **Austrian UN Ambassador Elisabeth Tichy-Fisslberger** delivered the **Joint Statement on the Human Rights of Intersex Persons** on behalf of a cross-regional group 51 States [37] urging the "need to combat discrimination on the basis of sex characteristics and address its root causes, such as gender stereotypes, spread of inaccurate information, stigma, taboo and pathologization" [96].

In 2019, the **Austrian Ministry of Social Affairs, Health, Care and Consumer Protection (BMASGK)**<sup>10</sup> worked with medical and mental health experts, as well as peer support and self-advocacy organisations (among them, VIMÖ), to develop recommendations that contained the core recommendations and conclusions of the 2017 bioethics committee statement. Those include that surgical assignment to a specific gender determined by others is, in most cases, harmful (and contrary to the concept that this is beneficial for an individual's psychosocial well-being) and emphasised that the necessity of other drastic, invasive surgical interventions needs to be carefully considered by an interdisciplinary team. These conclusions

<sup>10</sup> Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz

also highlight the importance of referring parents of intersex children to peer support groups [59].

However, these recommendations are not legally binding and their impact to change practices is slow and non-prohibitive. Further, practitioners of IGM face no repercussions or sanctions when conducting these torturous procedures. This was made further evident during the **Committee's 56th session in Geneva in 2015** when the committee questioned the **Austrian country delegation** on the torture of intersex persons in Austria. Aside from referencing the incorrect medical guidelines<sup>11</sup>, the delegation also denied any government-supported torture by claiming that the consensus of medical science was to perform invasive surgical interventions as late as possible (if they are necessary at all) and that the decision needed to be made not only by doctors alone, but by an interdisciplinary medical team [93].

In summary, despite all these recommendations and the prior commitment of the Austrian legislative, there are no 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 non-consensual, non-vital, medically unnecessary, irreversible surgery and other harmful treatments, i.e., IGM practices.

Other European countries such as **Malta** (in 2015 [2]), **Greece** (in 2022 [81]), **Portugal** (in 2018 [3]), **Iceland** (in 2021 [4]), **Germany** (in 2021 [48, 38]) and, most recently, **Spain** (in 2023 [9]) have already passed laws banning IGM procedures (see **Appendix A.2**).

Given the international developments, the continuing torture, cruel treatment and human rights violations of intersex persons in Austria can no longer be considered mere neglect or ignorance from the government (cf. **Section 2.3.4**) but as actively supported and upheld.

## 2.2 *Continued Pervasiveness of IGM Practices in Austria*

IGM continue to be conducted in different countries around the world. For Europe, existing research from 2019<sup>12</sup> shows that the majority of the 877 intersex respondents surveyed experience some form of medical treatment. Only 38% of those having had surgeries related to their intersex status provided consent for these procedures with 16% of those being conducted without any parental or individual consent provided. Because this data was gathered at the EU level, similar data is not available for Austria.

### 2.2.1 *Difficulties Determining the Scale of Torture*

Determining the exact scale of intersex torture in Austria is extremely difficult. One reason is that, for many intersex individu-

<sup>11</sup> The delegate referenced the guidelines by the Austrian Society of Pediatrics and Adolescent Medicine (Österreichischen Gesellschaft für Kinderheilkunde und Jugendheilkunde, ÖGKJ) on transgender medical care. At the time, the ÖGKJ did not have any guidelines on the medical care of intersex persons [93].

<sup>12</sup> <https://www.ilga-europe.org/files/uploads/2023/05/FRA-Intersections-Report-Intersex.pdf> [89], last accessed 2024-03-02

als/individuals with VSC and their families, experiences with IGM are fraught with trauma and taboos, making it difficult for them to speak about what happened to them.

Another reason is that in Austria (as in other countries [23, 49]) medical practitioners involved in IGM and other involuntary interventions often do so without disclosing sufficient information or referring parents to peer support services. Personal, prior, free and fully informed consent is paramount for any kind of ethical medical conduct [49, 25, 84]. Yet, in the case of bodies of intersex persons, bodies that do not conform to societal and cultural norms of gender [44, 45], fully informed consent is often disregarded. Even if parents are informed or consent to IGM procedures on behalf of their children, often choose not to disclose this information to their intersex children later in life.

The degree of secrecy becomes evident when examining accounts of intersex persons in Austria who were subjected to IGM during early childhood. Austrian intersex activist Alex Jürgen\* recounted discovering a mother-child health passport when Jürgen\* was seven years old. Because the passport contained Jürgen\*'s birth-date but contained a different name and gender, Jürgen\* initially believed it belonged to a deceased twin [85]. Describing another case, Litschauer's qualitative study records an interview participant reporting that, despite undergoing surgery and being 'treated for a disease' for years, they only coincidentally discovered their intersex status as an adult [72]. Enzendorfer's study also describes the high degree of secrecy and taboo of family members over the study participants' intersex bodies [40]. Intersex persons attending VARGES' peer counselling have reported instances of their medical records being destroyed. Obtaining access to medical documents is further hindered by the retention period for medical documents in Austria, which is only 10 or 30 years, depending on the type of document (§ 48 para 7 V-SG).<sup>13</sup>

Parents also reported to VARGES that they felt pressured by doctors to consent to surgeries on their children while having their concerns about which procedures were really medically necessary for the health of their child rebuffed or dismissed because the doctors seemed biased in favour of such operations. Further, parents are not informed about any peer counselling services by the medical practitioners who insisted on performing IGM on their children with VSC. Non-disclosure of the existence of such services further alienates intersex persons and their family members from vital sources of information and communities where they would be able to learn about alternatives to IGM and other harmful interventions [57]. This is particularly damaging given that education on intersex people

<sup>13</sup> Available at: <https://www.jusline.at/gesetz/v-sg/paragraf/48> (last accessed 2024-03-09)



and sex/gender diversity in Austria generally follows a normative and pathologising medical model [39, 40, 87]. Even when parents receive counselling from support groups, decisions about how best to treat their children may be made based on prejudices if the organisations do not prioritise autonomy and self-determination. This is, for instance, the case with the Network AGS Austria ("Netzwerk AGS Österreich") which opposes the term 'mutilations' and instead chooses to frame these interventions as 'corrective' [31]. All of this further entrenches the stigma, taboo, and ultimately secrecy around bodies with variations of sex characteristics and the invasive, non-consensual measures intersex persons might have been subjected to for the sake of upholding a feigned 'normal'.

The practice of doctors withholding sufficient information from parents or even the fact that their child is intersex or misrepresenting the necessity of interventions like surgeries or hormone treatments continues to persist.

There is another reason accounting for the difficulty in obtaining concrete numbers, namely a shift in diagnostic practices. Before Germany issued a general ban on IGM in 2021, the German Society of Pediatrics and Adolescent Medicine<sup>14</sup> published medical guidelines on the proper care of intersex children in 2007 [34, 69]. Similarly to the 2019 Austrian "Recommendations on Variants of Sex Development" [59], it advised doctors to refrain from performing IGM as much as possible [34]. The fact that IGM in Germany only *appeared to* have declined after the publications of these guidelines was demonstrated by an extensive study conducted in 2016 [69] and repeated in 2018 [60]. Analyzing hospital statistical data between 2005 and 2016 the authors show that, while a decline in the previously used intersex diagnoses could be seen, the number of diagnoses falling under "Disorders (Differences) of Sex Development" (DSD) increased significantly. Further, the number of IGM remained relatively stable within this timeframe. These results imply that diagnostic practices were changed to align with guidelines, while doctors were still able to perform IGM at their discretion.

While there currently are no such studies available to assess the status quo in Austria, numerous accounts of intersex persons/persons with VSC and family members gathered in VIMÖ's community and in VARGES' counselling work suggest a similar trend.

