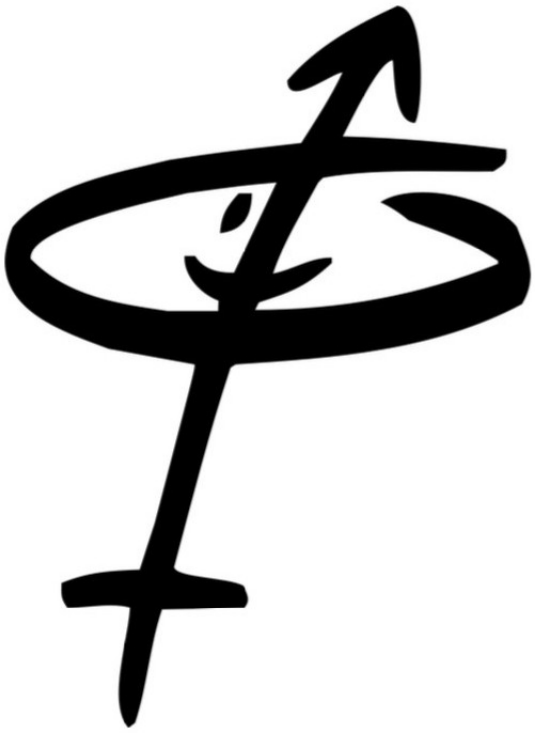


Parallel report
on the seventh periodic report of the Federal Republic of Germany
under the International Covenant on Economic, Social
and Cultural Rights (CESCR)

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Parallel report to the Committee on Economic, Social and Cultural Rights

Germany – seventh periodic report (E/C.12/DEU/7)

Surgery on intersex children without their consent: why section 1631e of the Civil Code does not protect them in practice (articles 2, 12 and 15 (1) of the International Covenant on Economic, Social and Cultural Rights)

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Summary. Since May 2021, parents in Germany may no longer consent to treatment of their child that is carried out solely to make the child's body look male or female. They may consent to other interventions on the sex characteristics of a child who cannot consent only if the intervention cannot be postponed until the child can make a self-determined decision (section 1631e (2) of the Civil Code). This consent requires the approval of a family court; only where the intervention is needed to avert a danger to the child's life or health and cannot be postponed until approval is granted do the parents decide alone, without court or commission (subsection (3), first sentence). If the parents submit a supporting statement of an interdisciplinary commission – which includes the treating physician and a person trained in ethics but is not required to include legal or human-rights expertise – the law presumes that the intervention is in the child's best interests. The court then decides in a written procedure and is to refrain from hearing the parents in person and from appointing a guardian ad litem for the child (section 167b (1) of the Act on Proceedings in Family Matters).

We welcome the Act as such.

The first empirical study of court practice found that **none of 40 court decisions refused a requested operation**; that **19 of the 21 children whose age was stated were younger than three**; that approvals included a clitoral reduction and two removals of gonads; and that **no decision considered the child's constitutional right to gender self-determination when deciding whether the operation could be postponed**. The statutory evaluation of the Act was due in May 2026 and is still not available at the time of this submission.

This report sets out that Germany, through the design and application of section 1631e of the Civil Code and section 167b of the Act on Proceedings in Family Matters, does not give effect to the Committee's recommendation of 2018 and violates its obligations under articles 2 (1) (non-retrogression) and 2 (2) (non-discrimination), 12 (right to health, including the right to sexual and reproductive health and the right to be free from non-consensual medical treatment: General Comments No. 14, para. 8, and No. 22, paras. 1 and 5) and 15 (1) (a) and (b) (participation in cultural life, benefit from scientific progress). We ask the Committee to follow up on paragraph 13 of its list of issues and on its recommendation of 2018, and to include the issue in its follow-up procedure (sections VI and VII). As the researchers' submission to the Federal Ministry of Justice of 17 June 2025 showed that this parallel report was needed, it could not be prepared within the deadline for the pre-sessional working group in September 2025.

I. Relevance for the review

1. As early as 2011 the Committee urged Germany to ensure that the personal integrity and the sexual and reproductive health rights of intersex persons are respected.[1] In 2018 it expressed concern that "gender confirmation surgery has continued to be performed on intersex infants and children" and at its "lifelong devastating consequences", and recommended that Germany "take necessary

[1] E/C.12/DEU/CO/5 (2011), para. 26.

measures to prohibit medically unnecessary gender confirmation surgery on intersex infants and children".[2] At that time the State party itself informed the Committee that federally funded studies had shown no significant change in such operations between 2005 and 2014.[3] In its list of issues of 2025, the Committee asked for information on steps taken to prohibit such surgeries on intersex children without their full and informed consent and "whether such procedures remain legally permitted under current federal law".[4] This report shows that section 1631e of the Civil Code and section 167b of the Act on Proceedings in Family Matters still permit them and that, according to the research available, courts have approved them without exception.

