

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



NGO Report (for LOIPR)  
to the 2<sup>nd</sup> Report of South Africa on the  
International Covenant on Civil and Political Rights  
(CCPR)

## Compiled by:

**StopIGM.org / Zwischengeschlecht.org** (International Intersex Human Rights NGO)

Markus Bauer, Daniela Truffer

*Zwischengeschlecht.org*

*P.O.Box 1318*

*CH-8031 Zurich*

*info\_at\_zwischengeschlecht.org*

<https://Zwischengeschlecht.org/>

<https://StopIGM.org>

**August 2024**

**This NGO Report online:**

**DOCX:** <https://intersex.shadowreport.org/public/2024-CCPR-South-Africa-NGO-Intersex-StopIGM.docx>

**PDF:** <https://intersex.shadowreport.org/public/2024-CCPR-South-Africa-NGO-Intersex-StopIGM.pdf>



## Executive Summary

Despite **repeated pledges by the South African Government** to take legislative action to prevent inhuman treatment of intersex children, **all typical forms of medical IGM**, as well as non-medical practices, including **infanticide** and **abandonment**, remain widespread and ongoing. To this day, the **Government fails to act**.

**South Africa** is thus in breach of its **obligations** under the Covenant to (a) take effective legislative, administrative, judicial or other measures to **prevent inhuman treatment and involuntary experimentation on intersex children** causing severe mental and physical pain and suffering of the persons concerned, and (b) **ensure equal access to justice and redress**, including fair and adequate **compensation** and as full as possible **rehabilitation** for victims, as stipulated in the CCPR in conjunction with the **General comment No. 20**.

**CRC** has already two times recognised IGM practices in South Africa to constitute a **harmful cultural practice** and called for a **prohibition** in Concluding Observations.

**This Committee has consistently recognised IGM practices to constitute inhuman treatment** in Concluding Observations, invoking **Articles 2, 3, 7, 9, 17, 24 and 26**.

In total, UN treaty bodies **CCPR, CAT, CRC, CRPD, and CEDAW** have so far issued **94 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, (b) ensure redress and compensation and (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 **30 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 LOIPR** (see p. 25).

**NGO Report (for LOIPR) to the 2<sup>nd</sup> Report of South Africa  
on the International Covenant on Civil and Political Rights (CCPR)**

**Table of Contents**

<b>Executive Summary .....</b>	<b>3</b>
<b>A. Introduction .....</b>	<b>5</b>
1. South Africa: Intersex, IGM and Human Rights .....	5
2. About the Rapporteurs .....	5
3. Methodology .....	5
<b>B. Precedents: Concluding Observations, UPR .....</b>	<b>6</b>
1. Previous Concluding Observations .....	6
a) Harmful Practices: CRC 2016 (CRC/C/ZAF/CO/2, paras 39-40 + 23-24) .....	6
b) Harmful Practices: CRC 2024 (CRC/C/ZAF/CO/3-6, para 27(h)) .....	7
2. Universal Periodical Review (UPR) .....	7
a) 2022 4 <sup>th</sup> Cycle Recommendations supported by South Africa (A/HRC/52/17) .....	7
<b>C. IGM in South Africa: State-sponsored and pervasive, Gov fails to act .....</b>	<b>8</b>
1. Overview: IGM practices in South Africa: Pervasive and unchallenged .....	8
2. South African Government’s commitment to prohibit intersex genital mutilation .....	8
a) CRC73 Constructive Dialogue with South Africa, 19.09.2016.....	8
b) National Dialogue on the Human Rights of Intersex People, 11.12.2017.....	9
c) UNHRC45 Statement, 01.10.2020.....	10
d) UNHRC48 Statement, 04.10.2021 .....	10
e) South Africa-European Union Policy Dialogue on Intersex and Transgender Rights .....	10
f) Children’s Amendment Bill B18 – 2020 (2020-2023).....	11
g) UNHRC54 Statement, 04.10.2023 .....	12
h) UNHRC55 Intersex Resolution A/HRC/55/L.9 co-sponsored by South Africa .....	13
3. Most common forms of medical IGM advocated and perpetrated by South Africa.....	13
a) IGM 3 – Sterilising Procedures: Castration / “Gonadectomy” / Hysterectomy .....	13
b) IGM 2 – “Feminising Procedures”: Clitoris Amputation/“Reduction”, “Vaginoplasty” .....	15
c) IGM 1 – “Masculinising Surgery”: Hypospadias “Repair” .....	16
4. Foreign organisation performing medical IGM in South Africa as “charity” .....	17
5. Non-medical forms of IGM: Infanticide and abandonment of intersex children .....	19
6. Scientific stereotypes: “Intersex in four South African racial groups in Durban” .....	21
7. Obstacles to remedy, redress, fair and adequate compensation .....	22
8. South Africa fails to protect intersex children from inhuman treatment .....	23
<b>D. Suggested Questions for the LOIPR.....</b>	<b>25</b>
<b>Annexe – IGM Practices in South Africa as a Violation of CCPR.....</b>	<b>26</b>
1. The Treatment of Intersex Children in South Africa as Inhuman Treatment .....	26
Art. 2: Non-Discrimination, Legal Implementation, Remedies and Reparations .....	26
Art. 3: Equal Right of Men and Women .....	26
Art. 7: Cruel, Inhuman or Degrading Treatment, and Involuntary Experimentation .....	26
Art. 9: Liberty and Security of the Person .....	28
Art. 17: Arbitrary or Unlawful Interference with Privacy .....	28
Art. 24: Child Protection.....	28
Art. 26: Equal Protection of the Law .....	28
2. Lack of Independent Data Collection and Monitoring .....	28

## A. Introduction

### 1. South Africa: Intersex, IGM and Human Rights

South African intersex advocates and NGOs, as well as human rights experts, NHRIs and other Civil Society Organisations have publicly **criticised IGM, and called for effective legal protections for almost two decades.**

South Africa has been reviewed by **CRC** (2016, 2023), with the Committee twice **recognising IGM in South Africa as constituting a harmful practice.**

This Thematic NGO Report demonstrates that the current and ongoing **harmful medical practices** on intersex children in South Africa – advocated, facilitated and perpetrated by the state funded **University Hospitals**, and **paid for by the State party** via the **public health system**, as well as in **private hospitals** –, and also the ongoing **non-medical harmful practices**, including **infanticide** and **abandonment**, constitute a **serious breach** of South Africa’s obligations under the Covenant.

However, despite **repeated pledges to take legislative action**, to this day the South African Government **fails to act.**

### 2. About the Rapporteurs

This NGO report has been prepared by the 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!*”<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 94 Treaty body Concluding Observations recognising IGM as a serious human rights violation.<sup>4</sup>

In addition, the Rapporteurs would like to acknowledge the work of pioneering South African intersex advocate **Sally Gross (1953-2014)**.<sup>5</sup> And we would like to acknowledge the work of South African intersex advocates **Nthabiseng Mokoena**<sup>6 7</sup> and **Crystal Hendricks**,<sup>8</sup> and the work of South African Intersex NGOs **Intersex South Africa (ISSA)**,<sup>9</sup> and the **Intersex Programme of Iranti**.<sup>10</sup>

### 3. Methodology

This thematic NGO report is based on the **2023 CRC South Africa NGO Report**<sup>11</sup> by the same Rapporteurs.

---

1 <https://Zwischengeschlecht.org/> English homepage: <https://StopIGM.org>

2 <https://zwischengeschlecht.org/post/Statuten>

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

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

5 [https://en.wikipedia.org/wiki/Sally\\_Gross\\_\(activist\)](https://en.wikipedia.org/wiki/Sally_Gross_(activist))

6 <https://www.interfaceproject.org/nthabiseng-mokoena/>

7 <https://www.interfaceproject.org/transcript-nthabiseng-mokoena>

8 <https://www.mambaonline.com/2022/07/23/sa-urged-to-follow-greece-in-banning-intersex-genital-mutilation/>

9 <https://www.facebook.com/InterHumanRightsSA>

10 <https://www.iranti.org.za/wp-content/uploads/2019/04/National-Intersex-Dialogue.pdf>

11 <https://intersex.shadowreport.org/public/2023-CRC-South-Africa-NGO-Intersex-StopIGM.pdf>

## **B. Precedents: Concluding Observations, UPR**

### **1. Previous Concluding Observations**

#### **a) Harmful Practices: CRC 2016 (CRC/C/ZAF/CO/2, paras 39-40 + 23-24)**

*E. Violence against children (arts. 19, 24 (3), 28 (2), 34, 37 (a) and 39) [...]*

##### *Harmful practices*

39. *The Committee is concerned at the high prevalence of harmful practices in the State party, which include child and forced marriage, virginity testing, witchcraft, female genital mutilation, polygamy, violent or harmful initiation rites and intersex genital mutilation. The Committee is also concerned that, although the practice of ukuthwala involving children is considered an “abuse of ukuthwala” and is a crime, as the State party noted during the dialogue, this practice still exists.*

40. *In the light of its general comment No. 18 (2014) on harmful practices, adopted jointly with the Committee on the Elimination of Discrimination against Women, the Committee urges the State party to:*

*(a) Ensure that its legislation prohibits all forms of harmful practices carried out on children in the State party, including by, among other things, criminalizing the practice of child and forced marriage and regulating initiation schools;*

*(b) Develop and adopt an effective national action plan to eliminate such practices;*

*(c) Ensure the meaningful participation of all stakeholders, including children affected by or at risk of being affected by harmful practices, and their communities, in developing, adopting, implementing and monitoring the implementation of relevant laws and policies;*

*(d) Guarantee the bodily integrity, autonomy and self-determination of all children, including intersex children, by avoiding unnecessary medical or surgical treatment during infancy and childhood;*

*(e) Build the capacity of all professional groups working for and with children to prevent, identify and respond to incidents of harmful practices and to eliminate customary practices and rituals that are harmful to children;*

*(f) Ensure sanctions for perpetrators of harmful practices, including perpetrators of the abuse of ukuthwala, and provide effective remedies to the victims of harmful practices.*

