

# Ending the Impunity of the Perpetrators!



Session 3 cc 2015 Daniela Truffer, Markus Bauer / [Zwischengeschlecht.org](http://Zwischengeschlecht.org)

[StopIGM.org](http://StopIGM.org)

1

**Daniela Truffer:** I think first and foremost we all have to realise that, in order to eliminate IGM practices, first we have to end the factual impunity of the perpetrators. We can talk all we want, as long as IGM doctors and their accomplices can just continue in the knowledge, that the earlier they cut the children, the safer they'll be from prosecution, nothing will ever change.



**2015:**  
**Blaise Meyrat (Lausanne),**  
one of only a handful of paediatric  
surgeons worldwide with a  
conscience, who refuses to do (most)  
unnecessary intersex surgeries:

**«Things hardly evolve in the medical sphere [...]»**

**«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 may sue as adults.»**

**Source: Tribune de Genève, 03.08.2015 p. 5**

And obviously, to end the factual impunity, first and foremost we'll have not only to ensure that IGM is made a criminal offence, but also that statutes of limitations are extended or delayed long enough to allow for adult survivors to be able to sue, just the same as with FGM or Childhood Sexual Abuse (CSA). In my experience, everything else would be naive.

# IGM Surgeons on the 2013 SRT Report:



Alaa El-Ghoneimi

**« unjust »**

Source: Le Figaro, 01.11.2013



Pierre Mouriquand + ESPU/SPU

**« inappropriate and  
biased statements »**

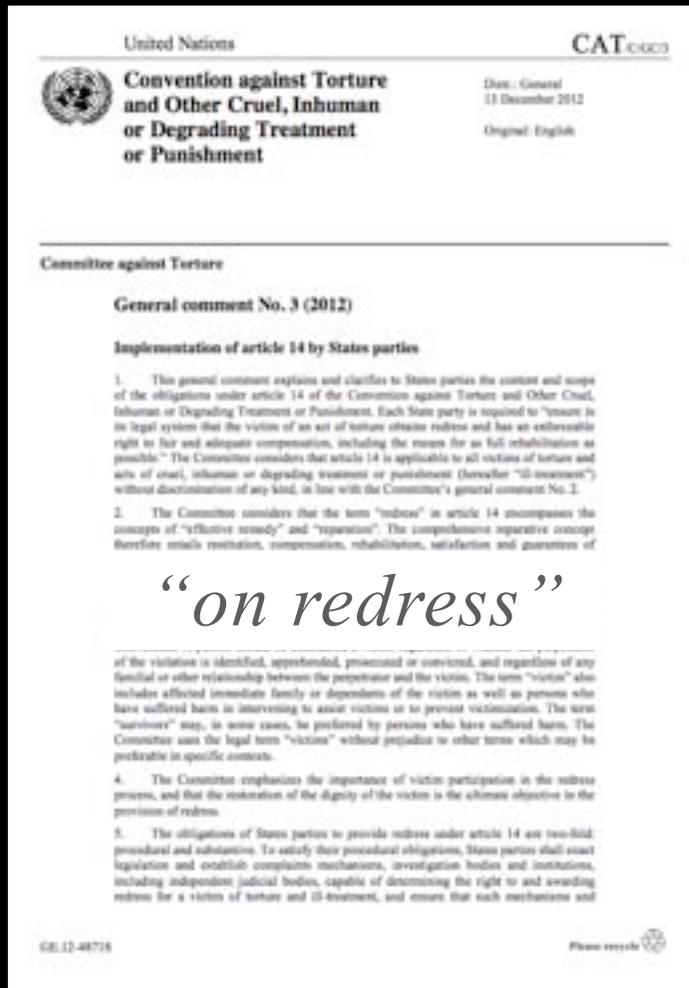
**« biased and  
counterproductive reports »**

ESPU/SPU standpoint on the surgical management of  
Disorders of Sex Development (DSD), 28.10.2013

For over 20 years now, persons concerned and their organisation have again and again tried to reason with the perpetrators, to no avail.

I've seen it time and time again in peer support groups, how doctors make empty promises, just to break them, and then again from the beginning. Unfortunately, many intersex groups still fall for this. Also mere statements by human rights experts inevitably fail to make doctors change, just look at how IGM surgeons just simply dismiss for example the 2013 report by the Special Rapporteur on Torture, "Torture and ill-treatment in health care settings".