2. In its seventh periodic report, the State party describes the Act on the Protection of Children with Variations of Sex Development,[5] in force since 22 May 2021, as prohibiting treatment intended solely to adapt a child's appearance to the male or female sex and as requiring family-court approval for other interventions. It adds that "the court can decide in a simplified procedure" if an interdisciplinary commission has approved the intervention, and that at the parents' request "such a commission must also involve an adviser with a variant of gender development".[6] This description is incomplete and in part inaccurate: the law only provides that the commission *should* involve such an adviser, and the report does not mention that in this procedure the court is to refrain from any hearing and from appointing a guardian ad litem for the child (para. 5). As of 2026-11-11 we could not find a published reply of the State party to the list of issues, which was due by 30 April 2026.[7]

3. This report shows, on the basis of the first empirical study of court practice, that the approval requirement has not stopped a single requested operation, and explains why the Act, as designed and applied, does not give effect to the Committee's recommendation of 2018 or to the State party's obligations under articles 2 (1) and (2), 12 and 15 (1) of the Covenant.

II. The legal framework

4. **Prohibition.** Under section 1631e (1) of the Civil Code (BGB), parents cannot consent to the treatment of a child who is unable to consent if the treatment is carried out *solely* to align the child's physical appearance with that of the male or female sex. This wording creates a major loophole: as soon as any further – medical, psychosocial or functional – purpose is claimed, the prohibition no longer applies.

5. **Approval procedure.** Other operations on the internal or external sex characteristics that could result in such an alignment may be consented to by the parents only if the operation cannot be postponed until the child can make a self-determined decision (section 1631e (2)). This consent requires the approval of the family court, unless the operation is needed to avert a danger to the child's life or health and cannot wait for the approval (section 1631e (3), first sentence). Approval is granted if the operation is in the child's best interests. If the parents submit a supporting statement of an interdisciplinary commission, **the law presumes that the operation is in the child's best interests** (section 1631e (3), third sentence). In that case the court grants the approval in a written procedure, provided that no reasons against it are apparent, and is to refrain from hearing the youth welfare office, from hearing the parents in person and from appointing a guardian ad litem for the child (section 167b (1) of the Act on Proceedings in Family Matters, FamFG).

6. **The commission.** The commission should include at least the treating physician, at least one further physician who must not be employed at the facility where the operation is to be performed, a person qualified in psychology, child psychotherapy or child psychiatry, and a person trained in ethics; a counsellor who has a variation of sex development is to be involved only at the parents' request (section 1631e (4)). No legal or human-rights expertise is required. The statement must set out, among other things, the indication for the operation, why the commission supports it, and to

[2] E/C.12/DEU/CO/6 (2018), paras. 24–25. See also E/C.12/NLD/CO/6 (2017), paras. 48–49.

[3] E/C.12/DEU/Q/6/Add.1 (2018), para. 35, referring to studies on the period 2005–2014.

[4] E/C.12/DEU/Q/7 (2025), para. 13.

[5] Gesetz zum Schutz von Kindern mit Varianten der Geschlechtsentwicklung of 12 May 2021 (BGBl. I p. 1082), in force since 22 May 2021; it introduced section 1631e BGB and section 167b FamFG.

[6] E/C.12/DEU/7 (received 21 December 2023, issued 12 June 2024), para. 165.

[7] E/C.12/DEU/Q/7, para. 1.

what extent the child can form and express an opinion and whether the operation corresponds to the child's will (section 1631e (5)); the Act does not define what counts as an "indication". Medical records must be kept until the person's 48th birthday (section 1631e (6)).

7. **Assessment.** Six features of this design weaken protection: (a) the presumption shifts the best-interests assessment in practice to the commission, which includes the physician who proposes the operation; the court is reduced to confirming the commission's statement; (b) the undefined notion of "indication" leaves room for expectations of what "normal" genitals and sexual functions should be; (c) there is no independent, rights-based review of whether an operation can be safely deferred; (d) once a supporting statement is submitted, the approval is granted in writing, as a rule without any hearing and without a guardian ad litem who could speak for the child – the child has no voice of its own in the proceedings; (e) the parents bear the costs of the commission statement and of legal representation; (f) in our legal view, this design replaces review against binding rights with an ethical balancing exercise: the Act requires a person trained in ethics on the commission, but no legal or human-rights expertise (para. 6), and through the presumption the commission's statement becomes decisive for the court (para. 5). Ethical principles are not binding and need not include human rights. Medical ethics is indeed a requirement of the right to health (General Comment No. 14, para. 12 (c)); it can complement review against the rights of the child, but cannot replace it. A procedure that allows irreversible interventions to be decided without review against the child's fundamental and human rights is also a dangerous precedent that could be transferred to the rights of other groups.

