Intersex Genital Mutilations

Human Rights Violations Of Children With Variations Of Reproductive Anatomy

NGO Report (for LOI)
to the 5th to 6th Report of Canada on the Convention on the Rights of the Child (CRC)

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Executive Summary

All typical forms of Intersex Genital Mutilation are still practised in Canada, facilitated and **paid for by the State party** via the public health system **Medicare.** Parents and children are misinformed, kept in the dark, sworn to secrecy, kept isolated and **denied appropriate support.** What's worse, **IGM is explicitly permitted** under **Section 268 (3) (a) of the Canadian Criminal Code**.

Canada 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 access to redress and justice**, including fair and adequate **compensation** and as full as possible **rehabilitation** for victims, as stipulated in **CRC art. 24 para. 3** in conjunction with the **CRC-CEDAW Joint general comment No. 18/31** "on harmful practices".

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

In total, UN treaty bodies **CRC, CEDAW, CAT, CCPR** and **CRPD** have so far issued **49 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 **NGO Report** has been compiled by **StopIGM.org / Zwischengeschlecht.org**, an international intersex NGO. It contains **Suggested Questions** (see p. 14).

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A. Introduction

1. Canada: Intersex Human Rights and State Report

IGM practices are known to cause **severe, lifelong physical and psychological pain and suffering**, and have been repeatedly **recognised by multiple UN treaty bodies**[1] **including CRC** as constituting a **harmful practice**, violence, and cruel, inhuman or degrading treatment. However, intersex and IGM were **not mentioned in the 5th and 6th Canadian State Report.**

What's worse, in Canada **IGM is explicitly permitted** under **Section 268 (3) (a) of the Criminal Code**, notably within the very **Section that criminalises FGM (!)**.

This Thematic NGO Report demonstrates that the current and ongoing **harmful medical practices on intersex children in Canada** – advocated, facilitated and **paid for by the State party**, and perpetrated both by public University hospitals and private clinics – constitute a **serious breach** of Canada's obligations under the Convention.

2. About the Rapporteurs

This NGO report has been prepared by the international intersex NGO *StopIGM.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 relevant UN treaty bodies, often in collaboration with local intersex persons and organisations,[4] substantially contributing to the so far 49 Treaty body Concluding Observations recognising IGM as a serious human rights violation.[5]

In addition, the Rapporteurs would like to acknowledge the work of **Morgan Holmes**[6] [7] [8] [9] and **Janik Bastien-Charlebois**.[10] And we also would like to acknowledge some of the work of **Egale**.[11]

3. Methodology

This thematic NGO report is a localised update to the **2019 CRC Portugal NGO Report (for Session)**[12] by the same Rapporteurs.

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 homepage: http://stop.genitalmutilation.org
3 http://zwischengeschlecht.org/post/Statuten
4 http://intersex.shadowreport.org
5 http://stop.genitalmutilation.org/post/IAD-2016-Soon-20-UN-Reprimands-for-Intersex-Genital-Mutilations
6 https://isna.org/node/743/
7 https://www.wlu.ca/news/spotlights/2019/june/professor-morgan-holmes-is-pushing-for-change-for-intersex-people,-through-research-and-activism.html
8 https://sencanada.ca/en/Content/SEN/Committee/421/ridr/54790-e
9 Morgan Holmes, Intersex: A Perilous Difference. Selinsgrove, Susquehanna University Press, 2008
10 https://montrealgazette.com/life/my-coming-out-the-lingering-intersex-taboo
11 https://egale.ca/wp-content/uploads/2018/10/Intersex-Awareness-Day-Press-Release.pdf
12 http://intersex.shadowreport.org/public/2019-CRC-Portugal-NGO-Zwischengeschlecht-Intersex-IGM.pdf

B. IGM in Canada: State-sponsored and pervasive, Gov fails to act

1. Overview: IGM practices in Canada: Pervasive and unchallenged

In **Canada**, same as in the *United Kingdom* (CRC/C/GBR/CO/5, paras 46-47; CRPD/C/GBR/CO/1, paras 10(a)-11(a), 38-41; CAT/C/GBR/CO/6, paras 64-65), in *France* (CRC/C/FRA/CO/5, paras 47-48; CAT/C/FRA/CO/7, paras 34-35; CEDAW/C/FRA/CO/7-8, paras 18e-f+19e-f), *Switzerland* (CRC/C/CHE/CO/2-4, paras 42-43; CEDAW/C/CHE/CO/4-5, paras 38-39; CAT/C/CHE/CO/7, para 20; CCPR/C/CHE/CO/4, paras 24-25), and in **many more State parties,**[13] there are

- **no legal or other protections** in place to **prevent all IGM practices** as stipulated in art. 24(3) and the CRC-CEDAW Joint General Comment No. 18/31,
- **no legal measures** in place to ensure **access to redress and justice** for adult IGM survivors,
- **no legal measures** in place to ensure the **accountability** of all IGM perpetrators and accessories,
- **no measures** in place to ensure **data collection** and **monitoring** of IGM practices.

Even worse, there are not only no protections, but **Section 268 (3) (a) of the Canadian Criminal Code explicitly allows IGM practices** (see p. 11).

Despite longstanding criticism and appeals, the **Canadian government refuses** to amend Section 268(3), let alone to **recognise** the serious human rights violations and the severe pain and suffering caused by IGM practices, and to ***"take effective legislative, administrative, judicial or other measures"* to protect intersex children** (see p. 11-13).

2. Most Common IGM Forms advocated by and perpetrated by Canada

To this day **all forms of IGM practices remain widespread and ongoing** in Canada, persistently **advocated, prescribed and perpetrated** in state funded University Children's Hospitals, **advocated and paid for by the State party** via the public health system **Medicare**.

Currently practiced forms of IGM in Canada include:

a) IGM 3 – Sterilising Procedures: Castration / "Gonadectomy" / Hysterectomy / Removal of "Discordant Reproductive Structures" / (Secondary) Sterilisation Plus arbitrary imposition of hormones [14]

The **"2016 Global Disorders of Sex Development Consensus Statement",**[15] co-authored by paediatric surgeons Luis Braga (Member of the Global DSD Update Consortium, University Hospital for Sick Children, Toronto) and Rodrigo Romao (Member of the Global DSD Update Consortium, IWK Health Centre of the Dalhousie University, Halifax), still advocates

13 Currently we count **49 UN Treaty body Concluding Observations** explicitly condemning IGM practices as a **serious violation of non-derogable human rights**, see: http://stop.genitalmutilation.org/post/IAD-2016-Soon-20-UN-Reprimands-for-Intersex-Genital-Mutilations

14 For general information, see 2016 CEDAW NGO Report France, p. 47. http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf

15 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

"gonadectomy" – even when admitting *"low"* cancer risk for CAIS (and despite explicitly acknowledging CRC/C/CHE/CO/2-4)[16].

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

And a 2013 publication **"Disorders of sexual differentiation: I. Genetics and pathology"**[17] out of the Montreal Children's Hospital of the McGill University in Quebec prescribes: *"In patients raised as female a **gonadectomy should be performed before puberty**."*, and in Table 2 further specifies:

- *"PAIS + intra-abdominal: Gonadectomy at diagnosis (all)"*
- *"PAIS Scrotal gonad, 17-beta-hydroxylase: Gonadectomy at diagnosis"*
- *Ovotestis DSD Genetically confirmed CAIS: Gonadectomy at puberty Testicular tissue removal"*

Accordingly, a 2007 presentation **"Decision and Dilemmas in the Management of Disorders of Sexual Development (DSD)"**[18] out of the Hospital for Sick Children of the University of Toronto contains graphic photos of the **surgical removal of the uterus** on a 3 months old child diagnosed with ovotesticular DSD (see also Annexe 3, p. 27), a ***"bilateral gonadectomy"*** on a 6 months old child diagnosed with PAIS (see also Annexe 3, p. 28), and a ***"discordant gonadectomy"*** on an adolescent diagnosed with ovotesticular DSD.