### 2.2.2 *Estimated Scale of Torture*

Despite the difficulties in assessing the exact scale of torture on intersex people/people with VSC in Austria, by collating several informal and formal sources, we can provide an estimation of the scale of tor-

<sup>14</sup> Deutsche Gesellschaft für Kinderheilkunde und Jugendmedizin – DGKJ

ture. This accounts for both the pervasiveness thereof as well as the impact it has on individuals.

Currently, all major Austrian public university or federal state children's clinics, as well as private children's clinics employ doctors advocating for, prescribing and performing IGM practices. This information is primarily based on accounts of intersex persons/persons with variations of sex characteristics as well as their family members attending VIMÖ's community and VARGES' counselling services that the NGO has collected over a decade of their advocacy for human rights. The 2015 thematic NGO report to the UN CAT [65], as well as the follow-up reports published since (in 2017 [15], 2018 [16] and 2019 [17] respectively) document case studies of IGM survivors and quote hospital public communications and medical guidelines that all clearly demonstrate that IGM continues to be performed in Austria.

To further showcase that IGM still persists in Austria and that neither the developments since the 2015 thematic NGO report [65], nor the 2019 BMASGK recommendations [59] have stopped them, we draw on statistical data as well as documentation from hospital websites, medical guidelines and academic works.

### *Statistical Data*

We identified the ICD-10 diagnostic codes that are most often assigned to intersex individuals, according to secondary literature [11, 46, 62, 70, 74] as well as experiential knowledge of persons attending VARGES' counselling services, and crossed them by age (in five year increments) and by region. The range of data we present here is from 2009 to 2022. All data is sourced from Statistics Austria's "Inpatient health care: hospital discharges" database.<sup>15</sup> We further identified medical procedures by code and crossed them with the ICD-10 diagnostic codes<sup>16</sup> previously identified, again by age range and by region. These numbers are likely to be higher given that we excluded non-singular diagnoses and procedures that are often used to conceal IGM, such as hernias in newborns. We know these diagnoses are used in such a fashion due to our experiences in peer consultation.

As Figure 1 shows, while the absolute number of interventions is slowly declining, with a 16% decrease in the total number since the preparation and introduction of the 2019 recommendations (starting in 2017), the scale of the torture conducted remains at a high level and is an ongoing practice across all individual Austrian states.

<sup>15</sup> data set available at: <https://www.statistik.at/en/statistics/population-and-society/health/health-care-and-expenditure/inpatient-health-care-hospital-discharges> (last accessed 2024-02-28)

<sup>16</sup> E25, E28, E29, E35, Q52, Q53, Q54, Q55, Q56, Q96, Q98, Q99



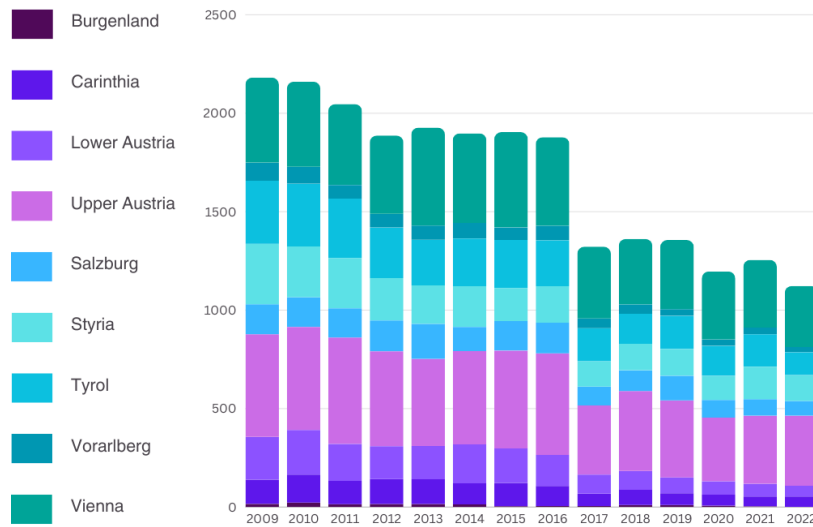


Figure 1: Number of patient discharges on common medically unnecessary intersex surgeries (Source: Statistics Austria)



### *Evidence Based on Public Hospital Communication*

The following documentation was gathered for all Austrian hospitals where we have established that IGM took place, gathered from informants attending the counselling service. Some of the quotes were obtained on the basis of the follow-up reports [16, 17, 15] and updated with the help of the internet archive, Wayback Machine.<sup>17</sup>

#### *Vienna General Hospital (AKH Wien)*

In 2017, the hospital's urology department reported<sup>18</sup> that it conducted **287 surgeries** on children. While not all of those could fall under the category of medically unnecessary, non-vital interventions related to variations of sex characteristics, this is only the data from the urology department. Their 2021 report<sup>19</sup> no longer contains specific information or statistics on surgeries conducted on children.

One of the heads of the department of pediatric urology there, Assoc.Prof.Priv.Doctor.med.univ Alexander Springer, regularly publishes articles on surgeries that we classify as IGM in this report and is considered an 'expert' in the area. Up until January 2022, the Vienna General Hospital actively advertised their expertise on hypospadias and urged parents to conduct such surgery before the first birthday of their children.

A 2017 diploma thesis, written under the supervision of Prof. Springer, investigated the treatment of intersex people from a medical perspective at the Vienna General Hospital hospital between 1994

<sup>17</sup> <https://archive.org/web/>

<sup>18</sup> [https://web.archive.org/web/20220120112655/https://www.meduniwien.ac.at/hp/fileadmin/urologie/pdf/2017\\_Jahresbericht\\_Urologie\\_Version\\_9\\_final\\_08.05.2018.pdf](https://web.archive.org/web/20220120112655/https://www.meduniwien.ac.at/hp/fileadmin/urologie/pdf/2017_Jahresbericht_Urologie_Version_9_final_08.05.2018.pdf), last accessed 2024-03-02

<sup>19</sup> [https://www.meduniwien.ac.at/hp/fileadmin/urologie/2021\\_Jahresbericht\\_Urologie.pdf](https://www.meduniwien.ac.at/hp/fileadmin/urologie/2021_Jahresbericht_Urologie.pdf), last accessed on 2024-03-02

and 2015 [74]. The specific focus of the study was on the diagnoses provided in the time-frame, whether surgical interventions were conducted and if so, whether there were any consequences stemming from them. Of the highly-selective 107 cases examined, 67 (62,6%) underwent surgically interventions. In 39,7% of cases, complications occurred, and in 16,8% of cases, additional surgeries were necessary, (and in some cases, up to four further surgeries were required).

*Linz Krankenhaus Barmherzige Schwestern (Merciful Sisters Hospital)*

Within a 2017 edition of the hospital's newspaper<sup>20</sup>, the head of the department for Paediatric Surgery, Prim. Univ.-Doz. Dr. Josef Oswald, brags about the hospital's status as the "Top Malformation Surgery at Austria's only Pediatric Urology Clinic". He freely admits to diagnosing and surgically intervening in cases of so-called malformations of genitals and testicles as well as conducting surgeries on boys. Oswald states specifically: 'We operate on four to five children per week. In the past, several procedures were necessary, but today, in 90 to 95 percent of cases, malformations can be corrected in one operation'. If this were the case, this would indicate **more than 200 cases a year** of surgical interventions occurring at this hospital alone.

<sup>20</sup> <https://web.archive.org/web/20230320084204/https://www.ordensklinikum.at/de/experten/neuigkeiten-fuer-zuweiser/am-puls-2017-neues-aus-medizin-und-forschung/kinderheilkunde/>, last accessed on 2024-03-02

*Uniklinik Innsbruck (Innsbruck University Hospital)*

While there is no public data available for the Innsbruck University Hospital, the head of the endocrinology department, OA Dr. Klaus Kapelari, recommends in scientific publications to conduct feminizing genitoplasty for young infants [66]. The department further advertises its expertise in DSD.