III. Evidence from court practice

8. **The study.** Prof. Dr. Anna Katharina Mangold and Nick Markwald (Europa-Universität Flensburg) surveyed all competent local courts in Germany and sent their findings to the Federal Ministry of Justice, which is evaluating the Act, on 17 June 2025.[8] Replies were received from or on behalf of 181 of 231 courts contacted (September to November 2024). The researchers learned of 53 decisions and seven pending proceedings. They analysed 40 decisions – 39 anonymised decisions from 11 courts and a published decision of the Mannheim Local Court of 6 March 2024 – issued between July 2022 and September 2024.

9. **Outcome.** None of the 40 decisions refused a requested operation. One application was rejected only because the court found that the operation could be carried out without approval. In all 39 approvals the parents had submitted a supporting commission statement, and the court's best-interests assessment followed the statutory presumption. The authors conclude that the approval requirement never led to an operation not being performed once parents had applied for approval.

10. **Age.** Of the 21 decisions that stated the child's age, 19 concerned children younger than three years; one child was five and one person 14.

11. **Diagnoses and procedures.** 26 decisions concerned forms of hypospadias, 12 congenital adrenal hyperplasia (CAH) and 3 mixed gonadal dysgenesis; 38 of the 40 decisions concerned hypospadias or CAH. Approved procedures included, in CAH, the separation of urethra and vagina and the creation of a vaginal opening of "normal" size, and, in hypospadias, the straightening of the penis and the extension of the urethra along the shaft. In one case a clitoral reduction and in two cases the removal of gonads were approved.

12. **Reasoning.** 29 decisions addressed whether the operation could be postponed; 16 of them relied solely on the medical statement without any assessment of their own. Where courts gave reasons, they mainly cited lower complication rates and better results at a young age; 13 decisions referred to possible psychological distress if the child grew up with atypical genitals. 14 decisions based the medical indication on the assumption that ("normal") sexual intercourse would not be possible without the operation. **No decision considered the child's constitutionally protected right to gender self-determination when deciding whether the operation could be postponed.**[9]

[8] A. K. Mangold / N. Markwald, statement to the Federal Ministry of Justice (Division I A 2) on sections 1631e BGB and 167b FamFG, Flensburg, 17 June 2025, 6 pp. All figures in paras. 8–15 are taken from this statement.

[9] Mangold/Markwald (note 8), pp. 3–5; for the constitutional protection they refer to BVerfGE 147, 1 (2017) – "third option"; the Court there refers to the protection of gender identity under the general right of personality (see para. 21 and note 20).

13. **Costs.** In all 38 decisions that addressed the question, the parents had to bear their out-of-court costs; in 8 of 40 proceedings they were represented by a lawyer.

14. **Numbers.** The legislator expected about 148 approval proceedings per year,[10] i.e. about 296 in two years; 53 decisions became known. The authors name three possible explanations: the estimate was wrong; operations for other diagnoses are no longer performed; or the approval procedure is being circumvented. They point out that their data are probably incomplete and recommend clarifying the question together with organisations of affected persons.

15. **The authors' assessment.** Mangold and Markwald criticise that considerations of genital and sexual "normality" play a central role in many decisions and in effect continue the treatment approach of the 1950s ("optimal gender policy") that the Act was meant to overcome;[11] that no balancing of fundamental rights takes place; and that courts follow the medical view presented to them. If courts merely follow medical proposals, the approval requirement loses its purpose. They suggest reconsidering the presumption in section 1631e (3), third sentence, a central register of records and commission statements, and a rule that the parents should not bear the costs of the commission statement.

16. **Background.** The "optimal gender policy" assumed that a child's gender identity could be instilled by upbringing if the genitals were made unambiguous early and the child was raised accordingly; it also relied on withholding information from the patients. It never rested on a sufficient body of evidence, and its best-known case had failed, which was made public in 1997.[12] The reasons found in the decisions (paras. 9–12) still reproduce its central premise: that an atypical body must be adapted early to prevent psychological harm.

17. **No evaluation, no follow-up.** The Act obliges the Federal Government to review its effectiveness within five years of its entry into force and to report to the Bundestag, i.e. by May 2026.[13] As of 2026-11-11, we could not find a published evaluation report. In 2022 the Committee on the Rights of the Child, which monitors the Convention on the Rights of the Child, recommended that Germany enforce the Act and establish procedural safeguards and accountability mechanisms for medical doctors;[14] we are not aware of any such measures.