# Preventing Ill-Treatment, Ensuring Access to Remedies:



CAT GC 3 2012

## Legislation

+ de facto access to timely

and effective redress

+ Review of Statutes of

Limitation

+ Victim Participation

+ Restoring Dignity

Fortunately, suitable human rights frameworks to address said problems are readily available, and have already been identified by various UN bodies as applicable:

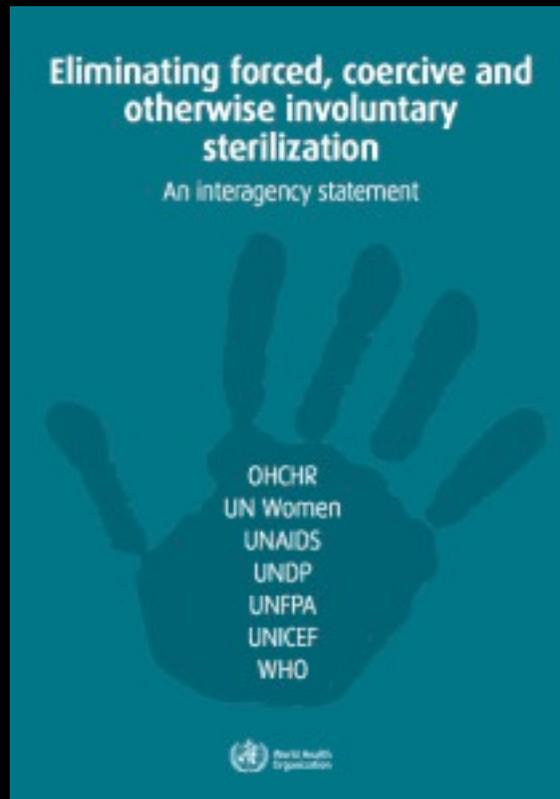
The Committee against Torture has recognised IGM as ill-treatment in its 2011 recommendations to Germany, as well as in its 2015 recommendations to Switzerland, and the CAT General Comment number 3 ensures access to effective remedies also for victims of ill-treatment.

# 2014: WHO Interagency Statement

**World Health Organisation (WHO),  
Office of the High Commissioner for Human Rights (OHCHR),  
UN Children's Fund (UNICEF), UN Women, UNAIDS,  
UN Development Program (UNDP), UN Population Fund (UNFPA)**

## **criticises**

**“forced, coercive, involuntary sterilization” and “cosmetic and other non-medically indicated surgeries performed on [the] reproductive organs” of “Children who are born with atypical sex characteristics”,**

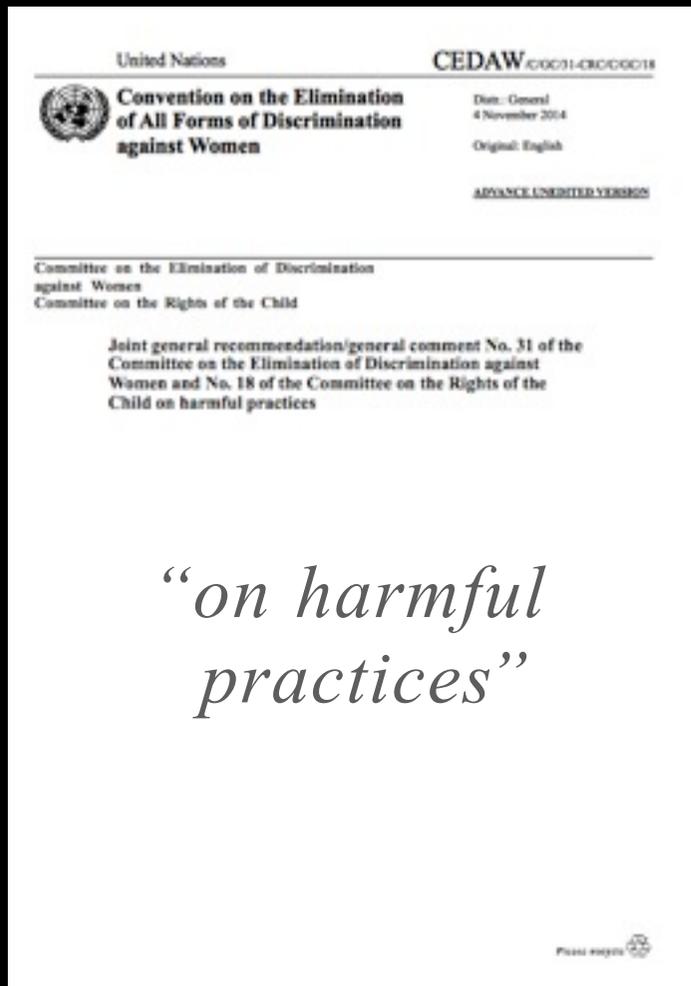


## **calls for**

- **Independent and impartial investigation of all incidents**
- **Recognize past or present policies, patterns or practices, issue statements of regret or apology to victims**
- **Collection of data and monitoring**
- **Provide appropriate and humane notification to people concerned**
- **Access, including through legal aid, to administrative and **judicial redress.****

The 2015 who interagency statement recognises not only sterilising procedures, but generally IGM.