#### **C. General principles (arts. 2, 3, 6 and 12) Non-discrimination**

23. *The Committee is concerned at the discrimination faced by girls, children living with HIV/AIDS, children with disabilities, indigenous children, stateless children, migrant, asylum-seeking and refugee children, children in street situations, lesbian, gay, bisexual, transgender and intersex children and children with albinism in accessing basic services and child protection services, and at their heightened exposure to violence, abuse and harassment. The Committee is also concerned at the serious divide in access to basic services and an adequate standard of living in the country on the basis of race, geography and economic status, with a disproportionate disadvantage for children living in rural areas and in urban informal settlements.*

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

(a) *Place strong focus on the eradication of structural inequality and discrimination in all legislative, policy and programmatic measures to advance the rights of the child, paying particular attention to children living with HIV/AIDS, children with disabilities, indigenous children, stateless children, migrant, asylum-seeking and refugee children, children in street situations, lesbian, gay, bisexual, transgender and intersex children and children with albinism, and to the accumulative impact of multiple discrimination;*

(b) *Enhance its efforts to raise the awareness of children and the general public about gender equality and actively promote it in education, from early childhood education, in order to eradicate discriminatory gender stereotyping and gender discrimination.*

#### **b) Harmful Practices: CRC 2024 (CRC/C/ZAF/CO/3-6, para 27(h))**

##### *Harmful practices*

27. *The Committee remains concerned about the harmful practices carried out on children in the State party, including the abduction of girls for the purpose of forced marriage (ukuthwala), child and forced marriage, so-called “virginity testing”, witchcraft, violent or harmful initiation rites, and female genital mutilation. Recalling joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices, and taking note of target 5.3 of the Sustainable Development Goals, the Committee recalls its previous recommendations [11] and urges the State party:*

[...]

(h) *To ensure that intersex children are not subjected to early unnecessary medical or surgical treatment, and to provide adequate counselling to intersex children and their parents, in line with the rights of the child to bodily integrity, autonomy and self-determination as they reach the age and maturity to consent to interventions.*

[11] *Ibid.* [CRC/C/ZAF/CO/2], para. 40.

## **2. Universal Periodical Review (UPR)**

### **a) 2022 4<sup>th</sup> Cycle Recommendations supported by South Africa (A/HRC/52/17)**

143.285 *End harmful practices, including forced and coercive medical interventions, to ensure the bodily integrity of children with intersex variations (Israel);*

## C. IGM in South Africa: State-sponsored and pervasive, Gov fails to act

### 1. Overview: IGM practices in South Africa: Pervasive and unchallenged

In **South Africa** (CRC/C/ZAF/CO/2, paras 39-40+23-24; CRC/C/ZAF/CO/3-6, para 27(h)), same as in the **fellow African countries** of *Kenya* (CCPR/C/KEN/CO/4, paras 12(e)+13(e)), *Tunisia* (CRC/C/TUN/CO/4-6, paras 26, 14(c)+15(c)), *Morocco* (CRPD/C/MAR/CO/1, paras 36-37), and *Zambia* (CRC/C/ZMB/CO/5-7, para 25(c)), and in **many more State parties**,<sup>12</sup> there are

- **no legal or other effective protections** in place to **prevent IGM practices**,
- **no legal measures** in place to ensure **access to remedy, redress, justice and rehabilitation** for IGM survivors,
- **no legal measures** in place to ensure the **accountability** of IGM perpetrators,
- **no measures** in place to ensure **data collection and monitoring** of IGM practices.

Despite that the persistence of **medical IGM** (see below, p. 13-19) and other acts of inhuman treatment perpetrated on intersex children in South Africa, including **infanticide** and **abandonment** (see below, p. 19-21), is a **matter of public record**, same as the **criticism and appeals** by **intersex persons, experts and allies** (see below, p. 23-24), and that the State Party **recognises** the serious human rights violations and the severe pain and suffering caused by IGM practices and has **repeatedly pledged to take legislative action** (see below, p. 8-13), to this day the South African Government fails to **“take effective legislative, administrative, judicial or other measures”** to effectively protect intersex children from inhuman treatment.

To this day, in **South Africa** all forms of **medical IGM practices remain widespread and ongoing**, persistently **advocated, prescribed and perpetrated** by the state funded **University Hospitals**, and **paid for by the State** via the **public health system** under the oversight of the **National Department of Health**, provincial and municipal health departments, as well as in **private clinics**.

Further, the State Party **fails to take adequate steps to prevent non-medical acts of inhuman treatment**, including infanticide and abandonment.

### 2. South African Government’s commitment to prohibit intersex genital mutilation and to protect the human rights of intersex persons

#### a) CRC73 Constructive Dialogue with South Africa, 19.09.2016

On occasion of the **73<sup>rd</sup> CRC Session** in Geneva, on 19.09.2016 **South Africa** was the first State Party to **recognise** at the UN that IGM constitutes a **“harmful practice”** that still continues but **“needs to stop”**, and to **pledge**: **“[W]e will be engaging with all the relevant stakeholders on that.”**<sup>13</sup>

In 2017, on occasion of a public keynote address during the *National Dialogue on the Protection and Promotion of the Human Rights of Intersex People*, this **pledge** was explicitly **repeated** by

12 Currently we count **94 UN Treaty body Concluding Observations** explicitly condemning IGM practices as a **serious violation of non-derogable human rights**, see:

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

13 StopIGM.org (2016), **“LIVE > South Africa Questioned Over Intersex Genital Mutilations by UN Committee on the Rights of the Child (CRC) – Gov Acknowledges!”**, 16.09.2016,

<https://stopigim.org/live-south-africa-questioned-over-intersex-genital-mutilations-by-un-committee-on-the-rights-of-the-child/>



the **Deputy minister of the Department of Justice, John Jeffrey**:<sup>14</sup>

*“In September last year, at the 73rd Session of the United Nations’ Committee of the Rights of the Child, the Committee [...] urged South Africa to guarantee the bodily integrity, autonomy and self-determination of all children, including intersex children, by avoiding unnecessary medical or surgical treatment during infancy and childhood. In our reply to the Committee the South African delegation **acknowledged that we are aware of the need to stop the practice of intersex genital mutilation.** [...]”*

*With regards to possible **new legislation to prohibit surgery on intersex children**, this is something that government and relevant stakeholders will have to engage on further. **I will, in any event, undertake to raise the issue** with the Ministries of Health, Home Affairs and Social Development and this is also something that can be placed on the ongoing agenda of the National Task Team on LGBTI Rights.”*

## **b) National Dialogue on the Protection and Promotion of the Human Rights of Intersex People, 11.12.2017**

On 11.12.2017, the **Department of Justice and Constitutional Development**, together with Intersex South Africa and Iranti, hosted a *National Dialogue on the Protection and Promotion of the Human Rights of Intersex People*.<sup>15</sup> At the dialogue, the **Deputy Minister of Justice John Jeffery**, referring to the constructive dialogue during the **73<sup>rd</sup> Session of CRC** and the resulting Concluding Observations on intersex genital mutilation in 2016,<sup>16</sup> **gave an undertaking to raise the prohibition** of surgery on intersex children with the Ministries of Health, Home Affairs and Social Development. He also mentioned the possibility of **public hearings and/or an investigation into harmful practices** by a Chapter 9 institution such as the South African Human Rights Commission or the Commission for Gender Equality.

The **recommendations** flowing from the national dialogue included a number of legal interventions, including:

- **Banning intersex genital mutilation (IGM) surgeries in medical settings**
- *Enactment of self-standing legislation/directives to deal concretely with surgical and hormonal interventions on intersex children*
- *Amendment of Children’s Act – include recognition of the right to consent to surgical intervention by intersex children*
- *Amendment of Sterilization Act to cover intersex surgeries which may have a sterilising effect on children*
- *Definition of what would be considered medically necessary interventions on intersex children*

---

14 Intersex South Africa (ISSA), Iranti (2018), “National Intersex Meeting Report” (National Dialogue on the Protection and Promotion of the Human Rights of Intersex People, 11.12.2017), <https://www.justice.gov.za/vg/lgbti/2018-NationalIntersexMeetingReport.pdf>

15 Intersex South Africa (ISSA), Iranti (2018), “National Intersex Meeting Report” (National Dialogue on the Protection and Promotion of the Human Rights of Intersex People, 11.12.2017), <https://www.justice.gov.za/vg/lgbti/2018-NationalIntersexMeetingReport.pdf>

16 Ibid., p. v (p. 6 in PDF)

- *Making provision for redress and reparations for intersex adults, including adequately prolonging statutes of limitations*
- *Revision of the Alternation of Sex Description and Sex Status Act 49 of 2003*<sup>17</sup>

#### c) UNHRC45 Statement, 01.10.2020

On occasion of the 45<sup>th</sup> Session of the Human Rights Council the State party supported a public “*Joint Statement [...] on the Rights of Intersex Persons*” calling to “*protect [...] intersex adults and children [...] so that they live free from violence and harmful practices. Governments should investigate human rights violations and abuses against intersex people, ensure accountability, [...] and provide victims with access to remedy.*”<sup>18</sup>

#### d) UNHRC48 Statement, 04.10.2021

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

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

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

*We call on all member states to take measures to combat violence and discrimination against intersex persons, develop policies in close consultations with those affected, ensure accountability, reverse discriminatory laws and provide victims with access to remedy.”*<sup>19</sup>

#### e) South Africa-European Union Policy Dialogue on Intersex and Transgender Rights in South Africa, 04.-05.11.2021

In November 2021, the South African Government co-hosted the *South Africa-European Union Policy Dialogue on Intersex and Transgender Rights in South Africa*, attended by representatives from the South African government (Departments of Justice & Constitutional Development, Health, and Home Affairs), representatives from the Government of Malta, high-level experts and Civil Society Organisations.<sup>20 21</sup>

