

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



NGO Report (for Session)
to the 6th to 7th Report of France on the
Convention on the Rights of the Child (CRC)

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



Executive Summary

All typical forms of Intersex Genital Mutilation are still practised in France, facilitated and paid for by the State party via the public health system (*Sécurité Sociale – Assurance Maladie*). Parents and children are denied appropriate support. The Government claims IGM practices are already “*prohibited*”, while the new Law on Bioethics in fact legalises them, thus upholding the impunity of IGM practitioners, while IGM survivors are denied access to justice and redress, which is also evident in French Case Law.

This Committee has consistently recognised IGM practices in France to constitute a harmful practice under the Convention in Concluding Observations, same as CAT, CEDAW and CRPD.

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

In total, UN treaty bodies CRC, CEDAW, CAT, CCPR and CRPD have so far issued 75 Concluding Observations recognising IGM as a serious violation of non-derogable human rights, typically obliging State parties to enact legislation to (a) end the practice and (b) ensure redress and compensation, plus (c) access to free counselling. Also, the UN Special Rapporteurs on Torture (SRT) and on Health (SRH), the UN High Commissioner for Human Rights (UNHCHR), the World Health Organisation (WHO), the Inter-American Commission on Human Rights (IACHR), the African Commission on Human and Peoples’ Rights (ACHPR) and the Council of Europe (COE) recognise IGM as a serious violation of non-derogable human rights.

Intersex people are born with Variations of Reproductive Anatomy, including atypical genitals, atypical sex hormone producing organs, atypical response to sex hormones, atypical genetic make-up, atypical secondary sex markers. While intersex people may face several problems, in the “developed world” the most pressing are the ongoing Intersex Genital Mutilations, which present a distinct and unique issue constituting significant human rights violations.

IGM practices include non-consensual, medically unnecessary, irreversible, cosmetic genital surgeries, and/or other harmful medical procedures that would not be considered for “normal” children, without evidence of benefit for the children concerned. Typical forms of IGM include “masculinising” and “feminising”, “corrective” genital surgery, sterilising procedures, imposition of hormones, forced genital exams, vaginal dilations, medical display, involuntary human experimentation and denial of needed health care.

IGM practices cause known lifelong severe physical and mental pain and suffering, including loss or impairment of sexual sensation, painful scarring, painful intercourse, incontinence, urethral strictures, impairment or loss of reproductive capabilities, lifelong dependency of artificial hormones, significantly elevated rates of self-harming behaviour and suicidal tendencies, lifelong mental suffering and trauma, increased sexual anxieties, and less sexual activity.

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

This Thematic NGO Report has been compiled by Alter Corpus, Nadine Coquet, and StopIGM.org / Zwischengeschlecht.org. It contains Suggested Recommendations (p. 25).

**NGO Report for Session
to the 6th to 7th Report of France
on the Convention on the Rights of the Child (CRC)**

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Introduction

Intersex, IGM and Human Rights in France

IGM practices in France are known to cause severe, lifelong physical and psychological pain and suffering,¹ and have already been **recognised by UN treaty bodies CRC, CAT, CEDAW and CRPD** to constitute a **harmful practice** and inhuman treatment, seconded by French Government agencies including the **National Consultative Commission on Human Rights CNCDH** and the **Council of State (Conseil d'État)**.

In the **State Party Report**, France claims that within the “*French legal framework*” IGM practices are already “*prohibited*” and “*Legal tools exist to sanction doctors performing such surgeries and to compensate people who are victims,*” but **fails to substantiate** these claims.

This NGO Report demonstrates that the ongoing **harmful medical practice on intersex persons in France** – advocated, facilitated and paid for by the State party – **persists in spite of previous Concluding observations by CRC, CAT, CEDAW and CRPD,**² and constitutes a **serious breach** of France’s obligations under the Convention. It further substantiates that, despite some agencies calling for action to protect intersex children, the Government **refuses** to take action, upholding the **impunity** of IGM practitioners, while IGM survivors are **denied access to justice and redress**, which is also evident in **French Case Law**.

About the Rapporteurs

This NGO report has been prepared by the French intersex NGO *Alter Corpus* and the intersex person and advocate *Nadine Coquet* in collaboration with the international intersex NGO *Zwischengeschlecht.org / StopIGM.org*.

- The French Association **Alter Corpus**,³ composed of persons concerned, lawyers and scholars, aims to protect and promote, legally and through their advocacy, the rights of intersexed persons and persons belonging to sex and gender minorities. It is regularly consulted in France and internationally by various human rights and ethics bodies. It participates in the drafting of legal texts for the recognition of the rights of intersex persons.
- **Nadine Coquet** is a French intersex person, survivor of IGM practices, intersex human rights defender and a member of OII Francophonie. Nadine has testified to IGM practices at a hearing of the French Senate.⁴
- **StopIGM.org / Zwischengeschlecht.org** is an international intersex human rights NGO based in Switzerland, working to end IGM practices and other human rights violations perpetrated on intersex people, according to its motto, “*Human Rights for Hermaphrodites, too!*”⁵ According to its charter,⁶ StopIGM.org works to support persons concerned seeking

1 **CAT, CRC, CRPD, SPT, SRT, SRSG VAC, COE, ACHPR, IACHR** (2016), “End violence and harmful medical practices on intersex children and adults, UN and regional experts urge”, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>

2 CAT/C/FRA/CO/7, paras 34-35; CRC/C/FRA/CO/5, paras 47-48; CEDAW/C/FRA/CO/7-8, paras 18(e)-(f)+19(e)-(f); CRPD/C/FRA/CO/1, paras 36(c)+37(c)

3 Groupement d’information et de soutien sur les questions sexuées et sexuelles (Information and support group on gender and sexual issues), <https://hal.archives-ouvertes.fr/hal-01627306/document>

4 http://www.liberation.fr/debats/2016/05/31/stop-aux-mutilations-des-personnes-intersexuees_1456398

5 <https://Zwischengeschlecht.org/>. English pages: <https://StopIGM.org/>

redress and justice, and regularly reports to UN treaty bodies, mostly in collaboration with local intersex advocates and organisations.⁷ In 2015 StopIGM.org in collaboration with French intersex advocates Sarita-Vincent Guillot and Nadine Coquet first reported the on-going practice in France to CRC,⁸ CAT⁹ and CEDAW.¹⁰ In 2016 in Paris StopIGM.org facilitated non-violent protests and an Open Letter with 239 signatures denouncing French IGM clinics and universities and their complicity in international medical networks promoting and practicing IGM.¹¹

Methodology

This thematic NGO report is a localised update to the **2021 CCPR France NGO Report (for LOIPR)**¹² and an update to the **2020 CRC France NGO Report (for LOIPR)**¹³ by the same Rapporteurs.

6 <https://zwischenengeschlecht.org/post/Statuten>

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

8 <https://intersex.shadowreport.org/public/2015-CRC-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

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

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

11 Open Letter of Concern to 55th ESPE 2016 and French DSD Universities and Clinics by Persons Concerned, Partners, Families, Friends and Allies, September 2016,

https://zwischenengeschlecht.org/public/Open_Letter_ESPE_2016.pdf

12 <https://intersex.shadowreport.org/public/2021-CCPR-France-LOIPR-NGO-Intersex-IGM.pdf>

13 <https://intersex.shadowreport.org/public/2020-CRC-France-LOIPR-NGO-Intersex-IGM.pdf>

A. Precedents: Concluding Observations, LOIPR, State Party Report

1. Previous Concluding Observations, LOIPR

a) Harmful Practices: CRC 2016, CRC/C/FRA/CO/5, paras 47-48

D. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39)

[...]

