

**Application no. 42821/18, M v. France:
Written comments by StopIGM.org**

11 March 2021

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A. Introduction

1. StopIGM.org / Zwischengeschlecht.org, founded in 2007, is an international intersex human rights NGO based in Switzerland working to end intersex genital mutilation (IGM) and other human rights violations perpetrated on intersex people, according to its motto, “Human Rights for Hermaphrodites, too!” According to its charter,¹ StopIGM.org works to support persons concerned seeking redress and justice, and regularly reports to UN Treaty bodies, often in collaboration with local intersex advocates and organisations, achieving the majority of the currently 50 UN Concluding Observations considering IGM practices as a serious violation of non-derogable human rights, namely inhuman treatment and harmful practices.²

2. These written comments were compiled by founding-members Markus Bauer and Daniela Truffer. Unless quoted from an official translation, translations from French are our own. Emphasis in quotes is ours.

3. The aim of these written comments is to provide a wider human rights background and context to the case at hand, namely from the proceedings of UN Treaty bodies that have extensively considered IGM practices, including in Concluding Observations to France, and the responses of the French Government.

B. UN Treaty Bodies considering intersex and intersex genital mutilation (IGM)

1. Intersex and IGM: Frame of reference as reported to UN Treaty Bodies

4. **Intersex persons**, in the vernacular also known as hermaphrodites, or medically as persons with “*Disorders of Sex Development (DSD)*”, 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**.³

5. **Intersex Genital Mutilation** includes non-consensual, medically unnecessary, irreversible, cosmetic genital surgeries, and/or other similar medical treatments, including imposition of hormones, performed on children with variations of reproductive anatomy, without evidence of benefit for the children concerned, but justified by “*psychosocial indications [...] shaped by the clinician’s own values*”, the latter informed by societal and cultural norms and beliefs, enabling clinicians to withhold crucial information from both patients and parents, and to submit healthy intersex children to risky and harmful invasive procedures “*simply because their bodies did not fit social norms*”.⁴

6. **Typical forms of 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.⁵

1 <https://zwischeneschlecht.org/post/Statuten>

2 For a regularly updated list of relevant Concluding Observations, see

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

3 For more information and references, see 2016 CEDAW France NGO Report (INT/CEDAW/NGO/FRA/24296),

p. 39-44, <https://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

4 For references, see *ibid.*, p. 45-46

5 For more information and references, see *ibid.*, p. 46-50

See also 2014 CRC Switzerland NGO Report (INT/CRC/NGO/CHE/18022), p. 70-76,

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

7. Typically, **IGM is performed at a very young age**, with doctors advocating unnecessary surgery in the first two years of life. Consent is obtained from legal guardians via **substitute decision-making**, usually from parents finding themselves in a **very vulnerable situation**, many of them in a **state of shock** after the unexpected birth of an atypical child, completely uninformed due to the persisting **societal taboo** of intersex as a natural variation, often overwhelmed by feelings of **guilt** and **shame**, under **undue pressure from doctors** to “sign quickly” because “it’s the best for your child” and the “only chance to lead a normal life”.⁶

8. IGM is known to cause **lifelong severe physical and mental pain and suffering**, sometimes **leading to disability**, 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.⁷

9. In “**developed countries**” with universal access to paediatric health care **1 to 2 in 1000 newborns** are at risk of being submitted to **IGM practices**, often **directly financed by the state** via the public health system.⁸

10. From **countries without universal access to paediatric health care**, there are reports of non-medical IGM practices, namely **infanticide** of intersex children, of **abandonment**, of **expulsion**, of **massive bullying** preventing the persons concerned from attending school (recognised by CRC as amounting to a harmful practice), and of **murder**.⁹

11. Doctors and medical bodies, in complicity with healthcare providers and governing State bodies, have traditionally been **framing and “treating” intersex variations as a form of disability in the medical definition** in need to be “cured” or “corrected” surgically, often with **racist, eugenic and supremacist undertones**.^{10 11 12 13}

12. French Encyclopaedists and paediatric surgeons were instrumental in transforming the traditional harmful stereotype of hermaphrodites as **inferior “races”** located in warmer climates, specifically Africa and Asia, into the **persisting “scientific notion”** of intersex people as a subhuman and less evolved species that **only after surgical “correction” may be regarded as**

⁶ For French examples, see 2016 CEDAW France NGO Report (INT/CEDAW/NGO/FRA/24296), p. 14-19, 20-23, 57-63 See also 2020 CRC France NGO Report (INT/CRC/NGO/FRA/44537), p. 11-13,

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

⁷ See 2016 CEDAW France NGO Report (INT/CEDAW/NGO/FRA/24296), p. 38-47

⁸ For more information and references, see *ibid.*, p. 50-51

⁹ For references, see 2019 CRPD Switzerland NGO Report (INT/CRPD/ICO/CHE/35657), p. 15-16,

