

# Intersex Genital Mutilations

## Human Rights Violations Of Children

### With Variations Of Reproductive Anatomy



NGO Report (for PSWG)  
to the 5<sup>th</sup> and 6<sup>th</sup> Report of Austria on the  
Convention on the Rights of the Child (CRC)

## Compiled by:

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## Executive Summary

**All typical forms of Intersex Genital Mutilation are still practised in Austria, facilitated and paid for by the State party via the public health system. Parents and children are misinformed, kept in the dark, sworn to secrecy, kept isolated and denied appropriate support.**

**Austria** 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”.

CAT has already considered **IGM in Austria** as constituting at least **cruel, inhuman or degrading treatment** in 2015 (CAT/C/AUT/CO/6, paras 44–45). Nonetheless, to this day the **Austrian Government fails to act.**

In total, UN treaty bodies **CRC, CEDAW, CAT, CCPR** and **CRPD** have so far issued **40 Concluding Observations on IGM**, 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 **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 for the LOI** (see p. 16).

**NGO Report (for PSWG)  
to the 5<sup>th</sup> and 6<sup>th</sup> Report of Austria  
on the Convention on the Rights of the Child (CRC)**

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## Introduction

### 1. Austria: Intersex Human Rights and State Report

Austria has recently been reviewed by CAT in 2015, **recognising IGM in Austria as constituting ill-treatment or torture**, same as **multiple UN treaty bodies also including CRC, CEDAW, CCPR and CRPD** regularly denouncing IGM as a **serious violation of non-derogable human rights**. Nonetheless, **Austria continues to deny** the human rights implications of IGM practices, and **refuses to undertake effective measures**, including legislation, to protect intersex children from the daily mutilations. Accordingly, also **Austria's 5<sup>th</sup> and 6<sup>th</sup> State report to CRC didn't mention intersex or IGM**. However, this Thematic NGO Report demonstrates that the current **harmful medical practice on intersex children in Austria** – advocated, facilitated and **paid for by the State party** – constitutes a **serious breach** of Austria's obligations under the Convention.

### 2. About the Rapporteurs

This NGO report has been prepared by the 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!*"<sup>1</sup> According to its charter,<sup>2</sup> 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,<sup>3</sup> substantially contributing to the so far 36 Treaty body Concluding Observations recognising IGM as a serious human rights violation.<sup>4</sup>

**StopIGM.org has been active in Austria since 2011**, documenting the ongoing practice, publicly confronting individual perpetrators and hospitals, has been consulted by the CRC NHRI Child and Youth Advocates Austria (KIJOE), supporting IGM survivors to testify at the UN, and has previously reported on IGM in Austria to CAT in 2015 (in collaboration with Verein Intergeschlechtlicher Menschen Österreich VIMÖ) and in 2017, and to CRPD and CEDAW in 2018.

### 3. Methodology

This thematic NGO report is an update to the **2015 CAT Austria NGO Report (for Session)**<sup>5</sup> by partly the same rapporteurs, and the **2017 CAT Austria NGO Report (for LOIPR)**,<sup>6</sup> the **2018 CRPD Austria NGO Report (for PSWG)**,<sup>7</sup> the **2018 CEDAW Austria NGO Report (for PSWG)**<sup>8</sup> by the same rapporteurs.

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1 <http://Zwischengeschlecht.org/> English homepage: <http://stop.genitalmutilation.org>

2 <http://zwischeneschlecht.org/post/Statuten>

3 <http://intersex.shadowreport.org>

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

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

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

7 <http://intersex.shadowreport.org/public/2018-CRPD-LOIPR-Austria-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

8 <http://intersex.shadowreport.org/public/2018-CEDAW-LOI-Austria-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

## A. Background: Intersex, IGM, Harmful Stereotypes and Prejudice

### 1. IGM: Involuntary, unnecessary and harmful practices, based on stereotypes and prejudice

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.<sup>9</sup>

In **regions without universal access to paediatric health care**, there are reports of **infanticide**<sup>10</sup> of intersex children, of **abandonment**,<sup>11</sup> of **expulsion**,<sup>12</sup> of **massive bullying** preventing the persons concerned from attending school (recognised by CRC as amounting to a harmful practice),<sup>13</sup> and of **murder**.<sup>14</sup>