Harmful practices

47. *While noting with appreciation the progress made by the State party in eradicating female genital mutilation, the Committee is nevertheless concerned by the many young girls still at risk and the possible resurgence of the phenomenon. The Committee is also concerned that medically unnecessary and irreversible surgery and other treatment are routinely performed on intersex children.*

48. *Recalling the joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, the Committee recommends that the State party gather data with a view to understanding the extent of these harmful practices so that children at risk can be more easily identified and their abuse prevented. It recommends that the State party: [...]*

(b) Develop and implement a rights-based health-care protocol for intersex children, ensuring that children and their parents are appropriately informed of all options; that children are involved, to the greatest extent possible, in decision-making about their treatment and care; and that no child is subjected to unnecessary surgery or treatment.

b) Harmful Practices: CEDAW 2016, CEDAW/C/FRA/CO/7-8, paras 18(e)-(f)+19(e)-(f)

Stereotypes and harmful practices

18. *The Committee welcomes the State party's efforts to combat discriminatory gender stereotypes, including by promoting the sharing of household duties and parenting responsibilities, and to address the stereotyped portrayal of women in the media, including by regulating broadcasting licences and strengthening the role of the Higher Council for the Audiovisual Sector. The Committee also welcomes the legislative and other measures taken to combat harmful practices, including child and forced marriage, female genital mutilation and crimes in the name of so-called honour. The Committee is, however, concerned:*

[...]

(e) That information on harmful practices and the ways to combat them in the State party is not readily accessible to many women;

(f) That medically unnecessary and irreversible surgery and other treatment are routinely performed on intersex children, as noted by the Committee on the Rights of the Child and the Committee against Torture.

19. ***The Committee recommends that the State party:***

[...]

(e) Systematically collect disaggregated data on harmful practices in the State party and make information on ways to combat such practices widely available;

(f) Develop and implement a rights-based health-care protocol for intersex children, ensuring that children and their parents are appropriately informed of all options; that children are involved, to the greatest extent possible, in decision-making about medical interventions and that their choices are respected; and that no child is subjected to unnecessary surgery or treatment, as recommended recently by the Committee against Torture (see [CAT/C/FRA/CO/7](#), para. 35) and the Committee on the Rights of the Child (see [CRC/C/FRA/CO/5](#), para. 48).

c) Inhuman Treatment: CAT 2016, CAT/C/FRA/CO/7, paras 34-35

Intersex persons

34. *The Committee is concerned about reports of unnecessary and sometimes irreversible surgical procedures performed on intersex children without their informed consent or that of their relatives and without their having all possible options always explained to them. It is also concerned that these procedures, which are purported to cause physical and psychological suffering, have not as yet been the object of any inquiry, sanction or reparation. The Committee regrets that no information was provided on specific legislative and administrative measures establishing the status of intersex persons (arts. 2, 12, 14 and 16).*

35. ***The Committee recommends that the State party:***

(a) Take the necessary legislative, administrative and other measures to guarantee respect for the physical integrity of intersex individuals, so that no one is subjected during childhood to non-urgent medical or surgical procedures intended to establish one's sex;

(b) Ensure that the persons concerned and their parents or close relatives receive impartial counselling services and psychological and social support free of charge;

(c) Ensure that no surgical procedure or medical treatment is carried out without the person's full, free and informed consent and without the person, their parents or close relatives being informed of the available options, including the possibility of deferring any decision on unnecessary treatment until they can decide for themselves;

(d) Arrange for the investigation of cases of surgical or other medical treatment reportedly carried out on intersex individuals without their informed consent and take steps to provide redress, including adequate compensation, to all victims;

(e) Conduct studies into this issue in order to better understand and deal with it.

**d) Protecting the Integrity of the Person: CRPD 2021,
CRPD/C/FRA/CO/1, paras 36(c)+37(c)**

Protecting the integrity of the person (art. 17)

36. *The Committee notes with concern that:*

[...]

(c) *Intersex persons are subjected to medical interventions without their consent.*

37. ***The Committee recommends that the State party:***

[...]

(c) ***Prohibit the practice of subjecting intersex persons to medical interventions without their consent.***

e) Inhuman Treatment: CAT 2019, CAT/C/FRA/QPR/8, para 21

21. *In the light of the Committee's previous concluding observations (para. 35) regarding intersex persons, please indicate:*

(a) *The measures taken by the State party to ensure that no one is subjected during childhood to non-urgent medical or surgical treatment in order to establish a gender for that person;*

(b) *The measures taken to ensure that the persons concerned and their parents receive impartial counselling services and psychological and social support free of charge;*

(c) *The measures taken to ensure that no medical treatment is carried out without a person's full, free and informed consent, and that the person or the parents concerned are informed of the available options, including the possibility of deferring any decision on unnecessary treatment until the person can decide for himself or herself;*

(d) *The investigations conducted by the State party into cases of surgical or other medical treatment carried out on intersex persons without their free and informed consent; and, where applicable, the steps taken by the State party to provide redress, including adequate compensation, to victims.*

2. Current 6th to 7th CRC Cycle: LOIPR and State Party Report

a) 2021 CRC LOIPR: CRC/C/FRA/QPR/6, para 23

Harmful practices

23. Please provide information about the extent and type of harmful practices to which children are exposed, and inform the Committee about the measures taken to:

(a) Prevent and combat the practice of female genital mutilation;

(b) Ensure that no intersex child is subjected to unnecessary surgery or treatment; to ensure that the child's free, prior and informed consent is obtained for necessary interventions; and to educate medical and psychological professionals on the negative consequences of unnecessary medical interventions on intersex children.

b) 2022 CRC State Party Report: CRC/C/FRA/QPR/6, para 5(b)

5. Extent and type of harmful practices to which children are exposed.

[...]

b) Intersex children.

The French legal framework allows for the medical treatment of children with variations in genital development. However, it prohibits interventions performed at an early age on these children for the sole purpose of sex assignment, without urgency or medical necessity. Thus, surgical operations performed at an age when the person concerned is not able to express his or her will and to participate in decision-making that do not meet any medical need are prohibited. Legal tools exist to sanction doctors performing such surgeries and to compensate people who are victims.

Law 2016-1547 of 18 November 2016 on the modernisation of justice for the 21st century extends the deadline for declaring sex at birth to five days. The Bioethics Act of 2 August 2021 allows parents, in the event of a "medically established impossibility", to have a three-month period between the declaration of birth and the registration of the sex in the civil register.

Law No. 2021-1017 of 2 August 2021 on bioethics provides for better care for intersex children and their families, in accordance with the principles of medical necessity and proportionality. Children with a variation in genital development are systematically taken care of by the specialised multidisciplinary teams of the centres of reference for rare genital development diseases, within the framework of a consultation aimed at establishing the diagnosis and possible therapeutic proposals. The centre's team provides full information and appropriate psychosocial support for the child and his/her family. The child's consent is sought if he/she is capable of expressing his/her will and participating in the decision.

B. IGM practices in France: State-sponsored and pervasive

1. IGM in France: Still no protections, Government fails to act

Allover France, all forms of **IGM practices remain widespread and ongoing**, persistently **advocated** by the official **public medical body** “*Haute Autorité de Santé (HAS)*”, including in “*National Guidelines*”, **prescribed and perpetrated** by French public **University or Regional Children’s Clinics** (including, but not limited to the 27 government-appointed “*Reference and Competence Centres for Genital Development DEV-GEN*”),¹⁴ and **paid for** by the **public Health System** (“*Sécurité Sociale – l’Assurance Maladie*”) – as the **actors themselves publicly admit**, as well as to the psycho-social justification of the surgeries, and to knowledge of the human rights criticism.