# Eliminating Harmful Practices: “Holistic Policy Development”



## Legislation

+ Implementation

+ Monitoring

+ Enforcement

+ Access to Remedies & Justice

**Joint CEDAW-CRC 2014**

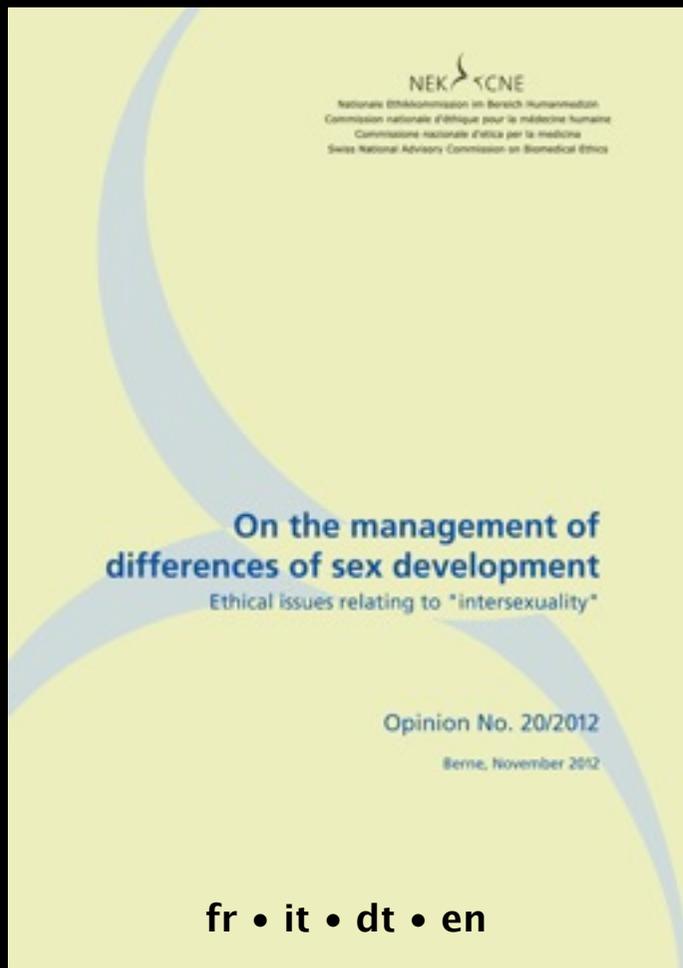
The Committee for the Rights of the Child recognised IGM as a harmful practice in its 2015 recommendations to Switzerland, and the Joint CEDAW-CAT General Comment on harmful practices is very thorough. However, regarding IGM, CEDAW has yet to follow suit.

# 2012: Swiss National Ethics Commission

Swiss National Advisory Commission on Biomedical Ethics NEK-CNE

## criticises

**“medical practice [...] guided by sociocultural values which [...] are not compatible with fundamental human rights, specifically respect for physical and psychological integrity and the right to self-determination” of “children with a sex variation”,**



## recommends

- **Suffering of survivors should be acknowledged by society**
- **Psychosocial indication cannot in itself justify irreversible genital surgery in a child who lacks capacity**
- **Legal review of:**
  - **Liability implications of unlawful interventions in childhood**
  - **Limitation periods**
  - **Criminal law re: Assault and Genital Mutilation**

And last but not least, the 2012 Swiss ethics recommendations predating aforementioned documents, already constitutes a similarly powerful framework.