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 supremacist implications**.<sup>15 16 17 18</sup>

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9 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>

10 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](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-](http://stop.genitalmutilation.org/post/CEDAW70-Mexico-Joint-Intersex-NGO-Statement-05-07-2018)

[Mexico-Joint-Intersex-NGO-Statement-05-07-2018](http://stop.genitalmutilation.org/post/CEDAW70-Mexico-Joint-Intersex-NGO-Statement-05-07-2018)

11 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>

12 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>

13 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>

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

15 2014 CRC NGO Report, p. 52, 69, 84, [http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM\\_v2.pdf](http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf)

16 In the WHO “World Atlas of Birth Defects (2nd Edition)”, many intersex diagnoses are listed, including “*indeterminate sex*” and “*hypospadias*”:

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**,<sup>19</sup> 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 breach of international law.**<sup>20</sup> **UN Treaty bodies have so far issued 40 Concluding Observations condemning IGM practices.**<sup>21</sup>

## 2. 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)*”,<sup>22</sup> 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.*<sup>23</sup>

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<http://web.archive.org/web/20160305152127/http://prenatal.tv/lecturas/world%20atlas%20of%20birth%20defects.pdf>

17 “The Racist Roots of Intersex Genital Mutilations” <http://stop.genitalmutilation.org/post/Racist-Roots-of-Intersex-Genital-Mutilations-IGM>

18 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>

19 See “IGM Practices – Non-Consensual, Unnecessary Medical Interventions”, *ibid.*, p. 38–47

20 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>

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

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

23 [http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM\\_v2.pdf](http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf)

### 3. Harmful Stereotypes (2): Intersex is NOT THE SAME as Transgender or LGBT

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**<sup>24 25</sup> 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,**<sup>26</sup> 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.<sup>27</sup>

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*”,<sup>28</sup> and again IGM survivors as “*transgender children*”,<sup>29</sup> “*transsexual children who underwent difficult treatments and surgeries*”, and IGM as a form of “*discrimination against transgender and intersex children*”<sup>30</sup> and as “*sex assignment surgery*” while referring to “*access to gender reassignment-related treatments*”.<sup>31</sup>

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*”,<sup>32</sup> “*a special provision on sexual orientation and*

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24 CRC67 Denmark, <http://stop.genitalmutilation.org/post/CRC67-Intersex-children-used-as-cannon-fodder-LGBT-Denmark>

25 CEDAW66 Ukraine, <http://stop.genitalmutilation.org/post/Ukraine-Instrumentalising-Intersex-and-IGM-for-LGBT-and-Gender-Politics>

26 For references, see 2016 CEDAW France NGO Report, p. 45

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

27 For example ACHPR Commissioner Lawrence Murugu Mute (Kenya), see

<http://stop.genitalmutilation.org/post/ACHPR-African-Commissioner-warns-Stop-conflating-intersex-and-LGBT>

28 CAT60 Argentina, <http://stop.genitalmutilation.org/post/UN-Press-Release-calls-IGM-survivors-transsexual-children-CATArgentina-UNCAT60>

29 CRC77 Spain, <http://stop.genitalmutilation.org/post/UN-Press-Release-mentions-genital-mutilation-of-intersex-children>

30 CRC76 Denmark, <http://stop.genitalmutilation.org/post/UN-Press-Release-calls-IGM-survivors-transsexual-children-CRC-Denmark-UNCRC67>

31 CAT/C/DNK/QPR/8, para 32

32 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”<sup>33</sup>, transgender guidelines<sup>34</sup> or “Gender Identity”<sup>35 36</sup> 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**<sup>37</sup> and public **representation**.<sup>38</sup>

#### **4. Harmful Stereotypes (3): Misrepresenting Genital Mutilation as “Health Care”**

An interrelated, alarming new trend is the **increasing misrepresentation of IGM as “health-care issue”** instead of a serious human rights violation, and the **promotion of “self-regulation” of IGM by the current perpetrators**<sup>39 40 41</sup> – instead of effective measures to finally end the practice (as repeatedly stipulated also by this Committee).