In contrast, **on the side of protections**, in **France**¹⁵ – same as in the neighbouring States of *Belgium*,¹⁶ *Switzerland*,¹⁷ *Italy*,¹⁸ *Spain*,¹⁹ and the *United Kingdom*,²⁰ and in many more State parties,²¹ there are

- **no effective legal or other protections** in place to ensure the rights of intersex children to physical and mental integrity, autonomy and self-determination, and **to prevent IGM practices**
- **no measures** in place to ensure **data collection and monitoring** of IGM practices
- **no legal or other measures** in place to ensure the **accountability** of IGM perpetrators
- **no legal or other measures** in place to ensure **access to redress and justice** for adult IGM survivors

In contrast, **in France all types of Female Genital Mutilation (FGM) are prohibited** in the general provisions of the **French Penal Code**, in particular Articles 221–2, 222–3 and 222–5, referring to acts of **torture** and barbarity, and also Articles 222–9 and 222–10, which refer to intended bodily harm causing permanent infirmity or **mutilation**. Committing the **offence against a minor is considered an aggravating circumstance** that increases the penalty. The **principle of extraterritoriality is applicable**, making FGM punishable even if it is committed outside the country.²²

14 <https://www.developpement-genital.org>

15 CRC/C/FRA/CO/5, paras 47-48; CAT/C/FRA/CO/7, paras 32–33; CEDAW/C/FRA/CO/7-8, paras 18(e)-(f)+19(e)-(f); CRPD/C/FRA/CO/1, paras 36(c)+37(c)

16 CRC/C/BEL/CO/5-6, paras 25(b)+26(e); CCPR/C/BEL/CO/6, paras 21-22

17 CRC/C/CHE/CO/2-4, paras 42-43; CAT/C/CHE/CO/7, para 20; CEDAW/C/CHE/CO/4-5, paras 38-39; CCPR/C/CHE/CO/4, paras 24-25; CRC/C/CHE/CO/5-6, paras 29(b)+(c); CRPD/C/CHE/CO/1, paras 35(c)+36(c), 10(a), CEDAW/C/CHE/CO/6, paras 55(f)+56(d)

18 CRC/C/ITA/CO/5-6, para 23; CRPD/C/ITA/CO/1, paras 45-46

19 CRC/C/ESP/CO/5-6, para 24

20 CAT/C/GBR/CO/6, paras 64-65; CRC/C/GBR/CO/5, paras 46-47; CRPD/C/GBR/CO/1, paras 10(a)-11(a), 38-41

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

22 European Institute for Gender Equality (EIGE) (2013), Current situation and trends of female genital mutilation in France, https://eige.europa.eu/sites/default/files/documents/current_situation_and_trends_of_female_genital_mutilation_in_france_en.pdf

2. France's commitment to "protect intersex children from violence and harmful practices", "investigate abuses", "ensure accountability" and "access to remedy"

a) French agencies recognising intersex human rights

Since the CRC, CAT, CEDAW and CRPD Concluding Observations to France, **several French Government agencies** have **recognised** the ongoing IGM practices on intersex children in France to constitute "*mutilations*", "*harmful practices*" and "*inhuman and degrading treatment*", and have **called for legislation** to explicitly prohibit IGM practices, inter alia in 2016 the **Interministerial delegation on combatting racism, anti-semitism and anti-LGBT hatred (DILCRAH)**, in 2017 the **outgoing President François Hollande**, and in 2018 the **National Consultative Commission on Human Rights CNCDH** (see 2020 LOIPR NGO Report, p. 14-15).

In addition, a 2018 study by the **Council of State (Conseil d'État)** on the **Draft Law on Bioethics** (see also below 13-15), commissioned by the Prime Minister and approved by the General Assembly, notes, referring to the CAT and CRC Concluding Recommendations and the European Parliament Resolution 2016/2096(INI), "*Some denounce the **mutilating nature of these practices** [276], which are likely to have irreversible and dramatic consequences both physically (urinary infections, neurological lesions, loss of sensitivity, pain, etc.) and psychologically, and which are often concealed from those who are subjected to them [277]*" (p. 132). Regarding the right of the holders of parental authority to "consent" to such practices, the study concludes, "*Ultimately, a medical procedure whose sole purpose is to conform the aesthetic appearance of the genitalia to representations of masculinity and femininity in order to promote the psychological and social development of the child **should not be carried out as long as the person concerned is not in a position to express his or her will and to participate in the decision-making process***" (p. 140).²³

Further, France has repeatedly committed to protect intersex children from IGM, to ensure accountability of IGM practitioners and to provide survivors with access to justice at the UN:

b) UNHRC45 Statement, 01.10.2020

On occasion of the **45th Session of the Human Rights Council** the **State party** supported a public statement calling to "***protect [...] intersex adults and children [...] so that they live free from violence and harmful practices. Governments should investigate human rights violations and abuses against intersex people, ensure accountability, [...] and provide victims with access to remedy.***"²⁴

c) UNHRC48 Statement, 04.10.2021

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

23 Conseil d'État, section du rapport et des études (2018), "Révision de la loi de bioéthique : quelles options pour demain?", Étude à la demande du Premier ministre. Étude adoptée en assemblée générale le 28 juin 2018, https://www.conseil-etat.fr/Media/actualites/documents/reprise-contenus/etudes/conseil-d-etat_sre_etude-pm-bioethique.pdf

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

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

*Furthermore, there is also a need to take measures to protect the **autonomy** of intersex children and adults and their rights to health and to **physical and mental integrity** so that they live **free from violence and harmful practices**. Medically unnecessary surgeries, hormonal treatments and other invasive or irreversible non-vital medical procedures without their free, prior, full and informed consent are **harmful to the full enjoyment of the human rights of intersex persons**.*

*We call on all member states to take measures to combat violence and discrimination against intersex persons, develop policies in close consultations with those affected, **ensure accountability**, reverse discriminatory laws and **provide victims with access to remedy**.”²⁵*

3. French doctors and authorities refusing to act

However, in spite of above strong statements, **nothing has changed in practice**. On the contrary, on several occasions **French authorities** have demonstrated their continued and active **refusal to comply** with the CRC, CAT, CEDAW and CRPD Concluding Observations (see LOIPR NGO Report, p. 15-16).

Also, **French paediatric surgeons** remain adamant advocates of IGM practices, known for publicly dismissing statements of human rights experts as unsubstantiated and unfair:

For example, **Prof. Alaa El-Ghoneimi** (Hôpital Universitaire Robert-Debré, Paris) simply dismissed the **2013 Report by the Special Rapporteur on Torture** as *“unjust”*.²⁶

In the same vein, **Prof. Pierre Mouriquand** (Reference Centre for Rare Diseases of Sex Development CHU Lyon) dismissed both the **2013 Report by the Special Rapporteur on Torture** and the 2012 Recommendations by the Swiss National Advisory Commission on Biomedical Ethics flatly as *“inappropriate and biased statements”* and *“biased and counterproductive reports”*, while insisting on continuing with IGM practices.²⁷

At the same time, these doctors and other clinicians **continue to publicly promote IGM practices as a “cure”** to help “deformed” intersex children and to relieve “parental distress” (see LOIPR NGO Report, p. 10, 17).

4. 2021 Law on Bioethics legalises IGM, increases pressure on parents

a) 2021 Law on Bioethics enacted despite known shortcomings

In August 2021, France enacted the new **Law on Bioethics (Law no 2021-1017 of 02.08.2021)**.²⁸ Its **Article 30** is aimed at restricting IGM practices (see also State Party Report, p. 23). However, the new **Article L2131-6 of the Public Health Code**²⁹ as amended by the Bioethics Law

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

26 <http://www.lefigaro.fr/international/2013/11/01/01003-20131101ARTFIG00204-l-allemagne-devient-le-premier-pays-europeen-a-reconnaitre-un-troisieme-sexe.php>

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

28 https://www.assemblee-nationale.fr/dyn/15/dossiers/bioethique_2

29 https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043889073

ultimately further invalidates the previous ineffective and unenforced legal provisions by **explicitly legalising early surgery** on intersex children, based on the medical opinion of the “specialised multidisciplinary teams at the Reference Centres for Rare Diseases of Sex Development” (i.e. the current IGM practitioners) and the “consent” of the “holders of parental authority”. In addition, the new **Article 57 of the Civil Code**³⁰ as amended by the Bioethics Law **increases the pressure on parents** to quickly “consent” to non-urgent procedures: The time limit for reporting the sex of the child will be reduced to three months, whereas previously the law offered a time limit of one or two years (see also 2020 LOIPR NGO Report, p. 17).

