

Committee on the Elimination of Discrimination against Women

Reporting Cycle VI – Switzerland – 83rd Session

NGO-repot of InterAction Switzerland

may be posted on the OHCHR website

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InterAction Switzerland is a non-governmental organization (article 60ff. Swiss Civil Code) for and by intersex women, men and non-binary intersex people of all ages and from all linguistic parts of the country, founded on 26 October 2017.ⁱ We are committed to political advocacy, providing education in schools and to medical professionals, higher education institutions and medical students, public awareness-raising and monthly community meetings.

InterAction Switzerland is part of the LGBTIQ+ family and other human-rights-networks and child protection organizations.

I. Meaning of Intersex and executive summary

1 **Intersex is an umbrella term**, a spectrum to describe innate variations of sex characteristics (**VSC**) regarding reproductive organs / internal or external sex / genital characteristics, hormonal structure and/or levels and/or chromosomal patterns that are different from the definition of male or female. Intersex children are either boys or girls. **Intersex** should be distinguished from **gender** identity (e.g. non-binary gender identity, men/boys or women/girls).ⁱⁱ The UN estimates that at least 1.7% of the population have been born with intersex traits.ⁱⁱⁱ Like any human being, intersex people may later in life have a non-binary gender-identity or have any kind of sexual orientation (lesbian, gay, bisexual or heterosexual etc.). People with a VSC are therefore as diverse as the rest of the Swiss population (endosex people).

2 Mostly, medical interventions are not proportionate but aim to fit the child into a socio-medical norm. We understand **modifications of sex characteristics** as all forms of modifying internal or external sex / genital characteristics and as harmful practices.^{iv}

Forms of modifying internal or external sex / genital characteristics:

genital surgeries, gonadectomies, partial clitoris amputations, dilation of a surgically created vagina on girls, plastic surgeries on the vulva, vagina, plastic surgeries of the scrotum, testicles, and penis, including ‘corrections’ of hypospadias, and other irreversible interventions such as sterilizing procedures, ovariectomies, hysterectomies, involving medical treatment that terminates or permanently reduces reproductive autonomy – *unless such interventions are lifesaving and of crucial importance for the health of the child*.^v Prenatal ‘therapies’ with dexamethasone and selective abortion cannot strictly be considered a modification of sex characteristics but aim to prevent children being born with an enlarged clitoris.

Executive Summary

3 This report is submitted by InterAction Switzerland. We may also refer to the joint NGO submission of the NGO-Coordination post Beijing Switzerland with which we are working in this cycle. **Key facts:**

- Lack of legal security and lack of implementation of the Swiss Constitution.¹,
- lack of access to justice and compensation,
- shift in responsibility from the state to the medical profession and shift in responsibility by the medical profession to parents of intersex children (blackboxing of intersex),
- lack of integration of InterAction into medical psychosocial care,
- absence of a strategy or action plan to promote awareness, health and rights,
- absence of progress in implementing human rights of intersex children and adults in Switzerland.

¹ Hereafter Fed.Cst. (RS 101 : Compilation (<https://www.fedlex.admin.ch/eli/cc/1999/404/fr>)).

II. Introduction and key facts

Intersex Genital Mutilation and Female Genital Mutilation as Harmful Practices

Both intersex girls and boys and girls who experience female genital mutilation “are denied basic human rights including freedom from violence, freedom from gender and sex-based discrimination, the right to bodily integrity and the right to the highest attainable standard of health.”^{vi} Jones continues (note vi, p.403): “As with FGM, IGM practices carry a large number of known risks of physical and psychological harm. As with FGM, these include loss or impairment of sexual sensation, poorer sexual function, painful scarring, painful intercourse, incontinence, problems with passing urine, increased sexual anxieties, [...] less sexual activity, lifelong trauma and mental suffering.” Experiences are different (relating to the variation), but include elevated rates of self-harming behaviour, suicidal tendencies comparable to those who have experienced child sexual abuse, loss of reproductive capabilities, lifelong need for Hormone Replacement Therapy.

Resulting health problems, lack of healthcare, inadequate support, and irreversible consequences, **are a result of harmful practices** to emphasize the *surgically* assigned sex (e.g. CEDAW/C/DEU/CO/7-8, no.23(e), CEDAW/C/CHE/CO/4-5, no.24(c), CRC/C/CHE/CO/2-4, no.42(b)).