<https://intersex.shadowreport.org/public/2019-CRPD-LOI-Swiss-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

¹⁰ For more information and references, see 2014 CRC Switzerland NGO Report (INT/CRC/NGO/CHE/18022), p. 51-53, 69, 84

¹¹ The Nazi standard textbook on “*racial hygiene*” discusses intersex diagnoses including “*hypospadias*”, “*pseudohermaphroditism*”, “*intersexuality*” and “*cryptorchism*” as “*pathological hereditary dispositions*”, “*abnormal mutations*” and “*result of racial mixing*”, see Erwin Baur, Eugen Fischer, Fritz Lenz (1936), “*Menschliche Erblehre und Rassenhygiene*”, Band 1 “*Menschliche Erblehre*”, “*Dritter Abschnitt: Die krankhaften Erbanlagen*”, 4. Auflage, München 1936, p. 402-404, <https://archive.org/details/BaurErwin-Menschliche-Auslese-und-Rassenhygiene-Band01/mode/1up>

¹² Helga Satzinger (2009), *Racial Purity, Stable Genes, and Sex Difference. Gender in the Making of Genetic Concepts* by Richard Goldschmidt and Fritz Lenz, 1916-1936. In: Susanne Heim, Carola Sachse, Mark Walker, *The Kaiser Wilhelm Society for the Advancement of Science under National Socialism*, Cambridge University Press, p. 145-172, at 161-162, <https://www.genderopen.de/handle/25595/247>

¹³ In the WHO “*World Atlas of Birth Defects (2nd Edition)*”, many intersex diagnoses are listed, including “*indeterminate sex*” and “*hypospadias*”, https://apps.who.int/iris/bitstream/handle/10665/42630/9241580291_eng.pdf

fully human and entitled to human rights.^{14 15} Paediatric surgeons and endocrinologists themselves linked western **clitoris amputations on intersex patients** to the African practice of **female genital mutilation (FGM)**, justifying the former by the alleged “proven harmlessness” of the latter.¹⁶

13. Also a **contemporary French paediatric surgeon** openly describes intersex children as “defective” and in need of surgery for psychosocial reasons, “*Such a child is not born with just a variation of the normal, it is born with a part of its body that did not work. So, it is not... we must not discriminate it... same as if it had a serious abnormality... no. It is simply necessary to recognise that it was born with chromosomes that didn’t work, with hormones that didn’t work, and if there are medical means to help such children with hormones, it must be done; if there are surgical means to help this child to adapt to society, to current social life, we must not hesitate either.*”¹⁷

14. And a **contemporary French paediatric psychiatrist** from a “Reference Centre for Rare Diseases of Sex Development” advocates early surgery for the benefit of the parents so that they can better accept their “abnormal” intersex child, “*surgery has a real restorative function, a normalisation that can boost parental investment*”.¹⁸

15. To this day, such harmful stereotypes and prejudices framing intersex as “*inferior*”, “*deformed*”, “*disordered*”, “*degenerated*” or a “*bad omen*” remain widespread and still inform the current harmful western medical practice, as well as other practices including infanticide and child abandonment.

2. UN Treaty Bodies recognising IGM as a serious violation of non-derogable human rights

16. UN Convention on the Rights of the Child (CRC): The Committee on the Rights of the Child has recognised “intersex genital mutilation” (CRC/C/ZAF/CO/2) and “*medically unnecessary surgeries and other procedures on intersex children before they are able to provide their informed consent*” (CRC/C/GBR/CO/5) to constitute a “**harmful practice**” (**CRC art. 24(3)**) in conjunction with the CRC-CEDAW Joint General Comment/Recommendation No. 18/31 “*on harmful practices*”) in currently **17 Concluding Observations**,¹⁹ sometimes additionally invoking target 5.3 of the Sustainable Development Goals (SDGs) (CRC/C/MLT/CO/3-6). CRC typically recommends State parties to “[e]nact legislation explicitly prohibiting” IGM practices (CRC/C/AUS/CO/5-6), to “*adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation*” (CRC/C/IRL/CO/3-4), “*including by lifting the statute of limitations*” (CRC/C/BEL/CO/5-6), to “*provide families with intersex children with adequate counselling and*

¹⁴ For more information and sources, see 2016 CEDAW France NGO Report (INT/CEDAW/NGO/FRA/24296), p. 7, 66

¹⁵ Ellen Feder, Alice Dreger (2016), “Still ignoring human rights in intersex care”, Journal of Pediatric Urology, Vol 12, No 6, p. 436-437, https://interactadvocates.org/wp-content/uploads/2016/01/Feder-JPU-Response-July-2016-Still_Ignoring_Human_Rights_in_Intersex.pdf

