

Intersex Genital Mutilations

Human Rights Violations Of Persons With Variations Of Sex Anatomy



NGO Report for LoIPR
to the 7th Report of Austria
on the Convention against Torture (CAT)

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June 2017

This NGO Report online:

<http://intersex.shadowreport.org/public/2017-CAT-LoIPR-Austria-NGO-Zwischengeschlecht-Intersex-IGM.pdf>



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Introduction

Background and Concluding Observations

IGM practices are known to cause severe, lifelong physical and psychological pain and suffering, and have been repeatedly **recognised by multiple UN treaty bodies¹ including CAT** as constituting torture or ill-treatment, a harmful practice and violence. This NGO Report demonstrates that the current **harmful medical practice on intersex persons in Austria** – advocated, facilitated and paid for by the State party via the **Public Health System** – **persists unchanged in spite of the last Concluding observations by this Committee (paras 44-45)**, and constitutes a serious breach of Austria’s obligations under the Convention.

About the Rapporteurs

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

- **StopIGM.org / Zwischengeschlecht.org** is an international intersex human rights NGO based in Switzerland, working to end IGM Practices and other human rights violations perpetrated on intersex people, according to its motto, “*Human Rights for Hermaphrodites, too!*”² According to its charter,³ StopIGM.org works to support persons concerned seeking redress and justice and regularly reports to UN treaty bodies.

Methodology

This thematic NGO report follows up on the **2015 thematic CAT NGO Report⁴** by partly the same rapporteurs substantiating the **ongoing IGM practices in Austria** and the **severe physical and mental suffering caused by IGM in Austria**, as well as on the resulting Concluding observations by this Committee (paras 44-45).

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 <http://Zwischengeschlecht.org/> English pages: <http://StopIGM.org/>

3 <http://zwischengeschlecht.org/post/Statuten>

4 <http://intersex.shadowreport.org/public/2015-CAT-Austria-VIMOE-Zwischengeschlecht-Intersex-IGM.pdf>

Concluding Observations on Intersex (CAT/C/AUT/CO/6, paras 44–45)

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 on cases of unnecessary surgery and other medical treatment with life-long consequences to which intersex children would 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 necessary legislative, administrative and other measures 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 people without effective consent, and ensure that the persons concerned are adequately compensated.

A. IGM practices in Austria: State-sponsored and pervasive

1. Intersex is NOT THE SAME as LGBT or SOGI

Unfortunately, there are several **harmful misconceptions about intersex** still prevailing in public, including if intersex is counterfactually described as being the same as or a subset of LGBT or SOGI, e.g. if intersex and/or intersex status are represented as a sexual orientation (like gay or lesbian), and/or as a gender identity, as a subset of transgender, as the same as transsexuality,⁵ or as a form of sexual preference.

The underlying reasons for these harmful misconceptions include **lack of awareness**, third party groups **instrumentalising** intersex as a means to an end for their own agenda, and State parties **trying to deflect** from criticism of involuntary intersex treatments.

Intersex persons and their organisations have spoken out clearly against instrumentalising or misrepresenting intersex issues,⁶ maintaining that Intersex Genital Mutilations present a distinct and unique issue constituting significant human rights violations, which are different from those faced by the LGBT or SOGI community, and thus need to be adequately addressed in a separate section as specific intersex issues.

Nonetheless, the **pervasiveness and persistence** of these harmful misconceptions remains, as illustrated for example in two recent UN press releases misrepresenting IGM as “*sex alignment surgeries*” (i.e. voluntary procedures on transsexual or transgender persons), and IGM survivors as “*transsexual children*”,⁷ and State parties referring to e.g. transgender guidelines,⁸ “*Gender Identity Law*”⁹ or “*Civil Status Act*”¹⁰ when asked about IGM by Treaty bodies.