Medical professionals and the Swiss Government do not explicitly act against such practices.^{vii} However, modifying sex characteristics is still practiced in Switzerland: all these interventions of ‘unspecified malformation of the female/male genitalia’ remain constant or even increase^{viii} and must be understood as **harmful practices**^{ix}. These practices

- “constitute a denial of the dignity and/or integrity of the individual and a violation of the human rights and fundamental freedoms enshrined in the two Conventions”;
- “constitute discrimination against women or children and are harmful” in various regards;
- they “are traditional, re-emerging or emerging practices that are prescribed and/or kept in place by social norms [...] on the basis of sex, gender, age and other intersecting factors”;
- “are imposed on women and children by family members, community members or society at large, regardless of whether the victim provides, or is able to provide, full, free and informed consent”^x.

Shift in responsibility

Furthermore, there is a “shift in responsibility from the state to the medical profession.[...] Similar shifts in responsibility are also utilised by the medical profession to deflect responsibility from themselves and to place it onto [...] parents of intersex embodied children. This ‘funneling’ of responsibility away from institutions and towards individuals enables the continuation of non-therapeutic medical interventions on children and prevents collective action against them.”^{xi} This leads to the “blackboxing” of intersex that maintains the schism between human rights and non-therapeutic, irreversible non-consented bodily interventions on children.

III. Implementation of international children's rights and legal framework

8 In several concluding observations of **UN treaty bodies**, Switzerland had been recommended to stop or prohibit non-voluntary, deferrable, irreversible modifications of sex characteristics of intersex children.^{xii} On the **regional level**, ECRI required the same in 2019^{xiii}; GREVIO will publish recommendations this year.^{xiv}

9 On the **national level**, the NCE recommended already twice to prohibit sex modifying procedures of intersex children lacking capacity.^{xv} The NCE concluded (p.13): "An irreversible sex assignment intervention involving harmful physical and psychological consequences cannot be justified on the grounds that the family, school or social environment has difficulty in accepting the child's natural physical characteristics. [...] In addition, there is no guarantee that the intended purpose (integration) will be achieved" (see: CEDAW/C/CHE/CO/4-5, 24(d)).

Any restriction on fundamental rights must have a legal basis and must be justified as being in the public interest and be proportionate; above all, the essence of fundamental rights is inviolable (article 36(4) Fed.Cst.).^{xvi} In addition to constitutional law, civil law is of particular importance, especially the protection of children's rights (articles 19c and 296ff. Swiss Civil Code (RS 210)². These rights are not guaranteed yet in Switzerland, either for boys and girls or for adults with a VSC.

10 Regarding female genital mutilation, a new provision (article 124) was added to the Swiss **Criminal Code** (RS 311.0)³ in 2012 to put an end to the lack of legal security. No such provision in the Criminal Code, *hence* no legal security, exists against harmful medical treatment of intersex children (e.g., articles 2, 3, 4, 12, 19, 24(3), 37a CRC / articles 2, 5, 10-13, 15 CEDAW).

² Hereafter Civil Code.

³ Hereafter Criminal Code.

IV. Recommendations for the State under Review

The following recommendations aim to promote the human rights situation of intersex people and especially children in Switzerland. Our [LOIPR of 26.09.2019](#) was sent to the federal administration (Swiss government) in July 2020. ¹¹

(1) EXPLICITLY PROHIBIT IN THE CRIMINAL CODE ANY PRACTICE THAT MODIFIES CHILDREN'S SEX CHARACTERISTICS WITHOUT MEDICAL REASONS AND FULL AND INFORMED CONSENT UNLESS THE INTERVENTION IS LIFESAVING OR OF CRUCIAL IMPORTANCE FOR THE CHILD'S HEALTH.

The legal situation is essentially the same as it was before the ban on female genital mutilation in article 124 Criminal Code. Explicit legislation to protect the bodily integrity and self-determination of intersex children doesn't exist (CEDAW/C/CHE/CO/4-5, para. 25(c)).⁴ The recommendations from the Swiss Ethics Commission have not been implemented by the Swiss Government (margin9). The State party report (CEDAW/C/CHE/6)⁵ does not take this into account and does not address questions 11, 19(c) of CEDAW/C/CHE/QPR/6.⁶ ¹²

Motion [22.3355](#) was submitted to the Council of States on 18 March 2022. An explicit prohibition in the Criminal Code of modifications of sex characteristics of children not capable of judgement is crucial and indispensable to ensure legal security.

COB 25(c) / QPR/6, 11, 19(c)

(2) WITHDRAW PARAGRAPH 4 OF ARTICLE 30B SWISS CIVIL CODE.