*Uniklinikum Salzburg (Salzburg University Hospital)*

At the Salzburg University Hospital, there is also no publicly available data specifically on their interventions and procedures performed on intersex infants or children. However, they do have a children's urology department and also advertise offering specific surgical interventions for intersex children.<sup>21</sup>

<sup>21</sup> <https://salk.at/723.html>, last accessed 2024-02-03

*Uniklinikum Graz (Graz University Hospital)*

As with the Innsbruck University Hospital and the Salzburg University Hospital, the Graz University Hospital also offers no public data on the number and type of interventions performed at this hospital. However, the website of their department for pediatric and adolescent surgery advertises urological 'treatments' for intersex-related diagnoses, such as undescended testis, hypospadias, or explicitly "malformation of the genitals (Intersex, AGS)".<sup>22</sup>

<sup>22</sup> <https://www.uniklinikumgraz.at/kinderchirurgie/ueber-uns>, last accessed 2024-03-08

### 2.3 *The Treatment of Intersex Persons in Austria as Torture*

IGM explicitly fall under the category of torture as defined by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 1 of CAT [105] defines torture as

*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*

Why IGM interventions are constituted as torture is tied to the psycho-social and physical damage they inflict on the individuals subjected to them. After describing the infliction of severe pain and suffering, the following section illustrates how IGM is intentionally conducted and constitute purposeful discrimination with the active involvement of the state of Austria.<sup>23</sup>

#### 2.3.1 *Infliction of Severe Pain or Suffering*

The infliction of severe pain or suffering on a person can be physical or mental. Mental suffering has been defined as the infliction of pain through the creation of a state of anguish and stress by means other than bodily assault. Each circumstance of torture needs to be considered individually, in the associated context and circumstances, and there is no definitive list of what constitutes tortuous acts.

This was already stated in the 2015 report [65, p. 41]:

*The severity of pain and suffering is relative and therefore has to be evaluated in the specific context. Therefore, the severity of an act that might constitute torture needs to be assessed from an objective perspective that looks at each specific situation and each particular victim and [their] vulnerability.<sup>24</sup> Thereby one needs to take into account different factors, such as the duration of the treatment, its physical/mental effects and the sex, age, state of health of the victim. Thus, the UN Special Rapporteur on Torture has pointed out that children are more vulnerable to the effects of torture as they are in the critical stages of physical and psychological development where they may suffer graver consequences than similarly ill-treated adults. The effects of torture/ill-treatment will also differ according to the age of the child, depending on the readiness of mind. Torture inflicted on a child might leave more long-lasting effects than on an adult. As with children undergoing female genital mutilation (FGM), intersex children undergoing IGM Practices at an early age are in a situation of powerlessness, as they are under the complete control of their parents and have no means of resistance.*

<sup>23</sup> For a detailed analysis of IGM practices as situated against the backdrop of the Austrian and international legal framework see [95].

<sup>24</sup> see also [1]

There is no justification for the lifelong and severe physical and mental suffering inflicted by IGM. As research demonstrates, there is no consensus or evidence for the necessity of such surgeries. The often cited cancer risks are considered at the very least, overstated or, at best, inconclusive [24, 27, 47, 59, 91, 98].

The main rationale for IGM is to ensure an intersex person's 'psycho-social' well-being. Such psycho-social motivations include the prevention of psychological stress and ostracization, the prevention of 'trauma' over body-image or gender identity, respecting parental wishes or sparing them from anxiety over their child's non-normatively gendered body [74, 112]. However, while this reasoning presents IGM as performed in good faith, these underlying psycho-social motivations are based on binary, normative and stereotypical conceptions of sex/gender, and are outdated, subjectively interpreted and are based on faulty reasoning as the basis for both as social and as legal arguments [67, 86, 78, 97, 111]. The latter is especially inconclusive given the legal recognition of several gender entries beyond "male" and "female" in Austria since 2019, as is discussed in **Section 2.1**. During their collaborative development of the 2019 recommendations in a working group at BMASGK, VIMÖ was regularly confronted with such normative arguments for IGM by Austrian medical practitioners [56].

The parents of intersex children/children with VSC participating in Danner's qualitative study show experiences made in Austrian hospitals [31]. Medical professionals frequently emphasised how their children's bodies deviated from the norm and appeared surprised if parents were unconcerned about it. Parents noticed how doctors were not sufficiently trained in adequately caring for their intersex children, how medical professionals bombarded them with specialised medical information without providing comprehensive explanations, or even how they outright performed interventions on children without involving parents in the decision-making process. Additionally, such 'treatments' were performed in a highly transgressive, insensitive and voyeuristic manner. In one of the interviews, parents described an examination procedure that was visibly painful to the child and even led to an injury as "an abuse situation. It felt like it and was for me like 'Everything I never wanted for my child is happening right now'" (p. 86).<sup>25</sup> Intersex persons attending VARGES' peer counselling service reported experiences of similarly voyeuristic and degrading treatment as children, for instance, some described doctors taking photographs of their genitals without their consent.

While many parents are made to believe that these procedures only comprise a single surgical intervention, it is more common that several surgeries are necessary throughout the life of an intersex per-

<sup>25</sup> Original quote: "(...) es war für mich wirklich so wie eine Missbrauchssituation. Also es hat sich so angespürt und das war für mich so ‚All das, was ich für mein Kind nie wollte, passiert gerade'" [31, p. 86]

son, which is associated with additional risks for their physical and mental well-being [112, 28]. M. was subjected to IGM as a child for the sake of being able to urinate while standing<sup>26</sup> and describes years of repeatedly failed surgeries that resulted in tormenting infections and, eventually, incontinence [77]. As M. relates in their personal account, the repercussions of these non-vital interventions on their health continue far into adulthood and cause deep and profound psychological stress in addition to physical damage. While medical doctors claim that this is in the best interest of the child and frame IGM as medical necessities [18, 97], there is voluminous evidence that demonstrates the contrary, with victims detailing the physical and mental suffering this form of needless mutilation brought them (e.g., [12, 32, 50, 54, 73, 80, 82, 99]; for further accounts specifically of intersex persons in Austria beyond those documented in this report, please refer to the 2015 NGO thematic report [65]).

Non-vital surgical interventions performed on the genitalia, while framed as ‘reconstructive’ and corrective of supposedly ‘normal’ physical appearance or functions, are not based on any scientifically supported standards (and the impossibility of establishing such an ‘objective’ standard is even reflected in medical literature [24, 74]). Rather, they are based on dehumanizing technical aspects of surgical practice, heteronormative functioning, or even purely on the aesthetic sensibilities of the surgeon performing the intervention [67, 41, 68]. Even the envisioned ‘cosmetic results’ of IGM might not even be achieved, given that the children’s bodies keep developing with age [112, 28], while these surgical interventions are likely to result in a loss of sensitivity and erotic response, a loss of reproductive capacity, genital pain and/or discomfort, scarring, infections, urinary incontinence, and other irreversible complications [29, 30, 53, 71, 112]. Given that the serious complications are prone to disenable certain (sexual) practices and sensations, the argument that these interventions are merely ‘reconstructing’ the body is unveiled as even more hollow and fallacious [67].