And a 2012 publication **"Update on the Management of Disorders of Sex Development"**[19] out of the Hospital for Sick Children of the University of Toronto reports:

> *"Three patients with CAH referred after puberty and previously raised as boys underwent **hysterectomy, bilateral gonadectomies**, and hypospadias repair."*

16 Ibid, at 180 (fn 111)

17 Mohamed El-Sherbiny (2013), Disorders of sexual differentiation: I. Genetics and pathology, in: Arab Journal of Urology (2013) 11, 19–26, here p. 24, https://www.researchgate.net/publication/257737019_Disorders_of_sexual_differentiation_I_Genetics_and_pathology

18 J. L. Pippi Salle: "Decisions and Dilemmas in the Management of Disorders of Sexual [sic!] Development (DSD)", 2007, p. 20, 19, 22

19 Rodrigo L.P. Romao, Joao L. Pippi Salle, Diane K. Wherrett, (2012), Update on the Management of Disorders of Sex Development, Pediatr Clin N Am 59 (2012) 853–869, here p. 859

b) IGM 2 – "Feminising Procedures": Clitoris Amputation/"Reduction", "Vaginoplasty", "Labiaplasty", Dilation[20]

There is **testimony** of Canadian intersex persons submitted to **"clitoral reduction surgery"**, and to the resulting lifelong **pain and suffering**, for example **Morgan Holmes**[21] and **Janik Bastien-Charlebois**.[22]

The **"2016 Global Disorders of Sex Development Consensus Statement",**[23] co-authored by paediatric surgeons Luis Braga (Member of the Global DSD Update Consortium, University Hospital for Sick Children, Toronto) and Rodrigo Romao (Member of the Global DSD Update Consortium, IWK Health Centre of the Dalhousie University, Halifax), while admitting *"There is still no consensual attitude regarding indications, timing, procedure and evaluation of outcome of DSD surgery"*, and despite explicitly acknowledging CRC/C/CHE/CO/2-4,[24] nonetheless **refuses to dismiss early "feminising" surgery**, but describes ***"surgical repair"* for girls** diagnosed with CAH, including "vaginoplasty", "labioplasty" and "clitoral reduction", as **feasible options:** .

Typically, the 2012 publication **"Update on the Management of Disorders of Sex Development"**[25] out of the Hospital for Sick Children of the University of Toronto advocates:

> *"Most investigators agree that **feminizing genitoplasty should be offered routinely in infancy** for patients with significant virilization (Prader 3 or higher) and performed by surgeons experienced with the procedure"*

To this day, the **Hospital for Sick Children of the University of Toronto** offers on its "*Division of Urology"* homepage under *"What we do"*: *"Our staff surgeons specialize in […] **Treatment of […] complex anomalies of the genitalia"**.*[26]

c) IGM 1 – "Masculinising Surgery": Hypospadias "Repair"[27]

The **"2016 Global Disorders of Sex Development Consensus Statement",**[28] co-authored by paediatric surgeons Luis Braga (Member of the Global DSD Update Consortium, University Hospital for Sick Children, Toronto) and Rodrigo Romao (Member of the Global DSD Update Consortium, IWK Health Centre of the Dalhousie University, Halifax), while admitting ***"those with surgically repaired hypospadias reported less satisfaction than controls"***, and despite explicitly acknowledging CRC/C/CHE/CO/2-4, [29] nonetheless **refuses to dismiss early "masculinising" surgery**, but describes *"carefully individualized"* early surgery as a **feasible option**.

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20 For general information, see 2016 CEDAW NGO Report France, p. 48. http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf
21 https://isna.org/node/743/
22 http://stop.genitalmutilation.org/post/Bearing-Witness-To-IGM-Canada
23 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
24 Ibid, at 180 (fn 111)
25 Rodrigo L.P. Romao, Joao L. Pippi Salle, Diane K. Wherrett, (2012), Update on the Management of Disorders of Sex Development, Pediatr Clin N Am 59 (2012) 853–869, here p. 859
26 http://www.sickkids.ca/urology/what-we-do/index.html
27 For general information, see 2016 CEDAW NGO Report France, p. 48-49. http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf
28 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
29 Ibid, at 180 (fn 111)

Typically, the 2012 publication **"Update on the Management of Disorders of Sex Development"**[30] out of the Hospital for Sick Children of the University of Toronto advocates:

> *"In terms of surgical management,* ***most undervirilized boys will require hypospadias repair*** *with or without orchidopexy. […] The authors' group favors complete correction of severe hypospadias in 2 operations, with the* ***repair being completed ideally before the age of toilet training."***

In contrast, the 2012 publication **"Timing and nature of reconstructive surgery for disorders of sex development – Introduction"**[31] co-authored by the same surgeons of the Hospital for Sick Children of the University of Toronto at least admits:

> *"In summary, whereas* ***most surgeons still agree that hypospadias surgery should be done early*** *(especially for proximal cases), the quality of the evidence for such an approach is limited and will likely be challenged until there is additional strict scientific data in support of it."*

On the other hand, the 2017 publication **"Update on the surgical approach for reconstruction of the male genitalia"**[32] authored by the same surgeons of the Hospital for Sick Children of the University of Toronto at least in the text remains entirely vague:

> *"As with any DSD/intersex condition the issue of timing and need for surgical intervention is a delicate one and certainly not clear-cut.* ***The position of the authors is that the two sides of the controversy must be clearly presented to the family in the most unbiased way possible*** *to assist in their decision to proceed with surgery or not."*

However, the photos accompanying the **text without exception depict the genitals of and surgery on small children.**

Accordingly, the University Children's Hospital **CHU Sainte-Justine** affiliated with the **University of Montreal** and the **McGill University** offers on its *"Urology"* homepage *"preoperative evaluation of* ***various anomalies whose treatment is mainly surgical (hypospadias****, epispadias, cryptorchidism, hydrocele/hernia and other genital anomalies)"*,[33] as well as a leaflet ***"Hypospadias and Chordal Surgery Post-Operative Care Information"*** for parents.[34]

To this day, the **Hospital for Sick Children** of the **University of Toronto** offers on its *"Division of Urology"* homepage under *"What we do"*: *"Our staff surgeons specialize in […]* ***Treatment of hypospadias […]"***.[35]

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30 Rodrigo L.P. Romao, Joao L. Pippi Salle, Diane K. Wherrett, (2012), Update on the Management of Disorders of Sex Development, Pediatr Clin N Am 59 (2012) 853–869, here p. 862

31 Sarah Creighton, Steven D. Chernausek, Rodrigo Romao, Philip Ransley, Joao Pippi Salle (2012), Timing and nature of reconstructive surgery for disorders of sex development – Introduction, J Pediatr Urol. 2012 Dec;8(6):602-10, http://aisdsd.org/wp-content/uploads/sites/2/2014/09/Reconstructive-Surgery-Timing-Creigton-JPU-2012.pdf

32 Rodrigo L.P. Romao, and Joao L. Pippi Salle (2017), Update on the surgical approach for reconstruction of the male genitalia, SEMINARS IN PERINATOLOGY 41 (2017) 218–226, https://www.sciencedirect.com/science/article/abs/pii/S0146000517300290

33 https://www.chusj.org/soins-services/U/Urologie

34 https://www.chusj.org/getmedia/062f1002-267c-478f-9c0e-6bbdfa62d428/depliant_F-4740_chirurgie-hypospadias-et-chordee_fr.pdf.aspx?ext=.pdf

35 http://www.sickkids.ca/urology/what-we-do/index.html

And the **British Columbia Children's Hospital** of the **University of British Columbia** offers on its *"Urology"* homepage *"surgical care"* for *"hypospadias"*.[36] Its leaflet *"Surgery For Hypospadias. Some information for caring for your son"* elaborates:[37]

> ***"How Is Hypospadias Corrected?***
> *It is corrected with surgery. After the surgery the penis will look normal. [...]"*

And the **Montreal Children's Hospital** of the **McGill University** offers on its *"Day or ambulatory surgery"* homepage [38] a leaflet for parents *"What you need to know about hypospadias surgery"* which elaborates:[39]