¹⁶ For more information and references, see 2014 CRC Switzerland NGO Report (INT/CRC/NGO/CHE/18022), p. 57-58

¹⁷ Alaa El-Ghoneimi, Hôpital Universitaire Robert-Debré, Paris (2018), interview in segment “Intersexualité : première plainte pour mutilation”, Le magazine de la Santé, TV France 5, 11.05.2018, see <https://sexandlaw.hypotheses.org/388>

¹⁸ François Medjkane, Reference Centre for Rare Diseases of Sex Development CHU Lille, at the Symposium “Dialogue sur les Prises en Charge du Développement Sexuel Atypique : une Table Ronde France-Suisse” at EHESS Paris, 11.07.2016, see Compte-rendu de la journée (2016-07-18 – version longue), p. 11

¹⁹ CRC/C/CHE/CO/2-4, para. 42-43; CRC/C/CHL/CO/4-5, para. 48-49; CRC/C/FRA/CO/5, para. 47-48; CRC/C/IRL/CO/3-4, para. 39-40; CRC/C/NPL/CO/3-5, para. 41-42; CRC/C/GBR/CO/5, para. 46-47; CRC/C/NZL/CO/5, para. 25+15; CRC/C/ZAF/CO/2, para. 39-40+23-24; CRC/C/DNK/CO/5, para. 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, para. 25(b)+26(e); CRC/C/MLT/CO/3-6, para. 28-29; CRC/C/AUS/CO/5-6, para. 25(b)+26(e); CRC/C/PRT/CO/5-6, para. 28(b); CRC/C/AUT/CO/5-6, para. 27(a)-(b)

support” (CRC/C/CHE/CO/2-4), to “[e]ducate and train medical and psychological professionals [...] on the consequences of unnecessary surgical and other medical interventions for intersex children” (CRC/C/DNK/CO/5), and to systematically collect disaggregated data on IGM practices (CRC/C/FRA/CO/5). Further, CRC recognised “high levels of stigma and discrimination” preventing intersex children from attending school and lack of access to adequate identity documents to constitute a harmful practice (CRC/C/NPL/CO/3-5). While CRC in itself does not contain non-derogable articles, CAT and CCPR have recognised harmful practices including IGM to constitute a violation of non-derogable human rights (see below), and CRC has also referred to IGM constituting “cruel, inhuman and degrading treatment” in CRC/C/AUT/CO/5-6. More recently CRC has again asked about “measures taken to [...] provide [...] access to effective remedies for victims subjected to such treatment during childhood, including the statute of limitations” (CRC/C/SWE/QPR/6-7).

17. UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW): The Committee on the Elimination of Discrimination against Women has recognised “intersex genital mutilation” (CEDAW/C/CHE/CO/4-5) and “unnecessary medical procedures on intersex infants and children until they reach an age when they are able to give their free, prior and informed consent” (CEDAW/C/CHL/CO/7) to constitute a “**harmful practice**” (CEDAW art. 5 in conjunction with the CEDAW-CRC Joint General Recommendation/Comment No. 31/18 “on harmful practices”) in currently **12 Concluding Observations**,²⁰ sometimes additionally invoking target 5.3 of the Sustainable Development Goals (SDGs) (CEDAW/C/NPL/CO/6). CEDAW typically recommends State parties to “[a]dopt clear legislative provisions explicitly prohibiting” IGM practices (CEDAW/C/DEU/CO/7-8), to “[a]dopt legal provisions to provide redress to intersex persons who are victims of surgical or other medical interventions performed without their free, prior and informed consent or that of their parents” (CEDAW/C/LUX/CO/6-7), to “provide families of intersex children with adequate counselling and support” (CEDAW/C/MEX/CO/9), and to “[e]ducate and train medical professionals on the harmful impact of unnecessary surgical or other medical interventions for intersex children” (CEDAW/C/CHE/CO/4-5). Further, CEDAW recognised “infanticide” and “forced marriage” of intersex children to constitute a harmful practice (CEDAW/C/NPL/CO/6). While CEDAW in itself does not contain non-derogable articles, CAT and CCPR have recognised harmful practices including IGM to constitute a violation of non-derogable human rights (see below).