While evidence that IGM are beneficial to individuals’ psycho-social well-being is deeply questionable, numerous studies and accounts offered by IGM survivors highlight the life-long psychological suffering (such as symptoms of post-traumatic stress, dissociation, numbness, persistent nightmares, overwhelming feelings of shame, or substance abuse) inflicted by such invasive, non-consensual and non-vital interventions [12, 18, 22, 21, 35, 36, 65]. In biographical accounts, survivors describe their bodies as ‘expropriated’ by medicine [54]. The possibility to develop without radical and unnecessary medical intervention was taken away from them by non-consensual, invasive procedures and comes with associated psychological reper-

<sup>26</sup> The name of the hospital responsible for this intervention is known to the rapporteurs

cussions and severe trauma [54, 72]. Because many IGM procedures are performed over the course of several years, intersex people are continuously confronted with the biases of medical practitioners, specifically the idea that something is terribly wrong with them and urgently needs to be corrected [72]. The most severe mental suffering caused by IGM results in suicidal ideation. In a study conducted in Hamburg, Germany, for instance, 50% of those who had been subjected to IGM were found to have contemplated suicide [22, 91]. Another study found elevated rates of self-harming behaviour and suicidal ideation among individuals diagnosed with “DSD”; these elevated rates were comparable to those of women traumatised by physical or sexual abuse [92]. Speaking in an interview, Austrian trauma counsellor and sex educator Gabriele Rothuber said she does not know a single intersex person who has not experienced trauma of some kind or another [87].

### 2.3.2 *IGM as Intentional Acts*

It is generally established that IGM conducted on intersex persons is always intentionally inflicted (cf. Article 1 of CAT [105]) and not merely the result of negligence. The intentionality of such acts is not negated even if the doctors performing such interventions do so with a well-meaning or ‘noble’ purpose. As delineated in **Section 2.3.1** of the report, the psycho-social motivations of doctors in performing this kind of torture are clear and transparent. The data obtained for IGM in Austria and the reasons publicly communicated by hospitals as to the reasoning behind such interventions further show that these procedures are conducted intentionally and even with a sense of pride (cf. **Section 2.2**).

### 2.3.3 *Purposeful Discrimination*

Article 1 of CAT [105] requires that the pain or suffering be inflicted for one of the enumerated purposes, i.e. for the extraction of information or confession, punishment, intimidation and coercion, “or for any reason based on discrimination of any kind”.

The Committee against Torture emphasises that the protection of certain minority groups or marginalised individuals or populations that are especially at risk of torture is part of the states’ obligation to prevent torture. State parties must make sure that, with respect to the Convention, their laws are in practice applied to all persons, “regardless of [...] gender, sexual orientation, transgender identity, mental or other disability, health status, [...]” [23, para. 21]. This includes fully prosecuting and punishing all acts of violence and abuse against these individuals and implementing positive prevention and

protection measures.

Relating to intersex children, IGM practices indicate that there is an exceptionalism in place concerning the implementation of any such protective measures. Intersex bodies become 'states of exception' merely to uphold the gender binary [33]. They are medically classified as disordered to imply the normality of an arbitrarily decided upon sex/gender binary [45]. While Western countries generally condemn Female Genital Mutilation (FGM) as an abhorrent social practice, similar procedures on intersex children are ignored or even endorsed [49, 64]. Further, whereas the general consensus around medical procedures is to obtain personal, prior, free and fully informed consent [49, 25] (i.e. without omitting different options and their implications from the patients themselves as much as possible or at least from parents who understand the ramifications fully), with intersex children/children with variations of sex characteristics, this is not the case. Even in cases where consent is provided (be it by intersex persons themselves or their parents), this consent cannot be classified as 'fully informed' because both a medical necessity and urgency are implied when that does not fully capture all aspects of IGM procedures [18, 35]. Consent can not be considered obtained "if the person has been pressured or (emotionally) coerced into agreeing" [25, Art. 2] and this report has detailed how emotional coercion is a common practice to enforce the mutilation of intersex children.

In summary, the ethical codes regulating bodily autonomy and integrity as well as the mitigation of harm have historically been developed to prevent atrocities committed against humanity [84], but are purposefully disregarded and downright violated where intersex children are concerned.

#### 2.3.4 *Involvement of a State Official*

Given that, in Austria, public and mandatory health insurance covers the cost of the medical ill-treatment of intersex persons, it is self-evident that, even if IGM takes place in a private clinic, these procedures are directly funded by, and attributable to, the state. Additionally, they are committed by a person acting in an official capacity. This is doubly so in the case of public university hospitals and the clinics of the different federal states. Further, the state's failure to exercise due diligence to protect intersex people from torture itself comprises the active endorsement of such mutilations.

In the previous report, circulated in 2015, we argued that IGM practices are committed, at the very least, with the acquiescence of state officials. However, since then, Austria has been officially reprimanded by international bodies, which resulted in the Austrian



legislative body drafting legislation to prohibit IGM. Despite all this, the draft legislation has been put on hold by the government for unclear and unexplained reasons (see **Section 2.1**). Therefore, this can no longer simply be classified as mere acquiescence by the government but rather constitutes **active** involvement by the Austrian government in torturing intersex people through **willful** and **callous inaction**.

### 2.3.5 IGM are Not Lawful Sanctions

Surgery performed on an intersex child or adult does not constitute a sanction. It is therefore not covered by the exception clause (cf. Article 1 of CAT [105]).

## 2.4 The Treatment of Intersex Persons in Austria as Ill-Treatment

Austria is a signatory to the CAT. **Article 16** of the Convention commits each State Party to the prevention of:

*other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*

Acts which do not constitute torture are thus still prohibited if they amount to cruel, inhuman or degrading treatment or punishment. This is the case even if the treatment does not reach the requisite threshold of severity, or if the suffering was inflicted negligently (see also **Section 2.3.3**).

Even if the treatment of intersex people in Austria does not constitute torture, it certainly constitutes cruel, inhuman and degrading treatment (Art. 16). Ill-treatment is equally prohibited by the Convention in absolute and non-derogable terms. According to the Committee's General Comment 3, for Cruel, inhuman or degrading treatment also **Article 14** applies [100]. If considering that this suffering is not foreseeable to the surgeons, the insurance companies or the State, this lack of consideration constitutes negligence sufficient for **Article 16**.

Moreover, ill-treatment is demonstrated by the massive disrespect and humiliation intersex people are treated by many medical practitioners in Austria [31, 40, 65, 72, 77] (as also elaborated in **Section 2.3.1**).

## 2.5 Obstacles to Redress, Fair and Adequate Compensation

The current statute of limitations in Austria prohibits survivors of early childhood IGM practices from seeking redress through the legal



system. Often, this is because survivors of IGM do not find out about their medical history until much later in their lives (see **Section 2.2.1**). Further, the severe trauma caused by IGM practices often hinders their ability to act within the limited time that Austria affords them to file such cases. In the case of arbitrary or non-consensual medical treatments (§ 110 StGB)<sup>27</sup> committed against minors, the statute of limitations offers a window of 1 year, beginning at age 18 and closing at age 19. In the instance of grievous bodily harm (§ 84 StGB),<sup>28</sup> the statute of limitations (§ 58 para. 3 StGB)<sup>29</sup> permits lawsuits to be filed until the age of 32.

To date, there has not been a case of a victim of IGM practices succeeding in a lawsuit against a medical institution or a doctor in Austria.<sup>30</sup>

Additionally, the Austrian government so far refuses to ensure that non-consensual and non-vital IGM interventions on minors are recognised as genital mutilation (§ 90 StG para 3)<sup>31</sup>, which would formally prohibit parents from giving ‘consent’. In addition, the state party refuses to initiate impartial investigations, as well as data collection, monitoring, and disinterested research. Furthermore, hospitals are often unwilling to provide full access to patients’ files.

This situation does not conform with state parties’ obligations under **Articles 12–14** of the Convention [105].

<sup>27</sup> available at: <https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296&FassungVom=2015-06-05&Artikel=&Paragraf=110&Anlage=&Uebergangsrecht=> (last accessed 2024-03-04)

<sup>28</sup> available at: <https://www.ris.bka.gv.at/eli/bgbl/1974/60/P84/NOR12029627> (last accessed 2024-03-04)

<sup>29</sup> available at: <https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296&FassungVom=2024-03-03&Artikel=&Paragraf=58&Anlage=&Uebergangsrecht=> (last accessed 2024-03-04)

<sup>30</sup> Globally, this is similar. In 2013, for instance, the adoptive parents of a 12-year-old inter child sued both the South Carolina Department of Social Services and the Medical University of South Carolina for an IGM procedure that was performed on the child when they were 16 months old. However, the lawsuit was settled without any admission of wrongdoing and without a decision on the core legal issue at stake [51, 52].