IV. Assessment under the Covenant

IV.1 Adoption of the Act and non-retrogression (articles 2 (1) and 12); non-discrimination (article 2 (2))

18. **A law contrary to existing obligations; retrogression in access to remedies.** In our legal view, Germany violates article 12 not only by omission (para. 22) but also by its own action: in 2021, three years after the Committee's recommendation (para. 1), it adopted a law under which a commission – for which the law provides ethical but no legal or human-rights expertise – in practice decides on deferrable, irreversible interventions on children (paras. 5–7 and 9), contrary to the obligations under article 12 (paras. 20–21). The Committee regards the adoption of legislation "manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to health" as a violation through acts of commission.[15] To the extent that the statutory presumption also makes later claims for damages more difficult (para. 30), it is, in our legal view, a retrogressive measure for which the State party bears the burden of justification (General Comment No. 14, para. 32). Domestically, its incompatibility with the Basic Law as well (para. 21) could only be established once a person operated on after 2021 has gone through all instances up to the Federal Constitutional Court, which takes years.

[10] Bundestag printed paper BT-Drs. 19/24686, p. 2.

[11] On the treatment approach of the 1950s ("optimal gender policy") see the explanatory memorandum, BT-Drs. 19/24686, p. 11; Mangold/Markwald also refer to Money/Hampson/Hampson (1955), Bulletin of the Johns Hopkins Hospital 97(4), pp. 284–300.

[12] M. Diamond / H. K. Sigmundson, Sex reassignment at birth: long-term review and clinical implications, Archives of Pediatrics & Adolescent Medicine 151 (1997), pp. 298–304.

[13] Article 6 of the Act of 12 May 2021.

[14] CRC/C/DEU/CO/5-6 (2022), para. 24 (c), under the heading "Harmful practices".

[15] General Comment No. 14 (2000), para. 48.

19. **Discrimination on the basis of sex characteristics.** Article 2 (2) prohibits discrimination in the exercise of all Covenant rights, expressly including on the ground of sex. The Committee recognises gender identity as a prohibited ground and has noted that intersex persons often face serious human rights violations.[16] Where medically deferrable operations are performed on intersex children without their own informed consent in order to establish later sexual function according to a male or female norm or to avoid stigma, the treatment is based solely on the child's physical sex characteristics. Instead of combating discrimination in society, the child's body is surgically adjusted.

IV.2 Right to health (article 12)

20. **Standard.** The right to health includes the right to be free from non-consensual medical treatment.[17] The obligation to respect includes refraining from applying coercive medical treatments, except on an exceptional basis for the treatment of mental illness or the prevention and control of communicable diseases (General Comment No. 14, para. 34). The right to sexual and reproductive health is an integral part of the right to health under article 12 and includes the freedom to make decisions concerning one's body free of violence, coercion and discrimination (General Comment No. 22, paras. 1 and 5); States must enable such autonomous decision-making (para. 29). Laws and policies that prescribe involuntary, coercive or forced medical interventions violate the obligation to respect (para. 57), as do practices that present inaccurate or misrepresentative information (para. 58). Failure to prevent third parties from performing medically unnecessary, irreversible and involuntary surgery and treatment on intersex infants or children violates the obligation to protect (para. 59). Prohibiting and enforcing the prohibition of harmful practices, and ensuring effective remedies, are core obligations (para. 49).[18]

21. **Consent and its limits.** Informed consent is therefore part of the right to health. It requires information on the risks of a treatment, of alternatives and of not treating. Parents normally consent on behalf of young children. Where an intervention is irreversible, affects the child's sex characteristics, future identity and fertility, and can be safely deferred, only deferral preserves the child's own free, prior and informed consent. The Committee has therefore recommended to another State party to review early interventions so that intersex children are mature enough to be consulted on their preferred treatment.[19] Under the German Basic Law, too, the child's bodily integrity (article 2 (2)) – according to the Federal Constitutional Court including the right to be treated only on the basis of free consent given after proper medical information – and the child's gender identity (article 2 (1) in conjunction with article 1 (1)) are protected. For a child whose identity is still developing, this protection in our legal view also covers the child's later self-determined decision, to which section 1631e (2) of the Civil Code refers; the explanatory memorandum to the Act expressly names protecting the child's right to gender self-determination as its aim.[20] Germany moreover acknowledges human rights as the basis of every community (article 1 (2)). According to the Federal Constitutional Court, the German Constitution, "in line with international developments, particularly since the establishment of the United Nations, has a universal core that is not subject to amendment by positive law"; the rule of law and the substance of essential fundamental rights are, "in their principal quality, beyond the reach of any amendment".[21] None of these standards appears in the decisions studied.

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[16] General Comment No. 20 (2009), para. 32.

[17] General Comment No. 14 (2000), para. 8.

[18] General Comment No. 22 (2016), paras. 29, 49, 57–59.

[19] E/C.12/NLD/CO/6 (2017), paras. 48–49.