> ***"Why is repair important?***
> *Hypospadias is* ***not*** *a life-threatening condition. However, it does affect what the penis looks like and how it works. A hypospadias can make it difficult for some boys to stand and urinate properly. The location of the opening and the bend in the penis may also affect sexual functioning later in life. For these reasons, it may be important to repair.*
>
> ***What is the treatment?***
>
> *[...]*
>
> ***The treatment for hypospadias is surgery.*** *Surgery is done under general anesthesia. It is* ***usually offered to children between the ages of 6 and 24 months.*** *This is the ideal time for surgery because the penis is big enough. Also,* ***very young children do not remember the experience.****"*

And the **McMaster Children's Hospital** of the **McMaster University** in **Hamilton** offers on its *"Urology Clinic"* homepage[40] *"Specialized pediatric urological surgical care [...] for acquired and congenital genitourinary conditions including surgery of the urinary tract (i.e. kidneys, ureters, bladder) and genitalia (i.e. penis, testes, genital reconstruction)."*

Its leaflet for parents *"Hypospadias repair"* elaborates:[41]

> ***"What is hypospadias repair?***
> *Hypospadias repair is surgery to correct the placement of the urethral opening and in some cases to straighten the penis. This allows the child to pass urine normally and have normal sexual function.* ***The repair is usually done before age 2.*** *For some children, the repair may require a series of operations. The surgeon will discuss your child's needs and the plans for his surgery."*

A **2019 presentation** *"Close Monitoring In the First Year after Hypospadias Repair Results in Early Detection of Urethrocutaneous Fistulas (UCFs)"*[42] by surgeons from the **McMaster Children's Hospital** further reveals the following numbers:

> *"Study Design: Retrospective review of prospectively collected data [...]*
> - ***Consecutive TIP repairs between 2008-2019 (n=733)***
> - *Staged repairs, other hypospadias repair techniques, and redo cases excluded (****n=303****)"*

36 http://www.bcchildrens.ca/our-services/clinics/urology#tabArea3
37 http://www.cw.bc.ca/library/PDF/pamphlets/BCCH1039SurgeryForHypospadias_2010.pdf
38 https://www.thechildren.com/patients-families/hospital-visits/day-or-ambulatory-surgery
39 https://www.thechildren.com/sites/default/files/PDFs/hypospadias_mch_16_july2015_en.pdf
40 https://www.hamiltonhealthsciences.ca/mcmaster-childrens-hospital/areas-of-care/surgical-care/urology-clinic/
41 https://www.hamiltonhealthsciences.ca/wp-content/uploads/2019/08/Hypospadias-Repair.pdf
42 https://spuonline.org/fallcongress/multimedia/files/2019/presentations/Friday/0807_Randhawa.pdf

3. The Canadian Law explicitly allows IGM practices

The legal situation in Canada is particularly horrifying, as not only there are **no protections for intersex children from harmful practices**, but in contrary the **Canadian Criminal Code explicitly allows IGM**, notably within the very **Section that criminalises FGM (!)**.

Specifically, the definition of *"aggravated assault"* under **Section 268 of the Criminal Code**[43] contains in Section **268 (3) (a)** an exemption that **explicitly legalises IGM** ***"for the purpose of*** *[a] […] person having […]* ***normal sexual appearance*** *[…]"*.
The full relevant Section 268 reads:

> ***Aggravated assault***
>
> ***268 (1)*** *Every one commits an aggravated assault who wounds, maims, disfigures or endangers the life of the complainant.*
>
> ***Punishment***
>
> ***(2)*** *Every one who commits an aggravated assault is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.*
>
> ***Excision***
>
> ***(3)*** *For greater certainty, in this section, "wounds" or "maims" includes to excise, infibulate or mutilate, in whole or in part, the labia majora, labia minora or clitoris of a person, except where*
>
> > ***(a)*** *a surgical procedure is performed, by a person duly qualified by provincial law to practise medicine, for the benefit of the physical health of the person or for the purpose of that person having normal reproductive functions or normal sexual appearance or function; or*
> >
> > ***(b)*** *the person is at least eighteen years of age and there is no resulting bodily harm.*
>
> ***Consent***
>
> ***(4)*** *For the purposes of this section and section 265, no consent to the excision, infibulation or mutilation, in whole or in part, of the labia majora, labia minora or clitoris of a person is valid, except in the cases described in paragraphs (3)(a) and (b).*

4. Despite repeated calls, the Canadian Government refuses to act

The Canadian Government was repeatedly challenged to **repeal or amend Section 268 (3) (a)**, for example:

2019 by **Egale** in an **Open Letter**[44] *"65 Reasons. The Rights of Intersex People in Canada"*, referring to a previous 2018 letter by Egale, and explicitly calling to (p. 26):

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43 https://laws-lois.justice.gc.ca/eng/acts/c-46/section-268.html

44 https://egale.ca/wp-content/uploads/2019/10/2-Intersex-Final-65-Reasons.pdf
Note: Unfortunately, the Egale Open Letter perpetuates **harmful legal misconceptions** about intersex and IGM, particularly with regards to harmful practices and the Convention on the Rights of the Child in particular, and non-derogable human rights in general. Namely, it **claims** to regard the Convention (para 16) and invokes harmful practices (in the title "Part II: Canadian Charter v. Harmful Practices"), however, it **fails** to even once correctly refer to art. 24(3) CRC, the CRC-CEDAW Joint General Comment No. 18/31, relevant Concluding Observations or other applicable human rights frameworks, but **instead repeatedly refers to insufficient legal protections** e.g. in Malta, Chile, Portugal, Australia, New Zealand, South Africa, Germany, Nepal, and **wrongly praises** them as effective, despite that all these legal provisions have (sometimes repeatedly) been **found lacking and ineffective by CRC and/or other Committees** in multiple Concluding Observations. Nonetheless, we **support the recommendations in para 63** (but only these).

- ***Amend Subsection 268*** *to include IGM as aggravated assault under the criminal code in order to provide legal redress to victims of IGM.*
- ***Amend Subsection 268(3)*** *to include standards of informed consent at par with the Malta Model, wherein*

  "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..."

2019 by the **Canadian Bar Association** in a **Letter**[45] to the **Standing Committee on Health**:

> *"In 1997, the federal government used the criminal law to protect girls from female genital mutilation (FGM) by amending section 268 of the Criminal Code to define FGM as aggravated assault. However, the exemption in section 268(3) allows surgeries for the purpose of a person having a "normal sexual appearance". With growing evidence of the mutilating and traumatizing effects of genital normalizing surgeries on many intersex children, it is time to revisit this exemption and protect the rights of intersex children – in the face of potentially strong social pressures to make the genitalia of intersex children conform with a typical male or female."*

2019 by **Morgan Holmes**[46] during a hearing at the **Standing Senate Committee on Human Rights**:

> *"In Canada, our current Criminal Code in section 268(3) bans female genital mutilation, while at the same time explicitly permits this damaging surgery as well as the attendant appearance and function-altering procedures that include things like the removal of clitoral and vulvar tissue, the alteration of the appearance and function of a small or hypospadic penis. The practices also can include the removal of small testes in men with Klinefelter syndrome and their replacement with larger prosthetic testes that serve no biological function whatsoever."*

2019 in a **Report of the Standing Committee on Health**[47] *"The Health of LGBTQIA2 Communities in Canada"* explicitly recommending:

> *"Intersex people*
>
> *Recommendation 22*
>
> *That the Government of Canada hold consultations with intersex people and stakeholders on subsection 268(3) of the Criminal Code, which allows for surgeries on intersex people, and consider the postponement of genital normalizing surgeries on children until the child can meaningfully participate in the decision, except where there is immediate risk to the child's health and medical treatment cannot be delayed."*

In addition, in 2018 the **Association of Ontario Midwives (AOM)**[48] issued a *"AOM Position Statement on Intersex Child Autonomy"*, referring to UN calls to *"prohibit" "medically unnecessary, unsolicited surgery or treatment"* on intersex children, further stating:

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45 http://cba.org/CMSPages/GetFile.aspx?guid=da2fdb2a-11ec-4420-9121-842e93db093d

46 https://sencanada.ca/en/Content/SEN/Committee/421/ridr/54790-e

47 p. 55, https://www.ourcommons.ca/Content/Committee/421/HESA/Reports/RP10574595/hesarp28/hesarp28-e.pdf

48 https://www.ontariomidwives.ca/aom-position-statement-intersex-child-autonomy

"The AOM condemns unnecessary surgeries and supports midwives to provide medically-appropriate, sensitive, supportive, evidence-based care to all families."