18. UN Convention against Torture (CAT): The Committee against Torture has recognised “unnecessary and non-urgent surgery and other medical treatment” on intersex children (CAT/C/AUT/CO/6) to constitute “**cruel, inhuman or degrading treatment**” (CAT art. 16), further invoking **arts. 2 (non-derogability), 12 (impartial investigation), and 14 (redress)** in currently **8 Concluding Observations**.²¹ CAT typically recommends State parties to “[t]ake the necessary legislative, administrative and other measures to guarantee the respect for the physical integrity and autonomy of intersex persons and ensure that no one is subjected during infancy or childhood to unnecessary medical or surgical procedures” (CAT/C/DNK/CO/6-7), to “[u]ndertake investigation of reports of surgical and other medical treatment of intersex people without effective

²⁰ CEDAW/C/FRA/CO/7-8, para. 18e-f+19e-f; CEDAW/C/CHE/CO/4-5, para. 24-25, 38-39; CEDAW/C/NLD/CO/6, para. 21-22, 23-24; CEDAW/C/DEU/CO/7-8, para. 23-24; CEDAW/C/IRL/CO/6-7, para. 24-25; CEDAW/C/CHL/CO/7, para. 22-23, 12(d)-13(d), 14(d)-15(d); CEDAW/C/LUX/CO/6-7, para. 27b-c+28b-c; CEDAW/C/MEX/CO/9, para. 21-22; CEDAW/C/NZL/CO/8, para. 23(c)-24(c); CEDAW/C/AUS/CO/8, para. 25(c)-26(c); CEDAW/C/LIE/CO/5, para. 35+36(c); CEDAW/C/NPL/CO/6, para. 18(c),(d)-19(a),(d),(e)

²¹ CAT/C/DEU/CO/5, para. 20; CAT/C/CHE/CO/7, para. 20; CAT/C/AUT/CO/6, para. 44-45; CAT/C/CHN-HKG/CO/4-5, para. 28-29; CAT/C/DNK/CO/6-7, para. 42-43; CAT/C/FRA/CO/7, para. 34-35; CAT/C/NLD/CO/7, para. 52-53; CAT/C/GBR/CO/6, para. 64-65

consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation” (CAT/C/CHE/CO/7) and to “punish perpetrators” (CAT/C/NLD/CO/7), and to “[e]nsure that the persons concerned and their parents or close relatives receive impartial counselling services and psychological and social support free of charge” (CAT/C/FRA/CO/7). According to CAT art. 2, the entire Convention is non-derogable, with General Comment No. 2 explicitly confirming that also inhuman treatment and protection from gender-based violence and genital mutilation constitute non-derogable protections, and General Comment No. 3 confirming the same for the right to redress in cases of inhuman treatment.

19. UN Convention on the Rights of Persons with Disabilities (CRPD): The Committee on the Rights of Persons with Disabilities has recognised “unnecessary, invasive and irreversible medical interventions, including surgical, hormonal or other medical procedures on intersex children before they reach the legal age of consent” (CRPD/C/AUS/CO/2-3) to constitute a violation of **CRPD art. 17, “Protecting the integrity of the person”** in currently **8 Concluding Observations**.²² CRPD typically recommends State parties to “prohibit and criminalize” IGM practices (CRPD/C/MAR/CO/1), to “provide families with intersex children with adequate counselling and support” (CRPD/C/ITA/CO/1), and, invoking **art. 16 “Freedom from exploitation, violence and abuse”** and target 16.3 of the Sustainable Development Goals (SDGs), to “[e]stablish measures to ensure equal access to justice” (CRPD/C/GBR/CO/1). Further, CRPD recognised infanticide (“mercy killings”) of intersex children to constitute a violation of **art. 10 “Right to life”** (CRPD/C/IND/CO/1), and lack of funding and representation of intersex persons (CRPD/C/GBR/CO/1). While CRPD in itself does not contain non-derogable articles, the Committee has repeatedly recognised IGM practices to constitute “cruel, inhuman or degrading treatment” e.g. in General Comment No. 3, para. 33 and in Concluding Observations (CAT/C/DEU/CO/5).

20. International Covenant on Civil and Political Rights (CCPR): The Human Rights Committee has recognised “irreversible medical treatment, especially surgery, of intersex infants and children, who are not yet able to provide fully informed and free consent, unless such procedures constitute an absolute medical necessity” (CCPR/C/AUS/CO/6) to constitute a violation of **CCPR art. 7, protection from “cruel, inhuman or degrading treatment” and “non-consensual medical or scientific experimentation”** in currently **5 Concluding Observations**,²³ further invoking **arts. 2 (non-discrimination, legal implementation, remedies and reparations), 3 (equal right of men and women), 9 (liberty and security of the person), 17 (privacy), 24 (child protection), and 26 (equal protection of the law)**. CCPR typically recommends State parties to “take all necessary measures” to prevent IGM practices, to “see to it that medical records are accessible”, “that inquiries are launched in cases where intersex persons are subjected to treatment or surgical procedures without their effective consent”, and to “ensure that psychological assistance and reparation, including compensation, are provided for victims of needless surgical procedures” (CCPR/C/CHE/CO/4). CCPR art. 4(2) states that art. 7 is non-derogable.