[20] On consent: Federal Constitutional Court, BVerfGE 128, 282 (2 BvR 882/09), order of 23 March 2011, paras. 39 and 41; BVerfGE 142, 313 (1 BvL 8/15), order of 26 July 2016, paras. 75 and 77. On gender identity: BVerfGE 147, 1 (1 BvR 2019/16), order of 10 October 2017, headnote 1 and paras. 37–40. Explanatory memorandum: BT-Drs. 19/24686, p. 15; on section 1631e (2) of the Civil Code, ibid., p. 27. As a European point of comparison, article 3 (2) (a) of the Charter of Fundamental Rights of the European Union (OJ C 202, 7.6.2016, p. 389) requires, in the fields of medicine and biology, "the free and informed consent of the person concerned"; the Charter applies to Member States, however, only when they are implementing Union law (article 51 (1)).

[21] Federal Constitutional Court, BVerfGE 123, 267 (Lisbon), judgment of 30 June 2009, paras. 217–218 (quotations from the Court's English translation, www.bundesverfassungsgericht.de). In our legal view, deciding on irreversible interventions on children by ethical standards instead of the binding fundamental and human rights (articles 1 (2) and (3) and 2 (2) of the Basic Law; article 12 of the Covenant) is incompatible with this inviolable core; according to the Court, a violation of constitutional identity is an "encroachment on the constituent power of the people" (para. 218).

22. **A prohibition that does not prevent operations.** The Act prohibits only treatment carried out *solely* for appearance. Every other intervention can be approved, and in practice every requested intervention has been approved (paras. 9–12). Protection therefore depends entirely on the commission and the court. In no known case did a court stop an operation, and cases in which a commission advised against an operation are not recorded anywhere. This does not give effect to the Committee's recommendation to prohibit medically unnecessary surgery on intersex children, nor to the recommendation of the Committee on the Rights of the Child to enforce the Act. A law that in practice prevents no intervention does not meet the obligation to protect under article 12.[22]

23. **The deferral rule has become the exception.** The Act makes postponement until the child can decide the rule. The courts, however, affirmed that operations could not be postponed on grounds – better results and fewer complications at a young age, possible psychological distress – that would apply to almost every child with a variation of sex development. Decisions were taken at an age at which the child cannot take part (19 of 21 children under three). An exception that is justified by the child's age itself empties the rule.

24. **Normality instead of health.** Reasons such as expected distress from atypical genitals or the ability to have "normal" intercourse treat intersex bodies as in need of correction. They address social expectations by surgery on the child instead of addressing stigma and discrimination. This is incompatible with the non-discrimination guarantee of article 2 (2) and with the understanding of health in article 12, and it is precisely the practice that the Committee criticised in 2018. The Committee on the Rights of the Child deals with such interventions under the heading of harmful practices.[23]

25. **No independent review.** Because of the presumption and the written procedure, the decision rests in practice with the medical team that proposes the operation; no one is appointed to represent the child's own interests. During the legislative process, the Monitoring Body for the UN Convention on the Rights of the Child of the German Institute for Human Rights, the national human rights institution, already considered it "questionable" to dispense with a guardian ad litem in the simplified procedure unless the child's interests were represented on the commission, since such representation is an "indispensable component of determining the best interests of the child"; no such representative sits on the commission, and the court is to refrain from appointing a guardian ad litem (paras. 5–6).[24] The courts did not examine the child's rights and, in the cases studied, could not hear the child's own views. Effective protection requires a review that is independent of the treating team and based on the child's rights, with the burden on those who claim that an operation cannot wait.

26. **Best interests and the weight of parental consent.** Article 10 (3) of the Covenant requires special measures of protection for all children. In our legal view, which also rests on article 12 of the Covenant (General Comment No. 14, paras. 8 and 34) and on article 2 (2) of the Basic Law (para. 21), parents' authority to consent is a responsibility to be exercised in the child's interests, not a power to decide irreversibly on the child's sex characteristics in the child's place. The Committee on the Rights of the Child asks decision-makers to take into account the child's evolving capacities and to prefer measures that can be revised over definitive and irreversible decisions,[25] and recognises the risk of a conflict of interest between children and their parents as their representatives.[26] In 2022 it was concerned that in Germany the best interests of the child are not applied in all proceedings affecting children and that children's views are not always taken into account in courts.[27] Under section 1631e (3) BGB, however, a commission statement submitted by the parents is enough to presume the child's best interests (para. 5). The Office of the United Nations High Commissioner for

[22] General Comment No. 22 (2016), paras. 42 and 59.

[23] CRC/C/DEU/CO/5-6 (2022), para. 24 (c).

[24] German Institute for Human Rights, Monitoring Body for the UN Convention on the Rights of the Child, Stellungnahme zum Entwurf eines Gesetzes zum Schutz von Kindern mit Varianten der Geschlechtsentwicklung [statement on the draft Act on the Protection of Children with Variations of Sex Development], January 2021, p. 9 (quotations in our translation).

