

Additional information to a number of UPR-recommendations, provided by Intersex Denmark

A) Legal Framework

1) 60.31 Integrate international obligations related to human rights into national legislation.

As Denmark has signed and ratified a number of ¹conventions and treaties, we have thereby assumed a number of human rights obligations, some of which are stated in the document from the UN High Commissioner for Human Rights ², which cements the duty to protect all persons, including intersex persons, from torture and other cruel, inhuman or degrading treatment, in medical contexts, by ensuring that sterilization and ³unnecessary surgery and treatment on intersex children are violations of national criminal law.

Several of the UN bodies have referred to unnecessary surgery and treatment on intersex children as torture and other cruel, inhuman or degrading treatment, as well as ⁴ harmful practice, and have both ⁵generally and in ⁶recommendations to Denmark, condemned these practices and called for a legislation on this area, just as both the ⁷Council of Europe and the ⁸EU Parliament in resolutions, have condemned these practices and called for a legislation.

2) 60.35 Integrate the Convention against Torture into national legislation.

Denmark, despite clear ⁹obligations to ratified UN conventions, fail to recognize ¹⁰unnecessary surgeries and treatment on intersex children as ¹¹torture, and cruel, inhuman and degrading

¹ Danmark has signed and ratified the following conventions:(ECHR) (1950/1952), (CCPR) (1968/1972),(CESCR) (1968/1972) (CEDAW) (1980/1983),(CAT) (1985/1987),(CRC) (1990/1991),(CRPD) (2007/2009) The European Charter for Fundamental Rights (2007/2009)

² Document A/HRC/29/23 (2015) Link: [A/HRC/29/23 \(undocs.org\)](https://undocs.org/A/HRC/29/23) No. 13 og 14

³ Definition of unnecessary surgeries: "The Rights of Children in Biomedicine, Challenges posed by scientific advanced and uncertainties"

P. 40,, para 1, p 43, para 2, p 44, para 3. Link: <https://rm.coe.int/16806d8e2f>

⁴ CEDAW/C/GC/31-CRC/C/GC/18 Link : <https://undocs.org/CEDAW/C/GC/31/CRC/C/GC/18>

Para 1 + 50

⁵ Statement: End violence and harmful medical practices on intersex children and adults, UN and regional experts urge, OHCHR,CAT,CRC etc.

Link: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=20739>

⁶ CRC/C/DNK/CO/5

Link: [CRC/C/DNK/CO/5: Committee on the Rights of the Child: Concluding observations on the fifth periodic report of Denmark | OHCHR](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=20739)

Para 24, CAT/C/DNK/CO/6-7 , Link : [G1601775.pdf \(un.org\)](https://undocs.org/G1601775.pdf) Para 42, E/C.12/DNK/CO/6, Link : <https://undocs.org/E/C.12/DNK/CO/6> para 64, CAT/C/DNK/CO/8

Link [binternet.ohchr.org/ layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FCO%2FDNK%2FCO%2F8&Lang=en](https://www.ohchr.org/en/lawandpolicy/treatybodyexternal/Download.aspx?symbolno=CAT%2FCO%2FDNK%2FCO%2F8&Lang=en)

Para 32 & 33

⁷ Resolution 2191 "Promoting the Human Rights of and elimination discrimination against intersex people."

Link : <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=24232&lang=en>

No. 7.1.1 + 7.1.2

⁸ P8_TA-PROV(2019)0128 "The rights of intersex people",

Link: [Texts adopted - The rights of intersex people - Thursday, 14 February 2019 \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019TA0128)

No. 1 +2

⁹ Link: [International Human Rights Law | OHCHR](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=20739) Para 2-3

¹⁰ "The Rights of Children in Biomedicine, Challenges posed by scientific advanced and uncertainties" Page 40, para 1 Page 43, para 2

Link : <https://rm.coe.int/16806d8e2f>

¹¹ Convention against Torture, Definition of torture Para 1

treatment, and have not yet included these, as ¹²violations of national criminal law.

Special Rapporteur on Torture, Juan Mendez, in document ¹³A/HRC/22/53 made it clear that the torture and CIDT rubrics apply in variety of settings, as he stated that although the prohibition of torture may have originally applied primarily in the context of interrogation, punishment or intimidation of a detainee, the international community has begun to recognize, that torture also occur in other contexts, including in health care settings, and that that intent, required in article 1 of the Convention, can be effectively implied where a person has been discriminated against on the basis of disability. which is particularly relevant in the context of medical treatment, where serious violations and discrimination against persons with disabilities may be defended as ¹⁴“well intended” on the part of the health-care professionals.