Even worse, **Health ministries** construe UN Treaty body 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**.<sup>42</sup>

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

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

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

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

37 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>

38 See e.g. “Instrumentalizing intersex: ‘The fact that LGBTs in particular embrace intersex is due to an excess of projection’ - Georg Kluda (2002)”, <http://stop.genitalmutilation.org/post/Instrumentalizing-Intersex-Georg-Kluda-2002>

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

40 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](http://stop.genitalmutilation.org/public/S3_Zwischengeschlecht_UN-Expert-Meeting-2015_web.pdf)

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

42 See for example Ministry of Health Chile (2016), <http://stop.genitalmutilation.org/post/Circular-7-step-back-for-intersex-human-rights-in-Chile>

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

### 1. IGM practices in Austria: Pervasive and unchallenged

In **Austria**, same as in the **neighbouring states** of *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), *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), *Italy* (CRC/C/ITA/CO/5-6, para 23; CRPD/C/ITA/CO/1, paras 45-46), and in **many more State parties**,<sup>43</sup> there are

- **no legal or other protections** in place to ensure the rights of intersex children to physical and mental integrity, autonomy and self-determination, and **to prevent 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

To this day, the **Austrian government** simply **refuses** to recognise the human rights violations and suffering caused by IGM practices, let alone to “*take effective legislative, administrative, judicial or other measures*” to protect intersex children, but instead **allows IGM practices to continue with impunity** and against better knowledge, in spite of longstanding criticism and appeals by intersex persons and their organisations,<sup>44</sup> and legal experts.<sup>45</sup>

What’s worse, this continues **after the State party has already been reprimanded** by CAT in **2015** for IGM practices, with CAT explicitly calling for **legislative measures** including to ensure access to **redress**, and to provide **adequate support** (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 of cases of unnecessary surgery and other medical treatment with lifelong consequences to which intersex children have been subjected without their informed consent. The Committee is further concerned at the lack of legal provisions providing redress and rehabilitation in such cases (arts. 14 and 16).*

45. *The State party should:*

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

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

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43 Currently we count **40 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>

44 See below p. 14, footnotes 66-70

45 See below p. 15, footnotes 71-74

- (c) *Guarantee that full, free and informed consent is ensured in connection with medical and surgical treatments for intersex persons and that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give effective consent;*
- (d) *Undertake investigation of instances of surgical interventions or other medical procedures performed on intersex persons without effective consent and ensure that the persons concerned are adequately compensated.*

Despite **typical official denials** (“Such interventions for cosmetic or aesthetic reasons are of course generally excluded without exception, out of question, definitely No-Go.”),<sup>46</sup> to this day **all forms of IGM practices remain widespread and ongoing** in Austria, persistently **advocated, prescribed and perpetrated** by state funded University and public Children’s Hospitals, **advocated and paid for by the State** via the public Health System.

At the same time, the State party **refuses to collect and disseminate disaggregated data** on IGM practices.<sup>47</sup> What’s more, also access to **adequate psychosocial counselling and peer support** for intersex persons and their families **remains sorely lacking**.

## 2. Most Common IGM Forms advocated by Austrian Public University Clinics

**Some examples** of major Austrian public University or Federal State Children’s Clinics, as well as private Children’s Clinics employing doctors advocating, prescribing and performing IGM practices:

### a) Innsbruck University Hospital

- **IGM 3<sup>48</sup> – Sterilising Procedures: Castration / “Gonadectomy” / Hysterectomy / Removal of “Discordant Reproductive Structures” / (Secondary) Sterilisation**

As advocated in the Innsbruck University “Lecture notes of paediatric course 2011/12”:<sup>49</sup>

*“Complete Androgen Insufficiency Syndrome*

*[...]*

*Therapy:*

*[...]*

- *Leave gonads until after puberty.*
- *Thereafter removal of gonads [...]*
- *Thereafter substitution by estrogens and gestagens”*

(p. 28 PDF / p. no. 23 within document)

46 Austrian delegate Prof. Dr. Gerhard Aigner, Federal Ministry of Health, during the 56<sup>th</sup> CAT Session, Geneva, 13.11.2015, full transcript in German: <http://blog.zwischengeschlecht.info/post/2015/11/12/LIVE-Genf-UN-Ausschuss-gegen-Folter-pruft-Osterreich-wahrend-56-Session>

