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Presentation of international human rights standards in cases of intersex people in medical procedures

Jerneja Turin, representative of the Centre for Human Rights, presented relevant international human rights standards at the [round table of the Advocate of the Principle of Equality on the situation of intersex people in medical procedures](#) Ljubljana, 6. 10. 2022

Over the last decade, a clear position has emerged from international human rights bodies on the human rights aspects to be taken into account and respected in the context of same-sex medical procedures.

In his 2009 [report the Special Rapporteur on the right to health \(UN\)](#) urged health professionals to work towards delaying non-emergency, invasive and irreversible interventions until children are mature enough to give informed consent to the procedure. He stressed that genital surgery on intersex children is particularly problematic because it is painful, risky and has no proven health benefits.

In his 2013 [report the Special Rapporteur on torture](#) criticised medically unnecessary and irreversible operations on babies and children, carried out without their consent, and called on all countries to ban such operations.

Even the [Office of the UN High Commissioner for Human Rights](#) and various UN treaty bodies have in the past strongly criticised cosmetic and other medically unnecessary surgery on children's genital and reproductive organs when the child's opinion is not taken into account. [UN agencies and bodies, including the World Health Organisation](#), have warned that "gender normalisation procedures" can have irreversible and lifelong negative consequences for the physical and mental health of intersex people.

The human rights of children and adults with variations in sexual characteristics are recognised and protected in international law by the human rights to protection against discrimination, to physical integrity, to privacy, to the highest attainable standard of health, to self-determination, to recognition before the law, and the prohibition of torture and other ill-treatment. They are protected by the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination against Women, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture. Slovenia is legally bound by all these treaties.

The UN Committees established by these treaties, with the task of interpreting the provisions of the Conventions and periodically reviewing the status of implementation of these rights in Member States, consistently label non-emergency, invasive and irreversible surgical and hormonal interventions on intersex children without consent as harmful and contrary to the rights of the child.

Their newest recommendations shall be presented in continuation. All recommendations are available [via the ZN Universal Human Rights Index](#) search engine.

This year alone, the [UN Committee on the Rights of the Child](#) has made relevant recommendations to six countries when considering the periodic reports of States on the implementation of the Convention on the Rights of the Child in the context of addressing so-called harmful practices. It called on Greece to ensure that no child, including intersex children, is subjected to unnecessary medical or surgical treatment during childhood, and to provide intersex children and their families with social, medical and psychological services, as well as appropriate counselling, support and compensation. It recommended that Iceland ensure that unnecessary medical or surgical treatment of intersex children is safely delayed until the children are able to give their informed consent, and to provide compensation for children who have received unnecessary treatment. For example, it called on Croatia to ensure that intersex children are not subjected to unnecessary medical or surgical treatment in accordance with the rights of the child to physical integrity, autonomy and self-determination. It also called on Croatia to investigate cases of surgical and other medical treatment of intersex children without informed consent, and to ensure compensation for the victims of such treatment. The Committee made similar recommendations to Zambia and Chile in 2022. It also called on the Netherlands to prohibit unnecessary medical or surgical treatment of intersex children, where these procedures can be safely delayed until the children are able to give their informed consent.

Last year, in 2021, the [UN Human Rights Committee](#), which monitors the implementation of the International Covenant on Civil and Political Rights, in its concluding observations to Germany, expressed concern about reports that intersex children had in some cases been subjected to invasive, medically unnecessary and irreversible medical procedures designed to determine their sex. It was also concerned that such acts were often based on stereotypical views of gender roles, involved humiliating and painful procedures, and were carried out before the persons affected were old enough to give free and informed consent. While commending Germany for introducing a law on the protection of children with variations in sexual development in 2021, the Committee expressed concern that the law does not explicitly restrict all problematic practices and does not provide for criminal liability. It considered that the State party should take all necessary measures to ensure that all acts of gender assignment to intersex children, carried out without their free and informed consent, are expressly prohibited, except in cases where such interventions are medically necessary and in the best interests of the child.

The Committee called on Canada to make similar changes to its legislation this year. It also called for investigations into cases of surgical and other medical treatment of intersex children without their informed consent, and for provisions to ensure compensation for the victims of such treatment. It also called for education and training

of health professionals on sexual diversity and on the consequences of unnecessary surgery and other medical interventions for intersex children.

The [UN Committee against Torture](#) has also repeatedly expressed its concern about "unnecessary and in some cases irreversible surgical practices performed on intersex persons without their consent, and has called on States Parties to adopt legislation to protect the physical integrity of intersex persons and to ensure that no one is subjected to unnecessary medical or other sex-assignment surgery during childhood.

From the perspective of the right to health, the [UN Committee on Economic, Social and Cultural Rights](#) expressed concern this year about the Czech Republic's lack of regulations on the rights of intersex persons, including the prohibition of surgical procedures on intersex children, which are often irreversible and medically unnecessary. It called on the State to ensure that medically unnecessary procedures are not performed on intersex children until they have given their informed consent.

The [UN Committee on the Rights of Persons with Disabilities](#) has also made a number of recommendations on this issue this year alone, in the context of the right to respect for physical and mental integrity. For example, it called on New Zealand and Switzerland to adopt clear legislative prohibitions on unnecessary, invasive and irreversible medical interventions, including surgical, hormonal and other medical interventions on intersex children before the age of informed consent. Similarly, he called on France and India to prevent this practice. It also called on New Zealand to develop and implement a health care protocol for intersex children that is based on the rights of the child, sets out the procedures and steps to be followed by health teams, ensures that no one is subjected to unnecessary medical or surgical treatment in childhood, safeguards children's rights to physical integrity, autonomy and self-determination, and provides appropriate counselling and support to families with intersex children.

Individuals who believe their human rights have been violated can complain to any of these UN committees. To help you, the Ombudsman has prepared a [short guide](#) with information on which committees can be contacted and how to do so.

At the European level, this issue has been addressed by the [Parliamentary Assembly of the Council of Europe in its Resolution 2191 \(2017\) on the promotion of human rights and the elimination of discrimination against intersex people](#), which warned that the approach based on the medical viewpoint is that the bodies of intersex children can and should be conformed to the male or female paradigm, often through surgical and/or hormonal interventions; and that this should be done as early as possible; and that it involves serious violations of bodily integrity. It called for a ban on medically unnecessary surgery without the informed consent of children. Any such procedures, except when the child's life is in imminent danger, should be postponed until the child is able to participate in the decision. In addition, the Parliamentary Assembly of the Council of Europe calls on member states to ensure that all intersex people are provided with medical care by a multidisciplinary team including professionals such as psychologists, social workers and ethicists, and calls for comprehensive training of all health professionals.

At the EU level, Member States were then called upon to adopt legislative measures on intersex rights in 2019 in the [European Parliament Resolution on the rights of intersex people](#) (2018/2878(RSP)). In the Resolution, the European Parliament also strongly

condemns, among other things, gender-normalisation treatments and surgeries; welcomes laws prohibiting surgical procedures, such as those in Malta and Portugal, and calls on other Member States to adopt similar legislation as soon as possible. It also stresses the importance of flexible birth registration procedures and calls on all relevant stakeholders to carry out research on intersex people, taking into account sociological and human rights aspects rather than medical considerations.