We strongly criticize the government's legislative proposal of a *simplified* gender recognition in the civil status register: the government has linked *simplified* legal gender recognition with a **previously non-existent consent of parents for minors capable of judgement** (see [Article 19c SCC](#)). The government's proposal was a profoundly serious step backwards regarding **paragraph 4** of Article 30b SCC – rejected by all child protection organizations in Switzerland, criticized by child protection experts (COPMA/KOKES) by the National Ethics Commission, and all human rights NGOs.^{xvii} ¹³

⁴ Hereafter COB.

⁵ Hereafter SPR/6 (State party report).

⁶ Hereafter QPR/6.

(3) COLLECT SYSTEMATIC, DISAGGREGATED (I.A. AGE, MEDICAL REASONING) DATA REGARDING THE NUMBERS OF IRREVERSIBLE SEX-MODIFYING PRACTICES ON CHILDREN WITH A VSC.

14 Detailed statistics on medical practices in relation to medical treatments of intersex girls and boys are not available. 141 intersex infants aged 0-2 years received medical treatments in a hospital in Switzerland between 2010 and 2017. According to data from the Children's Hospital in Zurich (Jan 2022), 85-135 genital operations are performed each year on children with a VSC.^{xviii} Statistics on medical practices have to be independent and include all above-mentioned interventions.

COB 25(a) / QPR/6, 13

(4) PROVIDE families WITH INTERSEX CHILDREN AND INTERSEX PEOPLE WITH ADEQUATE COUNSELLING, EMPOWERING SUPPORT AND PEER-TO-PEER COUNSELLING.

15 There is currently little evidence that medical practice has changed. Supporting families in parenting intersex children has not been developed or supported by government healthcare systems.^{xix} Moreover, learning from empowerment and peer-to-peer concepts and counselling, such as initially developed by patient groups, the exchange between lived-experience experts, relatives and experts should be promoted to enhance mutual understanding of the different perspectives.^{xx} Apart from what we offer (self-help- or peer-groups), in Switzerland no such *independent* counselling services exist.

COB 25(c) / QPR/6, 13

**(5) A) PROVIDE ADEQUATE COMPENSATION/REDRESS TO INTERSEX PEOPLE AFFECTED BY SURGICAL OR OTHER MEDICAL TREATMENT WITHOUT THEIR FREE/FULL INFORMED CONSENT AND ESTABLISH SPECIFIC FUNDS FOR COMPENSATION.
B) EXTEND THE RETENTION PERIOD FOR MEDICAL RECORDS TO 40 YEARS, BEGINNING WITH THE AGE OF MATURITY, AND ESTABLISH A FEDERAL CENTRAL REGISTER.**

16 Intersex people in Switzerland deserve compensation for the human rights violations they have suffered and are suffering from.^{xxi} It should be noted that access to legal remedies is rendered impossible, as the retention period for medical records has often expired by the time intersex children reach adulthood. Funds for reparations should be established. A federal central register should be introduced for all genital modifying operations or other treatments that may result in a modification of internal or external sex characteristics.

COB 24(d), 25(d) / QPR/6, 11, 19

(6) ADOPT A NATIONAL ACTION PLAN TO PREVENT ALL FORMS OF VIOLENCE AGAINST INTERSEX CHILDREN/ADULTS, INCLUDING E.G.: AWARENESS-RAISING MEASURES, TEACHING OF MEDICAL STUDENTS AND PUPILS IN MEDICAL CURRICULA, SCHOOLBOOKS, LACK OF HEALTHCARE, INTERSEX IN HEALTH SURVEYS AND REGISTERS, GENDER AND SEX STEREOTYPES.

Education (COB 23(b), 25(e), 35)

- About one third of respondents (in FRA 2020) say that a medical determination was made, but that they did not get a specific diagnosis or clear information.^{xxii}
- Stigmatization and isolation hinder the development of young intersex persons.
- Development of a healthy self-esteem is extremely difficult.

Young intersex children should be informed at school, by medical professionals or peers like us, that intersex variations are healthy variations of the human body (CEDAW/C/GC/36, nos.12, 45f., 66). SPR/6 does not take this into account and does not address these matters (QPR/6, 17).

Health (COB 38(c), 39)

Switzerland (SPR/6) does not address specific health matters of intersex women and men (QPR/6, 19(d), analogously). Most forms of modifying sex characteristics are violations of the human rights of healthy children. Long-term health problems, lack of healthcare and inadequate support result from these interventions. Access to healthcare for adult people with a VSC is not guaranteed. Reference to, and documentation on intersex women, men and non-binary intersex (and LGBT) persons in national health surveys and registers is lacking (COB 39(c)).