So far, the Government refuses to heed these calls to amend or abolish Section 268 (3) (a).

Apart from the aforementioned hearing at the *Standing Senate Committee on Human Rights* and the *Report of the Standing Committee on Health*, so far the only time that the Canadian Government acknowledged intersex people was when the **Prime Minister** included the word "intersex" once in his 2017 **LGBTQ2 Apology**:[49]

"We want to be a partner and ally to LGBTQ2 Canadians in the years going forward. There are still real struggles facing these communities, including for those who are ***intersex****, queer people of colour, and others who suffer from intersectional discrimination."*

Tellingly, in the 2018 statement on the **Anniversary of the LGBTQ2 Apology**[50] by the "special advisor to the Prime Minister on LGBTQ2 issues", **intersex people were not mentioned –** while to this day **all forms of IGM continue to be practised** in Canada, persistently **advocated, prescribed and perpetrated** in state funded University Children's Hospitals, **advocated and paid for by the State party** via the public health system **Medicare,** the **impunity of the perpetrators** assured by **Section 268 (3) (a) of the Canadian Criminal Code**.

5. Lack of Independent Data Collection and Monitoring

The **Canadian Government refuses to collect and disclose disaggregated data** on intersex persons and IGM practices. With **no statistics available** on intersex births, let alone surgeries and costs, and **perpetrators, governments and health departments colluding to keep it that way as long as anyhow possible**, persons concerned as well as civil society **lack possibilities to effectively highlight and monitor** the ongoing mutilations. What's more, after realising how intersex genital surgeries are increasingly in the focus of public scrutiny and debate, perpetrators of IGM practices respond by suppressing complication rates, as well as refusing to talk to journalists "on record".

6. Obstacles to redress, fair and adequate compensation

In addition to the Canadian Law explicitly permitting IGM practices, also in **Canada** the **statutes of limitation** prohibit survivors of early childhood IGM practices to call a court, because persons concerned often **do not find out** about their medical history until much later in life, and **severe trauma** caused by IGM practices often prohibits them to act in time once they do.[51] So far, in Canada there was **no case** of a victim of IGM practices succeeding in going to court, despite survivors criticising the practice in public.

This situation is clearly not in line with Canada's obligations under the Convention.

49 https://pm.gc.ca/en/news/speeches/2017/11/28/remarks-prime-minister-justin-trudeau-apologize-lgbtq2-canadians

50 https://www.canada.ca/en/privy-council/news/2018/11/anniversary-of-the-apology-to-lgbtq2-canadians.html

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

C. Suggested Questions for the LOI

The Rapporteurs respectfully suggest that in the LOI the Committee asks the Canadian Government the following questions with respect to the treatment of intersex children:

Harmful practices: Intersex Genital Mutilation

- **How many non-urgent, irreversible surgical and other procedures have been undertaken on intersex minors? Please provide detailed statistics on sterilising, feminising, and masculinising procedures, disaggregated by age group and diagnosis.**
- **Does the State party plan to stop this practice? If yes, will it amend or repeal Subsection 268 (3) (a) of the Criminal Code, and what protective measures does it plan to implement, and by when?**
- **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?**
- **Please indicate which means of rehabilitation are available for intersex people who have undergone involuntary procedures?**
- **Please indicate which means of psychosocial support, including peer support, are available for intersex children and their families?**

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

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

a) Harmful Practice (art. 24(3) and JGC No. 18) [52]

Article 24 para 3 CRC calls on states to abolish harmful *"traditional practices prejudicial to the health of children"*. While the initial point of reference for the term was the example of Female Genital Mutilation/Cutting (FGM/C), the term consciously wasn't limited to FGM/C, but meant to include all forms of harmful, violent, and/or invasive traditional or customary practices.[53]

This Committee has repeatedly considered IGM as a harmful practice, and the CRC-CEDAW Joint General Comment No. 18/31 on harmful practices as applicable.[54]

Also **CEDAW** has repeatedly considered IGM as a **harmful practice**, and the CRC-CEDAW Joint General Comment/Recommendation No. 18/31 on harmful practices as applicable.[55]

Harmful practices (and inhuman treatment) have been identified by intersex advocates as the **most effective, well established and applicable human rights frameworks** to eliminate IGM practices and to end the impunity of the perpetrators.[56]

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

Particularly, the Joint General Comment/Recommendation further underlines the need for a ***"Holistic framework*** *for addressing harmful practices"* (paras 31–36), including ***"legislative, policy and other appropriate measures*** *that must be taken to ensure full compliance with [state parties'] obligations under the Conventions to eliminate harmful practices"* (para 2), as well as

"Data collection and monitoring" (paras 37–39)

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

*"**adequate civil and/or administrative legislative provisions"*** (para 55 (d))

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52 For a more extensive version, see 2017 CRC Spain NGO Report, p. 12-13, http://intersex.shadowreport.org/public/2017-CRC-Spain-NGO-Brujula-Zwischengeschlecht-Intersex-IGM.pdf

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

54 CRC/C/CHE/CO/2-4, paras 42-43; CRC/C/CHL/CO/4-5, paras 48-49; CRC/C/FRA/CO/5, paras 47-48; CRC/C/IRL/CO/3-4, paras 39-40; CRC/C/NPL/CO/3-5, paras 41-42; CRC/C/GBR/CO/5, paras 46-47; CRC/C/NZL/CO/5, paras 25+15; CRC/C/ZAF/CO/2, paras 39-40+23-24; CRC/C/DNK/CO/5, paras 24+12; CRC/C/ESP/CO/5-6, para 24; CRC/C/ARG/CO/5-6, para 26; CRC/C/ITA/CO/5-6, para 23; CRC/C/BEL/CO/5-6, paras 25(b)+26(e); CRC/C/MLT/CO/3-6, paras 28-29; CRC/C/AUS/CO/5-6, paras 25(b)+26(e); CRC/C/PRT/CO/5-6, paras 28(b); CRC/C/AUT/CO/5-6, para 27(a)-(b)

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

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

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

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

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

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

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

b) Violence against Children (art. 19 and GC No. 13) [57]

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

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

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

Accordingly, with regards to IGM practices, and referring to Article 24 para 3 and the CRC-CEDAW Joint General Comment/Recommendation No. 18/31, CRC repeatedly recognised the obligation for State parties to ***"[e]nsure that the State party's legislation prohibits all forms of harmful practices [including intersex genital mutilation]"***,[58] as well as to ***"ensure that no-one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to children concerned"***,[59] and to *"[u]ndertake investigation of incidents of surgical and other medical treatment of intersex children without informed consent and **adopt legal provisions in order to provide redress to the***

57 For a more extensive version with sources, see 2016 CRC UK Thematic NGO Report, p. 57, http://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

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

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

victims of such treatment, including adequate compensation”.[60]

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

Article 24 para. 3 of the Convention in conjunction with the CRC-CEDAW Joint General Comment/Recommendation No. 18/31 “on harmful practices” clearly stipulate the right of victims of IGM practices to ***“equal access to legal remedies and appropriate reparations”*** (JGC 18/31, para 55 (q)), and specifically to ensure that *“children subjected to harmful practices have* ***equal access to justice,*** *including by* ***addressing legal and practical barriers*** *to initiating legal proceedings,* ***such as the limitation period”*** (JGC 18/31, para 55 (o)).