3. UN Recommendations to France

21. So far, UN Treaty Bodies CRC, CEDAW and CAT issued 3 relevant Concluding Observations on intersex to France. **CRC** and **CEDAW** recognised IGM as a harmful practice, referring to CRC

²² CRPD/C/DEU/CO/1, para. 37-38; CRPD/C/CHL/CO/1, para. 41-42; CRPD/C/URY/CO, para. 44; CRPD/C/ITA/CO/1, para. 45-46; CRPD/C/GBR/CO/1, para. 10(a)-11(a), 38-41; CRPD/C/MAR/CO/1, para. 36-37; CRPD/C/AUS/CO/2-3, para. 33(b)+34(b); CRPD/C/IND/CO/1, para. 21-22, 35(c)+36(c)

²³ CCPR/C/CHE/CO/4, para. 24-25; CCPR/C/AUS/CO/6, para. 25-26; CCPR/C/BEL/CO/6, para. 21-22; CCPR/C/MEX/CO/6, para. 12-13; CCPR/C/PRT/CO/5, para. 16-17

art. 24(3), CEDAW art. 5 and CRC-CEDAW Joint General Comment/Recommendation No. 18/31 “on harmful practices” (CRC/C/FRA/CO/5, para. 47-48; CEDAW/C/FRA/CO/7-8, para. 18(e)-(f)+19(e)-(f)). And CAT considered IGM as cruel, degrading and inhuman treatment, referring to arts. 2, 12, 14 and 16, and explicitly recommending France to “[a]rrange for the investigation of cases of surgical or other medical treatment reportedly carried out on intersex individuals without their informed consent **and take steps to provide redress, including adequate compensation, to all victims**” (CAT/C/FRA/CO/7, para. 34-35).

4. Minimum requirements for protecting intersex persons under international law

22. The relevant UN Conventions ratified by France and the non-derogable human rights (*ius cogens*) enshrined therein, in particular CAT arts. 2 and 16 in conjunction with General Comments No. 2 (CAT/C/GC/2, para. 3, 4, 8) and No. 3 (CAT/C/GC/3, para. 1), CCPR arts. 2, 7 and 26 in conjunction with General Comments No. 20 (HRI/GEN/1/Rev.9 (Vol. I), para. 2, 8, 14, 15) and No. 31 (CCPR/C/21/Rev.1/Add.13, para. 8, 16), and CRC art. 24(3) and CEDAW art. 5 in conjunction with CRC-CEDAW Joint General Comment/Recommendation No. 18/31 (CRC/C/GC/18/Rev.1 – CEDAW/C/GC/31/Rev.1, para. 2, 13, 31-36, 37-39, 40-55, especially para. 50, 55(d), 55(n), 55(o), 55(q)) and CRPD art. 17 in conjunction with General Comment No. 3 (CRPD/C/GC/3, para. 32), stipulate the following **minimum requirements for effective protection of intersex persons**:

- Prohibition under criminal law
- Effective and timely access to justice, redress, compensation, reparation and rehabilitation for victims
- Abolition of statutes of limitations (or appropriate extension or suspension)
- Combating impunity, prosecution and punishment of perpetrators
- Aggravating circumstance if medical professionals or government employees or civil servants are involved or complicit
- Monitoring and collection of disaggregated data on violations and prosecutions
- Protection against extraterritorial violations
- Adequate victim participation in the redress process
- Restoration of the dignity of the victim

C. Relevant PACE and European Parliament Resolutions

1. Promoting gender equality in mental health and clinical research (European Parliament Resolution 2016/2096(INI))

23. The **European Parliament Resolution 2016/2096(INI) of 14.02.2017**²⁴ explicitly “[c]alls on the Member States to prevent, ban and prosecute female genital mutilation and **genital mutilation affecting intersex persons**, and to provide mental health support, in conjunction with physical care, to victims and to those individuals likely to be targeted” (para. 61).

2. Promoting the human rights of and eliminating discrimination against intersex people (PACE Resolution 2191 (2017))

24. The **Parliamentary Assembly of the Council of Europe Resolution 2191 (2017) of 12.10.2017**²⁵ calls on Council of Europe member States to “7.1.1 **prohibit** medically unnecessary sex-“normalising” surgery, sterilisation and other treatments practised on intersex children without their informed consent” and “7.5.1 conduct an inquiry into the harm caused by past

²⁴ https://www.europarl.europa.eu/doceo/document/TA-8-2017-0028_EN.html

²⁵ <https://pace.coe.int/files/24232/pdf>

invasive and/or irreversible sex-“normalising” treatments practised on individuals without their consent and consider granting compensation, possibly through a specific fund, to individuals having suffered as a result of such treatment carried out on them”. Further, the **Report** to the Resolution documents that the **Maltese Law fails to effectively protect** intersex children from all forms of IGM.²⁶

