

JURISTS AGAINST GENITAL MUTILATION OF INTERSEX PEOPLE

Human Rights have become a legitimacy criterion, but also a criterion of the validity of the juridical systems. This is the reason why a democracy can be one if it cannot introduce strong guarantees for its citizens. In this sense, intersex people, historically named “hermaphrodite” and medically stigmatised as “Disorders of Sex Development”, mean the impassable limit: those juridical systems unable to give a response with guarantees to intersex people cannot be named “democratical” neither “Human Rights defenders”.

Intersex people have suffered the terror of Law and Medicine throughout History: since the sentence to being burned because they had a “unnatural” figure to suffering genital and corporal mutilation in our hospitals. Nowadays, newborn intersex people get their genitals operated and are mutilated, violated in a physical and psychological level, and denied the right of the free development of their personality or sexuality.

The legal vacuum existing with the intersex people is a huge exception state. The medical protocols that impose a logic, a normativity, to determine the shape of a *normal* body are protocols that are based in cruelty, in the utter negation of the human dignity. We cannot keep on allowing these obvious intersex people Human Rights.

This is why the undersigned, jurists and specialists in Law, report the mutilations of the surgeries of newborn genital normalization, and also any other medical treatment that is purely aesthetic, that intersex people suffer. We understand that we are facing a crime against humanity that is at the same level as genocide. According to the article 7 of the Rome Statute of 1998 that the International Criminal Court created, a crime against humanity consists of “a generalised or systematic attack against civil population and being aware of this attack”.

- 1) “Generalised or systematic attack against the civil population”: it means a series of generalised acts in the frame of a state policy. This attack does not mean the existence of a war conflict. When using the adjectives “generalised” or “systematic”, we must understand as alternatives. “Generalised” means quantity: acts are against a lot of victims. The “systematic” character refers to a qualitative dimension: repetitive or continued commission of acts, according to a policy.

- 2) The active subject (the perpetrator) must have means that are not within the reach of the perpetrator of a common crime, making their impunity easier. They must be aware of the attack, made complying a state policy (that does not have to be specifically defined).
- 3) Passive subject. The concept “civil population” emphasises the collective character of the attack. This can be directed against an identified, concrete group because of their ethnics, nationality, political orientation, gender, etc.
- 4) The generalised or systematic attack against the civil population can come into murder, extermination, slavery, deportation, forced transfer, imprisonment, torture, rape, forced prostitution, forced pregnancy, forced sterilization, persecution of a group with an own identity founded on political, racial, national, ethnical, cultural, religious or gender reasons, forced disappearance, “apartheid-type” crimes.

How are intersex people in this puzzle? The medical treatments of normalization mean a type of torture, forced sterilization or, even, of persecution that are happening in both public and private hospitals against a concrete sector of the civil population and according to medical protocols accepted by the States. Let's check:

- 1) Generalised or systematic attack against the civil population: both quantitative (generalised) and qualitative (systematic), the medical practices on the intersex population, especially in minors, meet this requirement. We have a lot of intersex people that are through surgical and hormonal treatments without their consent complying medical protocols that the State allows.
- 2) Active subject: the Medicine professionals that practice these treatments have means in their reach (epistemological, materials and legal protection) that guarantee the success of their activity, and also their impunity.
- 3) Passive subject: the ones that are receiving the generalised or systematic attack is a population defined by their sexuality.
- 4) Possible attacks: torture (as the UN recognised in 2013), forced sterilization or persecutions for sex and gender reasons (where, for example, in many occasions, doctors do not get the informed consent, executing the treatments not even informing the parents of the intersex baby).

Therefore, we ask, following the path of the United Nations (report of 2013, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*; report of 2015, *Discrimination and violence against individuals based on their sexual orientation and gender identity*), of the Parliamentary Assembly of the European Council (resolution 1952, of 2013, *Children's right to physical integrity*), of the World Health Organization (report of 2014, *Elimination forced, coercive and otherwise involuntary sterilization*; report of 2015, *Sexual health, human rights and law*), of the State of Malta (in 2015, it is published the *Gender Identity, Gender Expression and Sex Characteristics Act*) or of the European Council (with their 2015 report *Human rights and Intersex people* and 2017 *Promoting the human rights of and eliminating discrimination against intersex people*), the end of mutilations on intersex people, and also the consideration of these medical treatments as crimes against humanity, open to be judged by the International Criminal Court.

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