However, also in **Canada** the **statutes of limitation** prohibit survivors of early childhood IGM practices to call a court, because persons concerned often **do not find out** about their medical history until much later in life, and **severe trauma** caused by IGM practices often prohibits them to act in time even once they do.[61] So far there was no case of a victim of IGM practices succeeding in going to an Canadian court.

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

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

Annexe 2 – Intersex, IGM and Non-Derogable Human Rights

1. Intersex = variations of reproductive anatomy

Intersex persons, in the vernacular also known as hermaphrodites, or medically as persons with *"Disorders"* or *"Differences of Sex Development (DSD)"*, [62] are people born with **variations of reproductive anatomy**, or "atypical" reproductive organs, including atypical genitals, atypical sex hormone producing organs, atypical response to sex hormones, atypical genetic make-up, atypical secondary sex markers. Many intersex forms are usually detected at **birth** or earlier during **prenatal testing**, others may only become apparent at **puberty** or **later in life**.

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, with **1 to 2 in 1000 newborns** at risk of being submitted to non-consensual "genital correction surgery".
For more information and references, see 2014 CRC Switzerland NGO Report, p. 7-12. [63]

2. IGM = Involuntary, unnecessary and harmful interventions

In **"developed countries"** with universal access to paediatric health care **1 to 2 in 1000 newborns** are at risk of being submitted to medical **IGM practices,** i.e. non-consensual, unnecessary, irreversible, cosmetic genital surgeries, and/or other harmful medical treatments that **would not be considered for "normal" children**, practiced without evidence of benefit for the children concerned, but justified by societal and cultural norms and beliefs, and often **directly financed by the state** via the public health system.[64]

In **regions without universal access to paediatric health care**, there are reports of **infanticide**[65] of intersex children, of **abandonment**,[66] of **expulsion**,[67] of **massive bullying** preventing the

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62 The currently still official medical terminology **"Disorders of Sex Development" is strongly refused by persons concerned**. See 2014 CRC NGO Report, p. 12 "Terminology".

63 http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

64 For references and general information, see 2015 CAT NGO Report Austria, p. 30-35, http://intersex.shadowreport.org/public/2015-CAT-Austria-VIMOE-Zwischengeschlecht-Intersex-IGM.pdf

65 For Nepal, see CEDAW/C/NPL/Q/6, para 8(d). See also 2018 CEDAW Joint Intersex NGO Report, p. 13-14, http://intersex.shadowreport.org/public/2018-CEDAW-Nepal-NGO-Intersex-IGM.pdf
For example in South Africa, see 2016 CRC South Africa NGO Report, p. 12, http://intersex.shadowreport.org/public/2016-CRC-ZA-NGO-Zwischengeschlecht-Intersex-IGM.pdf
For South Africa, see also https://mg.co.za/article/2018-01-24-00-intersex-babies-killed-at-birth-because-theyre-bad-omens
For example in Uganda, Kenya, Rwanda, see "Baseline Survey on intersex realities in East Africa – Specific focus on Uganda, Kenya, and Rwanda" by SIPD Uganda, relevant excerpts and source: http://stop.genitalmutilation.org/post/Africa-Intersex-Survey-Documents-Intersex-Genital-Mutilation-Infanticide-Abandonment-Expulsion-Uganda-Kenya-Rwanda ; for Uganda, see also 2015 CRC Briefing, slide 46, http://intersex.shadowreport.org/public/Zwischengeschlecht_2015-CRC-Briefing_Intersex-IGM_web.pdf
For Kenya, see also http://www.bbc.com/news/world-africa-39780214
For Mexico, see 2018 CEDAW NGO Joint Statement, http://stop.genitalmutilation.org/post/CEDAW70-Mexico-Joint-Intersex-NGO-Statement-05-07-2018

66 For example in Uganda, Kenya, Rwanda, see "Baseline Survey on intersex realities in East Africa – Specific focus on Uganda, Kenya, and Rwanda" by SIPD Uganda, relevant excerpts and source: http://stop.genitalmutilation.org/post/Africa-Intersex-Survey-Documents-Intersex-Genital-Mutilation-Infanticide-Abandonment-Expulsion-Uganda-Kenya-Rwanda
For example in China, see 2015 Hong Kong, China NGO Report, p. 15, http://intersex.shadowreport.org/public/2015-CAT-Hong-Kong-China-NGO-BBKCI-Intersex.pdf

67 For example in Uganda, Kenya, Rwanda, see "Baseline Survey on intersex realities in East Africa – Specific focus on Uganda, Kenya, and Rwanda" by SIPD Uganda, relevant excerpts and source: http://stop.genitalmutilation.org/post/Africa-Intersex-Survey-Documents-Intersex-Genital-Mutilation-Infanticide-Abandonment-Expulsion-Uganda-Kenya-Rwanda

persons concerned from attending school (recognised by CRC as amounting to a harmful practice),[68] and of **murder**.[69]

Governing State bodies, public and private healthcare providers, national and international medical bodies and individual doctors have traditionally been **framing and "treating"** healthy intersex children as **suffering from a form of disability in the medical definition**, and in need to be **"cured" surgically**, often **with openly racist, eugenic and supremativst implications**.[70 71 72 73]

Both in "developed" and "developing" countries, **harmful stereotypes and prejudice** framing intersex as **"inferior", "deformed", "disordered", "degenerated" or a "bad omen"** remain widespread, and to this day inform the current harmful **western medical practice**, as well as other practices including **infanticide** and **child abandonment**.

Typical forms of medical IGM include "feminising" or "masculinising", "corrective" genital surgery, sterilising procedures, imposition of hormones (including prenatal "therapy"), forced genital exams, vaginal dilations, medical display, human experimentation, selective (late term) abortions and denial of needed health care.

Medical IGM practices are known to cause **lifelong severe physical and mental pain and suffering**,[74] including loss or impairment of sexual sensation, poorer sexual function, painful scarring, painful intercourse, incontinence, problems with passing urine (e.g. due to urethral stenosis after surgery), increased sexual anxieties, problems with desire, less sexual activity, dissatisfaction with functional and aesthetic results, lifelong trauma and mental suffering, elevated rates of self-harming behaviour and suicidal tendencies comparable to those among women who have experienced physical or (child) sexual abuse, impairment or loss of reproductive capabilities, lifelong dependency on daily doses of artificial hormones.

UN Treaty bodies and other human rights experts have consistently recognised IGM practices as a serious violation of non-derogable human rights.[75] UN Treaty bodies have so far issued 49 Concluding Observations condemning IGM practices accordingly.[76]

68 For example in Nepal (CRC/C/NPL/CO/3-5, paras 41–42), based on local testimonies, see http://stop.genitalmutilation.org/post/Denial-of-Needed-Health-Care-Intersex-in-Nepal-Pt-3

69 For example in Kenya, see https://76crimes.com/2015/12/23/intersex-in-kenya-held-captive-beaten-hacked-dead/

70 2014 CRC NGO Report, p. 52, 69, 84, http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

71 In the WHO "World Atlas of Birth Defects (2nd Edition)", many intersex diagnoses are listed, including *"indeterminate sex"* and *"hypospadias"*: http://web.archive.org/web/20160305152127/http://prenatal.tv/lecturas/world%20atlas%20of%20birth%20defects.pdf

72 "The Racist Roots of Intersex Genital Mutilations" http://stop.genitalmutilation.org/post/Racist-Roots-of-Intersex-Genital-Mutilations-IGM

73 For 500 years of "scientific" prejudice in a nutshell, see 2016 CEDAW France NGO Report, p. 7, http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf

74 See "IGM Practices – Non-Consensual, Unnecessary Medical Interventions", ibid., p. 38–47

75 **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

76 http://stop.genitalmutilation.org/post/IAD-2016-Soon-20-UN-Reprimands-for-Intersex-Genital-Mutilations

3. Intersex is NOT THE SAME as LGBT or Transgender

Unfortunately, there are also other, often interrelated **harmful misconceptions and stereotypes about intersex** still prevailing in public, notably if intersex is counterfactually described as being the same as or a subset of LGBT or SOGI, e.g. if intersex is misrepresented as a sexual orientation (like gay or lesbian), and/or as a gender identity, as a subset of transgender, as the same as transsexuality, or as a form of sexual orientation.