The **failure** of the Law on Bioethics to effectively prevent IGM practices was also **criticised** by French legal experts:

*“Thus, contrary to other doctrinal recommendations or those of international organisations, the law does not provide for any reparation or sanctions against the health professionals responsible for the ‘suffering of children’; any allusion to the penal code in some of the proposed amendments has been rejected. Another absence from the law that reflects this approach is the decision not to include any provision formally stating the prohibition of procedures of sexual conformation carried out without the consent of the person concerned.”*³¹

“Newborns still subjected to surgery

However, the reform does not prohibit such operations on newborns and therefore does not necessarily require the consent of the person concerned. The last paragraph of the article simply states that ‘the consent of the minor must be systematically sought if he or she is capable of expressing his or her will and participating in the decision’, which is obviously not the case during the first months of life.

*These surgical interventions can therefore be performed on a very young child with the sole authorisation of the holders of parental authority, contrary to what had been recommended by the Council of State.”*³²

b) 2022 Draft Decree on implementation compounds shortcomings

In addition, the **2022 Draft Decree**³³ on the implementation of the new Law on Bioethics issued by the Ministry of Health on 17.11.2022 ultimately **compounds above shortcomings**.

On the positive side, the Draft Decree has to be commended for explicitly stating, **“The sole purpose of conforming the child’s atypical genitalia to representations of the feminine and masculine does not constitute a medical necessity. It is advisable to wait in this case until the minor is capable of participating in the decision.”** (II-3. – Objectifs, para 2) Notably, such a statement was not included in the actual law. However, already here it’s only “advisable” to postpone these explicitly unnecessary surgeries, but **not mandatory**.

30 https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043896203

31 Benjamin Moron-Puech (2021), Loi de bioéthique et intersexuation. Commentaire d’un article précaire (Bioethics law and intersex. Commentary on a precarious article), RDSS, Septembre-Octobre 2021, p. 827-835, <https://sexandlaw.hypotheses.org/files/2021/10/RDSS05-07Dossier-Moron-Puech.pdf>

32 Sophie Paricard (2021), “La loi bioéthique encadre la situation des enfants intersexes” (“The Bioethics Law provides a framework for the situation of intersex children”), Dalloz Actualité, 13.09.2021, <https://www.dalloz-actualite.fr/flash/loi-bioethique-encadre-situation-des-enfants-intersexes>

33 <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000046566375>

On the negative side, the Draft Decree **repeatedly ignores human rights concerns** and again **explicitly legalises IGM practices**:

- The Draft Decree **explicitly upholds and reaffirms** all “*other legislation and regulations in force*” (Préambule), i.e. arguably including the two current **National Guidelines explicitly prescribing IGM practices** (see p. 18, 19, 20).
- The **National multidisciplinary consultation meeting** (Réunion de concertation pluridisciplinaire nationale (RCP)) tasked with **authorising surgeries** on intersex children **consists exclusively of IGM practitioners** – human rights experts and intersex organisation representatives are **not included**, and even mental health experts are only admitted “*in an advisory capacity*” (II-2. – Composition).
- The **operational charter regulating the National multidisciplinary consultation meetings** (“*charte de fonctionnement*”) will be established **exclusively by IGM practitioners** – again, human rights experts and representatives of intersex organisations are **not included** (II-5. – Modalités et charte de fonctionnement).
- The Draft Decree **limits the scope of the implementation** of the Law on Bioethics to “*severe variation[s] in genital development*” (whereas the Law itself contains no such limitation) and inter alia explicitly **excludes the most frequent diagnosis** for unnecessary early genital surgery, i.e. “*isolated mild hypospadias*” (I-1. – Critères de recours à un centre expert).

c) 2022 Opinion of High Authority of Health criticises Draft Decree

Notably, even before its publication, several shortcomings of the Draft Decree have also been explicitly criticised by a **2022 Opinion No. 2022.0015/AC/SBP-UDCAP of the High Authority on Health** (“Haute Autorité de Santé (HAS)”) ³⁴ published on 10.03.2022, namely

- the lack of consideration of the **Parliamentary Assembly of the Council of Europe Resolution 2191 (2017) of 12.10.2017**³⁵ and the **European Parliament Resolution 2018/2878(RSP) of 14.02.2019**³⁶ both explicitly calling to “*prohibit*” IGM practices,
- the **lack of inclusion of intersex representatives** in the National multidisciplinary consultation meetings, and
- the resulting **limitation to “self-regulation of the professional community”**.

Accordingly, the HAS Opinion has been **welcomed** by a French intersex rights expert.³⁷

While **acknowledging** the HAS Opinion in the introductory remarks of the Minister, the **published Draft Decree entirely fails to amend** the criticised shortcomings (see above).

34 HAS (10.03.2022), “Avis n°2022.0015/AC/SBP-UDCA”,
https://www.has-sante.fr/upload/docs/application/pdf/2022-03/ac_2022_0015_vdg.pdf

35 <https://pace.coe.int/files/24232/pdf>

36 https://www.europarl.europa.eu/doceo/document/TA-8-2019-0128_EN.html

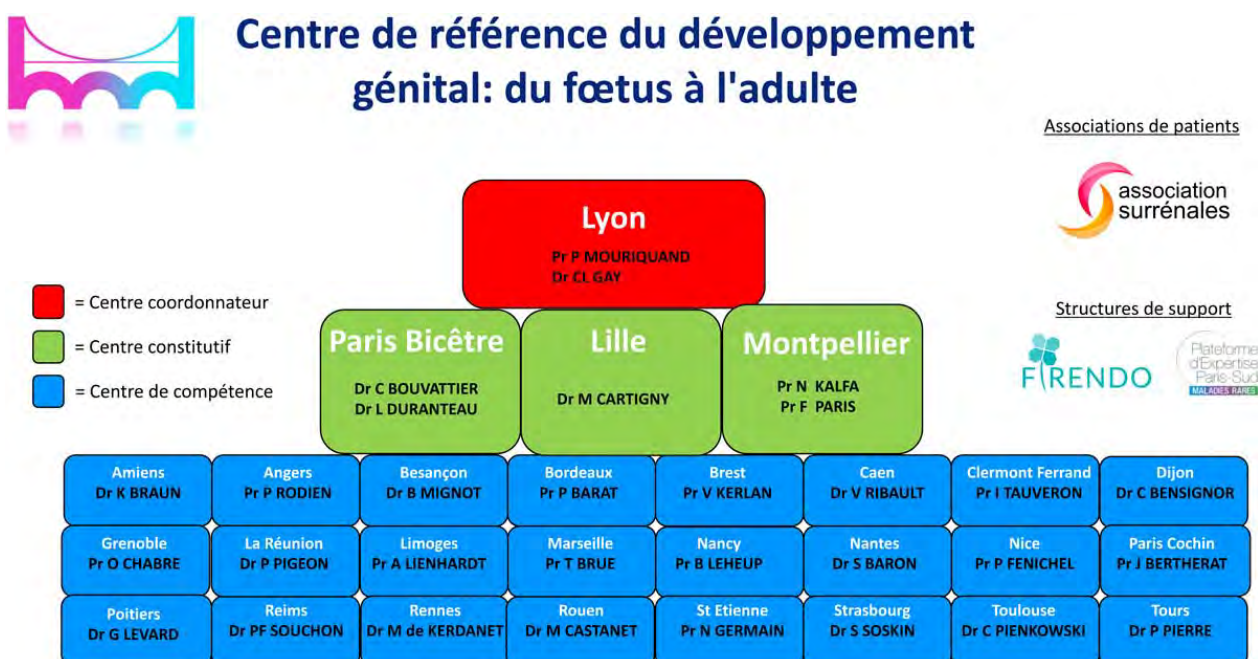
37 Benjamin Moron-Puech (2022), “Mutilations génitales intersexuées. La haute autorité de santé rappelle à l'ordre le ministère de la Santé”, La Semaine Juridique, 9 Mai 2022, No 18, 590,
<https://sexandlaw.hypotheses.org/files/2022/05/JCP-G-2022-act.-590.pdf>

