



Parallel Report

on the 9th Periodic Report of the Federal Republic of Germany on the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of the Vereins Intergeschlechtliche Menschen e.V./Bundesverband mit XY-Frauen (Association Intersex People e.V./Federal Association with XY Women)

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Glossary:

Genital altering operations /surgery:

There is a clearly defined concept behind the term "genital". It comprises the external and internal genital organs. The term therefore leaves little room for interpretation and has a high protective value.

Intersex children/people/girls/women:

Intersex people are born with physical sex characteristics that do not fit into binary medical concepts of male or female bodies.

A variety of terms exist to describe this fact, some of which are used interchangeably in public discourse. In this parallel report, we use the terms "intersex" and "variants in sex characteristics" as self-designations and "differences of sex development" as a term anchored in the German legal system.

Parallel report of the association Verein "Intergeschlechtliche Menschen e.V." on the ninth state report in the Federal Republic of Germany on the UN Convention on the Elimination of All Forms of Discrimination against Women.

As in previous reports, this is a joint report of the *Verein Intergeschlechtliche Menschen e.V.*, formerly *Intersexuelle Menschen e.V.* (name change 2021), and of *SHG XY-Frauen*.

Introduction

This individual report is submitted parallel to the membership and participation of the rapporteurs in the report of the CEDAW Alliance Germany. The rapporteurs fully support the parallel report of the CEDAW Alliance. The parallel report of the CEDAW Alliance only marginally highlights the lives of persons born intersex and other queer groups and thus does not sufficiently make visible the unfulfilled obligations of the Federal Republic of Germany towards all citizens born intersex.

This parallel report to the 9th State Report of the Federal Republic of Germany is dedicated, according to the conviction and experience of the rapporteurs, to the unfulfilled obligations regarding human rights, as they arise for intersex people from the UN Convention on Women's Rights (CEDAW) in conjunction with the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Rights of Persons with Disabilities (CRPD), the Convention against Torture and Other Inhuman Treatments and Punishments (CAT), as well as the UN Convention on the Rights of the Child (CRC).

People born intersex with a female marital status, a marital status as "divers" or without a gender marker, but living in the female role, are exposed to particular disadvantages and often multiple, intersectional discriminations. They experience that their rights are insufficiently protected by the state and that in particular the UN Convention CEDAW is not implemented. Intersex people are still stigmatized and made invisible, old traditional gender concepts and biological stereotypes are maintained. This hinders the equal participation of people born intersex.

This situation becomes particularly clear in the consideration of enabling participation. Since 2013, it has been possible in the Federal Republic of Germany to achieve an "open" civil status entry for children born intersex. It is regulated in paragraph 22 (3) of the German Civil Status Act (Personenstandsgesetz, PStG). Since 2019 under paragraph 22 (3) of the German Civil Status Act it is also possible for persons who do not permanently assign themselves to the male or female gender to register a fourth gender entry "diverse" ('divers' in German).^{1 2 3}

Protection against harmful treatments

CEDAW treaty text: Articles 2, 5 and 16

Convention on the Rights of the Child Articles 12, 19 and 24

General recommendations CEDAW No. 31(2014) and CRC No. 18, 59th session (harmful practices)

General Recommendations CEDAW No. 35, 67th session 2017 (violence against women, update of Recommendation No. 19)

General Recommendation CEDAW No. 18, No. 25 (para. 12), No. 26, No. 27 (para. 13), and No. 28 (para. 18)

Concluding observations CEDAW 2017: para. 18 (b), para. 44

Since May 2021, the German Law on the Protection of Children with Differences of Sex Development has been in force.⁴ The protection framework also includes children born intersex who are unable to give consent. The law aims to protect children in their birth sex and from inhumane treatment as defined by the Convention Against Torture (CAT), such as i.e. genital altering surgery. The law is intended to enable children to remain physically intact and not be assigned to one of the two binary so far standard sexes.

The law also provides for an evaluation by May 21, 2026. However, the basic requirements for this have not been met. There is no central collection of all data and thus the desired protection is not achieved. In the opinion of the rapporteurs, data must be centrally recorded on where and when surgical procedures were performed on the internal and external sex characteristics of a child.

¹ [§ 22 PStG - Einzelnorm \(gesetze-im-internet.de\)](#) [in German]

² [§ 45b PStG - Einzelnorm \(gesetze-im-internet.de\)](#) [in German]

³ see further elaboration [in English] at [Civil status - inter* \(inter-nrw.de\)](#)

⁴https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/Bgbl_Varianten_der_Geschlechtsentwicklung.html [in German]

Furthermore, it must be recorded

- how old the child was at the time of the medical intervention,
- whether the child had the capacity to consent and who determined the capacity to consent.
- Whether and which commission consented to the surgery,
- whether parents requested and received independent and open-ended peer counseling.