# European Union 2015



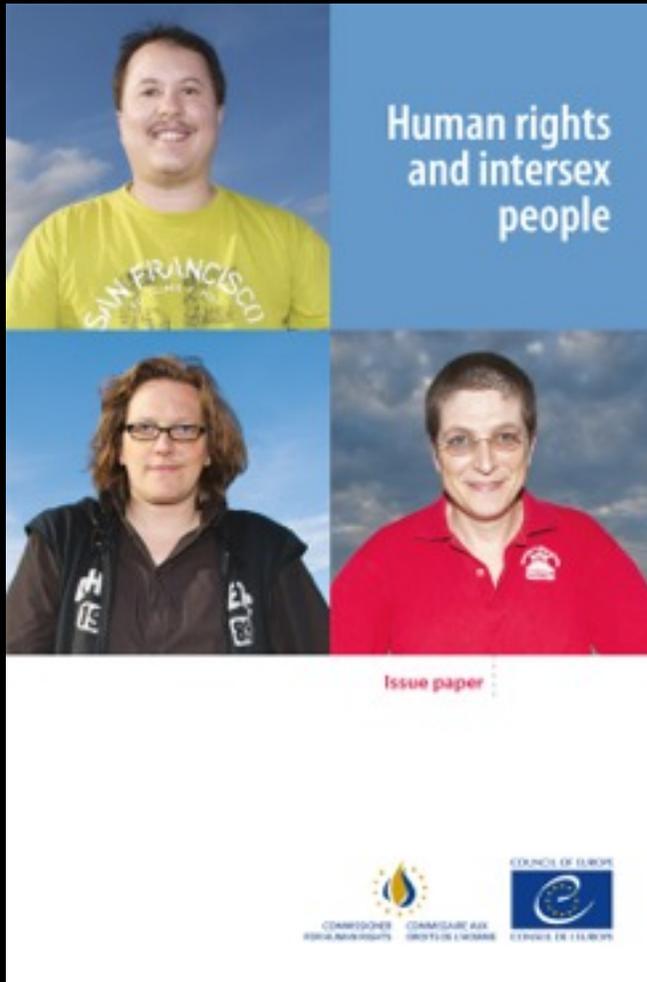
FRA 2015

- III-Treatment
- Harmful Practice
- Legislation against IGM
- Statutes of Limitations
- Monitoring
- Remedies

Unfortunately, and rather shockingly, so far there seems to be a rather limited understanding by government human rights bodies of both the human rights violations concerned as well as of the already specifically identified human rights frameworks involved.

The 2015 European Union FRA focus paper simply fails to identify ANY relevant UN documents and frameworks!

# Council of Europe 2015



COE 2015

- + **III-Treatment**
- **Harmful Practice**
- + **Legislation against IGM**
- **Statutes of Limitations**
- **Monitoring**
- + **Remedies**

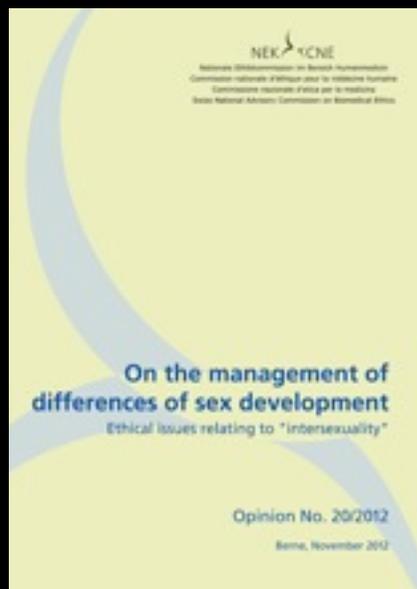
On the other hand, the Council of Europe issue paper fares much better, although still leaves room.

# Legislation alone is not enough!

*Ill-Treatment + Redress (CAT art. 16 + 14)*

*Harmful Practices (CRC art. 24)*

**“Toolbox” for Policy Development:**



NEK-CNE 2012

+



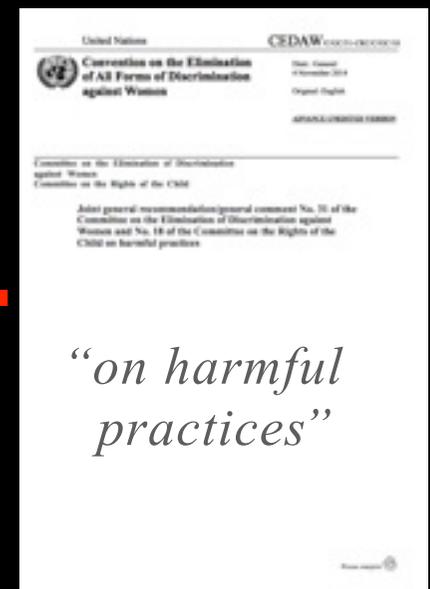
*“on redress”*

+



WHO 2014

+



*“on harmful practices”*

CEDAW-CRC 2014

**+ Truth & Reconciliation Commission**

So, I sincerely hope that this meeting will contribute to better understand and advance relevant frameworks and concepts to end the factual impunity, in order to eliminate IGM practices, (ctd.)



to eventually bring us closer to the ultimate goal: *(ctd.)*

# StopIGM.org

– reconciliation. – Thank you.

<http://StopIGM.org>

<http://intersex.shadowreport.org>

info\_at\_zwischengeschlecht.org

Daniela Truffer: +41 76 398 06 50