5. IGM in France: Still pervasive, advocated and paid for by State party

Accordingly, all forms of IGM practices remain widespread and ongoing, facilitated and paid for by the State party via the public Health System (“Sécurité Sociale – l’Assurance Maladie”) according to the relevant procedures codes classified in the “CCAM Classification Commune des Actes Médicaux” and advocated by the official public medical body “Haute Autorité de Santé (HAS)”, including in both persisting “National Guidelines” (“Protocole National de Diagnostic et de Soins PNDS”).

a) French Reference and Competence Centres practising IGM

In France, many university hospitals practising IGM are organised within the “Reference Centres for Rare Diseases of Genital Development: From the Foetus to the Adult” (“Centre de référence maladies rares du développement génital: du foetus à l’adulte – CRMR DEV GEN”), which also coordinated the “National Androgen Insensitivity Guidelines” 2018 prescribing IGM practices (see below, p. 18, 19, 20):



Source: “Haute Autorité de Santé (HAS)”, “National Androgen Insensitivity Guidelines” 2018, p. 22³⁸

Other university hospitals practising IGM, and also participating in relevant National guidelines but which currently are not members of CRMR DEV GEN include

- Hôpital Universitaire Robert-Debré, Paris
- Hôpital Necker-Enfants Malades, Paris
- Hôpital Armand-Trousseau, Paris
- Hôpital Saint-Antoine, Paris
- Hôpital la Pitié Salpêtrière, Paris

38 Haute Autorité de Santé (HAS) (2017), Protocole National de Diagnostic et de Soins (PNDS). Insensibilités aux androgènes. Centre de référence du développement génital: du foetus à l’adulte, https://www.has-sante.fr/portail/upload/docs/application/pdf/2018-01/pnds_ais_version_finale.pdf

In addition, also the CRMR “**Reference Centres for Rare Malformations of the Urinary Tract**” (“*Centres de Référence des Malformations rares des voies urinaires – MARVU*”)³⁹ practice IGM on some children with intersex condition, namely epispadias and persisting urogenital sinus.

For a list of **41 French university hospitals practicing IGM**, see the “Open Letter of Concern to 55th ESPE 2016 and French DSD Universities and Clinics”.⁴⁰

Currently practiced forms of IGM in France include:

b) IGM 3 – Sterilising Procedures:

**Castration / “Gonadectomy” / Hysterectomy /
Removal of “Discordant Reproductive Structures” / (Secondary) Sterilisation
Plus arbitrary imposition of hormones**⁴¹

The **French Association of Urology (Association Française d’Urologie)** endorses the **2022 Guidelines of the European Association of Urology (EAU)**,⁴² which include the current **ESPU/EAU “Paediatric Urology” Guidelines 2022**⁴³ of the European Society for Paediatric Urology (ESPU) and the European Association of Urology (EAU) which stress:⁴⁴

“Individuals with DSD have an increased risk of developing cancers of the germ cell lineage, malignant germ cell tumours or germ cell cancer in comparison with to the general population.”

Further, regarding “*whether and when to pursue gonadal or genital surgery*”,⁴⁵ the Guidelines refer to the “**ESPU/SPU standpoint on the surgical management of Disorders of Sex Development (DSD)**”,⁴⁶ which advocates “gonadectomies”:

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

Also, the “**2016 Global Disorders of Sex Development Consensus Statement**”,⁴⁷ which is co-authored by paediatric surgeon Pierre Mouriquand (Reference Centre for Rare Diseases of Sex Development CHU Lyon) and refers to the “*ESPU/SPU standpoint*”, advocates “*gonadectomy*” – even when admitting “*low*” cancer risk for CAIS (and despite explicitly acknowledging CRC/C/CHE/CO/2-4)⁴⁸:

39 <http://robertdebre.aphp.fr/centre-reference-maladie-rare/crmarvu/>

40 https://zwischenengeschlecht.org/public/Open_Letter_ESPE_2016.pdf

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

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

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

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

44 Ibid., p. 89

45 Ibid., p. 88

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

47 Lee et al., “Global Disorders of Sex Development Update since 2006: Perceptions, Approach and Care”, *Horm Res Paediatr* 2016;85:158–180, <https://www.karger.com/Article/Pdf/442975>

48 Ibid., at 180 (fn 111)

Table 2. GCC risk: clinical management

	Male	Female	Unclear gender
Gonadal dysgenesis (45,X/46,XY and 46,XY)	Undescended testes – Orchiopexy with biopsy – Self-examination – Annual ultrasound (post-puberty) Post-pubertal biopsy – Based on ultrasound and results of first biopsy – If CIS becomes GB → gonadectomy Low threshold for gonadectomy if ambiguous genitalia	Bilateral gonadectomy at diagnosis	Low threshold for gonadectomy if ambiguous genitalia If intact, gonadectomy depends on gender identity
Undervirilization (46,XY: partial AIS, complete AIS, testosterone synthesis disorders)	Undescended testes – Orchiopexy with biopsy – Self-examination – Annual ultrasound (post-puberty) Post-pubertal biopsy – Bilateral, CIS → gonadectomy/irradiation Repeat biopsy at 10 years of age – Consider gonadectomy to avoid gynecomastia or if on testosterone supplementation	Partial AIS and testosterone synthesis disorders – Prepubertal gonadectomy Complete AIS – Postpubertal gonadectomy or follow-up – GCC risk low, allow spontaneous puberty	Partial AIS and testosterone synthesis disorders – Bilateral biopsy – Low threshold for gonadectomy Intensive psychological counseling and follow-up
No data are available on the value of cryopreservation or safety if a precursor lesion for GCC is present.			

Source: Lee et al., in: *Horm Res Paediatr* 2016;85:158-180, at 174

Accordingly, the “*National Androgen Insensitivity Guidelines*”⁴⁹ promoting “*prophylactic gonadectomy*” for children and adolescents with Partial Androgen Insensitivity Syndrome (PAIS) (see 2020 LOIPR NGO Report, p. 11) **remain in force unchanged.**

To this day, IGM 3 procedures are paid for by the **public Health System** (“*Sécurité Sociale – l’Assurance Maladie*”) according to the relevant procedures codes contained in the “**CCAM Classification Commune des Actes Médicaux**”, chapter “8.3.2.11. *Correction des anomalies de position du testicule*”, including codes “**JHFA003 – Orchidectomie pour cryptorchidie abdominale, par laparotomie**” and “**JHFC001 – Orchidectomie pour cryptorchidie abdominale, par coelioscopie**”.⁵⁰

c) IGM 2 – “Feminising Procedures”: Clitoris Amputation/“Reduction”, “Vaginoplasty”, “Labiaplasty”, Dilatation⁵¹