<sup>31</sup> available at: <https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296&FassungVom=2015-12-31&Artikel=&Paragraf=90&Anlage=&Uebergangsrecht=> (last accessed 2024-03-04)

## 3

### *Recommendations*

The rapporteurs respectfully propose that the Committee recommends the following measures to the Austrian Government with respect to the treatment of intersex persons/persons with variations of sex characteristics:

**Regarding cases of non-consensual, non-vital, medically unnecessary surgical and other non-consensual interventions on intersex children and adults, which can entail irreversible consequences and can cause severe physical and psychological suffering, and regarding the lack of redress and compensation in such cases:**

1. To prevent torture and cruel, inhuman or degrading treatment (Art. 1, 2, 16 CAT)

**Take all effective legislative, administrative, judicial or other measures, including the review of associated statutes of limitation, to ensure that no intersex person/person with variations of sex characteristics is subjected to unnecessary or non-vital medical or surgical intervention during infancy or childhood, guarantee bodily integrity, autonomy and self-determination for the children concerned, and provide the families with intersex children/children with VSC with adequate counselling and access to peer-support. That includes taking all necessary steps to bring the draft law prohibiting IGM practices in Austria into force.**

2. To ensure that any intersex person/person with variations of sex characteristics who alleges they have been subjected to torture has the right to file a complaint, and to have their case promptly and impartially examined by competent authorities (Art. 13 CAT), and that an intersex victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation under the legal system, including the means for as full a rehabilitation as is possible (Art. 14 CAT):

Undertake investigations of incidents of surgical and other medical treatment of intersex persons/persons with variations of sex characteristics without personal, prior, free and fully informed consent and adopt legal provisions that provide redress to the victims of such treatment, including adequate compensation; facilitate disinterested, representative review, analysis, and outcome studies, in direct collaboration with intersex representatives and organisations; advance and facilitate the acknowledgment by society of the suffering experienced by intersex persons because of IGM practices, including a historical appraisal of the human rights violations inflicted on intersex children and adults in society.

3. To ensure that education and information regarding the prohibition against torture are fully included in the training of medical personnel (Art. 10 CAT):
 

**Ensure that all medical professionals know that non-consensual, non-vital surgical and other interventions on intersex children and adults with variations of sex characteristics justified by psycho-social indications amount to the infliction of torture or cruel, inhuman or degrading treatment and constitute a punishable offence. Corresponding education and training need to take place in direct collaboration with intersex representatives and organisations to ensure that doctors and other medical professionals have a full understanding of intersex individuals and their actual medical needs.**
4. To ensure that no parents of intersex children, or intersex persons themselves are coerced into consenting to non-vital medical or surgical interventions and that they are provided with complete, understandable, and impartial information on their children's/their intersex bodies (Art. 1, 10 CAT):
 

**Referring intersex persons/persons with variations of sex characteristics and/or their parents to human-rights based, medicine-independent peer counselling and support services needs to be a requirement of doctors and other medical professionals. Further, there needs to be a sex/gender-diversity affirming, destigmatising, and de-pathologising education and measures to reduce discrimination of intersex persons/persons with variations of sex characteristics.**

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# A

## *IGM in Human Rights Mechanisms*

### *A.1 International Bodies Recognizing Human Rights Violations of Intersex Persons*

2011: UNHCHR, A/HRC/19/41, para. 57 [106]

*In addition, intersex children, who are born with atypical sex characteristics, are often subjected to discrimination and medically unnecessary surgery, performed without their informed consent, or that of their parents, in an attempt to fix their sex.*

2015: UN CAT, CAT/C/AUT/6, paras. 44–45 [101]

#### ***Intersex persons***

44. *The Committee appreciates the assurances provided by the delegation that surgical interventions on intersex children are carried out only when necessary, following medical and psychological opinions. It remains concerned, however, about reports of cases of unnecessary surgery and other medical treatment with lifelong consequences to which intersex children have been subjected without their informed consent. The Committee is further concerned at the lack of legal provisions providing redress and rehabilitation in such cases (arts. 14 and 16).*

45. *The State party should:*

(a) *Take the legislative, administrative and other measures necessary to guarantee the respect for the physical integrity and autonomy of intersex persons and to ensure that no one is subjected during infancy or childhood to non-urgent medical or surgical procedures intended to decide the sex of the child;*

(b) *Guarantee impartial counselling services for all intersex children and their parents, so as to inform them of the consequences of unnecessary and non-urgent surgery and other medical treatment to decide on the sex of the child and the possibility of postponing any decision on such treatment or surgery until the persons concerned can decide by themselves;*

(c) *Guarantee that full, free and informed consent is ensured in connection with medical and surgical treatments for intersex persons and that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give effective consent;*

(d) *Undertake investigation of instances of surgical interventions or other medical procedures performed on intersex persons without effective consent and ensure that*

*the persons concerned are adequately compensated.*

2015: WHO, Report “Sexual health, human rights and the law”, p. 27-28 [113]

*A major concern for intersex people is that so-called sex normalizing procedures are often undertaken during their infancy and childhood, to alter their bodies, particularly the sexual organs, to make them conform to gendered physical norms, including through repeated surgeries, hormonal interventions and other measures. As a result, such children may be subjected to medically unnecessary, often irreversible, interventions that may have lifelong consequences for their physical and mental health, including irreversible termination of all or some of their reproductive and sexual capacity.*

*Increasingly, concerns are being raised by intersex people, their caregivers, medical professionals and human rights bodies that these interventions often take place without the informed consent of the children involved and/or without even seeking the informed consent of their parents (178, 262, 264, 270–273).*

*It has also been recommended [by human rights bodies and ethical and health professional organisations] that investigation should be undertaken into incidents of surgical and other medical treatment of intersex people without informed consent and that legal provisions should be adopted in order to provide remedies and redress to the victims of such treatment, including adequate compensation (91, 264).*

2016: UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, paras. 48, 50, 72 [107]

*48. Lesbian, gay, bisexual, transgender and intersex persons are frequently denied medical treatment and subjected to verbal abuse and public humiliation, psychiatric evaluations, forced procedures such as sterilization, “conversion” therapy, hormone therapy and genital-normalizing surgeries under the guise of “reparative therapies”. These procedures are rarely, if ever, medically necessary, lead to severe and life-long physical and mental pain and suffering and can amount to torture and ill-treatment (A/HRC/22/53). The criminalization of same-sex relationships and pervasive discrimination against lesbian, gay, bisexual, transgender and intersex persons lead to the denial of health care, information and related services, including the denial of HIV care, in clear violation of international human rights standards such as the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.*

*50. In many States, children born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization and genital normalizing surgery, which are performed without their informed consent or that of their parents, leaving them with permanent, irreversible infertility, causing severe mental suffering and contributing to stigmatization. In some cases, taboo and stigma lead to the killing of intersex infants.*

*72. With regard to abuses in health-care settings, the Special Rapporteur calls upon States to:*

*(g) Undertake appropriate training sessions and community-level gender-sensitization campaigns to combat discriminatory gender stereotypes underlying discrimination and abuses in the provision of health-care services to women, girls, and lesbian, gay, bisexual, transgender and intersex persons;*

(i) *Repeal laws that allow intrusive and irreversible treatments of lesbian, gay, bisexual, transgender and intersex persons, including, inter alia, genital-normalizing surgeries and “reparative” or “conversion” therapies, whenever they are enforced or administered without the free and informed consent of the person concerned;*