47 Platform Intersex Austria spokesperson Eva Matt: “*We have no current data, we do not know exactly how many of these surgeries are performed per year. It is clear that some are done. [...] [A]ll interventions that are performed in Austria have to be billed via health insurance companies or have to appear in hospital statistics in some kind of code. These codes should actually be able to be queried by a ministry or a hospital operator.*” In: Steve Crilley (2017), Being Intersex in Austria, Interview with Platform Intersex Austria spokesperson and jurist Eva Matt, Radio FM4, 04.11.2017, <https://fm4.orf.at/stories/2875989/>

48 For general information, see 2015 CAT NGO Report Austria, p. 31-32, 50-51, <http://intersex.shadowreport.org/public/2015-CAT-Austria-VIMOE-Zwischengeschlecht-Intersex-IGM.pdf>

49 Lecture notes of paediatric course 2011/12: Verena Kaiser, “Medizinische Universität Innsbruck, Pädiatrie, Modul 3.03, Wintersemester 2011/12”, available from the rapporteurs on request

*“Therapy: Intersexuality*

[...]

**1. Surgical:**

- *In children growing up as girls, early removal of testicular tissue.*
- *In boys, early removal of ovarian tissue.”* (p. 28 PDF / p. no. 23 within document)

- **IGM 2<sup>50</sup> – “Feminising Procedures”: Clitoris Amputation/“Reduction”, “Vaginoplasty”, “Labioplasty”, Dilation**

As advocated by Innsbruck head of paediatric endocrinology, Dr Klaus Kapelari in a medical publication:

*“One-stage feminizing genitoplasty is recommended in young infants, because of its low complication rates, the short operating time, and the low psychological burden it represents a minimally invasive first-line therapy.”*<sup>51</sup>

- **IGM 1<sup>52</sup> – “Masculinising Surgery”: Hypospadias “Repair”**

The current **2018 ESPE/EAU “Paediatric Urology” Guidelines**<sup>53</sup> chaired by Innsbruck paediatric urology head surgeon Prof Dr Christian Radmayr promote, *“The age at surgery for primary hypospadias repair is usually 6-18 (24) months.”*

**b) Vienna University Clinic**

- **IGM 1<sup>54</sup> – “Masculinising Surgery”: Hypospadias “Repair”**

The **Vienna University Clinic for Surgery, Department of Paediatric Surgery**, offers on its homepage under “Services” in the subsection *“Paediatric Urology”*.<sup>55</sup>

*“One focus of our clinic is the treatment of malformations of the external genitalia. These include above all the erroneous estuaries of the boy's urethra. These diseases, also called hypospadias, require early surgical correction (around the age of 1) in order not to endanger the psychosexual development of the boy. We offer all modern operative concepts of hypospadias correction and are in constant training with the major centres of hypospadias management (W. Snodgrass, Dallas / A. Hadidi, Cairo).”*

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50 For general information, see 2015 CAT NGO Report Austria, p. 32-33, 49,

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

51 Klaus Kapelari, “Abstract: Pathophysiology and Treatment of Congenital Adrenal Hyperplasia (CAH)”, in: Klaus Kapelari, “Pathophysiologie und Therapie des adrenogenitalen Syndroms.” Journal für Klinische Endokrinologie und Stoffwechsel – Austrian Journal of Clinical Endocrinology and Metabolism 2011; 4 (2), 28-34, online: <http://www.kup.at/kup/pdf/9771.pdf>

52 For general information, see 2015 CAT NGO Report Austria, p. 33, 48,

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

53 3.5.5.3 Age at surgery, available at <http://uroweb.org/guideline/paediatric-urology/>

54 For general information, see 2015 CAT NGO Report Austria, p. 33, 48,

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

55 <https://www.meduniwien.ac.at/hp/chirurgie/kinderchirurgie/patientinneninformationen/leistungen/>

- **IGM 1+2**

The **Vienna University Clinic for Surgery, Department of Paediatric Surgery**, offers on its homepage under “*Services*” in the subsection “*Newborn and Malformation Surgery*”:<sup>56</sup>