The **French Association of Urology (Association Française d’Urologie)** endorses the **2022 Guidelines of the European Association of Urology (EAU)**,⁵² which include the current **ESPU/EAU “Paediatric Urology” Guidelines 2022**⁵³ of the European Society for Paediatric Urology (ESPU) and the European Association of Urology (EAU). In **chapter 3.17 “Disorders of sex development”**,⁵⁴ despite admitting that “*Surgery that alters appearance is not urgent*”⁵⁵ and that “*adverse outcomes have led to recommendations to delay unnecessary [clitoral] surgery to an age when the patient can give inform consent*”,⁵⁶ the ESPU/EAU Guidelines nonetheless

49 Haute Autorité de Santé (HAS) (2017), Protocole National de Diagnostic et de Soins (PNDS). Insensibilités aux androgènes. Centre de référence du développement génital: du fœtus à l’adulte, https://www.has-sante.fr/portail/upload/docs/application/pdf/2018-01/pnds_ais_version_finale.pdf

50 https://www.ameli.fr/accueil-de-la-ccam/trouver-un-acte/consultation-par-chapitre.php?chap=a%3A1%3A%7Bi%3A0%3Bs%3A5%3A%228.3.2%22%3B%7D&add=8.3.2.11#chapitre_8.3.2.11

51 For general information, see 2016 CEDAW NGO Report France, p. 48, <https://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

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

53 <https://d56bochluzqnx.cloudfront.net/documents/full-guideline/EAU-Guidelines-on-Paediatric-Urology-2022.pdf>

54 Ibid., p. 86

55 Ibid., p. 88

56 Ibid., p. 88

explicitly **refuse to postpone non-emergency surgery**, but in contrary **insist to continue with non-emergency genital surgery** (including partial clitoris amputation) on young children based on “*social and emotional conditions*” and **substituted decision-making by “parents and caregivers implicitly act[ing] in the best interest of their children**” and making “*well-informed decisions [...] on their behalf*”, and further **explicitly refusing “prohibition regulations”** of unnecessary early surgery,⁵⁷ referring to the 2018 ESPU Open Letter to the Council of Europe (COE),⁵⁸ which further invokes **parents’ “social, and cultural considerations”** as justifications for early surgery (p. 2).

Accordingly, the “*National CAH Guidelines*”⁵⁹ promoting early surgery “*in the first months of life*” in order to “*minimis[e] psychological consequences for the child and the parents*” (see 2020 LOIPR NGO Report, p. 12) **remain in force unchanged**.

Also, the “*National Androgen Insensitivity Guidelines*”⁶⁰ inter alia promoting “*Clitoral reduction surgery*” for “*girls*” with Partial Androgen Insensitivity Syndrome (PAIS) (see 2020 LOIPR NGO Report, p. 12) **remain in force unchanged**.

To this day, IGM 2 procedures are paid for by the **public Health System** (“*Sécurité Sociale – l’Assurance Maladie*”) according to the relevant procedures codes contained in the “**CCAM Classification Commune des Actes Médicaux**”, **chapter “8.7.1. Correction des ambiguïtés sexuelles**”, including **codes “JMEA001 - Transposition du clitoris**”, “**JMMA001 - Vestibuloplastie avec enfouissement ou résection du clitoris, pour féminisation**”, “**JMMA004 - Clitoridoplastie de réduction**”, “**JZMA002 - Uréthroplastie, vaginoplastie et vestibuloplastie avec enfouissement ou réduction du clitoris, pour féminisation**”, “**JZMA003 - Uréthroplastie et vestibuloplastie avec enfouissement ou réduction du clitoris, pour féminisation**”⁶¹, **chapter “8.4.4.7. Autres actes thérapeutiques sur le vagin**”, including **code “JLAD001 - Séance de dilatation vaginale par bougies**”⁶², as well as additional codes in **chapter “8.4.4.5. Correction des malformations congénitales du vagin**”.⁶³

57 Ibid., p. 89

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

59 Haute Autorité de Santé (HAS) (eds.), Protocole National de Diagnostic et de Soins (PNDS). Hyperplasie congénitale des surrénales par déficit en 21-hydroxylase. Protocole national de diagnostic et de soins pour les maladies rares (p. 50), online: https://www.has-sante.fr/portail/upload/docs/application/pdf/2011-05/ald_hors_liste_-_pn_ds_sur_lhyperplasie_congenitale_des_surrenales.pdf

60 Haute Autorité de Santé (HAS) (2017), Protocole National de Diagnostic et de Soins (PNDS). Insensibilités aux androgènes. Centre de référence du développement génital: du fœtus à l’adulte, https://www.has-sante.fr/portail/upload/docs/application/pdf/2018-01/pnds_ais_version_finale.pdf

61 https://www.ameli.fr/accueil-de-la-ccam/trouver-un-acte/consultation-par-chapitre.php?chap=a%3A2%3A%7Bi%3A0%3Bs%3A5%3A%228.3.2%22%3Bi%3A1%3Bs%3A3%3A%228.7%22%3B%7D&add=8.7.1#chapitre_8.7.1

62 https://www.ameli.fr/accueil-de-la-ccam/trouver-un-acte/consultation-par-chapitre.php?chap=a%3A4%3A%7Bi%3A0%3Bs%3A3%3A%228.1%3Bi%3A1%3Bs%3A5%3A%228.3.2%3Bi%3A2%3Bs%3A5%3A%228.4.4%3Bi%3A3%3Bs%3A3%3A%228.7%3B%7D&add=8.4.4.7-chapitre_8.4.4.7

63 https://www.ameli.fr/accueil-de-la-ccam/trouver-un-acte/consultation-par-chapitre.php?chap=a%3A5%3A%7Bi%3A0%3Bs%3A3%3A%228.1%22%3Bi%3A1%3Bs%3A5%3A%228.2.3%22%3Bi%3A2%3Bs%3A5%3A%228.3.2%22%3Bi%3A3%3Bs%3A5%3A%228.4.4%22%3Bi%3A4%3Bs%3A3%3A%228.7%22%3B%7D&add=8.4.4.5#chapitre_8.4.4.5

d) IGM 1 – “Masculinising Surgery”: Hypospadias “Repair”⁶⁴

The French Association of Urology (Association Française d’Urologie) endorses the **2022 Guidelines of the European Association of Urology (EAU)**,⁶⁵ which include the current **ESPU/EAU “Paediatric Urology” Guidelines 2022**⁶⁶ of the European Society for Paediatric Urology (ESPU) and the European Association of Urology (EAU). In **chapter 3.6 “Hypospadias”**,⁶⁷ the ESPU/EAU Guidelines’ **section 3.6.5.3 “Age at surgery”** nonetheless explicitly promotes, **“The age at surgery for primary hypospadias repair is usually 6-18 (24) months.”**⁶⁸ – despite admitting to the **“risk of complications”**⁶⁹ and **“aesthetic[...]”** and **“cosmetic”** justifications.⁷⁰

Accordingly, the **“National Androgen Insensitivity Guidelines”**⁷¹ promoting **“correction of hypospadias, testicular lowering [...] in the 2nd year of life”** for **“boys”** with Partial Androgen Insensitivity Syndrome (PAIS) (see 2020 LOIPR NGO Report, p. 13) **remain in force unchanged.**

To this day, IGM 1 procedures are paid for by the **public Health System** (**“Sécurité Sociale – l’Assurance Maladie”**) according to the relevant procedures codes contained in the **“CCAM Classification Commune des Actes Médicaux”**, chapter **“8.2.4.14. Correction des malformations congénitales de l’urètre”**, including **codes “JEMA006 - Uréthroplastie pour hypospadias périnéoscrotal avec redressement du pénis”, “JEMA014 - Uréthroplastie pour hypospadias balanique ou pénien antérieur, avec reconstruction du prépuce”, “JEMA019 - Uréthroplastie pour hypospadias pénien postérieur ou moyen avec redressement du pénis”, “JEMA020 - Uréthroplastie pour hypospadias pénien postérieur ou moyen sans redressement du pénis”, “JEMA021 - Uréthroplastie pour hypospadias balanique ou pénien antérieur, sans reconstruction du prépuce”**,⁷² as well as additional codes in chapter **“8.3.3.9. Correction des malformations du pénis”**.⁷³