**2016: Office of the High Commissioner for Human Rights (Intersex Awareness Day – Wednesday 26 October) [108]**

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

**2017: Darlington Statement [20]**

*Human rights and legal reform 7. We call for the immediate prohibition as a criminal act of deferrable medical interventions, including surgical and hormonal interventions, that alter the sex characteristics of infants and children without personal consent. We call for freely-given and fully informed consent by individuals, with individuals and families having mandatory independent access to funded counselling and peer support.*

*10. We call on governments and institutions to acknowledge and apologise for the treatment of people born with variations of sex characteristics, and provide redress and reparation for people born with variations of sex characteristics who have experienced involuntary or coercive medical interventions. There must be no time limit on access to redress and reparation.*

**2017: Yogyakarta Principles plus 10 [63]**

**PRINCIPLE 32: THE RIGHT TO BODILY AND MENTAL INTEGRITY**

*Everyone has the right to bodily and mental integrity, autonomy and self-determination irrespective of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to be free from torture and cruel, inhuman and degrading treatment or punishment on the basis of sexual orientation, gender identity, gender expression and sex characteristics. No one shall be subjected to invasive or irreversible medical procedures that modify sex characteristics without their free, prior and informed consent, unless necessary to avoid serious, urgent and irreparable harm to the concerned person.*

**STATES SHALL:**

*A. Guarantee and protect the rights of everyone, including all children, to bodily and mental integrity, autonomy and self-determination;*

*B. Ensure that legislation protects everyone, including all children, from all forms of forced, coercive or otherwise involuntary modification of their sex characteristics;*

*C. Take measures to address stigma, discrimination and stereotypes based on sex and gender, and combat the use of such stereotypes, as well as marriage prospects and other social, religious and cultural rationales, to justify modifications to sex characteristics, including of children;*

*D. Bearing in mind the child's right to life, non-discrimination, the best interests of the child, and respect for the child's views, ensure that children are fully consulted*

and informed regarding any modifications to their sex characteristics necessary to avoid or remedy proven, serious physical harm, and ensure that any such modifications are consented to by the child concerned in a manner consistent with the child's evolving capacity;

E. Ensure that the concept of the best interest of the child is not manipulated to justify practices that conflict with the child's right to bodily integrity;

F. Provide adequate, independent counselling and support to victims of violations, their families and communities, to enable victims to exercise and affirm rights to bodily and mental integrity, autonomy and self-determination;

G. Prohibit the use of anal and genital examinations in legal and administrative proceedings and criminal prosecutions unless required by law, as relevant, reasonable, and necessary for a legitimate purpose.

### 2017: Council of Europe, Parliamentary Assembly, Promoting the human rights of and eliminating discrimination against intersex people [26]

7. In the light of the above, and bearing in mind the provisions of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164, "Oviedo Convention") and the relevant recommendations made in its Resolution 1952 (2013) on children's right to physical integrity, as well as those by the Council of Europe Commissioner for Human Rights and numerous treaty bodies of the United Nations, the Assembly calls on Council of Europe member States to:

7.1. with regard to effectively protecting children's right to physical integrity and bodily autonomy and to empowering intersex people as regards these rights:

7.1.1. prohibit medically unnecessary sex-"normalising" surgery, sterilisation and other treatments practised on intersex children without their informed consent;

7.1.2. ensure that, except in cases where the life of the child is at immediate risk, any treatment that seeks to alter the sex characteristics of the child, including their gonads, genitals or internal sex organs, is deferred until such time as the child is able to participate in the decision, based on the right to self-determination and on the principle of free and informed consent;

7.1.3. provide all intersex people with health care offered by a specialised, multi-disciplinary team taking a holistic and patient-centred approach and comprising not only medical professionals but also other relevant professionals such as psychologists, social workers and ethicists, and based on guidelines developed together by intersex organisations and the professionals concerned;

7.1.4. ensure that intersex people have effective access to health care throughout their lives;

7.1.5. ensure that intersex people have full access to their medical records;

7.1.6. provide comprehensive and up-to-date training on these matters to all medical, psychological and other professionals concerned, including conveying a clear message that intersex bodies are the result of natural variations in sex development and do not as such need to be modified;

### 2019: Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/AUT/CO/9, paras. 34 and 35 [102]

34. The Committee commends the State party for the adoption of the action plan for women's health, in 2017, and welcomes the measures adopted to integrate a gender

perspective into all health sector programmes. Nevertheless, the Committee remains concerned about the following: [...]

(h) The reports of mostly irreversible medical and other treatments that are performed on intersex persons.

**35. In line with its general recommendation No. 24 (1999) on women and health, the Committee recommends that the State party: [...]**

(h) Develop and implement a rights-based health-care protocol for intersex persons, ensuring that children and their parents are appropriately informed of all options, that the children are involved, to the greatest extent possible, in decision-making about medical interventions, that their choices are respected and that no person is subjected to surgery or treatment without their free, informed and prior consent.

2019: European Parliament resolution of 14 February 2019 on the rights of intersex people, 2018/2878(RSP) [43]

#### **Medicalisation and pathologisation**

2. Strongly condemns sex-normalising treatments and surgery; welcomes laws that prohibit such surgery, as in Malta and Portugal, and encourages other Member States to adopt similar legislation as soon as possible;

2020: Committee on the Rights of the Child, CRC/C/AUT/CO/5-6, para. 27 [104]

#### *Harmful practices*

27. With reference to 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 recalling the concluding observations of the Committee against Torture (CAT/C/AUT/CO/6, para. 45) the Committee recommends that the State party:

(a) 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;

(b) Gather data with a view to understanding the extent of instances of unnecessary medical or surgical treatment performed on intersex children, which constitute a harmful practice, so that children at risk can be more easily identified and their abuse prevented;

(c) Continue to take preventive and protection measures to address female genital mutilation, including the provision of social, psychological, medical and rehabilitative services and training of relevant professionals and awareness-raising programmes.

2020: European Commission, Union of Equality: LGBTIQ Equality Strategy 2020-2025, COM(2020) 698 final [42]

#### *Protecting and promoting LGBTIQ people's bodily and mental health*

Harmful practices such as non-vital surgery and medical intervention on intersex infants and adolescents without their personal and fully informed consent (intersex genital mutilation) 57, forced medicalisation of trans people and conversion practices targeting LGBTIQ people 58 may have serious bodily and mental health repercussions. The Commission will foster Member States' exchange of good practice on ending these practices.

2023: *Convention on the Rights of Persons with Disabilities, CRPD/C/AUT/CO/2-3, paras. 39–40 [103]*

39. *The Committee is concerned about the continued performance of sex-reassignment surgery on intersex children.*

40. *The Committee recommends that the State party enact a legal ban on non-live-saving sex-reassignment medical intervention on intersex children.*

## A.2 State Bodies Recognizing Human Rights Violations of Intersex Persons

2023: *Spain [9]*

*Law 4/2023, of February 28, for the real and effective equality of trans persons and for the guarantee of the rights of LGBTI persons.*

*Article 19. Integral health care for intersex persons.*

1. *The health care of intersex persons shall be carried out in accordance with the principles of non-pathologization, autonomy, informed decision and consent, non-discrimination, comprehensive care, quality, specialization, proximity and non-segregation. In all cases, respect for their privacy and confidentiality regarding their physical characteristics shall be ensured, avoiding unnecessary explorations or their exposure without a directly related diagnostic or therapeutic objective.*

2. *All those practices of genital modification in persons under twelve years of age are prohibited, except in cases where medical indications require otherwise in order to protect the health of the person. In the case of minors between twelve and sixteen years of age, such practices shall only be permitted at the request of the minor, provided that, due to his or her age and maturity, he or she is able to give informed consent to the performance of such practices.*

3. *The public administrations, within the scope of their competences, shall promote protocols of action in matters of intersexuality that guarantee, as far as possible, the participation of minors in the decision-making process, as well as the provision of advice and support, including psychological support, to intersex minors and their families. In particular, before the start of any treatment that could compromise their reproductive capacity, it shall be guaranteed that intersex persons have the real and effective possibility of accessing the techniques of freezing gonadal tissue and reproductive cells for their future recovery under the same conditions as other users.*

