

Concern about Disregard of Human Rights Implications in the “Call for Evidence on Variations in Sex Characteristics” of the UK Government Equalities Office

Dear Government Equalities Office

We are an international intersex human rights NGO active in the UK since 2011.^{1 2 3 4 5} In collaboration with local intersex advocates and organisations, StopIGM.org regularly reports to UN Treaty bodies on intersex and Intersex Genital Mutilation in currently 13 European countries,⁶ so far resulting in 25 Concluding Observations to European countries, condemning IGM as a serious violation of non-derogable human rights, namely harmful practice (CRC, CEDAW), torture or cruel, inhuman or degrading treatment (CAT, CCPR), non-consensual medical or scientific experimentation (CCPR), violation of the integrity of the person (CRPD).⁷ Globally, we currently count 40 such Treaty body verdicts, **including 2 concerning the UK.**⁸ We

1 <http://zwischenengeschlecht.org/pages/Open-Letter-ISHID-2011-18-09>

2 Margaret Simmonds, “Girls/women in inverted commas – facing ‘reality’ as an XY-female”, PhD Thesis University of Sussex, p. 208 (PDF p. 214), http://sro.sussex.ac.uk/43431/1/Simmonds_Margaret.pdf

3 Australian Senate Hearing, 28.03.2013, Testimony G. Ansara, p. 11 (PDF p. 15), http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/86ba4480-36ef-4e72-b25e-9fa162f9a4ae/toc_pdf/Community%20Affairs%20References%20Committee_2013_03_28_1856_Official.pdf?fileType=application%2Fpdf#search=%22committees/commsen/86ba4480-36ef-4e72-b25e-9fa162f9a4ae/0000%22

4 http://stop.genitalmutilation.org/public/Open-Letter_I-DSD_2013.pdf

5 <http://www.ias.surrey.ac.uk/workshops/intersex/papers/Intersex%20programme%20brochure.pdf>

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

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

8 CAT/C/DEU/CO/5, para 20; CRC/C/CHE/CO/2-4, paras 42-43; CRPD/C/DEU/CO/1, paras 37-38; CAT/C/CHE/CO/7, para 20; CRC/C/CHL/CO/4-5, paras 48-49; 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; CRC/C/FRA/CO/5, paras 47-48; CRC/C/IRL/CO/3-4, paras 39-40; CRPD/C/CHL/CO/1, paras 41-42; CAT/C/FRA/CO/7, paras 34-35; CRC/C/NPL/CO/3-5, paras 41-42; **CRC/C/GBR/CO/5, paras 46-47**; CEDAW/C/FRA/CO/7-8, paras 18e-f+19e-f; CRPD/C/URY/CO, para 44; CRPD/C/ITA/CO/1, paras 45-46; CRC/C/NZL/CO/5, paras 25+15; CRC/C/ZAF/CO/2, paras 39-40+23-24; CEDAW/C/CHE/CO/4-5, paras 24-25, 38-39; CEDAW/C/NLD/CO/6, paras 21-22, 23-24; CEDAW/C/DEU/CO/7-8, paras 23-24; CEDAW/C/IRL/CO/6-7, paras 24-25; CCPR/C/CHE/CO/4, paras 24-25; **CRPD/C/GBR/CO/1, paras 10(a)-11(a), 38-41**; CRPD/C/MAR/CO/1, paras 36-37; CRC/C/DNK/CO/5, paras 24+12; CCPR/C/AUS/CO/6, paras 25-26; CRC/C/ESP/CO/5-6, para 24; CEDAW/C/CHL/CO/7, paras 22-23, 12(d)-13(d), 14(d)-15(d); CEDAW/C/LUX/CO/6-7, paras 27b-c+28b-c;

are collaborators in the University of Huddersfield’s “Intersex/DSD Human Rights, Citizenship and Democracy [EUICIT] Project”,⁹ which produced the UK Report “Intersex, Variations of Sex Characteristics, and DSD: The Need for Change”¹⁰ mentioned in the Technical Paper of this Call for Evidence.