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

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

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

66 <https://d56bochlunqz.cloudfront.net/documents/full-guideline/EAU-Guidelines-on-Paediatric-Urology-2022.pdf>

67 Ibid., p. 26

68 Ibid., p. 27

69 Ibid., p. 27

70 Ibid., p. 27

71 Haute Autorité de Santé (HAS) (2017), Protocole National de Diagnostic et de Soins (PNDS). Insensibilités aux androgènes. Centre de référence du développement génital: du fœtus à l’adulte, https://www.has-sante.fr/portail/upload/docs/application/pdf/2018-01/pnds_ais_version_finale.pdf

72 https://www.ameli.fr/accueil-de-la-ccam/trouver-un-acte/consultation-par-chapitre.php?chap=a%3A3%3A%7Bi%3A0%3Bs%3A5%3A%228.2.4%22%3Bi%3A1%3Bs%3A5%3A%228.3.2%22%3Bi%3A2%3Bs%3A3%3A%228.7%22%3B%7D&add=8.2.4.14#chapitre_8.2.4.14

73 https://www.ameli.fr/accueil-de-la-ccam/trouver-un-acte/consultation-par-chapitre.php?chap=a%3A3%3A%7Bi%3A0%3Bs%3A5%3A%228.2.4%22%3Bi%3A1%3Bs%3A5%3A%228.3.3%22%3Bi%3A2%3Bs%3A3%3A%228.7%22%3B%7D&add=8.3.3.9#chapitre_8.3.3.9

e) IGM 4 – Prenatal “Therapy”⁷⁴

French doctors and clinics have been leading in introducing and defending prenatal “therapy” since at least 1984⁷⁵ and continue to practice it despite the **known serious risks** both for the intersex fetuses and the pregnant mothers (which led to the “therapy” being discontinued⁷⁶ in Sweden since 2010).

For example, a **2014 publication** by doctors from the **University Hospitals Lyon and Limoges**, despite acknowledging “*potential adverse effects on the fetus and the mother*” and that the procedure “*remains very controversial*” leading to “*several scientific societies to state that PreDex is an ‘experimental therapy, which should only be done in prospective trials approved by ethical review boards’*” continues to promote the “therapy” as an “*alternative, non-surgical treatment[...]*” to “cure” “*genital virilization*” in “*46,XX patients*” diagnosed with Congenital Adrenal Hyperplasia (CAH), reporting a “*French cohort (258 cases) of prenatally treated CAH*”.⁷⁷

Accordingly, at a **2016 Senate hearing** paediatric surgeon Pierre Mouriquand (Reference Centre for Rare Diseases of Sex Development CHU Lyon) confirmed, “*We continue to prescribe them*” (see 2020 LOIPR NGO Report, p. 13).

6. French Case Law: Obstacles to access to justice, redress, and compensation

The **CRC-CEDAW Joint General Comment/Recommendation No. 18/31 “on harmful practices”** invoked by the Committee in its previous Concluding Observations to France explicitly calls upon State parties to

“*provide for means of prevention, protection, recovery, **reintegration and redress for victims and combat impunity for harmful practices***” (para 13),

as well as to ensure

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

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

However, to this day, also in **France** the **statutes of limitation** effectively **prohibit survivors of early childhood IGM practices to call a court** – despite that in 2016 CAT explicitly recommended France to “*[a]rrange for the investigation of cases of surgical or other medical treatment reportedly carried out on intersex individuals without their informed consent and take steps to provide redress, including adequate compensation, to all victims*” (CAT/C/FRA/CO/7, para 35(d)).

74 See 2016 CEDAW NGO Report France, p. 50,

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

75 <https://clinicaltrials.gov/ct2/show/NCT02795871>

76 <https://academic.oup.com/jcem/article/97/6/1881/2536577>

77 Daniela Gorduzza, Véronique Tardy-Guidollet, Elsa Robert, Claire-Lise Gay, Pierre Chatelain, Michel David, Patricia Bretones, Anne Lienhardt-Roussie, Aude Brac de la Perriere, Yves Morel, Pierre Mouriquand, “Late prenatal dexamethasone and phenotype variations in 46,XX CAH: Concerns about current protocols and benefits for surgical procedures”, *Journal of Pediatric Urology*, Volume 10, Issue 5, Pages 941–947, October 2014, <https://pubmed.ncbi.nlm.nih.gov/24679821/>

This is evidenced by a **final court decision of the Highest Court (“Court de Cassation”) dated 6 March 2018,**⁷⁸ **rejecting** the case of an IGM survivor wanting to lodge a complaint on the basis of article 222-10 of the Penal Code (aggravated violence resulting in mutilation or permanent disability) for having been submitted to non-consensual castration and “feminising” genital surgery as a child, with the court referring to **expired statutes of limitation.**⁷⁹

This case was then submitted to the **European Court of Human Rights (ECHR).**^{80 81 82 83} Regrettably, in its **Decision of 19.05.2022,**^{84 85 86} ECHR ruled the case to be **“inadmissible” on formal grounds** and thus refrained from ruling on its merits. Nonetheless, in its **deliberations** within the judgement whether the castration and genital surgery performed on the claimant may **constitute torture or cruel, inhuman or degrading treatment** (art. 3 ECHR), in paras 60-61 the court **rejected the arguments against** the qualification of torture, and in paras 62 in principle **upheld the arguments supporting** this qualification, both for the acts of sterilisation and for those of genital mutilation carried out on the person concerned, therefore arguably indicating the possibility of a positive ruling in a future admissible case.⁸⁷

A **second case of an IGM survivor** born in 1979 who filed a complaint in 2016 before the criminal judge for mutilation intentional violence against a minor under 15 years of age, denouncing 7 non-consensual “masculinsing” genital surgeries between the age of 3 and 8, leaving the claimant with severe pain and suffering:

*“I’ve come to calculate everything I drink because every time I have to go to the bathroom, I feel like I’m peeing razor blades,» he says. «Sex is the same. I’m enjoying myself while having extreme pain!»”*⁸⁸

78 An anonymised version of this decision is available from the Rapporteurs on request.

79 B. Moron-Puech, “Rejet de l’action d’une personne intersexuée pour violences mutilantes. Une nouvelle ‘mutilation juridique’ par la Cour de cassation?”, La Revue des Juristes de Sciences Po, juin 2018, p. 71-104, <https://sexandlaw.hypotheses.org/412/bmp-commentaire-6-mars-2018>

80 Application no. 42821/18, M. v. France, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-205290%22%5D%7D>

81 See also Third Party Intervention by StopIGM.org,

https://intersex.shadowreport.org/public/ECHR-42821_18-M-v-France-Written-Comments-StopIGM.pdf

82 See also Third Party Intervention by FIDH, LDH, Alter Corpus, <http://www.revuedlf.com/cedh/la-conformation-sexuee-qualification-et-regime-juridique-de-la-torture-et-autres-traitements-inhumains-et-degradants-tierce-intervention-sous-cedh-m-c-france-n42821-18/>

83 See also A. Lorriaux, “L’histoire de M., première personne intersexe au monde à porter plainte pour mutilations”, Slate, 10 Apr. 2019, <http://www.slate.fr/story/17530/histoire-m-premiere-personne-intersexe-plainte-mutilations>

84 ECHR, Decision, Application No. 42821/18 M against France, <https://hudoc.echr.coe.int/eng?i=001-217430> English summary: <https://hudoc.echr.coe.int/eng?i=002-13664>