17 Intersex South Africa (ISSA), Women’s Legal Centre, Triangle Project and Joshua Sehoole (2020), “Submission to the Portfolio Committee on Social Development on the Children’s Amendment Bill [B18 – 2020]”, p. 7-8, <https://triangle.org.za/wp-content/uploads/2020/11/ISSA-WLC-TP-Sehoole-2020-Nov-Intersex-South-Africa-Submission-on-Childrens-Amendment-Bill-regarding-Intersex-Genital-Mutilation.pdf>

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

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

20 Iranti Annual Report 2022, p. 19-21 (p. 18-20 in PDF), <https://www.iranti.org.za/wp-content/uploads/2022/08/Iranti-Annual-Report2022-V2-2-1.pdf>

Day Two (5 November 2021) focused on “*violations experienced by Intersex persons and the necessity to have an Intersex specific legal framework that addresses Intersex Genital Mutilation*,” aimed at “*ending Intersex Genital Mutilation in South Africa*”.<sup>22</sup>

**Deputy Minister of Justice and Constitutional Development John Jeffery**, stated, “*Intersex persons are also subjected to unnecessary surgeries and medical interventions which deny them their right to bodily autonomy.*”<sup>23</sup>

**Dr Tlaleng Mofokeng, UN Special Rapporteur on Health**, said:

*“Most often, at birth, intersex people are subjected to unnecessary, we can go further to say sometimes unethical, surgeries [...]. This is the beginning and sets the stage for a lifetime of violation in healthcare settings. To restore someone’s dignity, you have to see them as fully human. And many of our global health systems are deeply dehumanising...”*<sup>24</sup>

**Iranti Intersex Program Officer Crystal Hendricks** noted, “*Human rights violations on Intersex persons need to be investigated, and Sanctions should exist for healthcare workers who violate Intersex persons.*”<sup>25</sup>

And **Nthabiseng Mokoena from Intersex South Africa** pointed out that there was a veil of secrecy in hospitals around surgeries on intersex babies and that hospitals were not upfront about whether such surgeries were still taking place. Mokoena said that intersex people are also subjected to forced hormonal treatment and sterilisation and that it is not just about their genitalia. “*This is about the right to consent and self-determination*,” said Mokoena, adding that the current legislation alone is not enough for the protection and promotion of rights for intersex people.<sup>26</sup>

#### **f) Children’s Amendment Bill B18 – 2020 (2020-2023)**

Currently, **Section 129 (2) – (5)** of the **Children’s Act 38 of 2005**, which regulates medical decisions regarding children, **legalises IGM practices**. This provision allows parents to give proxy consent for medical procedures for a child if certain requirements are met.<sup>27</sup> This legalisation was recently reconsidered to some extent on occasion of a proposed amendment:

The **Children’s Amendment Bill (B18 – 2020)**,<sup>28</sup> namely clause 6 of the Bill which aimed to amend Section 1 of the Children’s Act providing a definition of genital mutilation and Section

---

21 South African Government, Department of Justice and Constitutional Development (2021), “Minister Ronald Lamola addresses historic policy dialogue on Intersex and Transgender Rights in South Africa,” 4 to 5 Nov, Press Release 03.11.2021,

<https://www.gov.za/speeches/historic-policy-dialogue-intersex-and-transgender-rights-south-africa-3-nov-2021-0000>

22 Ibid.

23 Roberto Igual (2021), “SA govt commits to action on transgender and intersex rights,” MambaOnline 05.11.2021,

<https://www.mambaonline.com/2021/11/05/sa-govt-commits-to-action-on-transgender-and-intersex-rights/>

24 Ibid.

25 Iranti Annual Report 2022, p. 19-21 (p. 18-20 in PDF),

<https://www.iranti.org.za/wp-content/uploads/2022/08/Iranti-Annual-Report2022-V2-2-1.pdf>

26 Zukiswa Pikoli (2021), “More laws are needed to protect rights of intersex and transgender people, say activists”, Daily Maverick, 08.11.2021,

<https://www.dailymaverick.co.za/article/2021-11-08-more-laws-are-needed-to-protect-rights-of-intersex-and-transgender-people-say-activists/>

27 Sabrina Thompson (2021), “A comparative analysis of the content of parental responsibilities and rights during the ‘sex alteration decision-making process’ of intersexed infants,” Thesis, Department of Private Law, Stellenbosch University, p. 8 (p. 22 in PDF),

<https://scholar.sun.ac.za/server/api/core/bitstreams/dd1b3acb-2f70-4da6-b9b2-7d8d5b0f164d/content>

28 [https://www.parliament.gov.za/storage/app/media/Bills/2020/B18\\_2020\\_Childrens\\_Amendment\\_Bill/B18\\_2020\\_Childrens\\_Amendment\\_Bill.pdf](https://www.parliament.gov.za/storage/app/media/Bills/2020/B18_2020_Childrens_Amendment_Bill/B18_2020_Childrens_Amendment_Bill.pdf)

12(3) of the Children’s Act prohibiting female genital mutilation (FGM), would have **extended the current definition of “genital mutilation”** and therefore **prohibit parents** from consenting to IGM practices. Any surgery performed on a child without informed consent which physically alters their genitalia or causes injury, would have constituted genital mutilation and **could have been prosecuted**. A person convicted of such an offence would be liable to a **fine or imprisonment of either ten to twenty years, or both**, depending on the circumstances.<sup>29</sup>

**South African intersex advocates and NGOs**, while stating to feel *“encouraged by the decision, and steps taken to amend the Children’s Act”* in order to prohibit IGM, have criticised that the Children’s Amendment Bill (B18 – 2020) was **drafted without consultation** of intersex persons and their organisations.<sup>30</sup>

In **subsequent consultations**, South African intersex advocates and NGOs inter alia **recommended**:<sup>31 32 33</sup>

*“We believe that intersex genital mutilation and female genital mutilation must be dealt with in a separate and therefore more visible manner by the Children’s Act. Accordingly, we suggest that two sub-sections be added under section 12(3), with one subsection dealing with intersex genital mutilation and another subsection dealing with female genital mutilation, as these are two distinct harmful practices. As we noted earlier, our submission deals exclusively with intersex genital mutilation. In order to avoid confusion and conflation of the issues and a possible misapplication of the law, it is necessary to deal with intersex genital mutilation as a separate rights violation.”*

However, in the end **all proposed amendments concerning IGM practices were removed from the Bill** before it passed both Houses and was signed by the President as Act no. 17 of 2022 in December 2022 and entered into force on 05.01.2023.<sup>34 35</sup> Therefore, **IGM remains legal in South Africa** to this day.

#### **g) UNHRC54 Statement, 04.10.2023**

On occasion of the **54<sup>th</sup> Session of the Human Rights Council** the **State party** supported a public follow-up statement reiterating the call to prohibit harmful practices and inhuman treatment and to ensure access to justice:

*“4. Because their bodies are perceived as different, intersex persons, including children, face stigma, misconception and violence, such as forced, coercive, irreversible and non-vital*

---

29 Sabrina Thompson (2021), “A comparative analysis of the content of parental responsibilities and rights during the ‘sex alteration decision-making process’ of intersexed infants,” Thesis, Department of Private Law, Stellenbosch University, p. 8, 120-122 (p. 22, 134-136 in PDF),

<https://scholar.sun.ac.za/server/api/core/bitstreams/dd1b3acb-2f70-4da6-b9b2-7d8d5b0f164d/content>

30 Intersex South Africa (ISSA), Women’s Legal Centre, Triangle Project and Joshua Schoole (2020), “Submission to the Portfolio Committee on Social Development on the Children’s Amendment Bill [B18 – 2020].” <https://triangle.org.za/wp-content/uploads/2020/11/ISSA-WLC-TP-Schoole-2020-Nov-Intersex-South-Africa-Submission-on-Childrens-Amendment-Bill-regarding-Intersex-Genital-Mutilation.pdf>

31 Ibid., paras 29, 31-59

32 Intersex South Africa (2021), “Public Hearings on Children’s Amendment Bill [B18 - 2020],” presentation, slides 9-11, [https://pmg.org.za/files/210513InterSex\\_South\\_Africa\\_presentation.pptx](https://pmg.org.za/files/210513InterSex_South_Africa_presentation.pptx)

33 Sibongile Maputi (2021), “Rights of Intersex Children Take Centre Stage on Day 3 of Children’s Amendment Bill Public Hearings,” Parliament of the Republic of South Africa Press Release 13.05.2021, <https://www.parliament.gov.za/news/rights-intersex-children-take-centre-stage-day-3-childrens-amendment-bill-public-hearings>

34 <https://pmg.org.za/bill/964/>

35 [https://www.gov.za/sites/default/files/gcis\\_document/202301/47828gen1543\\_0.pdf](https://www.gov.za/sites/default/files/gcis_document/202301/47828gen1543_0.pdf)

*medical interventions. These include so-called “normalising” surgeries that can have life-long negative impacts on their physical and mental health. These harmful practices should be urgently stopped. Human rights of intersex persons need to be respected, so that they can live free from violence, cruel, inhuman, or degrading treatment and harmful practices. [...]*

8. We call on all States to increase efforts to combat violence, harmful practices and discrimination on the basis of sex characteristics, address their root causes, and **implement protective laws and policies in close consultations with those affected**, in order to ensure the full realization of human rights of intersex persons.”<sup>36</sup>

#### **h) UNHRC55 Intersex Resolution A/HRC/55/L.9 co-sponsored by South Africa, 21.03.2024**

On occasion of the 55<sup>th</sup> Session of the Human Rights Council, HRC adopted a Resolution promoted by South Africa recognising “*violence and harmful practices against intersex persons [...] including medically unnecessary or deferrable interventions [...] performed without the full, free and informed consent of the person*”, and urging States to “*combat*” such “*violence*”.<sup>37</sup>

#### **3. Most common forms of medical IGM advocated and perpetrated by South Africa**

Despite above mentioned commitments to protect intersex children (see p. 8-13), **to this day, in South Africa all forms of IGM practices remain widespread and ongoing**, persistently advocated, prescribed and perpetrated by the state funded **University Hospitals**, and **paid for by the State** via the **public health system** under the oversight of the **National Department of Health**, provincial and municipal health departments, as well as in **private clinics**.