The underlying reasons for such harmful misrepresentations include **lack of awareness**, third party groups **instrumentalising intersex as a means to an end**[77] [78] 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,[79] maintaining that IGM practices present a **distinct and unique issue** constituting significant human rights violations, which are different from those faced by the LGBT community, and thus need to be **adequately addressed in a separate section** as **specific intersex issues.**

Also, **human rights experts** are increasingly warning of the **harmful conflation** of intersex and LGBT.[80] [81]

Regrettably, **these harmful misrepresentations seem to be on the rise also at the UN**, for example in recent **UN press releases** and **Summary records** misrepresenting IGM as *"sex alignment surgeries"* (i.e. voluntary procedures on transsexual or transgender persons), IGM survivors as *"transsexual children"*, and intersex NGOs as *"a group of lesbians, gays, bisexuals, transgender and intersex victims of discrimination"*,[82] and again IGM survivors as *"transgender children"*,[83] *"transsexual children who underwent difficult treatments and surgeries"*, and IGM as a form of *"discrimination against transgender and intersex children"* [84] and as *"sex assignment surgery"* while referring to *"access to gender reassignment-related treatments"*.[85]

Particularly **State parties** are constantly **misrepresenting intersex and IGM as sexual orientation or gender identity issues** in an attempt to **deflect from criticism** of the serious human rights violations resulting from IGM practices, instead referring to e.g. *"gender reassignment surgery"* (i.e. voluntary procedures on transsexual or transgender persons) and *"gender assignment surgery for children"*,[86] *"a special provision on sexual orientation and*

77 CRC67 Denmark, http://stop.genitalmutilation.org/post/CRC67-Intersex-children-used-as-cannon-fodder-LGBT-Denmark
78 CEDAW66 Ukraine, http://stop.genitalmutilation.org/post/Ukraine-Instrumentalising-Intersex-and-IGM-for-LGBT-and-Gender-Politics
79 For references, see 2016 CEDAW France NGO Report, p. 45 http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf
80 For example ACHPR Commissioner Lawrence Murugu Mute, see http://stop.genitalmutilation.org/post/ACHPR-African-Commissioner-warns-Stop-conflating-intersex-and-LGBT
81 2018 Report of the Kenya National Commission on Human Rights (KNCHR), p. 15, https://www.knchr.org/Portals/0/GroupRightsReports/Equal%20In%20Dignity%20and%20Rights_Promoting%20The%20Rights%20Of%20Intersex%20Persons%20In%20Kenya.pdf?ver=2018-06-06-161118-323
82 CAT60 Argentina, http://stop.genitalmutilation.org/post/UN-Press-Release-calls-IGM-survivors-transsexual-children-CATArgentina-UNCAT60
83 CRC77 Spain, http://stop.genitalmutilation.org/post/UN-Press-Release-mentions-genital-mutilation-of-intersex-children
84 CRC76 Denmark, http://stop.genitalmutilation.org/post/UN-Press-Release-calls-IGM-survivors-transsexual-children-CRC-Denmark-UNCRC67
85 CAT/C/DNK/QPR/8, para 32
86 CRC73 New Zealand, http://stop.genitalmutilation.org/post/NZ-to-be-Questioned-over-Intersex-Genital-Mutilations-by-UN-Committee-on-the-Rights-of-the-Child

gender identity", *"civil registry"* and *"sexual reassignment surgery"* [87], transgender guidelines[88] or *"Gender Identity"* [89] [90] when asked about IGM by e.g. Treaty bodies.

What's more, **LGBT organisations** (including "LGBTI" organisations without actual intersex representation or advocacy) are using the ubiquitous misrepresentation of intersex = LGBT to **misappropriate intersex funding**, thus **depriving actual intersex organisations** (which mostly have no significant funding, if any) of much needed **resources** [91] and public **representation.**[92]

4. IGM is NOT a "Discrimination" Issue

An interrelated diversionary tactic is the **increasing misrepresentation by State parties of IGM as *"discrimination issue"*** instead of a serious violation of non-derogable human rights, namely inhuman treatment and a harmful practice, often in combination with the **misrepresentation of intersex human rights defenders as *"fringe elements"***, and their legitimate demands and criticism of such downgrading and trivialising of IGM as ***"extreme views"***.

5. IGM is NOT a "Health" Issue

An interrelated, alarming new trend is the **increasing misrepresentation of IGM as *"health-care issue"*** instead of a serious violation of non-derogable human rights, and the **promotion of *"self-regulation"* of IGM by the current perpetrators** [93] [94] [95] [96] – instead of effective measures to finally end the practice (as repeatedly stipulated also by this Committee).

Even worse, **Health Ministries** construe UN Concluding observations falling short of explicitly recommending legislation to criminalise or adequately sanction IGM as an **excuse for "self-regulation" promoting state-sponsored IGM practices to continue with impunity.**[97] [98]

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87 CCPR120 Switzerland, http://stop.genitalmutilation.org/post/Pinkwashing-of-Intersex-Genital-Mutilations-at-the-UN-CCPR120

88 CAT56 Austria, http://stop.genitalmutilation.org/post/Geneva-UN-Committee-against-Torture-questions-Austria-over-Intersex-Genital-Mutilations

89 CAT60 Argentina, http://stop.genitalmutilation.org/post/CAT60-Argentina-to-be-Questioned-on-Intersex-Genital-Mutilation-by-UN-Committee-against-Torture

90 CRPD18 UK, http://stop.genitalmutilation.org/post/UK-Questioned-over-Intersex-Genital-Mutilations-by-UN-Committee-on-the-Rights-of-Persons-with-Disabilities-CRPD

91 For example in Scotland (UK), LGBT organisations have so far collected at least **£ 135,000.–** public intersex funding, while actual intersex organisations received ZERO public funding, see 2017 CRPD UK NGO Report, p. 14, http://intersex.shadowreport.org/public/2017-CRPD-UK-NGO-Coalition-Intersex-IGM.pdf
Typically, during the interactive dialogue with CRPD, the UK delegation nonetheless tried to sell this glaring misappropriation as "supporting intersex people", but fortunately got called out on this by the Committee, see transcript (Session 2, 10:53h + 11:47h), http://stop.genitalmutilation.org/post/UK-Questioned-over-Intersex-Genital-Mutilations-by-UN-Committee-on-the-Rights-of-Persons-with-Disabilities-CRPD

92 See e.g. "Instrumentalizing intersex: 'The fact that LGBTs in particular embrace intersex is due to an excess of projection' - Georg Klauda (2002)", http://stop.genitalmutilation.org/post/Instrumentalizing-Intersex-Georg-Klauda-2002

93 For example Amnesty (2017), see http://stop.genitalmutilation.org/post/Amnesty-Report-fails-Intersex-Children-and-IGM-Survivors

94 For example FRA (2015), see Presentation OHCHR Expert Meeting (2015), slide 8, http://stop.genitalmutilation.org/public/S3_Zwischengeschlecht_UN-Expert-Meeting-2015_web.pdf

95 For example CEDAW Italy (2017), see http://stop.genitalmutilation.org/post/Major-Setback-for-Intersex-Human-Rights-at-the-UN

96 For example CEDAW Austria (2019): CEDAW/C/AUT/CO/9, paras 34(h), 35(h)

97 For example Ministry of Health Chile (2016), see http://stop.genitalmutilation.org/post/Circular-7-step-back-for-intersex-human-rights-in-Chile