Stereotypes (COB 22, 23)

CEDAW mentions in article 5(a) the obligation to eradicate stereotypes to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority [...]”.^{xxiii} Intersex human beings are considered as particularly *inferior* to other human beings. The eradication of prejudices, customs, traditions is of high discriminatory potential for intersex human rights. These stereotypes affect intersex women and people, not based on their social role or their gender identity (GENDER) *but mainly is based on stereotyped sex characteristics*. The Swiss Government (SPR/6) does not take this into account and does not address these matters relating to intersex women/girls and men/boys (QPR/6, 10).

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- i See our by-laws on our website (French).
- ii CEDAW/C/BGR/CO/8, no.34(e), where the Committee recommends that intersex *women* are not subjected to surgery or treatment without their free, informed and prior consent.
About 7-10% of intersex people have a **non-binary gender identity**; Ramesh Babu/Utsav Shah, Gender identity “disorder” (GID) [sic!] in adolescents and adults with differences of sex development (DSD): A systematic review and meta-analysis, *Journal of Pediatric Urology* (17/1) 2021, 39-47: mean: 15%; however, men with hypospadias (one of the most common variations) are not included in surveys; European Union, Agency for Fundamental Rights (FRA), A long way to go for LGBTI equality, Luxembourg 2020: 1’519 intersex persons were interviewed, only 7% identified as non-binary (p.60).
see: CEDAW/C/GC/28, nos.5, 22; Michelle Cottier, Article 5 CEDEF, 131-162, in: CEDEF - La Convention sur l’élimination de toutes les formes de discrimination à l’égard des femmes et son Protocole facultatif. Commentaire, Maya Hertig Randall, Michel Hottelier/Karine Lempen (éds.), Genève 2019. no.22f. and Karine Lempen, Repenser la discrimination «à raison du sexe» au sens de la loi fédérale sur l’égalité à la lumière de la CEDEF, *Revue de droit suisse* 2021(vol.II), 191-275, 208f.: “la convention [...] vise [...] une modification des rôles sociaux”, also 229f.
- iii Melanie Blackless/et al., How sexually dimorphic are we? Review and synthesis, *American Journal of Human Biology* 2000(12/2), 151-66.
- iv Already: WHO, Sexual health, human rights and the law, Geneva 2015, sections 3.4.9, 5.2.7, (<https://www.who.int/publications/i/item/9789241564984>, visited: June 2022); United Nations, Human Rights Council, Tlaleng Mofokeng, Violence and its impact on the right to health, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/50/28), 2022, e.g. no.16, 47, 59, 60.
- v Melinda Jones, Intersex Genital Mutilation – A Western Version of FGM, *International Journal of Children’s Rights* 2017(25), 396-411, 399f.
- vi Ibid., 397; also Nancy Ehrenreich/Mark Barr, Intersex Surgery, Female Genital Cutting, and the Selective Condemnation of “Cultural Practices”, *Harvard Civil Rights-Civil Liberties Law Review* 2005(40/1), 71-140; Martine Cools/et al., Caring for individuals with a difference of sex development (DSD): a Consensus Statement, *Nature Reviews/Endocrinology* 2018(14), 415-429, 416.
- vii See our [media release of 23 of July 2019](#) : Altérations et mutilations des caractéristiques sexuelles pratiquées sur des enfants intersexués et données statistiques; the development of the number of cases until 2019 did not change: Florence Brenzikofer, *Heure des questions in the Swiss parliament*, [20.6005](#), 14.12.2020; see endnote viii for Germany, the situation is probably the same in Switzerland.
- viii Josch Hoenes/et al., Häufigkeit normangleichender Operationen „uneindeutiger“ Genitalien im Kindesalter - Follow Up-Studie, Bochum 2019, 2: The study shows “that nothing has changed – notwithstanding discourse, reports and opinions. Surgeries continue to be carried out, no matter how many round tables and hearings there may be.”
- ix CEDAW and CRC, Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, 2014 (CEDAW/C/GC/31 - CRC/C/GC/18).
- x Ibid., no.16(a)-(d).
- xi Fae Garland/et al., Intersex Activism, Medical Power/Knowledge and the Scalar Limitations of the United Nations, *Human Rights Law Review* 2022(22), 1–22, 12.
- xii 2015: CAT/C/CHE/CO/7, para.20(a-c) and CRC/C/CHE/CO/2-4, para.43(b) (Harmful practices); 2016: CEDAW/C/CHE/CO/4-5, para.25(a-e) (Harmful practices) and 2017: CCPR/C/CHE/CO/4, para.25(a-c); **2021: CRC/C/CHE/CO/5-6**, para.29(a-d): recommending a **prohibition** of the “performance of medical or surgical treatment on intersex children where those procedures may be safely deferred until children are able to provide their informed consent” (b), para.39(d); para.15(a); see our website or the [TB database](#) (88. Session)).
- xiii ECRI Report on Switzerland (sixth monitoring cycle), on 10 December 2019 (rec. no. 5 "effectively protected"/prohibit “sex-“normalising” surgery”).