B) Equality

3) 60.52 Carry out the necessary actions to fully include in the national legal framework the express prohibition of all forms of discrimination enshrined in international human rights instruments, especially on grounds such as sexual orientation, gender identity, religion, age and disability.

Unnecessary and irreversible surgery on intersex children constitutes institutional discrimination. Unnecessary surgery and treatment on intersex children describes a practice where, before the child's gender identity is known, and before the child meaningfully can consent to treatment, extensive and irreversible surgical procedures and treatments are performed on the sex anatomy of intersex infants, children and adolescents. In many cases, there is no medical evidence of the necessity, safety or benefits of these interventions, which, despite evidence to the contrary, are carried out on the ¹⁵ pretext of being beneficial to the child and thus medically necessary, or for ¹⁶social, psychosocial or cosmetic reasons, rooted in ¹⁷pathologization , tabooization, ¹⁸stigmatization and ¹⁹discrimination of intersex people

¹² A/HRC/52/30 Good practices in national criminalization, investigation, prosecution and sentencing for offences of torture (2023)
Link : <https://undocs.org/A/HRC/29/23>

¹³Document: A/HRC/22/53

Link: [United Nations \(ohchr.org\)](https://www.ohchr.org) Para 15+ 20

¹⁴ “The Rights of Children in Biomedicine, Challenges posed by scientific advanced and uncertainties” Link:

<https://rm.coe.int/16806d8e2f> Page 44, Para 3

¹⁵ The Rights of Children in Biomedicine, Challenges posed by scientific advanced and uncertainties”, Link:

<https://rm.coe.int/16806d8e2f>

Side 44, punkt 5.2.2 afsnit 3

¹⁶ Torture in Healthcare Settings: Reflections on the Special Rapporteur on Torture’s 2013 Thematic Report

Link: [Torture in Healthcare Settings: Reflections on the Special Rapporteur on Torture’s 2013 Thematic Report - International Drug Policy Consortium \(IDPC\)](https://www.idpc.org/publications/torture-in-healthcare-settings-reflections-on-the-special-rapporteur-on-torture-s-2013-thematic-report) Page 100, Para 3

¹⁷ Resolution P8_TA-PROV(2019)0128 “The rights of intersex people”

Link: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0128_EN.html No. 7+8

¹⁸ Statement : End violence and harmful medical practices on intersex children and adults, UN and regional experts urge, OHCHR,CAT,CRC Link: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=20739>

¹⁹ ILGA in Para 5 describe the root causes of violations against intersex people Link: [Gender Identity, Gender Expression and Sex Characteristics Programme | ILGA World](https://www.ilga.org/ILGA-World/News/2015/05/20/Opening-remarks-by-Zeid-Ra-ad-AI-Husseini-United-Nations-High-Commissioner-for-Human-Rights-at-the-Expert-meeting-on-ending-human-rights-violations-against-intersex-persons) . Furthermore, in 2015, OHCHR describes in para 6 that the myth that all people belong to 1 of the 2 binary genders contributes to the taboo and stigma that comes with being intersex Link: [Opening remarks by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights at the Expert meeting on ending human rights violations against intersex persons | OHCHR](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=20739)

and their bodies in medical settings, grounded in ²⁰endosexist, abelistic, binary, heteronormative attitudes, about how a body should look and function sexually.

4) 60.55 Intensify efforts to combat discrimination, xenophobia as well as racism and bring perpetrators to justice.

According to document²¹A/HRC/29/23 UN states have an obligation to protect all persons, including LGBT and intersex persons, from torture and other cruel, inhuman, or degrading treatment or punishment in custodial, medical and other settings. This obligation extends to prohibiting, preventing, investigating and providing redress for torture and ill-treatment in all contexts of State control, including by ensuring that such acts are offences under domestic criminal law.

As the root causes to the way intersex children and adults are treated in medical settings, are founded in discrimination including but not limited to : heteronormative, endo sexist attitudes, about how a body should look and function sexually, and as surgeries on intersex children are considered torture, and cruel, inhuman and degrading treatment, and harmful practice, Denmark has an obligation to prohibit, prevent, and investigate these violations, to provide redress to the victims, to end impunity, and to bring the perpetrators to justice.

