

## Fact sheet 3



### Medical necessity (*Recommendations 4 and 8*)

International human rights law recognises a limited and narrowly defined exception, where it is permissible to perform medical interventions without the consent of the person concerned, in cases of medical necessity.

This medical necessity principle means it is permissible to carry out a medical intervention on a person without their personal consent only where the intervention is required urgently to avoid serious harm to the person concerned.

The Commission considers that medical interventions on children with variations in sex characteristics should be permissible only where:

- the medical intervention is required urgently to avoid serious harm
- the risk of harm cannot be mitigated in another less intrusive way, and intervention cannot be further delayed, and
- the risk of harm outweighs the significant limitation on human rights that is occasioned by medical intervention without personal consent.

Evidence suggests that medical interventions have been undertaken on children and young people in circumstances that do not always constitute medical necessity, including, for example, psychosocial rationales for interventions based on ‘normalising’ genitalia. Current clinical guidelines permit such medical interventions without personal consent.

New National Guidelines (see Fact sheet 4: Clinical practice) are needed to explain the application of the medical necessity principle, and concepts like proportionality, and the need to adopt the least intrusive intervention.

These would, for example, explain that psychosocial rationales are not a permissible basis for intervention without personal consent and highlight where there is incomplete evidence—for example, in respect of certain cancer risks.

The National Guidelines would also inform Independent Panels, in determining whether a medical intervention should be authorised (see Fact sheet 6: Authorisation of medical interventions).