Also in 2024, **South African medical bodies continue to endorse** international medical guidelines prescribing all forms of IGM practices (see below).

**Currently practiced forms of medical IGM in South Africa include:**

#### **a) IGM 3 – Sterilising Procedures:**

**Castration / “Gonadectomy” / Hysterectomy /  
Removal of “Discordant Reproductive Structures” / (Secondary) Sterilisation  
Plus arbitrary imposition of hormones**<sup>38</sup>

The “**South African Urological Association NPC (SAUA)**” endorses the current **2024 Guidelines of the European Association of Urology (EAU)**,<sup>39</sup> which include the current **ESPU/EAU “Paediatric Urology” Guidelines 2024**<sup>40</sup> of the European Society for Paediatric Urology (ESPU) and the European Association of Urology (EAU) which stress:<sup>41</sup>

*“The issue of whether gonads should be removed and the timing of such surgery remains controversial and has been altogether questioned in some forms of DSD. Patients with, for example, CAIS benefit from the presence of testicles and the resultant aromatisation of the*

36 Statement supported by South Africa (and 55 other States) during the 54<sup>th</sup> Session of the Human Rights Council on 4 October 2023, [https://finlandabroad.fi/web/geneve/current-affairs/-/asset\\_publisher/h5w4iTUJhNne/content/general-debate-item-8/384951](https://finlandabroad.fi/web/geneve/current-affairs/-/asset_publisher/h5w4iTUJhNne/content/general-debate-item-8/384951)

37 <https://undocs.org/A/HRC/55/L.9>

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

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

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

40 <https://d56bochluxqnz.cloudfront.net/documents/full-guideline/EAU-Guidelines-on-Paediatric-Urology-2024.pdf>

41 Ibid., p. 96

*naturally occurring testosterone to oestrogens. The risk of malignant gonadal transformation in this subcategory is low (1.5%) with cases of malignancy first appearing after the second decade of life, thus allowing for the safe deferral of gonadectomy until after puberty [1279, 1280].”*

Further, regarding “when and whether to pursue gonadal or genital surgery”,<sup>42</sup> the Guidelines refer to the “**ESPU/SPU standpoint on the surgical management of Disorders of Sex Development (DSD)**”,<sup>43</sup> which advocates “gonadectomies”:

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

Accordingly, a 2017 urology dissertation out of the **University of Cape Town** prescribes:<sup>44</sup>

*“If the child is to be raised as a female, removal of all testicular tissue present [...] can be accomplished in early infancy. [...] If patients are to be raised as males, then [...] gonads can be replaced with prostheses, the prepenile scrotum can be reconstructed, and Mullerian structures can be removed with the goal of preserving the vas deferens. There is no evidence that prophylactic removal of asymptomatic discordant structures, such as a utriculus or mullerian remnants, is required although symptoms in future may indicate surgical removal. In the patient assigned a male gender role, care should be taken to identify and remove all ovarian tissue. [...] In patients raised as females, testicular tissue needs to be removed to avoid virilization during puberty. Generally, most ovotestis are excised completely because they may be admixed or because of difficulty with precise cleavage of discordant gonadal tissues. Concerning the risk of tumor development in the testicular portion, it has been reported to be low even if the tissue is dysgenetic, especially in the absence of Y chromosome sequences(46).”*

And a 2017 medical publication out of the **Inkosi Albert Luthuli Central Hospital, the Nelson R Mandela School of Medicine and the University of KwaZulu-Natal, Durban**, on 64 patients diagnosed with “*ovotesticular disorder of sex development (OT DSD)*” notes:<sup>45</sup>

*“Conservative gonadal surgery involved removal of the discordant gonad and preservation of the gonad with the sex of rearing. Ovotestes were removed in all subjects.”*

*“Gonadal surgery was performed at a mean of 6.8 (3.1) years in 9 subjects identifying with the male gender and at 2 (2.1) years in 5 subjects identifying with the female gender.”*

---

42 Ibid., p. 95

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

44 Patrick Opoku Manu Maison (2017), “Genetic Basis of Human Disorders of Gonadal Development,” dissertation for Master of Science in Urology, Faculty of Health Sciences, University of Cape Town, p. 11-12, [https://open.uct.ac.za/bitstream/handle/11427/28015/thesis\\_hsf\\_2018\\_maison\\_patrick\\_opoku\\_manu%20%282%29.pdf](https://open.uct.ac.za/bitstream/handle/11427/28015/thesis_hsf_2018_maison_patrick_opoku_manu%20%282%29.pdf)

45 Yasmeen Ganie, Colleen Aldous, Yusenitha Balakrishna, Rinus Wiersma (2017) “The Spectrum of Ovotesticular Disorders of Sex Development in South Africa: A Single-Centre Experience,” *Horm Res Paediatr.* 2017;87(5):307-314, p. 3, 6, <https://pubmed.ncbi.nlm.nih.gov/28376506/>

## **b) IGM 2 – “Feminising Procedures”: Clitoris Amputation/“Reduction”, “Vaginoplasty”, “Labiaplasty”, Dilatation<sup>46</sup>**

The “**South African Urological Association NPC (SAUA)**” endorses the current **2024 Guidelines of the European Association of Urology (EAU)**,<sup>47</sup> which include the current **ESPU/EAU “Paediatric Urology” Guidelines 2024**<sup>48</sup> of the European Society for Paediatric Urology (ESPU) and the European Association of Urology (EAU). In **chapter 3.18 “Disorders/Differences of sex development”**,<sup>49</sup> despite admitting that “*Surgery that alters appearance is not considered urgent*”<sup>50</sup> and that “*adverse outcomes have led to recommendations to delay unnecessary [clitoral] surgery to an age when the patient can give informed consent*”,<sup>51</sup> the ESPU/EAU Guidelines nonetheless explicitly **refuse to postpone non-emergency surgery**, but in contrary **insist to continue with non-emergency genital surgery** (including partial clitoris amputation) on young children based on “*social and emotional conditions*” and **substituted decision-making by “parents and caregivers implicitly act[ing] in the best interest of their children”**<sup>52</sup> and making “*well-informed decisions [...] on their behalf*”, and further **explicitly refusing “prohibition regulations”** of unnecessary early surgery,<sup>53</sup> referring to the 2018 ESPU Open Letter to the Council of Europe (COE),<sup>54</sup> which further invokes **parents’ “social, and cultural considerations”** as justifications for early surgery (p. 2).

Accordingly, a **2017** urology dissertation out of the **University of Cape Town** prescribes:<sup>55</sup>

*“If the child is to be raised as a female, [...] labioscrotal reductions can be accomplished in early infancy. Clitoral reduction surgery should only be considered in cases of severe virilization (Prader III, IV, and V) and should be carried out in conjunction, when appropriate, with repair of the common urogenital sinus. As orgasmic function and erectile sensation may be disturbed by clitoral surgery, the surgical procedure should be anatomically based to preserve erectile function and the innervation of the clitoris. Emphasis is on functional outcome rather than a strictly cosmetic appearance. It is generally felt that surgery that is carried out for cosmetic reasons in the first year of life relieves parental distress and improves attachment between the child and the parents(41–44). The systematic evidence for this belief is lacking. [...] Vaginal dilatation should not be undertaken before puberty. An absent or inadequate vagina (with rare exceptions) requires a vaginoplasty performed in adolescence when the patient is psychologically motivated and a full partner in the procedure.”*

And a **2017** medical publication out of the **Inkosi Albert Luthuli Central Hospital**, the **Nelson R Mandela School of Medicine** and the **University of KwaZulu-Natal, Durban**, on 64 intersex

---

46 For general information, see 2016 CEDAW NGO Report France, p. 48.

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

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

48 <https://d56bochluxqnz.cloudfront.net/documents/full-guideline/EAU-Guidelines-on-Paediatric-Urology-2024.pdf>

49 Ibid., p. 91

50 Ibid., p. 95

51 Ibid., p. 95

52 Ibid., p. 95-96

53 Ibid., p. 96

54 [https://www.espu.org/images/documents/ESPU\\_Open\\_Letter\\_to\\_COE\\_2018-01-26.pdf](https://www.espu.org/images/documents/ESPU_Open_Letter_to_COE_2018-01-26.pdf)

55 Patrick Opoku Manu Maison (2017), “Genetic Basis of Human Disorders of Gonadal Development,” dissertation for Master of Science in Urology, Faculty of Health Sciences, University of Cape Town, p. 11-12, [https://open.uct.ac.za/bitstream/handle/11427/28015/thesis\\_hsf\\_2018\\_maison\\_patrick\\_opoku\\_manu%20%282%29.pdf](https://open.uct.ac.za/bitstream/handle/11427/28015/thesis_hsf_2018_maison_patrick_opoku_manu%20%282%29.pdf)

children diagnosed with “*ovotesticular disorder of sex development (OT DSD)*” notes:<sup>56</sup>

*“Female genital surgery involved clitoroplasty and vaginoplasty. [...] Genital surgery was performed at a median of 6.8 (2–10.1) years.”*

### **c) IGM 1 – “Masculinising Surgery”: Hypospadias “Repair”<sup>57</sup>**

The “**South African Urological Association NPC (SAUA)**” endorses the current **2024 Guidelines of the European Association of Urology (EAU)**,<sup>58</sup> which include the current **ESPU/EAU “Paediatric Urology” Guidelines 2024**<sup>59</sup> of the European Society for Paediatric Urology (ESPU) and the European Association of Urology (EAU). In **chapter 3.7 “Hypospadias”**,<sup>60</sup> the ESPU/EAU Guidelines’ **section 3.7.5.3 “Age at surgery”** explicitly promotes, *“The age at surgery for primary hypospadias repair is usually 6-18 (24) months.”*<sup>61</sup> – despite admitting to the “*risk of complications*”<sup>62</sup> and “*aesthetic[...]*” and “*cosmetic*” justifications.<sup>63</sup>