3. The rights of intersex people (European Parliament Resolution 2018/2878(RSP))

25. The **European Parliament Resolution 2018/2878(RSP) of 14.02.2019**²⁷ notes, “D. [...] **intersex genital mutilation** can have lifelong consequences, such as psychological trauma and physical impairments”, and “2. **Strongly condemns sex-normalising treatments and surgery; welcomes laws that prohibit such surgery, [...] encourages [...] Member States to adopt [...] legislation as soon as possible**”. However, unlike the PACE report (see above), the Resolution **fails** to note the shortcomings of the **Maltese and Portuguese legislations** which both prohibit **only certain forms** of IGM practices and **fail** to meet the minimum human rights requirements as outlined above. As a consequence, in both States **IGM practices persist** with impunity.^{28 29} Accordingly, **Malta** has been issued Concluding Observations on IGM practices by **CRC** (CRC/C/MLT/CO/3-6, para. 28-29) and **Portugal** by **CRC** (CRC/C/PRT/CO/5-6, para. 28(b)) and **CCPR** (CCPR/C/PRT/CO/5, para. 16-17). Further, the Resolution **fails** to adequately reference the relevant UN Conventions and articles.³⁰

D. Responses by French Government and agencies

1. French agencies recognising intersex human rights

26. Since the CRC, CAT and CEDAW Concluding Observations to France, **several French Government agencies** have **recognised** the ongoing IGM practices on intersex children in France to constitute “*mutilations*”, “*harmful practices*” and “*inhuman and degrading treatment*”, and have **called for legislation** to explicitly prohibit IGM practices:

27. In December 2016, the French “**Interministerial delegation on combatting racism, anti-semitism and anti-LGBT hatred (DILCRAH)**”, referring to the CAT, CRC and CEDAW Concluding Observations, declared, “**Stopping the surgeries and mutilations of intersex children [...] Unless they are not imperative for medical reasons, these surgeries are mutilations and must stop.**”³¹

28. On 17 March 2017, the **outgoing President François Hollande** said in a public statement, “*I’m also thinking of the prohibition of surgical operations that intersex children are submitted to today, and which around the world are largely considered as mutilations.*”³²

29. A 2018 study by the **Council of State (Conseil d’État)** on a new **Draft Law on Bioethics** (see below), commissioned by the Prime Minister and approved by the General Assembly, notes, referring to the CAT and CRC Concluding Recommendations and the European Parliament

26 Piet de Bruyn (2017), Report: Promoting the human rights of and eliminating discrimination against intersex people, COE Doc. 14404, 25 September 2017, p. 14, para 47, <https://pace.coe.int/files/24027/pdf>

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

28 For Malta, see 2019 CRC Malta NGO Report (INT/CRC/NGO/MLT/34709), p. 7-12,

<https://intersex.shadowreport.org/public/2019-CRC-Malta-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

29 For Portugal, see 2020 CCPR Portugal NGO Report (INT/CCPR/CSS/PRT/41379), p. 7-14,

<https://intersex.shadowreport.org/public/2020-CCPR-Portugal-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

30 StopIGM.org (2018), Open Letter of Concern to LIBE re: incomplete or inadequate Human Rights References,

https://intersex.shadowreport.org/public/StopIGM-Concerns-EU-LIBE-2018-2878-RSP_web.pdf

31 DILCRAH (2016), Plan de mobilisation contre la haine et les discriminations anti-LGBT, p. 25,

https://www.gouvernement.fr/sites/default/files/contenu/piece-jointe/2017/01/plan_de_mobilisation_contre_la_haine_et_les_discriminations_anti_lgbt_dilcrah.pdf

32 See full video at 12:09, <https://www.dailymotion.com/video/x5f1wlj> See also Libération, 17.03.2017,

https://www.liberation.fr/sexe/2017/03/17/hollande-prone-l-interdiction-des-chirurgies-sur-les-enfants-intersexes_1556444/

Resolution 2016/2096(INI), “Some denounce the **mutilating nature of these practices** [276], which are likely to have irreversible and dramatic consequences both physically (urinary infections, neurological lesions, loss of sensitivity, pain, etc.) and psychologically, and which are often concealed from those who are subjected to them [277]” (p. 132). Regarding the right of the holders of parental authority to “consent” to such practices, the study concludes, “Ultimately, a medical procedure whose sole purpose is to conform the aesthetic appearance of the genitalia to representations of masculinity and femininity in order to promote the psychological and social development of the child **should not be carried out as long as the person concerned is not in a position to express his or her will and to participate in the decision-making process**” (p. 140).³³