“*Malformations of the Sexual Organs*

- *vaginal atresia*
- *urogenital sinus*
- *hypospadias*”

- **IGM 1-3**

And the **Vienna University Clinic for Urology** admits in its Annual report 2017 (p. 15):<sup>57</sup>

“*6.3 Pediatric Urology*

*Our clinic is also a competence centre for the following diseases in childhood: Testicular malposition, Differences of Sex development (DSD), Hypospadias, Bladder Exstrophy-Epispadias-Complex, [...].*”

### c) **Linz KH Barmherzige Schwestern (Merciful Sisters Hospital)**

- **IGM 1<sup>58</sup> – “Masculinising Surgery”: Hypospadias “Repair”**

Prim. Univ.-Doz. Dr. Josef Oswald (Head Department for Paediatric Surgery) is the main authors of the current **2016 Paediatric Urology Guidelines** of the Austrian Society for Urology advocating **hypospadias surgery “around the 1st year of life”** without even mentioning alternatives (p. 13).<sup>59</sup>

And in the 2017 edition of the hospital’s newspaper “Am Puls”, Prim. Univ.-Doz. Dr. Josef Oswald (Head Department for Paediatric Surgery) freely admits (subheader “*Top Malformation Surgery at Austria’s only Paediatric Urology Clinic*”):<sup>60</sup>

“*2) Diagnosis and therapy of (complex) malformations:*

- *External genitals and testicular malformations.*
- *Surgery of urethral malformations (hypospadias) in boys. Primary Oswald says: ‘We operate on four to five children per week. In the past, several procedures were necessary, but today, in 90 to 95 percent of cases, malformations can be corrected in one operation’.*”

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56 Ibid.

57 [https://www.meduniwien.ac.at/hp/fileadmin/urologie/pdf/2017\\_Jahresbericht\\_Urologie\\_Version\\_9\\_final\\_08.05.2018.pdf](https://www.meduniwien.ac.at/hp/fileadmin/urologie/pdf/2017_Jahresbericht_Urologie_Version_9_final_08.05.2018.pdf)

58 For general information, see 2015 CAT NGO Report Austria, p. 33, 48,

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

59 [https://www.uro.at/images/uro/downloads/Leitlinien\\_Kinderurologie\\_2016.pdf](https://www.uro.at/images/uro/downloads/Leitlinien_Kinderurologie_2016.pdf)

60 <https://www.ordensklinikum.at/de/experten/informationen-services/am-puls-2017-neues-aus-medizin-und-forschung/kinderheilkunde/>

### 3. The Treatment of Intersex Children in Austria as Harmful Practice and Violence

#### a) Harmful Practice (art. 24(3) and JGC No. 18) <sup>61</sup>

**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.<sup>62</sup>

**The Committee has repeatedly considered IGM as a harmful practice, and the CRC-CEDAW Joint General Comment No. 18/31 on harmful practices as applicable.**<sup>63</sup>

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.<sup>64</sup>

Thus, **IGM practices in Austria** – 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 – 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) <sup>65</sup>

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.

### 4. Austrian Doctors and Gov consciously dismissing Intersex Human Rights

The persistence of IGM practices in Austria is a **matter of public record**, same as the **longstanding criticism and appeals by intersex persons and their organisations**,<sup>66 67 68 69 70</sup>

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61 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>

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

63 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)

64 Daniela Truffer, Markus Bauer / [Zwischengeschlecht.org](http://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](http://StopIGM.org/public/S3_Zwischengeschlecht_UN-Expert-Meeting-2015_web.pdf)

65 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](http://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf)

66 VIMÖ and StopIGM.org, 2015 CAT Austria NGO Report, <http://intersex.shadowreport.org/public/2015-CAT-Austria-VIMOE-Zwischengeschlecht-Intersex-IGM.pdf>

67 The 2006 documentary “Tintenfischalarm” features a damning first-hand account of the detrimental consequences of IGM by IGM survivor Alex Jürgen, <https://web.archive.org/web/20060709011653/http://www.tintenfischalarm.at/index.php?lang=en>

68 Bettina Enzenhofer (2012), Zero Tolerance to Intersex Genital Mutilation, <https://www.anschlaege.at/feminismus/2012/01/an-sage-zero-tolerance-to-intersex-genital-mutilation/>