Medical professionals and state officials have a heightened obligation to protect vulnerable individuals, and to report cases of, and even indications of torture and other cruel, inhuman or degrading treatment or punishment, and harmful practice. In document ²²A/HRC/52/30 it is stated that *“It is a gross contravention of medical ethics for medical personnel to participate or be complicit in acts of torture”* and in document ²³CEDAW/C/GC/31-CRC/C/GC/18 it is stated that: *“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..”* and finally in document ²⁴A/C.3/70/L.27/Rev.1 it is stated that the UN : *“Also condemns any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment under any circumstances... .. and urges States to ensure the accountability of those responsible for all such acts;”*

Yet the government, contrary to our obligations, and to recommendations and resolutions, and signed joint statemen (please see our answer to 60.101), removed the I for intersex from the LGBTI+ acronym in political context, and unlike the ²⁵2018 LGBTI+ action plan, failed to include any intersex

²⁰ Male and female are collectively described as endosex, in contrast to intersex.

²¹ A/HRC/29/23

link [A/HRC/29/23 \(undocs.org\)](https://undocs.org/A/HRC/29/23)

Para 13

²² A/HRC/52/30 Good practices in national criminalization, investigation, prosecution and sentencing for offences of torture

Link: [A_HRC_52_30_AdvanceEditedVersion_0.docx \(live.com\)](https://undocs.org/A_HRC_52_30_AdvanceEditedVersion_0.docx) Para 62

²³ CEDAW/C/GC/31-CRC/C/GC/18

Link : <https://undocs.org/CEDAW/C/GC/31-CRC/C/GC/18> Para 50

²⁴A/C.3/70/L.27/Rev.1

Link : <https://undocs.org/A/C.3/70/L.27/Rev.1> Para 2

²⁵ [Denmark launches first LGBTI action plan - The Copenhagen Post – The Copenhagen Post \(cphpost.dk\)](https://www.cphpost.dk/news/denmark-launches-first-lgbti-action-plan/)

specific topics in the ²⁶2022 LGBT+ action plan, just as the National institute for Human Rights acting on a mandate from the government has failed to include several violations of the Human Rights of intersex people in their 2023 ²⁷LGBT+ Barometer, thereby Invisibilizing the full extent of the human rights violations, faced by intersex people in Denmark.

60.101 Maintain the efforts to promote and protect the rights of lesbian, gay, bisexual, transgender and intersex persons, especially to protect the body integrity of intersex girls and boys.

In ²⁸2020, ²⁹2021 and again in ³⁰2023 Denmark has signed a Joint statement on the Human Rights of Intersex people, where they call on states to : 1) To combat discrimination on the basis of sex characteristics and address its root causes, such as gender stereotypes, spread of inaccurate information, stigma, taboo and pathologization 2) To protect the autonomy of intersex children and adults and their rights to health and to physical and mental integrity so that they live free from violence and harmful practices. Medically unnecessary surgeries, hormonal treatments and other invasive or irreversible non-vital medical procedures without their free, prior, full and informed consent are harmful to the full enjoyment of the human rights of intersex persons. 3) To ensure accountability, reverse discriminatory laws and provide victims with access to remedy. 4) address the root causes, and implement protective laws and policies in close consultations with those affected, in order to ensure the full realization of human rights of intersex persons.

Denmark still fail to address any of the 4 points, and contrary to the goals of the Joint statements, the Danish Government, in 2022 when launching the second LGBT+ action plan, had chosen to remove the I for Intersex from the LGBTI+ acronym, in all political contexts, and thereby re-Invisibilizing a marginalized group, that is struggling to highlight and combat, the ways in which the truth about human rights violations towards intersex people, such as medically unnecessary and nonconsensual surgeries on intersex infants and minors, for decades has been allowed to take place, hidden behind a veil of secrecy, compounded by discrimination and shame, which has led to making the mere existence of intersex people and the surreptitious violations of their human rights; invisible to those, not directly affected.

In the 2022 LGBT+ action plan, the Government furthermore chose, to remove all intersex specific issues from the action plan.

C) Prohibition of torture and other forms of ill-treatment

60.124 Cease torture and cruel and inhuman treatment in places of detention, particularly for persons with an immigration background.

²⁶ [Room for diversity in the community - LGBT+ Action Plan 2022-2025 | Digitaliserings- og Ligestillingsministeriet \(digmin.dk\)](#)

²⁷ [LGBT+ barometer | Institut for Menneskerettigheder](#)

²⁸ Link: [Joint Statement led by Austria on the Rights of Intersex Persons | Australian Government Department of Foreign Affairs and Trade \(dfat.gov.au\)](#)

²⁹ LINK: [UNITED NATIONS HUMAN RIGHTS COUNCIL 48th session Joint Statement on the Human Rights of Intersex Persons – BMEIA - Außenministerium Österreich](#)

³⁰ Link: [General Debate Item 8: Follow-up and implementation of the Vienna Declaration and Programme of Action - Finland abroad: Permanent Mission of Finland, Geneva](#)

On 17/11- 2023 Kriminalforsorgen, The Danish Probation Service, launched a Guide to institutional staff, under the title : Practice of the Danish Prison and Probation Service in relation to gender minorities. It is to work as a guide on how to treat gender minorities in the Danish prisons and detention centers.