Accordingly, a **2022** medical publication out of the Department of Paediatric Surgery of the **University of the Witwatersrand** on 81 intersex children submitted to hypospadias surgery prescribes:

*“Hypospadias requires surgical correction in order to improve penile function and provide the patient with a straight penis, with the urethral meatus positioned at the tip of the glans. This will enable the patient to pass urine in a normal standing position, allow for adequate sexual intercourse later in life, and ensure a cosmetically acceptable penis.6,9,10 Taking into consideration anaesthetic, technical and psycho-development factors, the optimal age for correction is between 6 and 18 months.4,11,12 Operative repair of hypospadias is one of the most challenging fields in surgery.1”*

*“For the 81 index cases, the median age of presentation was 14 months (IQR: 11, 27) and median age of index surgery was 15 months (IQR: 13, 30). [...] Of the 81 index cases, 17 (20.99%) developed postoperative complications.”*

*“[T]he median age of initial presentation in our cohort was 14 months and for index operation 15 months. [...] Of our 81 patients who presented for index surgery, 48 (59.26%) were operated on before 18 months of age.”*

The **Nelson Mandela Children’s Hospital (NMCH)** lists Dr Karen Milford as paediatric surgeon,<sup>64</sup> who specialises in “*the surgical management of hypospadias*”.<sup>65 66</sup>

---

56 Yasmeeen Ganie, Colleen Aldous, Yusenantha Balakrishna, Rinus Wiersma (2017) “The Spectrum of Ovotesticular Disorders of Sex Development in South Africa: A Single-Centre Experience,” *Horm Res Paediatr.* 2017;87(5):307-314, p. 3, <https://pubmed.ncbi.nlm.nih.gov/28376506/>

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

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

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

59 <https://d56bochluxqz.cloudfront.net/documents/full-guideline/EAU-Guidelines-on-Paediatric-Urology-2024.pdf>

60 *Ibid.*, p. 29

61 *Ibid.*, p. 31

62 *Ibid.*, p. 31

63 *Ibid.*, p. 30-31

64 <https://www.nelsonmandelachildrenshospital.org/private-practice>

65 <https://about.me/karenmilford>

66 <https://www.sickkids.ca/en/news/archive/2020/sharing-our-knowledge-karen-milford/>



Also, a 2021 leaflet for parents “*Information about Hypospadias*” of the **Nelson Mandela Children’s Hospital (NMCH)** states:<sup>67</sup>

**“About the operation**

*Hypospadias surgery aims to straighten the penis and move the meatus (the pee hole) to the tip of the penis. In most cases the foreskin is removed so that the penis appears circumcised after the operation. [...] Typically, boys with a very curved penis or with a meatus (pee hole) that is more than a few millimetres away from the head of the penis may require more than one surgery, so that the abnormalities can be corrected in stages. This allows for the best chance of a good outcome.*

*There is no ideal age for hypospadias surgery but typically our surgeons will allow the baby to reach 9 – 12 months of age before undertaking the first operation. Hypospadias surgery is never an emergency.*

**Does hypospadias surgery have any complications?**

*There are several complications associated with hypospadias surgery, and these may occur in 10 – 40% of patients. Several of these will require further surgery to correct.”*

And a **2023** “*Workshop: Understanding the Fundamentals of Hypospadias Repair*” hosted by the Department of Paediatric Surgery of the **University of the Witwatersrand, Johannesburg** at the **Nelson Mandela Children’s Hospital (NMCH)**, besides a lecture on “*Ethics and controversies surrounding hypospadias repair in children*”, featured **over 7 hours of “Live surgery”** simultaneously **in 2 operation theatres**.<sup>68 69</sup>

What’s more, **several South African private practitioners and clinics aggressively advertise hypospadias surgery**.<sup>70 71 72 73</sup>

#### **4. Foreign organisation performing medical IGM in South Africa as “charity”**

“**Kind Cuts for Kids**”, according to its homepage, “*is an Australian based organisation that exists to provide specialist medical care for children in developing countries around the world. Kind Cuts is a non-government, not-for-profit organisation*”. The organisation has **visited South Africa in 2009, 2011, 2012, 2016, 2017 and 2022**<sup>74</sup> (see also our 2016 CRC NGO Report<sup>75</sup>).

However, the organisation not only specialises in medically necessary procedures, but **regularly performs IGM practices**, e.g.:

---

67 Nelson Mandela Children’s Hospital, “Information about Hypospadias”, [offline] <https://drkarenmilford.co.za/wp-content/uploads/2021/03/Hypospadias-info-for-parents.pdf>

68 <https://witspaedcongress.org.za/>

69 <https://witspaedcongress.org.za/program/>

70 Dr Kiran Singh, “Hypospadias Repair,” <https://www.urologydurban.co.za/procedures/penis/hypospadias-repair/>

71 Dr T. Ridgard, Specialist Urologist, “Hypospadias Repair”, <https://urologistfourways.co.za/hypospadias-repair/>

72 Urology Hospital (2022), “A deformed penis is not uncommon and can be corrected — urologist,” 8 March 2022, <https://urology.co.za/a-deformed-penis-is-not-uncommon-and-can-be-corrected-urologist/>

73 “Best Hypospadias Hospitals and Cost in South Africa” <https://www.lyfboat.com/hospitals/hypospadias-hospitals-and-costs-in-south-africa/>

74 <https://www.kindcutsforkids.net/our-work-overseas/>

75 See p. 10, <http://intersex.shadowreport.org/public/2016-CRC-ZA-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

In 2017 at the **Harare Central Hospital** and the **Urology Department of the Free State University Hospital**:<sup>76</sup>

**“Case 2**

*Disorders of sexual differentiation are complex surgical cases, and involve even more complex, multifactorial decision making. Eight such cases were managed in Harare, including decisions to defer surgery in some and operate on others. The pictures show a ‘girl’ with 46XX chromosomes, a vagina, but a gonad in the inguinoscrotal fold. The gender of rearing had been female, which seemed appropriate and informed the decision to do the surgery shown”.*

In total, **at least 6 IGM surgeries** were practiced:<sup>77</sup>

**“Operative Procedures**

*A total of 42 operations were performed, during a total of 17 anaesthetics on 15 patients; two patients had examination under anaesthetic early in the week to plan for major surgery that was performed later in the visit. The operations were as follows:*

<b>Gender</b>	<b>DOB</b>	<b>Date</b>	<b>Operation [...]</b>
Male	27-Mar-07	23-Feb-17	Pena: Urethroplasty [...]
Male	14-Feb-17	22-Feb-17	Partial Urethroplasty [...]
Female	08-May-14	21-Feb-17	Cystoscopy
“	“	24-Feb-17	Clitoroplasty
“	“	“	Vaginoplasty
“	“	“	Vulvoplasty [...]
Male	29-Aug-10	20-Feb-17	Hypospadias UB I”

At least **7 more intersex children** were earmarked for future IGM surgeries:<sup>78</sup>

**“Major Surgery still required**

*The following operations were considered appropriate, but were unable to be performed because of the caseload, leading to the suggestion of a further visit in the coming months.”*

<b>“Gender</b>	<b>DOB</b>	<b>Pathology</b>	<b>Post visit plan</b>
Female	01-Dec-15	Ovotesticular DSD	feminizing genitoplasty
Intersex	01-Jan-17	True hermaphrodite	Feminizing genitoplasty
Female	01-Jan-07	46XX, DSD	Feminizing genitoplasty
Male	21-Jan-17	DSD, Colon Anomaly	Genitoplasty
Male	11-Feb-12	DSD – minor	Hypospadias
Male	17-Mar-04	Ovotesticular DSD	hypospadias repair
Male	29-Aug-10	46XY, Gonadal Dysgenesis	Hypospadias UB II”

76 Professor Paddy Dewan and Dr Titus Pakop (18 th February - 5 th March 2017), A joint project of Kind Cuts for Kids, the Harare Central Hospital and the Urology Department of the Free State University Hospital, African Paediatric Urology Outreach –2017, p. 5,

<https://www.kindcutsforkids.net/wp-content/uploads/2022/06/Africa-report-2017-final-PD.pdf>

77 Ibid., p. 6

78 Ibid., p. 7

In 2022, on occasion of the **South African Urological Association** meeting, an associated **Paediatric Urology workshop** and clinical work at two locations in Cape Town, **Red Cross Children’s Hospital** and **Tygerberg Hospital**, in total 172 operative procedures on 57 patients were performed, including IGM surgeries – however, this time the report remains **suspiciously vague** regarding IGM diagnoses and surgeries “*included*”:<sup>79</sup>

**“Diagnoses included:**

*Hypospadias – 8 [...]*

*Double penis – 1*

**Operations included:**

*Cystoscopy – 4*

*Vaginoscopy – 1 [...]*

*Double penis – 1 [...]*

*Vaginoplasty – 1”*

## **5. Non-medical forms of IGM: Infanticide and abandonment of intersex children**

Also in South Africa, harmful stereotypes and prejudices framing intersex as “*inferior*”, “*deformed*”, “*disordered*”, “*degenerated*” or a “*bad omen*” remain widespread and inform not only the current harmful medical practice, but also other, **non-medical harmful practices** including **infanticide** and **abandonment**,<sup>80</sup> with more reports emerging recently.

In May 2017, on occasion of the NGO Forum preceding the 60<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples’ Rights (ACHRP), the **Centre for Human Rights of the Faculty of Law, University of Pretoria** organised a *Presentation of a proposed Draft Model Law on Intersex Persons Rights in Africa*<sup>81</sup> and published a *Fact sheet on intersex persons*,<sup>82</sup> with both highlighting “**DEATH AND ABANDONMENT: Infanticide and dumping of intersex children**” as a relevant issue.