2. Austria: Still no protections for intersex people, State party ignores COs

In **Austria** (CAT/C/AUT/CO/6, paras 44-45), same as in the **neighbouring states** of Switzerland (CAT/C/CHE/CO/7, para 20; CRC/C/CHE/CO/2-4, paras 42-43; CEDAW/C/CHE/CO/4-5, paras 24–25, 38–39), *France* (CAT/C/FRA/CO/7, paras 32–33; CRC/C/FRA/CO/5, paras 47-48; CEDAW/C/FRA/CO/7-8, paras 17e-f + 18e-f), *Germany* (CAT/C/DEU/CO/5; para 20; CRPD/C/DEU/CO/1, paras 37-38; CEDAW/C/DEU/CO/7-8, paras 23–24), and *Italy* (CRPD/C/ITA/CO/1, paras 45-46), **there are still**

- **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, medically unnecessary, irreversible surgery and other harmful treatments a.k.a. IGM practices

5 E.g. the Swiss Federal Government in 2011 in answers to parliamentary questions consistently described intersex as “*True and Untrue Transsexualism*”, e.g. 11.3286,

http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20113286

6 For references, see 2016 CEDAW NGO Report France, p. 40, fn 49.

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

7 For relevant excerpts and references, see <http://stop.genitalmutilation.org/post/UN-Press-Release-calls-IGM-survivors-transsexual-children-CATArgentina-UNCAT60>

8 **CAT56 Austria**, see <http://stop.genitalmutilation.org/post/Geneva-UN-Committee-against-Torture-questions-Austria-over-Intersex-Genital-Mutilations>

9 CAT 60 Argentina, unofficial transcript see <http://stop.genitalmutilation.org/post/CAT60-Argentina-to-be-Questioned-on-Intersex-Genital-Mutilation-by-UN-Committee-against-Torture>

10 7th and 8th Periodic Report of Germany on CEDAW, para 202, see 2016 CEDAW PSWG NGO Report, p. 2, <http://intersex.shadowreport.org/public/2016-CEDAW-Germany-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

- **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

All forms of **IGM practices remain widespread and ongoing** – advocated, facilitated and **paid for by the State party** via the **Austrian Public Health Service**.

At the same time, the **Austrian government**

- **ignores** the ongoing practice,
- **ignores** the UN recommendations by this Committee (paras 44-45),
- **ignores** the intersex recommendations by the **CRC-NHRI Kinder- und Jugendanwaltschaften Österreichs (KIJOE)**,¹¹
- **refuses to take effective measures to end IGM practices,**
- **refuses** to take effective measures to guarantee **impartial counselling** services for all intersex children and their parents.

3. Austria is failing its obligations towards intersex people under CAT and CAT/C/AUT/CO/6, paras 44-45

As shown above, Austria is **categorically failing to meet its obligations** towards intersex people **resulting from the Concluding observations of this Committee** (paras 44-45).

Regarding IGM practices, Austria is unchangedly in breach of its obligation to take **effective legislative, administrative, judicial or other measures** to prevent acts of torture (Art. 2 CAT) or other forms of cruel, inhuman or degrading treatment (Art. 16 CAT, General Comment 2).

Victims of IGM practices unchangedly encounter **severe obstacles** in the pursuit of their right to an **impartial investigation** (Arts. 12, 13 CAT), and to **redress** and fair and adequate compensation, including the means for as **full rehabilitation** as possible (Art. 14 CAT, General Comment 3).

Also Austria's efforts on **education and information regarding the prohibition against torture in the training of medical personnel** remain grossly insufficient with respect to the treatment of intersex people (Art. 10 CAT).

¹¹ http://kija.at/images/KiJAOE-Positionspapier_zur_Intersexualitt_2015.pdf

B. Suggested Questions for the LoIPR

The Rapporteurs respectfully suggest that in the LoIPR the Committee asks the Austrian state party the following questions with respect to the treatment of intersex children:

Intersex persons and IGM practices (arts. 2, 12, 14, 16)

- **How many non-urgent, irreversible surgical and other procedures have been undertaken on intersex children before an age at which they are able to provide informed consent? Please provide detailed statistics on sterilising, feminising, masculinising procedures and imposition of hormones, including prenatal procedures.**
- **What measures does the State party plan to implement to stop this practice? And what measures to guarantee free psychosocial support for all persons concerned and their parents?**
- **Please indicate which criminal or civil remedies are available for intersex people who have undergone involuntary sterilisation or unnecessary and irreversible medical or surgical treatment when they were children and whether these remedies are subject to any statute of limitations?**