[25] CRC/C/GC/14 (2013), para. 84.

[26] CRC/C/GC/12 (2009), para. 36.

[27] CRC/C/DEU/CO/5-6 (2022), paras. 16–17.

Human Rights considers that interventions based on psychosocial considerations or on the preferences of family members or medical professionals should be strictly prohibited.[28]

27. **Lifelong consequences.** The Committee has noted the lifelong devastating consequences of such surgery (para. 1). Intersex persons report lifelong physical and psychological harm, including infertility, loss of sexual function and sensation, and trauma; they face discrimination in health care, education, employment and housing, and the lack of standards of care that respect their rights has also been documented.[29] The current medical guideline itself recommends that operations, their complications and long-term results be recorded in registers;[30] the Act does not require this, and we are not aware of any such register. Asked by members of the Bundestag in 2009 when it would define the degree of disability corresponding to the physical and psychological damage caused by faulty treatment of intersex persons, the Federal Government replied that such a definition was not necessary;[31] organisations of intersex persons had called for specific criteria.[32] No such guidance exists to date: the official principles for assessing the degree of disability (Versorgungsmedizinische Grundsätze) only rate the loss of individual organs, classified as “male” and “female genital organs”; they contain no criteria for the consequences of such surgery on intersex persons, for any variation of sex development.[33] In our legal view, neither the commission nor the court is required to consider the consequences of an intervention over the child’s whole life course; the long-term health and participation of the persons concerned remain out of view.

28. **Removal of gonads.** Two approvals concerned the removal of gonads, which causes infertility and lifelong dependence on hormone replacement. The current German medical guideline states, for example for complete androgen insensitivity, that the tumour risk is not increased before puberty and recommends that the gonads remain until adulthood.[34] Where gonads are removed without a concrete, evidence-based risk that does not permit postponement, this amounts to the irreversible sterilisation of a child who cannot consent. As early as 2011 the Committee against Torture, which monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, expressed concern at cases in which gonads had been removed without effective, informed consent, entailing lifelong hormonal medication.[35] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has called on all States to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalising surgery and involuntary sterilisation, without the free and informed consent of the person concerned.[36]

29. **No monitoring.** No official nationwide data on these proceedings and procedures have been published. The gap between expected and known proceedings (para. 14) is unexplained, and circumvention cannot be excluded. The statutory evaluation is overdue. A State cannot show that it protects children from medically unnecessary interventions if it does not know how many take place.

30. **Remedies.** Irreversible interventions cannot be undone; effective remedies are therefore essential, including the investigation and prosecution of violations by third parties and reparation such as compensation and rehabilitation.[37] A young child cannot itself challenge an approval, and in the written procedure, as a rule, no guardian ad litem is appointed who could appeal in the child’s interest (sections 158b (3) and 167b (1) FamFG). When the persons concerned can act as adults,

[28] A/HRC/60/50 (2025), para. 52 (d).

[29] A/HRC/60/50 (2025), paras. 14–18.

[30] AWMF S2k guideline 174-001 “Varianten der Geschlechtsentwicklung”, status 03/2025, recommendation 57.

[31] Bundestag printed paper BT-Drs. 16/13269 (2009), answer to question 5.

[32] Intersexuelle Menschen e.V./XY-Frauen and Humboldt Law Clinic, parallel report to the fifth periodic report of Germany under the Convention against Torture (2011), recommendation F.3.f.

[33] Annex to section 2 of the Versorgungsmedizin-Verordnung (“Versorgungsmedizinische Grundsätze”), as last amended by the Ordinance of 29 September 2025 (Federal Law Gazette 2025 I No. 228), Part A nos. 1.3 and 1.6, Part B nos. 13 and 14 (accessed 15 October 2026).

[34] AWMF S2k guideline 174-001 “Varianten der Geschlechtsentwicklung”, status 03/2025 (published 07/2025), statement 19 and recommendation 89.

[35] CAT/C/DEU/CO/5 (2011), para. 20.

[36] A/HRC/22/53 (2013), para. 88.

[37] General Comment No. 22 (2016), paras. 49 (h) and 64.

many lack access to their records and limitation periods may have expired.[38] The Committee against Torture regards statutes of limitations as an obstacle to the right to redress of victims of torture and ill-treatment,[39] and the Office of the High Commissioner has recommended that States review statutes of limitations, including for past violations.[40] In our legal view, a court approval based on the statutory presumption in effect largely shields the treating physicians from liability and makes later damages claims by the persons concerned considerably more difficult. For persons operated on before 2021 there is still no compensation scheme. The Committee on the Elimination of Discrimination against Women, which monitors the Convention on the Elimination of All Forms of Discrimination against Women, recommended in 2017 that Germany amend the statute of limitations and consider a State compensation fund.[41] In 2024 Germany supported a recommendation of the Universal Periodic Review to establish a compensation fund and stated that it would also cover intersex persons;[42] the coalition agreement of the current Government (2025) no longer contains such a fund.[43]