Marking Intersex Awareness Day 2017, Intersex South Africa (ISSA), Iranti, and the Cultural, Religious and Linguistic Communities’ Rights Commission co-hosted a dialogue *Intersex Rights in Rural Settings*, noting:<sup>83</sup>

**“In South Africa, a study recently revealed that 88 out of 90 midwives indicated that when an intersex child is born they commit infanticide and tell the mother that the child was stillborn.”**

---

79 Professor Paddy Dewan (September 2022), A project of Kind Cuts for Kids, supported by South African Urological Society, University of the Free State, Red Cross Children’s Hospital, Tygerberg University Hospital, African Paediatric Urology Outreach – September 2022, p. 3,

<https://www.kindcutsforkids.net/wp-content/uploads/2023/03/South-Africa-Report-2022.pdf>

80 See 2016 CRC South Africa NGO Report, p. 12,

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

81 Centre for Human Rights Faculty of Law, University of Pretoria (2017), “Invitation: Presentation of a proposed Draft Model Law on Intersex Persons Rights in Africa,” on occasion of the NGO Forum preceding the 60th Ordinary Session of the African Commission on Human and Peoples’ Rights,

[https://www.up.ac.za/faculty-of-law/news/post\\_2470850--invitation-presentation-of-a-proposed-draft-model-law-on-intersex-persons-rights-in-africa-fact-sheet-on-intersex-persons](https://www.up.ac.za/faculty-of-law/news/post_2470850--invitation-presentation-of-a-proposed-draft-model-law-on-intersex-persons-rights-in-africa-fact-sheet-on-intersex-persons)

82 Centre for Human Rights Faculty of Law, University of Pretoria (2017), “Fact sheet on intersex persons,” p. 1,

[https://www.chr.up.ac.za/images/researchunits/sogie/documents/Inter-Sex/Intersex\\_Fact\\_Sheet.pdf](https://www.chr.up.ac.za/images/researchunits/sogie/documents/Inter-Sex/Intersex_Fact_Sheet.pdf)

83 <https://intersexday.org/en/south-africa-rural-2017/>

At the **National Dialogue on the Protection and Promotion of the Human Rights of Intersex People** on 11.12.2017, **Deputy Minister of Justice and Constitutional Development John Jeffery** noted cryptically in his Keynote Address,<sup>84</sup> *“In certain regions of the world when an intersex variation is visible at birth it may result in **infanticide, abandonment and the stigmatization of families.**”*

The 2018 **Report on the National Dialogue** includes in Chapter III: “South Africa” a section **“2. Infanticide”**, summarising:<sup>85</sup>

*“Some cultures believe that intersex infants are ‘bad omens’, a sign of witchcraft, a punishment from God and a curse on the family they are born into. In these instances, it is often understood to be preferable to kill the child, by twisting its’ neck, than allowing the mother to raise it. Birth parents are often told that their child was stillborn and not to ask further questions. Instead of being buried, the body of the infant has been known to be crushed to make muti. Midwives have done this “over a number of years” because it is their “cultural belief”. An infant that is not killed may be abandoned in a hospital or left in the place they were born.”*

The section concludes, *“It is essential to urgently address intersex infanticide, child abandonment, familial stigma and other concerns in rural and traditional settings across the country.”*<sup>86</sup>

A comprehensive 2018 “Mail&Guardian” news report contains **several practical examples based on personal testimonies**, including:<sup>87</sup>

*“We were hoping for a boy because we wanted to name him after our grandfather. But we experienced something we didn’t know how to say it. The baby was healthy and was crying like any baby but we were not sure what was happening between the legs of this child,’ Amogelang says.*

*Because her mother and grandmother — both present at the birth — were ‘disappointed in the child’ and its ambiguous genitalia, the three ‘agreed to kill the child and be silent [about it]’.*

*A quick, merciless twist of its neck later and the newborn, the ‘bad omen’, was gone.*

*‘We buried it and told my sister that the child was stillborn. She didn’t argue it because we just told her not to ask too many questions.’”*

*“Poppy Ngubeni is a traditional healer and independent researcher into African medicine. Ngubeni, who has, as recently as last year, conducted research into intersex infanticide in KwaZulu-Natal, Lesotho, Gauteng, Limpopo and the Eastern Cape says: “When an intersex baby is born, it is viewed as a sign that the ancestors are angry about something. [...]*

*‘I have been told of intersex babies being thrown into the river; some bashed on big [rocks] or even left in the wilderness to be consumed by wild animals. When I asked the traditional birth*

---

84 Intersex South Africa (ISSA), Iranti (2018), “National Intersex Meeting Report” (National Dialogue on the Protection and Promotion of the Human Rights of Intersex People, 11.12.2017), p. iii (p. 4 in PDF), <https://www.justice.gov.za/vg/lgbti/2018-NationalIntersexMeetingReport.pdf>

85 Ibid., p. 5 (p. 14 in PDF)

86 Ibid.

87 Carl Collison (2018), “Intersex babies killed at birth because they are bad omens,” Mail&Guardian, 24.01.2018, <https://mg.co.za/article/2018-01-24-00-intersex-babies-killed-at-birth-because-theyre-bad-omens>

*attendants how they lived with [what they did], they said that when the ancestors have spoken it would be suicide for the family not to heed that order. ‘Who wants to keep a monster?’ they would say. They justified their actions as ‘an act of love’. They believe that, in doing this, they are saving the mother from too many questions from the community.’”*

And a 2019 Health-e News report notes:<sup>88</sup>

*“In some rural villages, when babies are born intersex they are seen as a bad omen, say Dimakatso and Sharon who are both activists to create awareness of the condition. ‘In deep rural villages, a lack of knowledge and understanding means that infanticide is rife,’ says Sharon”.*

Also, a 2019 City Press news report mentioned *“murder of intersex babies born in traditional settings”*.<sup>89</sup>

Further, a 2019 CNN news report includes, *“Mtshawu, now 32, says babies discovered to be intersex at birth are sometimes killed due to the traditional belief that they are bad luck. [...] These babies are considered a manifestation of sorcery and witchcraft”*.<sup>90</sup>

And a comprehensive 2022 New Frame news report features amongst others the story of Poppy Ngubeni, a Johannesburg former nurse, healer and birth attendant *“who, whenever an opportunity presents itself, travels to various parts of the country to speak with abelaphi (diviners, healers and initiates) in an attempt to change their perceptions of intersex people, and intersex newborns, in particular,”* in order to fight intersex infanticides.<sup>91</sup>

What’s worse, a 2020 academic publication out of the **Steve Biko Centre for Bioethics** at the **School of Clinical Medicine, Faculty of Health Sciences** of the **University of the Witwatersrand**, after **admitting** that infanticide, abandonment, ostracization, rejection, violent assault and social stigma of intersex children are **serious issues** in South Africa, then seriously **instrumentalises these serious human rights violations as an excuse and justification to continue legally practising IGM**, in order to *“save lives”* and protect vulnerable intersex children from *“back street surgeries, with the predictable, harmful consequences”*, as well as other *“potentially very harmful unintended consequences of simple prohibition”*, including *“a significant rise in infanticide or abandonment”*. Needless to say, if the discussion was about FGM instead of IGM, this “ethicist” would arguably refrain from such fallible justifications.

## **6. Scientific stereotypes: “Intersex in four South African racial groups in Durban”**

During the enlightenment, the **harmful societal, medical, scientific and academic notions, stereotypes and prejudices** were codified which still inform the harmful medical practice today: That intersex is a **subhuman species**, and therefore most frequent in the less developed and more

---

88 Bernadette Maguire (2019), “Intersex no-person’s land, Health-e News,” 22.05.2019, <https://health-e.org.za/2019/05/22/intersex-no-persons-land/>

89 Nickita Maesela (2019), “When bodily variations can get you killed or maimed new laws are needed,” City Press 22.11.2019, <https://www.news24.com/citypress/Trending/Reviews/when-bodily-variations-can-get-you-killed-or-maimed-new-laws-are-needed-20191122>

90 Aisha Salaudeen (2019), “Growing up intersex in a country where it is believed to be bad luck,” CNN, INSIDE AFRICA, 22 September 2019, <https://edition.cnn.com/2019/09/21/health/intersex-south-africa-intl/index.html>

91 Carl Collison (2022), “A sangoma campaigns to protect intersex newborns”, New Frame 28.04.2022, <https://web.archive.org/web/20220428111256/https://www.newframe.com/a-sangoma-campaigns-to-protect-intersex-newborns/>

primitive sections of the human race, as well as in primates, and that, like other monsters, such “races” equipped with “enormous clitorises” are traditionally to be found in the “hotter climates”, **for example in Africa.**<sup>92</sup>

Accordingly, to this day, individual doctors, national and international medical bodies, public and private healthcare providers, traditional healers as well as Government bodies continue to frame intersex as “**inferior**”, “**deformed**”, “**degenerated**” or a “**bad omen**”, and to “treat” intersex variations as “disorders” and “conditions” that need to be “**cured**” **surgically**, often with **racist, ableist, eugenic and supremacist undertones.**<sup>93</sup>

As the **2023** academic publication “**Envisioning African Intersex. Challenging Colonial and Racist Legacies in South African Medicine**” by Amanda Lock Swarr<sup>94</sup> demonstrates by examining five decades of South African medical literature, the pertinent “scientific” claim that **intersex and “true hermaphroditism” are more common among black South Africans** than among white South Africans remains **cherished by white South African IGM doctors.**

Tracing the **persisting influence of the infamous 1970 thesis by H. J. Grace, “Intersex in Four South African Racial Groups in Durban”** (see also 2016 CRC NGO Report<sup>95</sup>) in current publications by South African IGM doctors (notably most of them published in journals based in the Global North), Lock Swarr demonstrates how “[r]eferences with scant evidentiary bases become codified through citation without substantive engagement with the original publications. They begin to create norms about Africans’ bodies, deriving power through their repetition.”<sup>96</sup>

And she **turns the underlying scientific fallacy on its head:** “Researchers [...] repeat the same question from slightly different (albeit unsuccessful) angles: Why are black people more likely to be intersex? A more instructive question might be Why is the unproven high prevalence of black intersex the subject of such intense scrutiny and interest?”<sup>97</sup>

## **7. Obstacles to remedy, redress, fair and adequate compensation**

Also in **South Africa** 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>98</sup> So far, in South Africa there was **no successful case** of a victim of IGM practices going to court.