4. *The public administrations, within the scope of their competences, shall guarantee sufficient, continuous and updated training for health personnel, which takes into account the specific needs of intersex persons.*

2022: *Greece [81]*

*Law No. 4958/2022 Government Gazette 142/A/21-7-2022 “Reforms in medically assisted reproduction and other urgent regulations”*

**PART C’ CHANGE OF SEX CHARACTERISTICS OF INTERSEX MINORS**

*Article 17*

*Conditions for the change of sex characteristics of intersex minors*

1. *An intersex minor who has reached the age of fifteen (15) years may undergo medical procedures and treatments, such as surgical or hormonal, for the total or*



partial change of sex characteristics, i.e. chromosomes, genital and anatomical characteristics of the person, including primary characteristics such as reproductive organs and secondary characteristics such as muscle mass, breast development or hair growth, in accordance with para. 2 of Article 2 of the Law No. 4491/2017 (A'152), **only with the free and informed consent of the individual and of the persons exercising parental care or guardianship**, according to sub-para. aa) of para. b) of para. 2 of article 12 of the Law 3418/2005 (A' 287), on the conditions for the provision of valid consent of a minor patient for the performance of medical procedures on them by a doctor.

2. An intersex minor who has not completed the fifteenth (15th) year of their age may undergo the medical procedures and treatments of para.1, only after permission, which is granted with the decision of the County Court of the minor's place of residence. The court decides following a non-contentious proceeding and its decision is not subject to appeal. The hearing procedure is conducted behind closed doors. The permission is granted by the court following: a) the opinion of the interdisciplinary committee of article 18, which is freely evaluated by the court, b) the personal hearing of a representative of the interdisciplinary committee of article 18 and c) the personal hearing of the minor by the judge, in compliance with the terms of sub-para. aa) of para. b) of para. 2 of article 12 of the Law 3418/2005 (A' 287). The permission can only be granted for medical procedures or treatments that cannot be postponed until the minor reaches the age of fifteen (15) and do not cause other future, irreversible or significant complications to the health of the minor. Exceptionally, the permission is not required, when the medical procedure or treatment is necessary to prevent a risk to the life or health of the minor, within the meaning of paragraphs a) and c) of para. 3 of article 12 of the Law 3418/2005 and cannot be postponed until the court's decision is issued.

2021: Austria, Austrian National Council, Resolution 1594/A(E)<sup>1</sup> [6, 7]

2

### Report

#### of the Equal Treatment Committee

on motion 1594/A(E) of the Deputies Dr. Ewa Ernst-Dziedzic, Nico Marchetti and colleagues regarding the protection of intersex children and adolescents from medically unnecessary treatments on the sex characteristics.

The deputies Dr. Ewa Ernst-Dziedzic, Nico Marchetti and colleagues have tabled the motion for a resolution on this subject on May 19, 2021 and have reasoned as follows:

"In many countries around the world, intersex children and adolescents experience medically unnecessary treatments on the sex characteristics without their previous, fully informed and personal consent. The physical and psychological burdens associated with these human rights violations can haunt those affected for a lifetime. In early 2020, the UN Committee on the Rights of the Child called on Austria to ban unnecessary and non-consensual medical interventions and treatments involving children. They explicitly stated that this was a "harmful practice" and referred to the remarks of the UN Committee against Torture (CAT) from 2015. In 2015, Austria was already reprimanded by the CAT for such practices. The CAT classified these interventions as cruel, inhuman and degrading treatment in the sense of the UN Convention against Torture. In accordance with the personal right of self-determination, intersex medical interventions, which inherently affect the most

<sup>1</sup> Translated from German by Joachim Joseph Faiman

<sup>2</sup> Notes from the translator: (a) Both documents cited in the report speak of „unnecessary medical or surgical treatment (performed on intersex children)" which does not translate one-to-one to „medizinisch nicht notwendige Behandlungen"; (b) The (legal) term „geschlechtsverändernde Maßnahmen" is broader than „Intersex medical interventions" and also includes, for instance, „gender-affirming surgery". As the focus in this context is on intersex persons specifically, the reduction to „intersex medical interventions" is generally justifiable.

personal sphere of a person, always have to be the personal decision of those concerned. Medical practice has changed in Austria to the effect that during childhood, decisions about when and how medical interventions are carried out are made as cautiously as possible, and include intensive education of the parents, and happen in coordination with interdisciplinary teams, including significant consideration of the psychosocial aspects. The primary goal must be the preservation or enabling of sexual sensitivity and reproductive ability. In January 2021, as part of the United Nations Universal Periodic Review, Austria adopted the recommendations on ending non-consensual and medically unnecessary treatments of intersex children and adolescents. Now it is time to take further measures to protect intersex children and adolescents from medically unnecessary treatment on the sex characteristics and to close possible legal loopholes.“

#### **Resolution**

**of the National Council of 16 June 2021 regarding the protection of intersex children and adolescents from medically unnecessary treatments on the sex characteristics.**

The Federal Government, in particular the Federal Minister for Social Affairs, Health, Care and Consumer Protection, the Federal Minister for Justice and the Federal Minister for Women, Family, Youth and Integration, are requested to take measures to effectively protect intersex children and adolescents and their physical integrity from medical interventions that do not avert permanent physical suffering, a threat to life or the risk of serious damage to health/severe pain. In addition to necessary structures for education, advice and support, it is important to close possible legal loopholes. The Federal Minister for Social Affairs, Health, Nursing and Consumer Protection is also requested to provide Parliament with figures on the number, indication and age of the concerned individuals, as well as on quality assurance.

2021: Germany, German Civil Code (BGB), Book 4 Family law, Division 2 Relationship, Title 5 Parental custody [48]

§ Section 1631e Treatment of children with variants of sexual development

(1) The care for the person of the child does not include the right to consent to the treatment of a child with a variant of sexual development who is unable to consent or to oneself perform such treatment, which is being performed solely with the intention, without any additional grounds for the treatment existing, of aligning the child's physical appearance with that of the male or female sex.

(2) Parents can consent to surgical interventions in the internal or external genitalia of the child with a variant of sexual development who is unable to consent, the consequence of which could be an alignment of the child's physical appearance with that of the male or female sex and regarding which the power to grant consent is not already lacking in accordance with subsection (1) only if it is impossible to postpone the intervention until the child takes a self-determined decision. Section 1909 is not to be applied.

(3) The consent in accordance with subsection (2) sentence 1 requires ratification by the family court unless the surgical intervention is required in order to avert danger to the life or health of the child and cannot be postponed until the ratification is issued. The ratification is to be issued on application of the parents if the planned intervention is most conducive to the best interests of the child. Where the parents submit to the family court an opinion by an interdisciplinary committee in favour of the intervention in accordance with subsection (4), then the presumption will be that



*the planned intervention is most conducive to the best interests of the child.*

**2021: Iceland [4]**

*Act on Gender Autonomy No. 80/2019 as amended by Act No. 159/2019, No. 152/2020 and No. 154/2020*

*[Article 11a Children born with atypical sex characteristics.*

*Children born with atypical sex characteristics shall have the right to physical integrity in relation to their sex characteristics and the right to receive the best health care available at any given time. In implementing the Act, care shall be taken to respect their right to self-determination regarding personal matters.*

*Permanent changes to the sex characteristics of a child under the age of 16 born with atypical sex characteristics shall only be made in conformity with the will of the child, cf. paragraph 6. However, if a child is unable to give its consent due to its young age or is for other reasons unable to express its will, the child's sex characteristics may be changed if so required for health reasons, following a detailed assessment of the need for such changes and of their consequences in the short and long term. Social, psychosocial and appearance-related reasons shall not be regarded as health reasons. Permanent changes pursuant to the first and second sentence include inter alia surgical operations, medication and other irreversible medical interventions.*