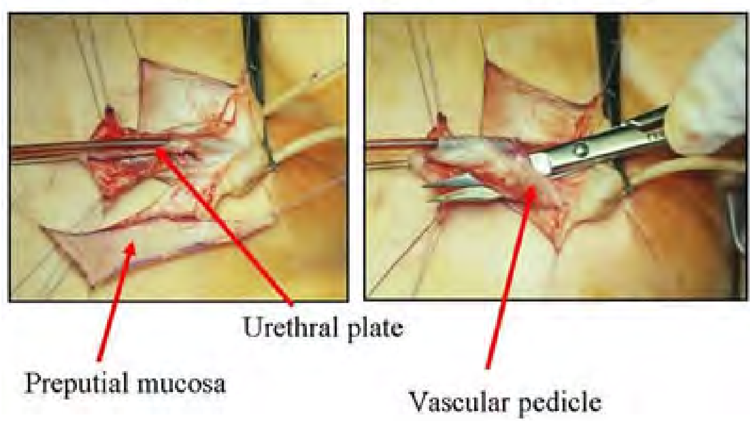
98 For example Ministry of Health Austria (2019), see 2019 CRC Intersex NGO Report (for Session), p. 4-5, http://intersex.shadowreport.org/public/2019-CRC-Austria-NGO-Zwischengeschlecht-Intersex-IGM.pdf

Annexe 3 – “IGM in Medical Textbooks: Current Practice”

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

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

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



Onlay / Duckett - results

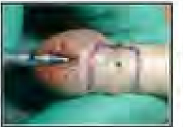
- Elbakry (BJUI 88: 590-595, 2001): 42% complications
  - 5 breakdowns (7%)
  - 17 fistulæ (23%)
  - Urethral strictures (9%)
  - Urethral diverticulæ (4%)
- Asopa / Duckett tube
  - 3.7% (El-Kasaby J Urol 136: 643-644, 1986)
  - 69% (Parsons BJU 25: 186-188, 1984)
  - 15% (Duckett - 1986)

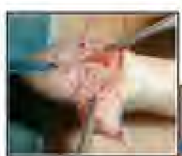
- No standardized procedures
- Personal experience of the surgeon
- Importance of a uro-endocrine approach of complex cases to increase the healing abilities of the penile tissues

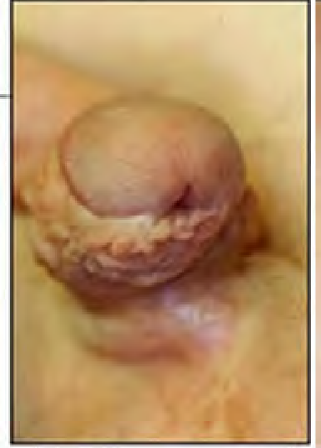
Official Diagnosis "Hypospadias Cripple"
= made a "cripple" by repeat cosmetic surgeries

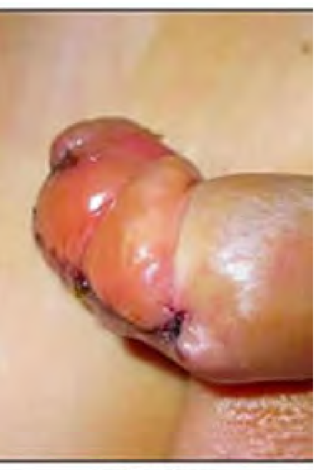
Treatment of isolated fistulæ

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









infection

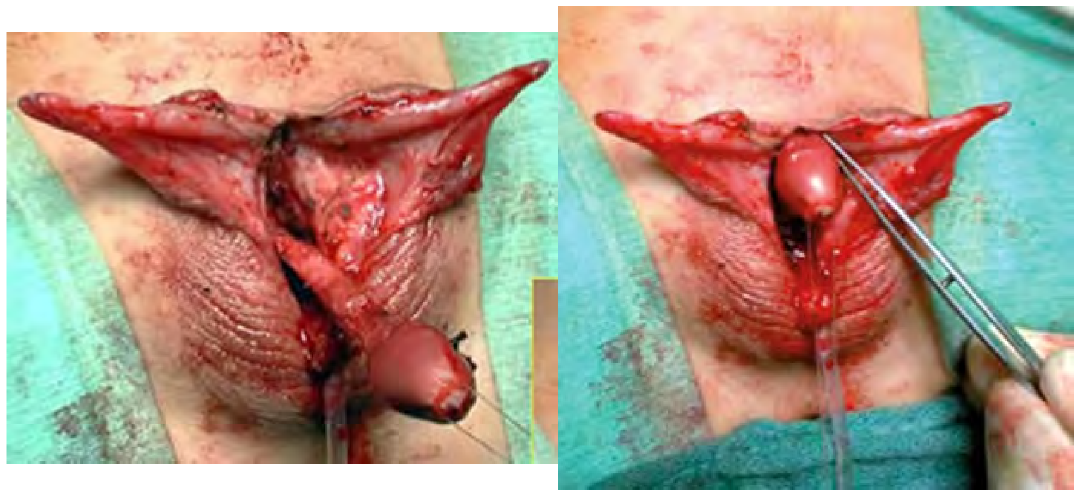
- Hypospadias surgery remains a surgical challenge
- Long-term results are poorly reported
- Essential joint uro-endocrine approach
- Psychological consequences poorly assessed
- Informing parents is crucial: 50% of all hypospadias will require further surgical attention during their life.
- Research: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

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

IGM 2 – “Feminising Surgery”: “Clitoral Reduction”, “Vaginoplasty”

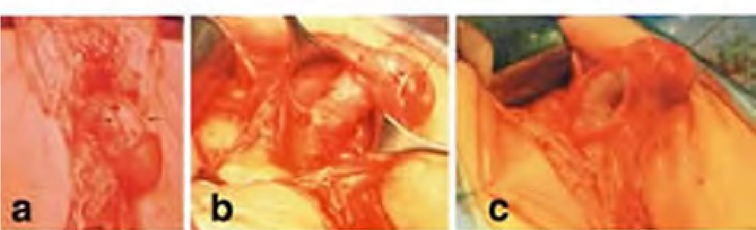
Partial amputation of clitoris, often in combination with surgically widening the vagina followed by painful dilation. “46,XX Congenital Adrenal Hyperplasia (CAH)” is arguably the second most prevalent diagnosis for cosmetic genital surgeries, and the most common for this type (further diagnoses include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

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

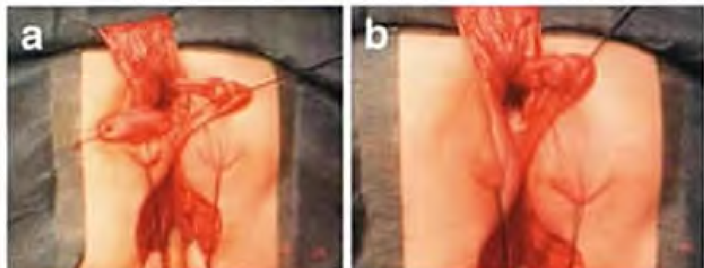


Source: Christian Radmayr: *Molekulare Grundlagen und Diagnostik des Intersex*, 2004

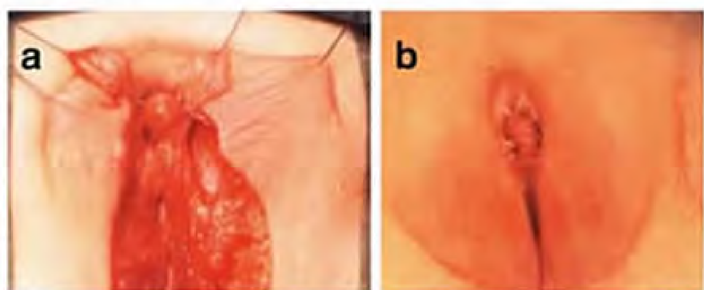
10. Indikationen und Ergebnisse von Korrekturoperationen beim interse



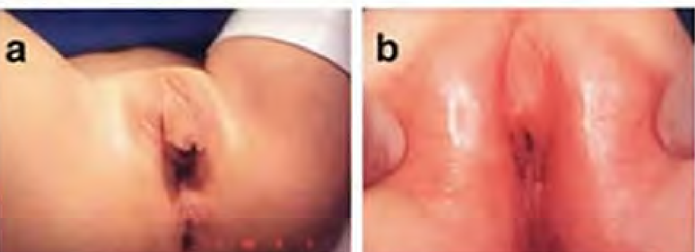
6a-c: Darstellung des Klitorisschaftes (a) sowie der Schwellkörper (b+c).