IV.3 Participation in cultural life and benefit from scientific progress (article 15 (1))

31. **Free choice of one's own identity.** The right to take part in cultural life (article 15 (1) (a)) includes the right of everyone, alone or in association with others, to act freely, to choose his or her own identity, to identify or not with one or several communities or to change that choice; discrimination, including on the ground of sex, is prohibited.[44] Where the body of an intersex child under the age of three (para. 10) is adapted to a male or female norm, this choice is pre-empted: the child loses the possibility of growing up as an intersex person and of deciding for itself whether to be part of the intersex community.

32. **Scientific progress.** Article 15 (1) (b) guarantees the right to enjoy the benefits of scientific progress and its applications. These include the findings that gender identity cannot be fixed by early surgery and upbringing (para. 16) and that the tumour risk of the gonads, for example in complete androgen insensitivity, is not increased before puberty (para. 28). A practice that still justifies interventions with the assumptions of the 1950s (paras. 12–16) withholds the application of this progress from the children concerned. These assumptions stand in a long history of the medical pathologisation of intersex persons.[45]

V. International context

33. Other UN treaty bodies have repeatedly urged Germany to protect intersex persons: the Committee against Torture in 2011 (investigation and compensation), the Committee on the Rights of Persons with Disabilities, which monitors the Convention on the Rights of Persons with Disabilities, in 2015 (non-implementation of the recommendations of the Committee against Torture on intersex children), the CEDAW Committee in 2017 (prohibition of unnecessary treatment without the person's own consent, amended limitation periods, consideration of a compensation fund), the Human Rights Committee, which monitors the International Covenant on Civil and Political Rights, in 2021 (in 2025 it found that its recommendation had not been fully implemented and reiterated it) and the Committee on the Rights of the Child in 2022 (harmful practice; procedural safeguards and accountability mechanisms for medical doctors).[46] A 2025 report of the Office of the High Commissioner lists Germany among the few States with such legislation and describes typical weaknesses of these laws, including vague exceptions, weak oversight, short limitation periods and

[38] A/HRC/60/50 (2025), para. 24.

[39] CAT/C/GC/3 (2012), paras. 38 and 40.

[40] A/HRC/60/50 (2025), para. 50.

[41] CEDAW/C/DEU/CO/7-8 (2017), paras. 23–24 (d) and (e).

[42] A/HRC/55/10/Add.1 (2024), response to recommendation 140.322 (supported).

[43] Coalition agreement of CDU, CSU and SPD for the 21st legislative period, "Verantwortung für Deutschland" (2025).

[44] General Comment No. 21 (2009), paras. 15 (a) and 21.

[45] U. Klöppel, XX0XY ungelöst. Hermaphroditismus, Sex und Gender in der deutschen Medizin. Eine historische Studie zur Intersexualität, Bielefeld 2010.

[46] CAT/C/DEU/CO/5 (2011), para. 20; CRPD/C/DEU/CO/1 (2015), paras. 37 (d) and 38 (d); CEDAW/C/DEU/CO/7-8 (2017), paras. 23–24; CCPR/C/DEU/CO/7 (2021), para. 21, and CCPR/C/144/2/Add.2 (2025); CRC/C/DEU/CO/5-6 (2022), para. 24 (c).

inadequate record-keeping.[47] In our legal view these weaknesses apply to Germany (paras. 4–7, 29 and 30). The European Court of Human Rights has expressly stated in 2022 – although it declared the application inadmissible on procedural grounds – that medical interventions without therapeutic necessity and without informed consent may amount to ill-treatment under article 3 of the European Convention on Human Rights and that sterilisation without therapeutic purpose and without informed consent is in principle contrary to article 3; whether this applied in the specific case, it left open.[48] Sweden asked Germany the same question about the rights of children with variations of sex development in the Universal Periodic Review in 2018 and again in 2023.[49]

VI. Suggested questions and request for follow-up

Effective protection of intersex children cannot wait until the next periodic report. We respectfully invite the Committee to ask the State party the following questions and – unlike in 2018[50] – to include its recommendations on this issue in the follow-up procedure, so that Germany reports on their implementation within 24 months:

(a) How many approval proceedings under section 1631e BGB have taken place nationwide since May 2021, disaggregated by diagnosis, age of the child, type of intervention and outcome? How many operations on the sex characteristics of children unable to consent were billed by German hospitals in the same period?

(b) How does the State party detect and prevent possible circumvention of section 1631e BGB, for example by classifying an intervention as not requiring approval or by operations abroad, and how are violations pursued under criminal and professional law?

(c) When will the statutory evaluation report, due in May 2026, be published, and how are organisations of intersex persons involved?