30. In May 2018, the **National Consultative Commission on Human Rights CNCNDH** stated in its report “Taking action against abuse in the health system: a necessity to respect fundamental rights” (p. 17), “The CNCNDH also considers that certain treatments inflicted on intersex persons **are inhuman and degrading treatment**. Indeed, in their national [Androgen Insensitivity] guidelines dated 2018[52], the [Haute Autorité de Santé] HAS takes an ambiguous position on the practice of **sexual mutilation** surgeries on intersex newborns. These surgeries, performed to bring the appearance of their genitals into line with the sex in which the child will be raised, without medical necessity, have serious lifelong consequences for patients and numerous complications.[53] Such surgeries are carried out in disregard of the person’s consent, parents being forced to decide immediately, and without taking into account **international standards of child protection, respect for the child’s physical integrity, and the recommendations of the United Nations** (Committee on the Rights of the Child, Committee against Torture, Committee on the Elimination of Discrimination against Women, 2016) and the **Parliamentary Assembly of the Council of Europe** (resolution 2191, 2017[54]).”³⁴

2. French Government refusing to act

31. However, in spite of above strong statements, **nothing has changed in practice**. On the contrary, on several occasions French authorities have demonstrated their continued and active **refusal to comply** with the CRC, CAT and CEDAW Concluding Observations:

32. In 2018, the **Ministry of Health** refused to take measures to ensure that the hospitals under its supervision comply with the CRC, CAT and CEDAW Concluding Observations and the PACE Resolution 2191 (2017), and in 2019 this refusal was backed by the **Council of State (Conseil d’État)**, the Supreme Court for Administrative Justice.³⁵

33. In 2018, the “**Haute Autorité de Santé (HAS)**” refused to withdraw the new 2018 “*National Androgen Insensitivity Guidelines*”³⁶ advocating IGM practices, and in 2019 this refusal was backed by the **Council of State (Conseil d’État)**, the Supreme Court for Administrative Justice.³⁷

³³ Conseil d’État, section du rapport et des études (2018), “Révision de la loi de bioéthique : quelles options pour demain?”, Étude à la demande du Premier ministre. Étude adoptée en assemblée générale le 28 juin 2018, https://www.conseil-etat.fr/Media/actualites/documents/reprise- contenus/etudes/conseil-d-etat_sre_etude-pm-bioethique.pdf

³⁴ Commission nationale consultative des droits de l’homme (CNCNDH), “Agir contre les maltraitements dans le système de santé : une nécessité pour respecter les droits fondamentaux”, http://www.cncndh.fr/sites/default/files/180522_avis_maltraitements_systeme_de_sante.pdf

³⁵ Conseil d’État, 2 oct. 2018, Groupement d’information et de soutien sur les questions sexuelles et sexuelles c. Ministère de la santé, n° 420542, <https://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000039168436>
For a summary of the proceedings, see 2020 CRC France NGO Report (INT/CRC/NGO/FRA/44537), p. 15, <https://intersex.shadowreport.org/public/2020-CRC-France-LOIPR-NGO-Intersex-IGM.pdf>

³⁶ Haute Autorité de Santé (HAS) (2017), Protocole National de Diagnostic et de Soins (PNDS). Insensibilités aux androgènes. Centre de référence du développement génital: du fœtus à l’adulte, https://www.has-sante.fr/portail/upload/docs/application/pdf/2018-01/pnds_ais_version_finale.pdf

For more information on these guidelines, see 2020 CRC France NGO Report (INT/CRC/NGO/FRA/44537), p. 11-13

34. The 2019 “Opinion 132: Ethical Questions raised by the Situation of People with Differences of Sex Development” of the **National Consultative Ethics Committee for health and life sciences CCNE**³⁸ completely ignored the CRC, CAT and CEDAW Concluding Observations to France, despite briefly mentioning “*basic rights*” (p. 16) and art. 3.1 CRC (p. 19), and despite repeatedly having been alerted to the Concluding Observations, including by the Referral letter of the **Ministry of Health and Solidarity** in 2019 (see p. 35, fn 6-7) and in a 2016 letter and annexe by legal experts (acknowledged by CCNE, p. 8, fn 3). Accordingly, the Opinion claims IGM to be strictly a thing of the past (“*Some previous practices inflicted on people with differences of sex development resulted in sequelae that were irreversible both physically and psychologically,*” p. 16), and a “*medical practice*” (e.g. p. 5, 8), not a violation.

35. The French Parliament is currently discussing a new **Draft Law on Bioethics**.³⁹ **Article 21bis** of this Draft Law as passed on 2nd reading by the National Assembly and the Senate,⁴⁰ despite adding some caveats, ultimately further invalidates the current ineffective and unenforced legal provisions by **explicitly legalising early surgery** on intersex children, based on the medical opinion of the “*specialised multidisciplinary teams at the Reference Centres for Rare Diseases of Sex Development*” (i.e. the current IGM practitioners) and the “*consent*” of the “*holders of parental authority*”. In addition, Article 21bis **increases the pressure on parents** to quickly “*consent*” to non-urgent procedures: The time limit for reporting the sex of the child will be reduced to three months, whereas today the law offers a time limit of one or two years.⁴¹

36. In its 2020 State report to the Committee against torture (CAT/C/FRA/8), the **French Government** claims “*the legislative framework in force is sufficient to prohibit them [i.e. IGM practices]*” (para. 212) – despite that IGM continues and IGM survivors are denied access to justice and redress, including in the case at hand.