=> The establishment of controls and statistics that could indicate progress in protection was not regulated. Operations on children's genitals are not centrally recorded statistically. The lack of statistics prevents taking positive action.

General Recommendations 35 of the 67th Session (2017)⁵ urged the obligation of States Parties under the CEDAW Convention and emphasized that failures and omissions to take measures to prevent gender-based violence are human rights violations. According to the legal opinion of the rapporteurs, the protection framework for children born intersex has not been achieved.

Demands:

- The State Party may ensure that the protection measures for intersex born children are effective and that the State Party implements instruments without delay, creates and finances a federal central registry so that the state measure is actually realized.
- May the State Party fulfill its obligation under the CEDAW treaty to effectively combat harmful practices and implement all obligations without delay in accordance with the CEDAW, CRC, CESC, CRPD and CAT conventions.

⁵ [OHCHR | Launch of CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 \(of 1992\), No CEDAW/C/GC/35](#)

- That the State Party promptly detail, compile and publish data collection and analysis on genital surgeries. That the State Party may make genital mutilation (GM) visible.
- The State Party should provide punitive regulations for genital altering surgeries, both domestically and abroad, to ensure comprehensive protection of children.
- The State Party may promptly identify and effectively address failures and omissions that enable gender-based violence. The obligation of immediate action to protect should be guaranteed for people born intersex /XY women/human beings with variants in sex characteristics and queer women. It is to require that the State party not seek to prevent their protection for economic, cultural or religious reasons.

Health and reproductive Rights-

CEDAW treaty text: article 12

CEDAW Art. 12 in conjunction with CESCER Art. 12

General Recommendation CEDAW No. 18, No. 25 (para. 12), No. 26, No. 27 (para. 13) and No. 28 (para. 18).

Concluding observations CEDAW 2017, para. 18 (b), para. 44

People born intersex within all ranges of age, especially women, often victims of genital mutilation (GM), are not adequately addressed in the health care system of the State Party. The rights of those affected to the greatest possible health cannot be claimed and asserted due to discrimination on the grounds of gender and sex.

In its human rights conventions, the United Nations formulated the right to health as a fundamental human right, giving rise to individual and international legal claims to comprehensive health as defined.

CEDAW Article 12 in conjunction with UN Social Covenant (CESCR), Article 12 guarantees the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. These obligations are also to be de facto guaranteed to intersex people and implemented without delay.

A comprehensive access to medical services and health care as well as protection from medical treatment for which fully informed consent has NOT been given is not guaranteed for people born intersex throughout their life, during childhood and in particular at a high age.

It has not yet been defined when exactly a child reaches the capacity to consent to surgery and how to determine it. The basic prerequisite for free informed consent to planned treatments, with the associated risks in the life course, is a recognition and understanding of the consequences and their significance for one's own sexuality and reproductive capacity. This must also be ensured for all human beings born intersex in all ages.

Intersex people who received treatment during their childhood are being excluded from medical care later in life as pediatric and adolescent endocrinology is no longer responsible for them and no one provides follow-up care.

Necessary care for victims of genital altering surgery, with and without consent, throughout the lifespan is inadequate. This is equally true for the health care of people born intersex. The reproductive rights of this group are also not given equal consideration.

The recognition and care of victims of genital altering operations are unregulated in the Federal Republic of Germany. This also applies to the unresolved jurisdiction for the injured parties who have been victims of inhumane treatments and practices in the sense of the CAT.⁶

Demands:

- The State Party shall make primary health care accessible to persons born intersex and guarantee their reproductive rights.
- The State party should, without delay, implement the provision of health and reproductive care to victims of genital alteration surgery throughout their life.
- The State Party shall ensure that standard services are being guaranteed and universally accessible for this group and that minimum standards for these services are being formulated.

⁶ Working paper No. 5, Humboldt Law Clinic, 2014
http://hlcmr.de/wp-content/uploads/2015/01/Working_Paper_Nr.5.pdf

- The State Party may enforce and thereby ensure the preservation of the reproductive rights of intersex human beings/XY women, regardless of their gender identity or other attributions.
- The State party may fulfill its obligations to pro active eliminate gender discrimination in the field of health care, paying particular attention to the rights of people with variants in sex characteristics as well as queer women and girls.
- The State party should establish a dialogue between the Rapporteurs and the Federal Ministry of Health and report to the Committee.