As this guide is considered a work-document and is not available online, we have sought and gained access to the document. The guide is largely positive, but there is a few issues to address:

This guide focusses on the handling of intersex and transgender inmates, however Intersex Danmark, the only NGO which from a Human Rights perspective, work to better the situation for intersex people in Denmark, were not involved or consulted, in connection with the preparation of this guide.

It is stated that biological sex in the guide, is interpreted as the sex assigned at birth. This is highly problematic, as this is not the case for intersex individuals, as the sex of intersex people is correctly ³¹categorized as intersex, and neither male nor female. The biological sex/ the anatomy of an intersex person, does not live up to the medical and social standards, for male or female bodies, and may have clear, innate sex characteristics from both male and female, some of which may have been visible at birth (Primary sex characteristics) while other may have become visible later in life (Secondary sex characteristics) often around puberty.

However, in order to fit into the Danish social security system Intersex people are assigned either male or female sex at birth, however this sex assignment, can in no way be considered as correct, or adequately covering the actual anatomy of the individual.

It is highly problematic and offensive to many transgender and intersex people, that it is stated in the guide, that they are to be frisked by people of the same biological sex, (Sex assigned at birth), as themselves, thereby allowing male prison guards to frisk transgender and intersex women assigned male at birth, disregarding their current anatomy, and gender identity. Disregarding a person's gender identity³²Mandela rules, rule 1 stating that :*" No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification "* Rule 2: *"There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status "* and rule 52, stating that *"Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner"*

However there are many positive points, and an implementation of the paper, will represent a

³¹ "Gender interacts with but is different from sex, which refers to the different biological and physiological characteristics of females, males and intersex persons, such as chromosomes, hormones and reproductive organs"

Link: [Gender \(who.int\)](https://www.who.int/gender)

Para 3

³² Link: [The United Nations Standard Minimum Rules for the Treatment of Prisoners \(unodc.org\)](https://www.unodc.org/treaties/ML/1984/1984_01_01.html)

Rule 1,2 52

major shift, in the way gender minorities are viewed, and treated, and how their human rights are upheld, in the prison system.

Right to Health

60.197 Ensure equal access to health care and essential services for persons with an ethnic minority background, including through the provision of quality, affordable translation and interpretation services.

³³UNHCR states that : LGBTI persons fleeing persecution face a complex array of challenges and threats at all stages of displacement, including discrimination, prejudice, violence, difficulty accessing humanitarian services, and barriers to articulating their protection needs during asylum procedures and other interactions with protection and humanitarian actors.

For intersex asylum seekers the access to healthcare is very difficult for many reasons. The term intersex does not as such exist in many languages, and therefore risk to be ³⁴wrongfully translated by interpreters, due to lack of the necessary knowledge, and language to describe intersex.

Intersex asylum seekers experience to have fled persecution in their country for being intersex, or due to their gender expression, or sexual orientation, some have been forced to undergo unnecessary surgeries and treatments in their country of origin and suffer from the consequences of these procedures. Intersex people may be deeply ³⁵traumatized by their prior experience with medical staff, and fear to disclose their situation to medical staff upon arrival in the centers, although they need medical care, including, but not limited to hormone therapy and surgeries. They may not have proof of their prior hormone treatments and surgeries, and may, due to ³⁶lack of knowledge of the rules in place in Denmark, opt not to disclose their intersex variation out of fear, although being intersex may have played a significant role in their need to flee.

However in Denmark, intersex and transgender asylum seekers are asked to provide proof of prior legal hormone treatment, from their country of origin, in order to access hormone treatment while their asylum case is being processed, this should change to offer intersex and transgender asylum seekers ³⁷easy access to hormone treatment, and specialized medical care.

60.201 Strengthen efforts to protect people's right to life and the right to health, especially the life and health of the elderly, the disabled and women.

Intersex people experience that they, and their bodies, are systematically referred to in highly pathologizing terms in medical settings.