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- xiv First (baseline) evaluation regarding the Istanbul Convention and our report, supported in the common Alternative report: <https://www.coe.int/en/web/istanbul-convention/switzerland> (visited June 2022).
- xv National Advisory Commission on Biomedical Ethics, NCE
<https://www.nek-cne.admin.ch/en/publications/opinions>:
 - On the management of differences of sex development, no.20/2012, 13 and rec. 3 and 4;
 - Officially recorded gender. Ethical considerations on the management of the recording of gender in the civil register, no.36/2020, 29.see also: Katrina Roen, Intersex or Diverse Sex Development: Critical Review of Psychosocial Health Care Research and Indications for Practice, *The Journal of Sex Research*, 2019(56/4-5), 511-528, 526.
- xvi On the regional level see e.g.: European Parliament resolution of 14 February 2019 on the rights of intersex people (2018/2878(RSP)); Promoting the human rights of and eliminating discrimination against intersex people, Resolution 2191 (2017); European Union (FRA), 2020 (endnote ii), no 2.4: 62% of 1'519 intersex respondents were not asked for their or their parents' consent before undergoing surgical intervention to modify their sex characteristics.
- xvii See Conférence en matière de protection des mineurs et des adultes (COPMA): (https://www.kokes.ch/application/files/8015/9110/2452/Vernehmlassung_KOKES.pdf, visited July 2022) and National Advisory Commission on Biomedical Ethics (NCE) (https://www.nek-cne.admin.ch/inhalte/Themen/Vernehmlassungsantworten/NEK-CNE_CC_changement_de_sexe_a_l_etat_civil_final.pdf), para. 5; our joint statement here: <https://us8.campaign-archive.com/?e=&u=d73952ab7f346daa87bfece51&id=fa589b31f4> (visited June 2022).
- xviii See our [media release of 23 of July 2019](#) (French): 4ème rapport périodique de la Suisse sur la mise en œuvre de la Convention internationale relative aux droits économiques, sociaux et culturels; Ulrike Klöppel, Zur Aktualität kosmetischer Operationen „uneindeutiger“ Genitalien im Kindesalter, Zentrum für transdisziplinäre Geschlechterstudien, Bulletin Texte 42, Berlin 2016; Josch Hoenes/Eugen Januschke/Ulrike Klöppel, Häufigkeit normangleichender Operationen „uneindeutiger“ Genitalien im Kindesalter - Follow Up-Studie, Bochum 2019, 2: Surgeries continue to be carried out. - **Voir Canton de Zurich RRB-2022-0125** : selon les données de l'Hôpital pour enfants de Zurich, 85 à 135 opérations génitales sont effectuées chaque année sur des enfants présentant des "variantes du développement sexuel": [Postulat du 15.11.2021](#), Extrait du procès-verbal du Conseil d'Etat du canton de Zurich du 26.01.2022, [KR-Nr. 394/2021](#) (visited June 2022).
- xix Martine Cools/et al., Caring for individuals with a difference of sex development (DSD): a Consensus Statement, *Nature Reviews/Endocrinology* 2018(14), 415-429, 416.
- xx Ute Lampalzer/et al., Psychosocial care and support in the field of intersex/diverse sex development (dsd): counselling experiences, localisation and needed improvements, *Sexual Medicine Journal* 2021(33), 228–242, 238 f.; Susanne Krege/et al., Variations of sex development: The first German interdisciplinary consensus paper, *Journal of Pediatric Urology* 2019(15), 114-123, 115f.
- xxi CEDAW/C/GC/35, nos.12, 33.
- xxii European Union (FRA), 2020 (endnote ii), no.2.4.3; see also: Tiffany Jones, The needs of students with intersex variations, *Sex Education* 2016(16/6), 602-618, 616.
- xxiii Johanna Niemi/et al., Introduction: no.5.1 and Ruth M. Mestre, Chap.7: no.3, noting, similar practices (to FGM/C) remains a regular practice with intersex babies, in: Johanna Niemi/et al. (Eds.), *International Law and Violence Against Women. Europe and the Istanbul Convention*, London/New York 2020; also endnote ii (Cottier (2019) and Lempen (2021)).