**2018: Portugal, Law no. 38/2018 of August 7th [3]**

*Right to self-determination of gender identity and gender expression and the protection of each person's sexual characteristics*

*Article 5 Modifications to the body and sexual characteristics of intersex minors Except in situations where there is a proven risk to their health, surgical, pharmacological or other treatments and interventions involving changes to the body and sexual characteristics of intersex minors shall not be carried out until they have expressed their gender identity.*

**2015: Malta, CHAPTER 540 [2]**

**GENDER IDENTITY, GENDER EXPRESSION AND SEX CHARACTERISTICS ACT**

**14. (1)** *It shall be unlawful for medical practitioners or other professionals to conduct any sex assignment treatment and, or surgical intervention on the sex characteristics of a minor which treatment and, or intervention can be deferred until the person to be treated can provide informed consent: Provided that such sex assignment treatment and, or surgical intervention on the sex characteristics of the minor shall be conducted if the minor gives informed consent through the person exercising parental authority or the tutor of the minor.*

### A.3 National Ethics Bodies Recognizing Human Rights Violations of Intersex Persons

2017: Austrian Bioethics Commission, *Statement on "Intersexuality and Trans-identity"*<sup>3</sup> [19]

<sup>3</sup> Translated from German by Joachim Joseph Faiman

#### 3.1 Experiences of affected persons and the increased demand for self-determination.

Especially when it comes to intersexuality, the current discussion about medical interventions is characterized by testimonies of affected persons, which have made the suffering that was inflicted on them in the name of a "benevolent Paternalism" visible. Many surgical interventions during infancy and childhood turned out to be traumatizing and those affected could not identify with their assigned sex. While in this case the objection of those affected targeted medical interventions that were both premature and too incisive, and proved ultimately to be wrong, the protests regarding trans-identity opposed obstacles for surgical sex reassignment that are too high. In both cases a critical revision of former practice is necessary because of the increased importance of the right of self-determination, the protection of privacy and the protection of bodily integrity. On this line, regarding both intersexuality and transidentity, the internally perceived and freely affirmed gender identity of the mature individual ultimately has to be the reference point and goal for all further considerations

#### 3.2 Dissolution of rigid gender stereotypes

Considering the constantly increasing sensitivity towards actual lived and perceived gender identities, there is a stronger ethical aspiration to do justice to the needs of affected individuals and to avoid forced gender-assignment, which is also why the old strategy of swift surgical gender-assignments have to be questioned/criticised as structural abuse. Medical interventions are in danger of being consciously or subconsciously put in the service of societal expectations, and of being detrimental to the wellbeing of those affected. Due to the insights into the social-constructivist dimension of the classical gender dichotomy it is all the more crucial that on the one hand an objective medical indication regarding alignment - or assignment surgeries are rejected on the basis of ambiguous somatic sex alone. On the other hand the sole fact of recognized patient autonomy makes it important to ensure that the persons concerned are given the maximum chance to make their own decisions in all relevant stages of treatment, which must be taken into account in particular when assessing the factor of timeliness.

Available at: <https://tinyurl.com/yfhn5hfu>

2012: German Ethics Council. *Intersexuality. Opinion*

Available at: [https://www.ethikrat.org/fileadmin/Publikationen/Stellungnahmen/deutsch/DER\\_StnIntersex\\_Deu\\_Online.pdf](https://www.ethikrat.org/fileadmin/Publikationen/Stellungnahmen/deutsch/DER_StnIntersex_Deu_Online.pdf)

English version: <https://www.ethikrat.org/fileadmin/Publikationen/Stellungnahmen/englisch/opinion-intersexuality.pdf>

2012: *Swiss National Advisory Commission on Biomedical Ethics (NEK-CNE), On the management of differences of sex development. Ethical issues relating to “intersexuality”, Opinion No. 20/2012*

Available at:

[https://www.nek-cne.admin.ch/inhalte/Themen/Stellungnahmen/en/NEK\\_Intersexualitaet\\_En.pdf](https://www.nek-cne.admin.ch/inhalte/Themen/Stellungnahmen/en/NEK_Intersexualitaet_En.pdf)

#### A.4 *NGO and NHRI Reports on Human Rights Violations of Intersex Persons*

Below is an updated compilation of NGO and NHRI reports on human rights violations of intersex persons since 2015. For a list of reports published between 2004 and 2015, please refer to the 2015 CAT Austrian Thematic NGO Report on Intersex and IGM practices [65].

2017: *CAT Austria*

*NGO Report for LoIPR to the 7 th Report of Austria on the Convention against Torture (CAT). StopIGM.org / Zwischengeschlecht.org. <https://tinyurl.com/yc6kd92w>*

2018: *CRPD Austria*

*NGO Report (for LOIPR) to the 2 nd and 3 rd Periodic Report of Austria on the Convention on the Rights of Persons with Disabilities (CRPD). StopIGM.org / Zwischengeschlecht.org. <https://intersex.shadowreport.org/public/2018-CRPD-LOIPR-Austria-NGO-Zwischengeschlecht-Intersex-IGM.pdf>*

2019: *CRC Austria*

*NGO Report (for PSWG) to the 5th and 6th Report of Austria on the Convention on the Rights of the Child (CRC). StopIGM.org / Zwischengeschlecht.org. <https://intersex.shadowreport.org/public/2019-CRC-PSWG-Austria-NGO-Zwischengeschlecht-Intersex-IGM.pdf>*

2022: *CAT Australia*

*Shadow Report submission: Australia By Intersex Human Rights Australia (IHRA)*

<https://ihra.org.au/wp-content/uploads/2022/09/IHRA-2022-CAT-shadow-report.pdf>

A further compendium of reports from NGO and NHRI reports concerning IGM from France, Kenya, Finland, Portugal, Austria, Spain, Switzerland, Belgium, Mexico, the United Kingdom, Malta, Germany, Italy, Nepal, New Zealand, Liechtenstein, Argentina, Denmark, Ireland, Netherlands, South Africa, and the United States is available here: <https://intersex.shadowreport.org/>

## *About the rapporteurs*

*Verein Intergeschlechtlicher Menschen Österreich (VIMÖ)*  
*(Austrian National Association of Intersex People)*

**VIMÖ** is the Austrian national association of intersex persons. VIMÖ was founded in 2014 with the aim to work for political and social change to improve the situation of intersex persons in Austria. VIMÖ is an NGO working on the rights of intersex people and is the first organisation that addresses issues of structural discrimination of intersex persons in Austria. The NGO is a member organisation of the **Organisation Intersex International Europe** (OII Europe) and therefore is also known as OII Austria.

*Beratungsstelle für Variationen der Geschlechtsmerkmale (VARGES)*  
*(Peer Counselling Centre for VSC)*

**VARGES** is a contact point for intersex persons/persons with variations of sex characteristics (VSC) and/or their family members. VARGES offers peer counselling; their counsellors are intersex persons/persons with VSC themselves or parents of intersex children. VARGES also offers educational training for professionals and organisations via workshops or lectures to raise awareness about diversity of sex characteristics and gender identities.

### *Academic Partners*

**Ekat Osipova, BSc BSc MA** is an interdisciplinary researcher at the intersection of science and technology studies and human-computer interaction. In their work, Osipova is committed to highlighting the lived realities and practices of fellow queer and disabled people through a participatory approach.

**Prof. Dr. Katta Spiel** researchers marginalised perspectives on technology through a lens of Critical Access. They are inter\* themselves and also a member of the educational team of VARGES.

**Hugh Schmidt, MA** is an interdisciplinary researcher who works on issues around data, datafication and metrics and their intersection with (inter)national governance and regulatory policy. He has a background in history and science and technology studies.