³³ Link: [UNHCR leads in LGBTI refugee, asylum seeker protection | UNHCR](#)

³⁴ Link: [Intersex Refugees & Asylum Seekers – OII Europe](#) Point 5

³⁵ Link: [Intersex Refugees & Asylum Seekers – OII Europe](#) Point 1

³⁶ Link: [Intersex Refugees & Asylum Seekers – OII Europe](#) Point 2

³⁷ Link: [refugeeflyerfold6pages.indd \(oiieurope.org\)](#) Page 2, Current migration policies should, Point 3

Much of the pathologizing language is ³⁸misrepresented as neutral language, and both intersex people and their families, but also the general public, are taught to refer to intersex in the same pathologizing terms, thus reinforcing a ³⁹general understanding, of intersex as a serious sickness or a flaw, which can and should be treated and corrected.

This unnecessary medicalization of intersex, and the pathologizing language, subconsciously affects ⁴⁰parents.

This become obvious when parents are faced with the choice of whether to terminate the pregnancy, when prenatal tests show they are expecting an intersex child, they often opt for termination, and when faced with a ⁴¹choice to ⁴²consent to surgery and/or treatment, often weighing in favor of surgeries and treatments.

In their 2019 resolution ⁴³P8_TA-PROV(2019)0128 "The rights of intersex people", the European Parliament states that the pathologizing of intersex people, stands in the way of their right to the highest attainable health.

This effects intersex children as mentioned above but also effects intersex adults in need of gender-affirming care, who disagree with the sex assigned at birth, as they experience discrimination, and lack of the same level of highly specialized treatment, when compared to intersex persons who agree with the sex assigned at birth. In 2023 Denmark received recommendations from ⁴⁴CAT advising the State to: "Ensure that all intersex persons receive the same level of specialized care, regardless of their conformity with the gender they were assigned at birth"

Due to the statutes of limitation in place, intersex people who were harmed by unnecessary surgeries or treatments in their childhood, are unable to seek redress, as they by the time they are old and mature enough to understand, and express the full scope of the harm caused, the window

³⁸ Torture in Healthcare Settings: Reflections on the Special Rapporteur on Torture's 2013 Thematic Report
Link: [Torture in Healthcare Settings: Reflections on the Special Rapporteur on Torture's 2013 Thematic Report - International Drug Policy Consortium \(IDPC\)](#) Page 95, Para 3

³⁹ Public understanding of intersex: an update on recent findings
Link: [Public understanding of intersex: an update on recent findings | International Journal of Impotence Research \(nature.com\)](#)

⁴⁰ Shaping Parents: Impact of Contrasting Professional Counseling on Parents' Decision Making for Children with Disorders of Sex Development, Streuli et al.
Link: [Shaping parents: impact of contrasting professional counseling on parents' decision making for children with disorders of sex development - PubMed \(nih.gov\)](#)

⁴¹ Statement : End violence and harmful medical practices on intersex children and adults, UN and regional experts urge, OHCHR,CAT,CRC
Link: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=20739>

⁴² "The Rights of Children in Biomedicine, Challenges posed by scientific advanced and uncertainties"
Link: <https://rm.coe.int/16806d8e2f> Page 40 para 1

⁴³ P8_TA-PROV(2019)0128 "The rights of intersex people",
Link: [Texts adopted - The rights of intersex people - Thursday, 14 February 2019 \(europa.eu\)](#) Para 7.

⁴⁴ CAT/C/DNK/CO/8 Link:
tinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FDNK%2FCO%2F8&Lang=en Para 32 & 33

to seek redress is surpassed.

Refugees and asylum seekers

60.250 Further increase efforts aimed at protection of asylum seekers and migrants.

“⁴⁵Experience shows that intersex people encounter massive violence in accommodations. Room distribution is often randomly decided due to the persons gender marker in their official documents, or on an assumed gender based on perception, without taking the specific needs of the intersex person into account.”

Intersex refugees and asylum seekers are especially vulnerable, and often find themselves in eminent risk of discrimination and hate related violence,⁴⁶ therefore finding safe accommodation as soon as possible is important; specific LGBTIQAA accommodation is best, if wished for by the asylum seeker.

However in Denmark intersex and transgender asylum seekers, are still placed in camps with other groups, we need to establish a specific LGBTIQAA accommodation, that is a safespace with staff that are trained in LGBTIQAA issues.

⁴⁵ Link: [Intersex Refugees & Asylum Seekers – OII Europe](#)
Accommodation structure Point 1

⁴⁶ Link: [Intersex Refugees & Asylum Seekers – OII Europe](#)
Accommodation structure Point 2