As such we are delighted to learn that the UK Government, according to the Technical Paper, is now officially “*aware of calls from some UK stakeholders to end the practice of what they describe as ‘medically unnecessary interventions’*”, aims to fill “*evidence gaps*” and better “*understand the nature and scale of the issue*” via the Call for Evidence addressed at persons concerned, caretakers of persons concerned and professionals working on/with persons concerned, as well as to determine if “*further evidence is necessary before considering any policy or legislative proposals.*”

We are, however, concerned that the “evidence-gathering exercise” so far, according to the Technical Paper¹¹ and the Call for Evidence¹² itself, completely ignores human rights implications.

We would therefore like to recall that since 2016, UN Treaty bodies CRC and CRPD both reprimanded the UK for Intersex Genital Mutilations, explicitly considering IGM as a “*harmful practice*” (CRC, CRPD) and “*ill-treatment*”, i.e. “*cruel, inhuman or degrading treatment*” falling under the prohibition of torture (CRPD), and, inter alia, explicitly recommended the Government to “*[p]rovide redress to the victims of such treatment*” (CRC/C/GBR/CO/5, para 48(d)) and to “*[e]stablish measures to ensure equal access to justice*” (CRPD/C/GBR/CO/1, para 39(a)). And we would like to recall further obligations arising from the **Convention on the Rights of the Child** (see also Annexe, p. 4-6), including:

- “*Data collection and monitoring*”
- “*equal access to justice, including by addressing legal and practical barriers to initiating legal proceedings, such as the limitation period, and that the perpetrators and those who aid or condone such practices are held accountable*”
- “*equal access to legal remedies and appropriate reparations in practice*”.

However, we note the **Technical Paper fails to mention human rights at all**, let alone the recent UN Treaty body reprimands, or the **alarming statistical findings** of the Huddersfield study, despite extensively chronicling 12 months of research and findings by the Government Equalities Office. Also the **Call for Evidence itself fails to mention human rights, or to ask any questions on access to justice, redress and rehabilitation**, despite that these are crucial issues for many IGM survivors.

CRC/C/ARG/CO/5-6, para 26; CEDAW/C/MEX/CO/9, para 21-22; CEDAW/C/NZL/CO/8, paras 23(c)-24(c); CEDAW/C/AUS/CO/8, paras 25(c)-26(c); CEDAW/C/LIE/CO/5, paras 35+36(c); CEDAW/C/NPL/CO/6, paras 18(c),(d)-19(a),(c),(d); CAT/C/NLD/CO/7, paras 52-53; CRC/C/ITA/CO/5-6, para 23; CRC/C/BEL/CO/5-6, paras 25(b)+26(e). For a regularly updated list and breakdowns by country, regions and Conventions, see:

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

9 https://research.hud.ac.uk/institutes-centres/ccid/projects/current_projects/intersex-dsd_human_rights/

10 <http://eprints.hud.ac.uk/id/eprint/33535/1/Intersex%20Variations%20of%20Sex%20Characteristics%20and%20DSD%20the%20Need%20for%20Change%20report%20Oct10.pdf>

11 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/771468/VSC_Technical_Paper_Web_Accessible.pdf

12 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/771459/VSC_call_for_evidence_Web_Accessible.pdf

We would therefore like to register our concerns, and we would **very much appreciate an explanation** why the Government Equalities Office so far seems to fail to adequately consider intersex human rights, namely the non-derogable rights to protection from harmful practices, and to justice, redress and rehabilitation.

Thank you and kind regards,

Daniela Truffer, Markus Bauer / StopIGM.org

Annexe:

- UK: Intersex and the UN Convention on the Rights of the Child (CRC), p. 4-6

About StopIGM.org

StopIGM.org / Zwischengeschlecht.org, founded in 2007, is an international intersex human rights NGO based in Switzerland. We are the leading NGO in reporting intersex issues to UN Treaty bodies, achieving (in collaboration with local intersex NGOs and advocates) the vast majority of the currently 40 UN Concluding Observations considering serious violations of intersex human rights. We have been active in close to 23 countries in Europe (including Switzerland, Germany, Austria, Italy, France, UK, Ireland, Belgium, Luxembourg, Liechtenstein, Denmark, Spain), Africa, Asia and South America, and have been consulted by various ethics, human rights, government and non-government bodies, including CRC, CAT, CEDAW, CCPR, CRPD, OHCHR, the Swiss National Bioethics Commission (NEK-CNE), the German Ethic Council, WHO, OECD, the Luxembourg Comité interministériel des droits de l'homme presided by the Ministry of Foreign Affairs, Podemos (Spain). We have presented and taught on intersex issues at various universities, institutions and symposia including the University of Lausanne, University of Padova, the Institut de Formation et de l'Éducation Nationale (IFEN) of Luxembourg, Genital Autonomy, the BanFGM Conference in Rome, the symposium "After the Recognition of Intersex Human Rights" at the Institute of Advanced Studies (IAS) at the University of Surrey, and participate in the "Intersex/DSD Human Rights, Citizenship and Democracy (EUCIT)" project of the University of Huddersfield. Daniela has also been internationally active in intersex self-help groups for almost 20 years.