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



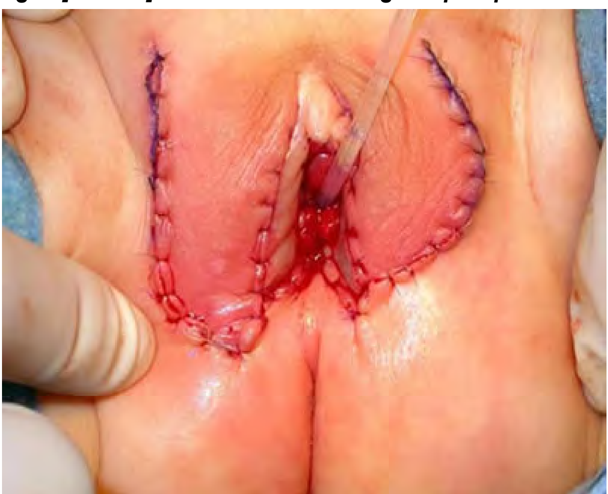
8a+b: Refixation der Corpora cavernosa clitoridis. "Materialknappheit" bei der Rekon
ı clitoridis und der kleinen Labien.



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

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

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



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

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

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

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

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

91 M.M. Bailez • Intersex Disorders

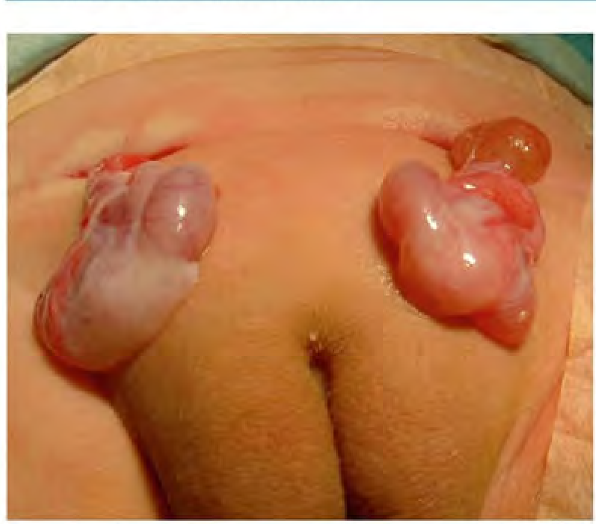


Fig. 91.6 An inguinal approach for gonadectomy in a CAIS patient with two palpable gonads

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

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

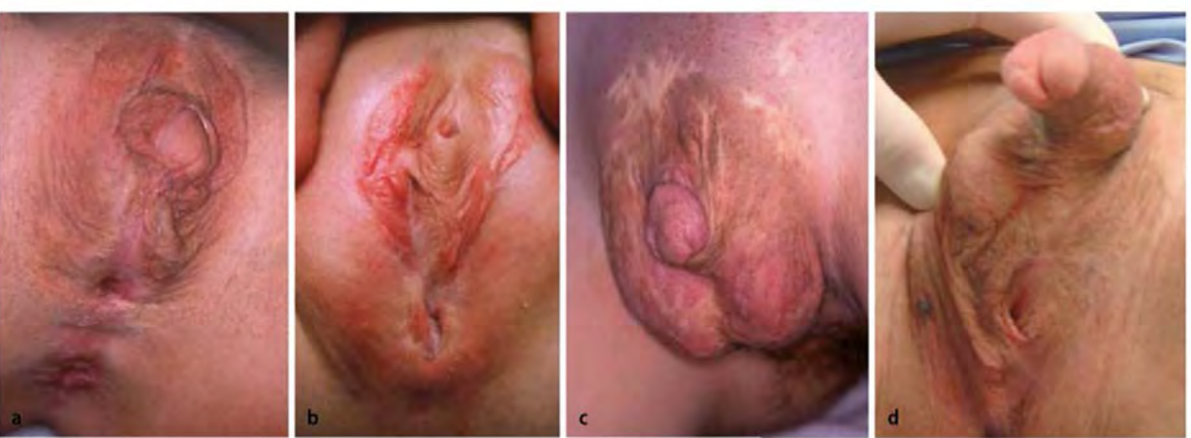
Risk	Type of DSD	Preva-lence %
High	GD in general	12*
	46,XY GD	30
	Frasier syndrome	60
	Denys-Drash syndrome	40
	45,X/46,XY GD	15–40
Intermediate	PAIS	15
	17β-hydroxysteroid dehydrogenase deficiency	17
Low	CAIS	0.8
	Ovotesticular DSD	2.6
Unknown	5α-reductase deficiency	?
	Leydig cell hypoplasia	?

GD = Gonadal dysgenesis; PAIS = partial androgen insensitivity syndrome; CAIS = complete androgen insensitivity syndrome.
* Might reach more than 30%, if gonadectomy has not been performed.

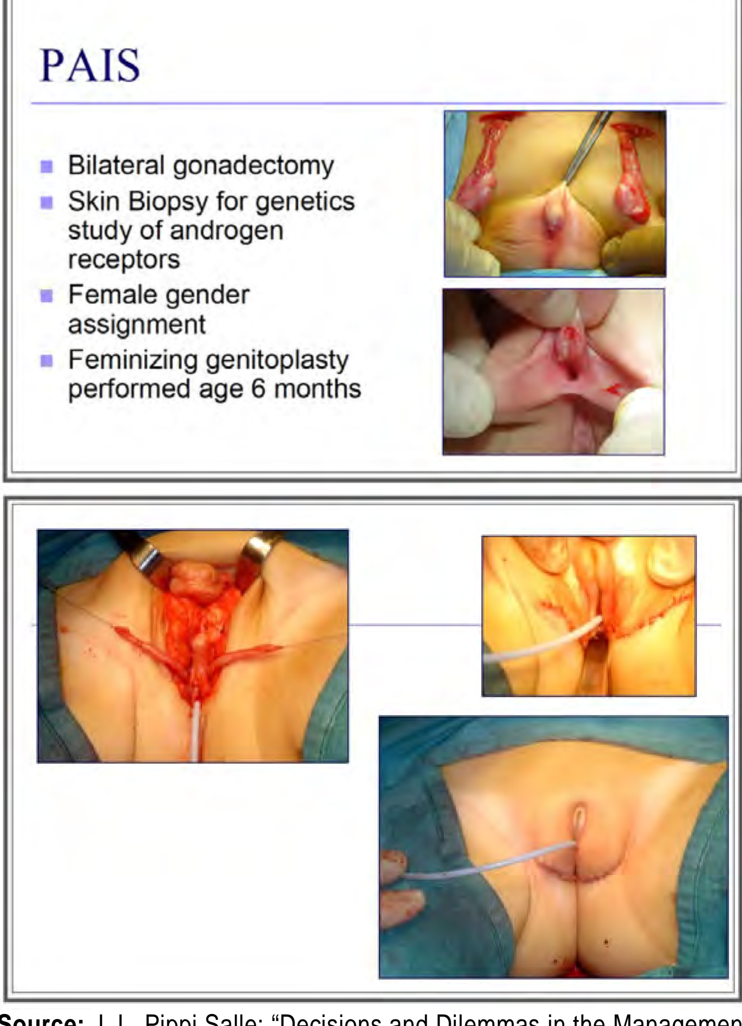
Source: J. Pleskacova, R. Hersmus, J. Wolter Oosterhuis, B.A. Setyawati, S.M. Faradz, Martine Cools, Katja P. Wolffenbuttel, J. Lebl, Stenvert L.S. Drop, Leendert H.J. Looijenga: “Tumor risk in disorders of sex development,” in: *Sexual Development* 2010 Sep;4(4-5):259-69.

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

“Bad results” / “Gonadectomy, Feminizing Genitoplasty”



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



Source: J. L. Pippi Salle: “Decisions and Dilemmas in the Management of Disorders of Sexual [sic!] Development (DSD)”, 2007, at 19.