Notably, General Comment No. 20 **clearly and explicitly stipulates** to “*prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction*”

---

92 Daniela Truffer, Markus Bauer (2023), “Bias in intersex research and the lack of implementation of intersex human rights.” Presentation at Centring Intersex Conference, 21.02.2023, <https://stopigm.org/public/Bias-in-intersex-research-Centring-Intersex-Truffer-Bauer-StopIGM-21-02-2023.pdf>

93 StopIGM.org (2018), “Submission for OHCHR Study on Youth and Human Rights (HRC39)”, p. 3, [https://intersex.shadowreport.org/public/2018-OHCHR-Youth-Human-Rights-Intersex-StopIGM\\_v2.pdf](https://intersex.shadowreport.org/public/2018-OHCHR-Youth-Human-Rights-Intersex-StopIGM_v2.pdf)

94 Amanda Lock Swarr (2023), *Envisioning African Intersex: Challenging Colonial and Racist Legacies in South African Medicine*. Duke University Press, <https://library.oapen.org/handle/20.500.12657/62548>

95 p. 9, 18-19, <https://intersex.shadowreport.org/public/2016-CRC-ZA-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

96 Lock Swarr (2023), p. 56-57

97 Ibid., p. 58

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

(para 8), as well as the right of victims to “*an effective remedy, including compensation and such full rehabilitation as may be possible*” (para 15).

**Conclusion, this situation is clearly not in line with South Africa’s obligations under the Covenant.**

## **8. South Africa fails to protect intersex children from inhuman treatment**

The persistence of IGM practices in South Africa is a **matter of public record**, same as the **criticism and appeals by intersex persons, experts and allies**, as well as by some **Government agencies**.<sup>99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117</sup>

- 
- 99 Carl Collison (2016), “SA joins the global fight to stop unnecessary genital surgery on intersex babies,” Mail&Guardian 27.10.2016, <https://mg.co.za/article/2016-10-27-00-sa-joins-the-global-fight-to-stop-unnecessary-genital-surgery-on-intersex-babies/>
- 100 Amy Green (2018), “Intersex people urge government to ban genital mutilation,” Health-e News 15.01.2018, <https://health-e.org.za/2018/01/15/government-urged-ban-intersex-genital-mutilation/>
- 101 Dalaine Krige (2019), “Fighting for the rights of intersex people,” Health-e News 23.10.2019, <https://health-e.org.za/2019/10/23/fighting-for-the-rights-of-intersex-people/>
- 102 Sibongile Maputi (2021), “Rights of Intersex Children Take Centre Stage on Day 3 of Children’s Amendment Bill Public Hearings,” Parliament of the Republic of South Africa Press Release 13.05.2021, <https://www.parliament.gov.za/news/rights-intersex-children-take-centre-stage-day-3-childrens-amendment-bill-public-hearings>
- 103 Intersex South Africa (2021), “Public Hearings on Children’s Amendment Bill [B18 - 2020],” presentation, [https://pmg.org.za/files/210513InterSex\\_South\\_Africa\\_presentation.pptx](https://pmg.org.za/files/210513InterSex_South_Africa_presentation.pptx)
- 104 Sophy Baird (2021), “The silence of the ‘I’: Legal and social implications of intersex genital mutilation of children,” South African Journal on Human Rights, Volume 37, 2021 - Issue 3, <https://www.tandfonline.com/doi/abs/10.1080/02587203.2022.2030249>
- 105 Carte Blanche (2021), “Intersex Issues,” Video, DSTv 20.6.2021, <https://www.dstv.com/m-net/en-za/show/carte-blanche/season/37/videos/intersex-issues/video>
- 106 Roberto Igual (2022), “SA urged to follow Greece in banning intersex genital mutilation,” MambaOnline 23.07.2022, <https://www.mambaonline.com/2022/07/23/sa-urged-to-follow-greece-in-banning-intersex-genital-mutilation/>
- 107 South African Government, Department of Justice and Constitutional Development (2021), “Minister Ronald Lamola addresses historic policy dialogue on Intersex and Transgender Rights in South Africa,” 4 to 5 Nov, Press Release 03.11.2021, <https://www.gov.za/speeches/historic-policy-dialogue-intersex-and-transgender-rights-south-africa-3-nov-2021-0000>
- 108 Irantí Annual Report 2022, p. 19-21 (p. 18-20 in PDF), <https://www.iranti.org.za/wp-content/uploads/2022/08/Iranti-Annual-Report2022-V2-2-1.pdf>
- 109 Mamba Writer (2021), “SA and EU to address intersex and transgender rights in South Africa,” MambaOnline 03.11.2021, <https://www.mambaonline.com/2021/11/03/sa-and-eu-to-address-intersex-and-transgender-rights-in-south-africa/>
- 110 Roberto Igual (2021), “SA govt commits to action on transgender and intersex rights,” MambaOnline 05.11.2021, <https://www.mambaonline.com/2021/11/05/sa-govt-commits-to-action-on-transgender-and-intersex-rights/>
- 111 Centre for Human Rights Faculty of Law, University of Pretoria (2017), “Fact sheet on intersex persons,” p. 1, [https://www.chr.up.ac.za/images/researchunits/sogje/documents/Inter-Sex/Inter\\_Sex\\_Fact\\_Sheet.pdf](https://www.chr.up.ac.za/images/researchunits/sogje/documents/Inter-Sex/Inter_Sex_Fact_Sheet.pdf)
- 112 Centre for Human Rights Faculty of Law, University of Pretoria (2017), “Invitation: Presentation of a proposed Draft Model Law on Intersex Persons Rights in Africa,” on occasion of the NGO Forum preceding the 60th Ordinary Session of the African Commission on Human and Peoples’ Rights, [https://www.up.ac.za/faculty-of-law/news/post\\_2470850--invitation-presentation-of-a-proposed-draft-model-law-on-intersex-persons-rights-in-africa-fact-sheet-on-intersex-persons](https://www.up.ac.za/faculty-of-law/news/post_2470850--invitation-presentation-of-a-proposed-draft-model-law-on-intersex-persons-rights-in-africa-fact-sheet-on-intersex-persons)
- 113 Carl Collison (2018), “Intersex babies killed at birth because they are bad omens,” Mail&Guardian, 24.01.2018, <https://mg.co.za/article/2018-01-24-00-intersex-babies-killed-at-birth-because-theyre-bad-omens>
- 114 Intersex South Africa (ISSA), Irantí (2018), “National Intersex Meeting Report” (National Dialogue on the Protection and Promotion of the Human Rights of Intersex People, 11.12.2017), <https://www.justice.gov.za/vg/lgbti/2018-NationalIntersexMeetingReport.pdf>
- 115 Bernadette Maguire (2019), “Intersex no-person’s land, Health-e News,” 22.05.2019, <https://health-e.org.za/2019/05/22/intersex-no-persons-land/>
- 116 Nickita Maesela (2019), “When bodily variations can get you killed or maimed new laws are needed,” City Press 22.11.2019, <https://www.news24.com/citypress/Trending/Reviews/when-bodily-variations-can-get-you-killed-or-maimed-new-laws-are-needed-20191122>
- 117 Aisha Salaudeen (2019), “Growing up intersex in a country where it is believed to be bad luck,” CNN, INSIDE AFRICA, 22 September 2019, <https://edition.cnn.com/2019/09/21/health/intersex-south-africa-intl/index.html>

However, **South African paediatric surgeons** continue to **fail to adequately consider any human rights concerns**. Also, **infanticide** and **abandonment** of intersex children continues.

And the **South African government** to this day **fails to take effective legislative measures** to protect intersex children from inhuman treatment, in particular to **explicitly prohibit** by law and **adequately sanction or criminalise** IGM, as well as non-medical harmful practices, including infanticide and abandonment, in order to ensure **equal access to justice**, including by **addressing legal and practical barriers** to initiating legal proceedings, such as **the limitation period** (CCPR arts. 2 and 7; General Comment No. 20, paras. 2, 5, 7, 8, 13-15).

**Again, this situation is clearly not in line with South Africa's obligations under the Covenant.**



## **D. Suggested Questions for the LOIPR**

*The Rapporteurs respectfully suggest that in the LOIPR the Committee asks the South African Government the following questions with respect to the treatment of intersex children:*

### **Intersex genital mutilation (arts. 2, 3, 7, 9, 17, 24 and 26)**

- **Please provide data on surgical and other procedures on intersex minors and on infanticide and abandonment of intersex children.**
- **Please indicate the measures taken to prevent non-urgent, irreversible surgery and other medical procedures on intersex minors, and to prevent infanticide and abandonment of intersex children.**
- **Please indicate which criminal or civil remedies are available for intersex people who have undergone involuntary 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 procedure.**
- **Please indicate which means of psychosocial support, including peer support, are available for intersex children and their families.**

## Annexe – IGM Practices in South Africa as a Violation of CCPR

### 1. The Treatment of Intersex Children in South Africa as Inhuman Treatment

This Committee has repeatedly recognised IGM practices as a **serious violation of Covenant**,<sup>118</sup> and **arts. 2, 3, 7, 9, 17, 24, 26** as applicable.

#### Art. 2: Non-Discrimination, Legal Implementation, Remedies and Reparations

**On the basis of being born with intersex traits**, intersex children are singled out for experimental harmful treatments, including surgical “genital corrections” and potentially sterilising procedures, that would be **“considered inhumane” on “normal” children**,<sup>119</sup> e.g. “normal” boys and girls, while on intersex children, according to a specialised surgeon, **“any cutting, no matter how incompetently executed, is a kindness.”**<sup>120</sup> While similar inhuman treatment of other children is **criminalised** in the South African Penal Law and perpetrators are persecuted, **intersex children have no such legal protections and no access to justice, redress, rehabilitation and reparation.** Clearly, IGM practices therefore violate Article 2, also in conjunction with General Comment No. 20, in particular para 14.