69 Interface Project (2013), testimony Alex Jürgen, <https://www.interfaceproject.org/transcript-alex-jurgen>

70 Lisa Wöfl (2015), In Österreich werden intersexuelle Babys umoperiert, [https://www.vice.com/de\\_ch/article/bnb5v3/in-oesterreich-werden-intersexuelle-babys-umoperiert](https://www.vice.com/de_ch/article/bnb5v3/in-oesterreich-werden-intersexuelle-babys-umoperiert)

and by **legal experts**.<sup>71 72 73 74</sup>

Also **Austrian paediatric surgeons**, despite **openly admitting to knowledge of relevant criticisms** by human rights and ethics bodies, nonetheless continue to **consciously refuse to consider relevant human rights concerns**.

**Also Austrian government bodies continue to ignore the human rights implications of IGM.**

## **5. Lack of Independent Data Collection and Monitoring**

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**,<sup>75</sup> 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".

**Also in Austria, there are no statistics on intersex birth and on IGM practices available.**

## **6. Obstacles to redress, fair and adequate compensation**

Also in **Austria** 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.<sup>76</sup> So far, in Austria there was **no case** of a victim of IGM practices succeeding in going to court.

The **Austrian government** fails to ensure that non-consensual unnecessary IGM surgeries on minors are recognised as a form of **genital mutilation** (§ 90 StG para 3), which would formally prohibit parents from giving "consent". In addition, the state party **fails to initiate impartial investigations**, as well as data collection, monitoring, and disinterested research.<sup>77</sup> In addition, hospitals are often **unwilling to provide full access to patient's files**.

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

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71 2018, the **Austrian Constitutional Court** made clear that Intersex constitutes "*a variation of sex development, which has to be recognised as such and in particular that it is not an expression of a pathological development. [...] Therefore, fear of stigmatisation on the part of families can in no way indicate interventions.*", see Verfassungsgerichtshof Österreich (VfGH), 15.06.2018, Az G 77/2018-9, Rz 16, [https://www.vfgh.gv.at/downloads/VfGH\\_Entscheidung\\_G\\_77-2018\\_unbestimmtes\\_Geschlecht\\_anonym.pdf](https://www.vfgh.gv.at/downloads/VfGH_Entscheidung_G_77-2018_unbestimmtes_Geschlecht_anonym.pdf)

72 Position Paper (2015) of the Austrian Ombudsoffice for Children and Youths (Kinder- und Jugendanwaltschaften Österreichs, KIJA),

[https://www.kija.at/images/KiJAOE-Positionspapier\\_zur\\_Intersexualitt\\_2015.pdf](https://www.kija.at/images/KiJAOE-Positionspapier_zur_Intersexualitt_2015.pdf)

73 Eva Matt (2009), Intersexualität aus rechtlicher Perspektive, dissertation (unpublished), see also

[https://www.ethikrat.org/fileadmin/PDF-Dateien/Stellungnahmen\\_Sachverstaendige\\_Intersexualitaet/Matt\\_-\\_Expertenbefragung.pdf](https://www.ethikrat.org/fileadmin/PDF-Dateien/Stellungnahmen_Sachverstaendige_Intersexualitaet/Matt_-_Expertenbefragung.pdf)

74 Stefanie Schenker (2014), "Das ist rechtlich erlaubte Genitalverstümmelung", interview with Andrea Holz-Dahrenstaedt (Kinder- und Jugendanwaltschaft Salzburg),

[https://www.meinbezirk.at/salzburg-stadt/c-lokales/das-ist-rechtlich-erlaubte-genitalverstuemmung\\_a1134204](https://www.meinbezirk.at/salzburg-stadt/c-lokales/das-ist-rechtlich-erlaubte-genitalverstuemmung_a1134204)

75 See above p. 11, footnote 47

76 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.

77 For more on this topic see 2015 CAT NGO Report Austria, p. 37-38,

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

## C. Suggested Questions for the LOI

*The Rapporteurs respectfully suggest that in the LOI the Committee asks the Austrian 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 groups and region (Bundesländer).**
- **Does the State party plan to stop this practice? If yes, what 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?**