E. Conclusion: “Only the fear of the judge will make things change”

37. Faced by increasing calls for access to justice by IGM survivors and human rights bodies, **French paediatric surgeons** openly admit that they **rely on the support of the French authorities** to be able to continue practicing involuntary, non-urgent surgery on intersex children with **impunity**, for example at a **2016 Senate hearing**, further framing legitimate human rights criticism and calls for judicial oversight as “*aggressive*”, “*I’ll be honest: the medical profession needs help. From time to time, as is the case at the moment, we have to deal with strong and even aggressive language. I hope you have heard the message from the medical profession today.*”⁴²

38. As shown in the previous section, and demonstrated by the case at hand, the **French authorities are indeed willing to shield IGM practitioners** from legal consequences of their actions, same as Governments in other jurisdictions. Intersex advocates have therefore long predicted that the situation of IGM survivors and intersex children at risk will not change for the better until IGM doctors and other responsible parties **face consequences for their actions in court**. Or as Blaise

³⁷ Conseil d’État, 2 oct. 2018, Groupement d’information et de soutien sur les questions sexuées et sexuelles c. HAS, n° 422197, <https://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000039168438>

For a summary of the proceedings, see 2020 CRC France NGO Report (INT/CRC/NGO/FRA/44537), p. 15

³⁸ https://www.ccne-ethique.fr/sites/default/files/publications/avis_132_en_anglais.pdf

³⁹ https://www.assemblee-nationale.fr/dyn/15/dossiers/bioethique_2

⁴⁰ <https://www.assemblee-nationale.fr/15/rapports/r3891.asp>

⁴¹ For more information, see 2020 CRC France NGO Report (INT/CRC/NGO/FRA/44537), p. 17

⁴² Prof Pierre Mouriquand, Reference Centre for Rare Diseases of Sex Development CHU Lyon, in: Maryvonne Blondin, Corinne Bouchoux (2017), “Rapport d’Information fait au nom de la délégation aux droits des femmes et à l’égalité des chances entre les hommes et les femmes sur les variations du développement sexuel : lever un tabou, lutter contre la stigmatisation et les exclusions”, Sénat, Session Ordinaire de 2016-2017, p. 194, <https://www.senat.fr/rap/r16-441/r16-4411.pdf>

Meyrat, one of only a handful of paediatric surgeons worldwide who after following up on his previous patients stopped doing (most) non-urgent surgeries on intersex children put it, “‘**Things hardly evolve in the medical world.**’ According to Meyrat, this reluctance can be explained by ‘a fear of admitting that one has made a mistake.’ **‘In my opinion, only the fear of the judge will make things change,’** he continues. ‘We need statutes of limitation long enough so that victims can press charges as adults.’”⁴³

39. This prediction is also corroborated by **official statistics** of “clitoral surgery” on intersex children 0-9 years in Germany: After 2008, when for the first and to date last time an **IGM surgeon was sentenced** in the last instance to pay damages for a non-consensual procedure on an adult intersex person, **“clitoral surgery” decreased in the five-year-average.**⁴⁴

40. We expect paediatric surgeons and other clinicians involved in IGM practices **around the world** to follow this case closely. All the more depends on the decision of this court.

41. We therefore would like to urge the Court to uphold the human rights of IGM survivors and intersex children at risk. Thank you for your consideration.

Kind regards,

The image shows two handwritten signatures in black ink. The first signature on the left is 'D. Truffer' and the second signature on the right is 'Markus Bauer'. Both signatures are written in a cursive, flowing style.

Daniela Truffer, Markus Bauer (StopIGM.org / Zwischengeschlecht.org)

⁴³ Interview in: Caroline Zuercher (2015), “Les docteurs ne pouvaient pas dire si j'étais un garçon ou une fille”, Tribune de Genève, 03.08.2015, p. 5,

<https://web.archive.org/web/20151013122941/http://www.tdg.ch/suisse/docteurs-pouvaient-j-garcon-fille/story/16092478>

⁴⁴ See 2017 CEDAW Germany NGO Report (INT/CEDAW/NGO/DEU/26316), p. 9,

<https://intersex.shadowreport.org/public/2017-CEDAW-Germany-NGO-Zwischengeschlecht-Intersex-IGM.pdf>