(d) How does the State party ensure that the removal of gonads in young children is approved only where a concrete risk does not permit postponement, as the current medical guideline indicates for example for complete androgen insensitivity, and what steps is it taking to prohibit involuntary sterilisation?

(e) What steps has the State party taken to establish the compensation fund whose establishment it supported in the Universal Periodic Review in 2024, and to adapt limitation periods for civil claims?

VII. Proposed recommendations

We respectfully invite the Committee to recommend that the State party:

(a) Amend section 1631e BGB so that interventions on the sex characteristics of intersex children that can be safely deferred until the child is able to give free, prior and informed consent are prohibited, and limit exceptions to cases in which a concrete, evidence-based risk to the child's life or health does not permit postponement;

(b) Require by law legal and human-rights expertise on the commission; repeal the best-interests presumption in section 1631e (3), third sentence, BGB and the written procedure in section 167b (1) FamFG, which allow the child's own informed consent to be circumvented by approving medically deferrable operations, and ensure that every intervention claimed to be non-deferrable is reviewed independently of the treating team, on the basis of the child's rights, after a hearing, with a guardian ad litem for the child and with reasons in writing;

(c) Prohibit the removal of gonads without the person's own free, prior and informed consent unless a concrete, evidence-based risk to life or health does not permit postponement;

[47] A/HRC/60/50 (2025), paras. 32 and 35.

[48] ECtHR (Fifth Section), M v. France (dec.), no. 42821/18, 26 April 2022, §§ 59–63 (available in French only; complaint under article 3 inadmissible for non-exhaustion of domestic remedies, §§ 68–74).

[49] Advance questions to Germany, Universal Periodic Review, 30th session (2018) and 44th session (2023).

[50] In E/C.12/DEU/CO/6, para. 66, the Committee requested follow-up information within 24 months only on paras. 49 (care for older persons), 51 (child poverty) and 55 (b) and (c) (housing).

(d) Publish the statutory evaluation without further delay, collect and publish disaggregated data, including health-insurance billing data on interventions, establish a central register of interventions, commission statements, court applications and decisions, and investigate possible circumvention of the Act;

(e) Provide training on the rights of intersex children under the Covenant and on the consequences of interventions over the whole life course, developed with organisations of intersex persons, for family judges and for all those involved in counselling and treating intersex children;

(f) Guarantee free, independent psychosocial and peer counselling for intersex children and their families, and ensure that the costs of any review are not borne by the parents;

(g) Ensure effective remedies for all persons subjected to such interventions without their consent, including before 2021, by adapting limitation periods and establishing the compensation fund;

(h) Commission an independent historical review, with the binding participation of organisations of intersex persons, of medical interventions on intersex persons, in particular since the introduction of the “optimal gender policy” in the 1950s, and officially acknowledge the injustice done.

Annex: Recommendations of UN treaty bodies to Germany on intersex children

Year	Body	Document	Core content
2011	Committee on Economic, Social and Cultural Rights	E/C.12/DEU/CO/5, para. 26	Concern about discrimination against transsexual and intersex persons and violations of their sexual and reproductive health rights; measures to respect their personal integrity; full consultation.
2011	Committee against Torture	CAT/C/DEU/CO/5, para. 20	Investigate surgery on intersex persons without effective consent; legal provisions on redress including adequate compensation; inform patients and parents.
2015	Committee on the Rights of Persons with Disabilities	CRPD/C/DEU/CO/1, paras. 37 (d), 38 (d)	Under “integrity of the person” (art. 17): the 2011 recommendations of the Committee against Torture on the bodily integrity of intersex children not implemented; implement all of them.
2017	Committee on the Elimination of Discrimination against Women	CEDAW/C/DEU/CO/7-8, paras. 23–24	Clear legal prohibition of unnecessary treatment until the child can consent; access to justice including amended limitation periods; consider a State compensation fund.
2018	Committee on Economic, Social and Cultural Rights	E/C.12/DEU/CO/6, paras. 24–25	Prohibit medically unnecessary surgery on intersex infants and children; enabling environment for their development.
2021	Human Rights Committee	CCPR/C/DEU/CO/7, para. 21; follow-up CCPR/C/144/2/Add.2 (2025)	Intersex persons; in 2025 recommendation found not fully implemented and reiterated.
2022	Committee on the Rights of the Child	CRC/C/DEU/CO/5-6, para. 24 (c)	Under “harmful practices”: enforce the Act; procedural safeguards and accountability mechanisms for medical doctors.
2025	Committee on Economic, Social and Cultural Rights	E/C.12/DEU/Q/7, para. 13	List of issues: steps to prohibit medically unnecessary gender-assignment surgeries on intersex children without their full and informed consent; whether they remain legally permitted under federal law; implementation of the 2018 recommendation.