#### Art. 3: Equal Right of Men and Women

**On the basis of their “indeterminate sex,”** intersex children are singled out for inhuman treatment, namely IGM practices. Generally, medical justifications for IGM are often rooted in **gender-based stereotypes**. Further, while **Female Genital Mutilation (FGM) is criminalised** in the South African Penal Law, IGM practices remain legally permitted. Clearly, IGM practices therefore also violate Article 3.

#### Art. 7: Cruel, Inhuman or Degrading Treatment, and Involuntary Medical or Scientific Experimentation

Like this Committee, the **Committee against Torture**<sup>121</sup> has repeatedly **considered IGM to constitute inhuman treatment** falling under the non-derogable prohibition of torture (same as FGM and gender-based violence). Intersex advocates consider harmful practices and inhuman treatment as the **most important human rights frameworks** to effectively combat IGM.<sup>122</sup>

Concerning **involuntary medical or scientific experimentation**, as generally there is **no evidence** of any benefit for the children submitted IGM practices, any such treatments are **experimental**. While due to the general avoidance of follow-up by doctors, IGM practices are mostly done as **uncontrolled field experiments** and so in many cases may not be considered as involuntary medical or scientific experimentation in a more strict definition.

---

118 See CCPR/C/CHE/CO/4, paras 24-25; CCPR/C/AUS/CO/6, paras 25-26; CCPR/C/BEL/CO/6, paras 21-22; CCPR/C/MEX/CO/6, paras 12-13; CCPR/C/PRT/CO/5, paras 16-17; CCPR/C/FIN/CO/7, paras 20+21(c); CCPR/C/KEN/CO/4, paras 12(e)+13(e); CCPR/C/DEU/CO/7, paras 20+21; CCPR/C/LUX/CO/4, paras 11+12; CCPR/C/IRL/CO/5, paras 19+20(b); CCPR/C/CHL/CO/7, paras 23+24

119 Alice Domurat Dreger (2006), *Intersex and Human Rights: The Long View*, in: Sharon Sytsma (ed.) (2006), *Ethics and Intersex*: 73-86, at 75

120 Cheryl Chase (1998), *Surgical Progress Is Not the Answer to Intersexuality*, in: Alice Dreger (ed.) (1999), *Intersex in the Age of Ethics*: 148-159, at 150

121 See CAT/C/DEU/CO/5, para 20; CAT/C/CHE/CO/7, para 20; CAT/C/AUT/CO/6, paras 44-45; CAT/C/CHN-HKG/CO/4-5, paras 28-29; CAT/C/DNK/CO/6-7, paras 42-43; CAT/C/FRA/CO/7, paras 34-35; CAT/C/NLD/CO/7, paras 52-53; CAT/C/GBR/CO/6, paras 64-65; CAT/C/LUX/CO/8, paras 35+36; CAT/C/NZL/CO/7, paras 53-54; CAT/C/CHE/CO/8, paras 37-38; CAT/C/DNK/CO/8, paras 32+33; CAT/C/AUT/CO/7, paras 42+43; CAT/C/FIN/CO/8, paras 44+45(b)-(d)

122 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: [https://stopigm.org/public/S3\\_Zwischengeschlecht\\_UN-Expert-Meeting-2015\\_web.pdf](https://stopigm.org/public/S3_Zwischengeschlecht_UN-Expert-Meeting-2015_web.pdf)

However, internationally there are **many examples proving also a strict definition to apply.**<sup>123</sup> For decades, intersex children have been regularly described and exploited by scientists as an *“experiment of nature”*.<sup>124 125 126</sup> Often **twins, siblings, mothers or other family members or relatives** of intersex children are used as controls.<sup>127 128</sup> Generally, intersex children, while being submitted to IGM practices or thereafter, are often used as **subjects in scientific research**, particularly in the field of genetics, also in **South Africa** and internationally with the contribution of **South African IGM doctors.**<sup>129 130</sup>

Thus, intersex children surely also fall under *“persons not capable of giving valid consent”* deserving *“special protection in regard to such experiments”* according to **General comment No. 20** (para 7), and involuntary experimental intersex treatments in **South Africa** surely also constitute **involuntary medical or scientific experimentation in breach of article 7.**

What’s more, regarding **legislative and other measures**, **General comment No. 20** explicitly obliges State parties to

- *“afford everyone **protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.**”* (para 2)
- *“inform the Committee of the **legislative, administrative, judicial and other measures they take to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction.**”* (para 8)
- *“indicate how their legal system effectively guarantees the **immediate termination of all the acts prohibited by article 7 as well as appropriate redress. The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the***

- 
- 123 See e.g. Case Study No. 1 in 2015 CAT Austria NGO Report (p. 13-15), explaining how **of two intersex cousins, one was castrated at age 5 or 6 and the other only at age 10 “to document the difference”**, <https://intersex.shadowreport.org/public/2015-CAT-Austria-VIMOE-Zwischengeschlecht-Intersex-IGM.pdf>
- 124 See e.g. Kang H-J, Imperato-McGinley J, Zhu Y-S, Rosenwaks Z. 5alpha-reductase-2 Deficiency’s Effect on Human Fertility. *Fertility and sterility*. 2014;101(2):310-316, at p. 5, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4031759/pdf/nihms578345.pdf>
- 125 Clarnette, T.D; Sugita, Y.; Hutson, J.M.: Genital anomalies in human and animal models reveal the mechanisms and hormones governing testicular descent, *British Journal of Urology* (1997), 79, 99–112, at 99, <http://onlinelibrary.wiley.com/doi/10.1046/j.1464-410X.1997.25622.x/pdf>
- 126 U. Kuhnle; W. Kral; Geschlechtsentwicklung zwischen Genen und Hormonen. Worin liegt der Unterschied zwischen Mädchen und Jungen, Männern und Frauen?, *Monatsschr Kinderheilkd* 2003 · 151:586–593, at 591, see also: Lang C.; Kuhnle U.: Intersexuality and Alternative Gender Categories in Non-Western Cultures, *Horm Res* 2008;69:240–250
- 127 See e.g. Dittmann, R. W., Kappes, M. H., Kappes, M. E., Borger, D., Stegner, H., Willig, R. H., Wallis, H. (1990). “Congenital adrenal hyperplasia. I: Gender-related behavior and attitudes in female patients and sisters.” *Psychoneuroendocrinology* 15(5-6): 401-420, see also: Ralf W. Dittmann, “Pränatal wirksame Hormone und Verhaltensmerkmale von Patientinnen mit den beiden klassischen Varianten des 21-Hydroxylase-Defektes. Ein Beitrag zur Psychoendokrinologie des Adrenogenitalen Syndroms”, *European University Studies*, Bern: 1989
- 128 For an example of studies on intersex twins by German gynaecologist Ernst Philipp in collaboration with Swiss endocrinologist Andrea Prader, see Marion Hulverscheidt (2016), *Begriffsdefinitionen “Intersexualität” VII: Eine einheitliche Betrachtung des Zwittertums – der Kieler Gynäkologe Ernst*, <http://intersex.hypotheses.org/3976>
- 129 Patrick Opoku Manu Maison (2017), “Genetic Basis of Human Disorders of Gonadal Development,” dissertation for Master of Science in Urology, Faculty of Health Sciences, University of Cape Town, p. 11-12, [https://open.uct.ac.za/bitstream/handle/11427/28015/thesis\\_hsf\\_2018\\_maison\\_patrick\\_opoku\\_manu%20%28%29.pdf](https://open.uct.ac.za/bitstream/handle/11427/28015/thesis_hsf_2018_maison_patrick_opoku_manu%20%28%29.pdf)
- 130 Yasmeen Ganie, Colleen Aldous, Yusentha Balakrishna, Rinus Wiersma (2017) “The Spectrum of Ovotesticular Disorders of Sex Development in South Africa: A Single-Centre Experience,” *Horm Res Paediatr*. 2017;87(5):307-314, p. 3, 6, <https://pubmed.ncbi.nlm.nih.gov/28376506/>

*domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective. The reports of States parties should provide specific information on the remedies available to victims of maltreatment and the procedure that complainants must follow, and statistics on the number of complaints and how they have been dealt with.*” (para 14)

- *“guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.”* (para 15)

In Concluding Observations, this Committee further stipulated the need for legislative measures to ensure that violations of article 7 are **not subject to a statute of limitations**.<sup>131</sup>

### **Art. 9: Liberty and Security of the Person**

As IGM practices cause known, severe physical and mental **pain and suffering** and are often practices with impunity in **public institutions**, including under **direct tutelage of the State** in case of intersex orphans under guardianship of Social services, where they are often submitted to IGM before they're given up for adoption, this surely also violates article 9.

### **Art. 17: Arbitrary or Unlawful Interference with Privacy**

While intersex children are regularly **lied to about diagnosis and treatment**, and often even the fact that have an intersex condition is **concealed** from them, on the other hand **doctors regularly share and publish private details** about them in medical publications and text books. Often intersex persons and their parents are also **blackmailed by threatening to expose their intersex status**, if they don't do this or comply with that, notably but not limited to sports. This clearly violates article 17.

### **Art. 24: Child Protection**

As IGM practices are **mostly performed on very young children**, they surely constitute a violation of the right to protection of the intersex children concerned, and therefore of article 24.

### **Art. 26: Equal Protection of the Law**

Intersex children have the **same rights to effective protections** from IGM as for example girls against Female Genital Mutilation (FGM). However, while **FGM is criminalised** in the South African Penal Law, **IGM practices remain legally permitted**. This is clearly not in line with article 26.

## **2. 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**, 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 South Africa, there are no official statistics on intersex births and on IGM practices available.**

---

131 CCPR/C/LBN/CO/3, paras 27-28, 29(d)