85 Aude Lorriaux (2022), “La CEDH déboute Mø, première personne intersexe au monde à porter plainte pour mutilations” (“ECHR rejects Mø, the first intersex person in the world to file a complaint for mutilation”), 20minutes, 19.05.2022, <https://www.20minutes.fr/societe/3293223-20220519-cedh-deboute-premiere-personne-intersexe-monde-porter-plainte-mutilations>

86 Vincent Vantighem, Juliette Desmonceaux (2022), “La CEDH déboute Mø, première personne intersexe à porter plainte pour mutilations médicales” (“ECHR rejects Mø, the first intersex person to file a complaint for medical mutilation”), BFMTV, 19.05.2022, https://www.bfmtv.com/police-justice/la-cedh-deboute-mo-premiere-personne-intersexe-a-porter-plainte-pour-mutilations-medicales_AV-202205190445.html

87 Benjamin Moron-Puech (2022), “Les mutilations génitales intersexuées sont-elles des actes de torture pour la Cour européenne des droits de l’homme ?” (“Is intersex genital mutilation torture for the European Court of Human Rights?”), 19.05.2022, <https://sexandlaw.hypotheses.org/1131>

88 Vincent Vantighem (26.11.2017), “Une personne intersexe dépose plainte contre les médecins qui l’ont opérée pour ‘devenir’ homme”, 20minutes, <https://www.20minutes.fr/societe/2172971-20171126-personne-intersexe-depose-plainte-contre-medecins-operee-devenir-homme>

Since the complaint has been filed in 2016, **a criminal investigation was opened in 2017**. However, to this day, **no public statement has been made concerning the progress** of the investigation and the possibility of a trial. This kind of delay in dealing with such a case is highly **unusual given the serious criminal offences at stake**. This investigation therefore has only been made public via media interviews with the claimant.⁸⁹

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

7. Lack of Independent Data Collection and Monitoring

To this day, the **French Government refuses to collect and disclose disaggregated data** on intersex persons and IGM practices (see also LOIPR NGO Report, p. 20).

As mentioned, e.g. in 2016 the **Health Minister** claimed only **160 births of intersex children** were born in France per year, without indicating any figures for IGM practices.

However, **partial data** was obtained as part of the research study “*Mutilations génitales intersexuées*” at the University Panthéon-Assas, Paris II,⁹⁰ drawing from data of the National Health Data System SNDS (“*Système national des données de santé*”) and revealing **at least 4678 relevant procedures were performed on intersex children aged 0-12 years** in 2017 alone – an increase in procedures compared to previous years.⁹¹ This shockingly high number was also **acknowledged** by the majority of the members of the Senate.⁹² Notably, the **vast majority** of these procedures were performed in public University Clinics and **on children under 4 years of age (>86%)**.

A **data collection exercise** within 18 months after publication, i.e. before 03.02.2023, is part of the above-mentioned **Bioethics Law** (art. 30 III):

“Within a period of eighteen months from the publication of the decree taken in application of Article L. 1151-1 of the Public Health Code, the Government shall submit to Parliament a report on the activity and operation of the centres of reference for rare diseases competent in the care of persons presenting variations in genital development in France, on the number of medical acts carried out in relation to these variations as well as on compliance with international recommendations in terms of care protocols. This report may be the subject of a debate under the conditions provided for by the regulations of the parliamentary assemblies. It shall be accompanied by figures on the number of persons concerned and the nature of the medical procedures performed each year.”

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- 89 Ibid., and: Iris Peron (27.11.2017), “‘J’ai été mutilé dans un souci de normalisation’, témoigne une personne intersexue”, l’Express, https://www.lexpress.fr/actualite/societe/justice/j-ai-ete-mutile-dans-un-souci-de-normalisation-temoigne-une-personne-intersexe_1964084.html, Allodocteurs.fr, “Intersexualité: une personne dépose plainte pour mutilation”, https://www.francetvinfo.fr/sante/affaires/intersexualite-une-personne-depose-plainte-pour-mutilation_2753545.html, Interview in segment “Intersexualité : première plainte pour mutilation”, Le magazine de la Santé, TV France 5, 11.05.2018, see <https://sexandlaw.hypotheses.org/388>
- 90 Mutilations génitales intersexuées / Gis Genre, APR Axe 6 « Sexualités, LGBTI »-laboratoire LISE UMR 3320 CNAM – Laboratoire de sociologie juridique Univ. Panthéon-Assas, Paris II, lead investigator: Dr Benjamin Moron-Puech, <https://www.lp3c.fr/projets-finances/>
- 91 Full data set available on request. See also Benjamin Moron-Puech, notes for Senate hearing, p. 9, <https://f.hypotheses.org/wp-content/blogs.dir/3033/files/2020/01/2019-12-16-Mise-en-forme-notes-audition-au-Se%CC%81nat.pdf> The full data set is available at request from the Rapporteurs.
- 92 See the explanatory memorandum to amendment 779 tabled by these deputies before the Special Committee responsible for examining the draft law on the bioethics law, <http://www.assemblee-nationale.fr/dyn/15/amendements/2658/CSBIOETH/779>

However, this is a **one-off project**, the scope is **incomplete** (as the Bioethics Law according to the Draft Decree on implementation explicitly **excludes** the most frequent diagnosis), and its **independence in question**, as the data will be collected by IGM practitioners themselves.

Conclusion, **reliable data collection** on intersex births and IGM procedures would need to be **independent, ongoing, comprehensive and disaggregated by diagnosis, procedure, age at intervention and clinic** where the intervention took place.

8. State Party Report grossly misrepresents actual legal situation

The French State Party Report boldly **claims** not once, but twice that within the “*French legal framework*” it is “**prohibited**” to submit intersex children to non-urgent, unnecessary surgical or other interventions without their consent. Further, it claims, “**Legal tools exist to sanction doctors performing such surgeries and to compensate people who are victims.**”

However, it conveniently **fails to identify** the claimed relevant “*frameworks*” and “*legal tools*”. In fact, regarding interventions, the only Law it mentions is the Law on Bioethics (see above, p. 13-15), which explicitly **doesn’t “prohibit”**, but actually legalises, IGM practices, and contains **no “legal tools”** to “*sanction*” IGM practitioners nor to “*compensate*” IGM survivors, as indirectly admitted by the State Party Report itself, “*The child’s consent is sought if he/she is capable of expressing his/her will and participating in the decision.*”

Conclusion, these bold **claims fly in the face** not only of the actual **legal situation**, but also of the actual **situation in French IGM clinics**, where IGM continues with impunity (see above, p. 16-21), and last but not least of the actual **situation in French courts**, where IGM survivors continue to be denied access to justice and redress (see above, p. 21-23).

Nonetheless, such **baseless and unsubstantiated claims come as no surprise**, as also e.g. in its 2020 State Party Report to the Committee against torture (CAT/C/FRA/8), the **French Government** similarly claimed, “*the legislative framework in force is sufficient to prohibit them [i.e. IGM practices]*” (para 212).

C. Suggested Recommendations

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

Harmful practices: Intersex genital mutilation

The Committee welcomes the adoption of the Law on Bioethics aimed at protecting intersex children. It remains concerned, however, about cases of medically unnecessary and irreversible surgery and other treatment on intersex children without their informed consent, which can cause severe suffering, and the lack of redress and compensation in such cases.

With reference to the 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 taking note of target 5.3 of the Sustainable Development Goals, the Committee urges the State party to:

- **Prohibit the performance of unnecessary medical or surgical treatment on intersex children where those procedures can be safely deferred until children are able to provide their informed consent.**
- **Ensure that intersex children and their families have access to adequate counselling and support and to effective remedies, including by lifting the statute of limitations.**
- **Systematically collect data with a view to understanding the extent of these harmful practices so that children at risk can be more easily identified and their abuse prevented.**