UK: Intersex and the UN Convention on the Rights of the Child (CRC)

1. The Treatment of Intersex Children in the UK as a Harmful Practice (CRC art. 24(3) and JGC No. 18)¹³

Article 24 para 3 CRC calls on states to abolish harmful “*traditional practices prejudicial to the health of children*”. While the initial point of reference for the term was the example of Female Genital Mutilation/Cutting (FGM/C), the term consciously wasn’t limited to FGM/C, but meant to include all forms of harmful, violent, and/or invasive traditional or customary practices.¹⁴

CRC has repeatedly considered IGM as a harmful practice, and the CRC-CEDAW Joint General Comment/Recommendation No. 18/31 on harmful practices as applicable,¹⁵ including in its binding Recommendations to the UK.¹⁶

Also when **CRPD** condemned IGM in the UK as a serious human rights violation,¹⁷ during the review in Geneva the Committee explicitly framed IGM as “*harmful practices*” and “*intersex genital mutilation*”.¹⁸

Internationally, also **CEDAW** has repeatedly considered IGM as a **harmful practice**, and the **CRC-CEDAW Joint General Comment/Recommendation No. 18/31 on harmful practices** as applicable.¹⁹

Harmful practices (and inhuman treatment) have been identified by intersex advocates as the **most effective, well established and applicable human rights frameworks** to eliminate IGM practices and to end the impunity of the perpetrators.²⁰

The **CRC-CEDAW Joint General Comment/Recommendation No. 18/31 “on harmful practices”** “*call[s] upon States parties to explicitly prohibit by law and adequately sanction or criminalize harmful practices, in accordance with the gravity of the offence and harm caused,*

13 For a more extensive version, see *2016 CRC UK Thematic NGO Report*, p. 55–56, http://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

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

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

16 CRC/C/GBR/CO/5, paras 45–46

17 CRPD/C/GBR/CO/1, paras 10(a)-11(a), 38-41

18 See transcript, <http://stop.genitalmutilation.org/post/You-answered-on-female-genital-mutilation%2C-but-I-was-talking-about-intersex-genital-mutilation-CRPD18>

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

20 Daniela Truffer, Markus Bauer / Zwischengeschlecht.org: “Ending the Impunity of the Perpetrators!” Input for Session 3: “Human Rights Standards and Intersex People – Progress and Challenges - Part 2” at “Ending Human Rights Violations Against Intersex Persons.” OHCHR Expert Meeting, Geneva 16–17.09.2015, online: http://StopIGM.org/public/S3_Zwischengeschlecht_UN-Expert-Meeting-2015_web.pdf

provide for means of prevention, protection, recovery, **reintegration and redress for victims and combat impunity for harmful practices**” (para 13).

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

“Data collection and monitoring” (paras 37–39)

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

“adequate civil and/or administrative legislative provisions” (para 55 (d))

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

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

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

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

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

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

Accordingly, with regards to IGM practices, and referring to Article 24 para 3 and the CRC-CEDAW Joint General Comment/Recommendation No. 18/31, CRC repeatedly recognised the obligation for State parties to **“[e]nsure that the State party’s legislation prohibits all forms of harmful practices [including intersex genital mutilation]”**,²¹ as well as to **“ensure that no-one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to children concerned”**,²² and to **“[u]ndertake investigation of incidents of surgical and other medical treatment of intersex**

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

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

*children without informed consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation”.*²³

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

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

However, also in the **UK** the **statutes of limitation** prohibit survivors of early childhood IGM practices to call a court, because persons concerned often **do not find out** about their medical history until much later in life, and **severe trauma** caused by IGM practices often prohibits them to act in time even once they do.²⁴ So far there was no case of a victim of IGM practices succeeding in going to a UK court.

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

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