

Annex by InterAction Suisse/Schweiz/Switzerland

Report of NGO-Coordination on the Implementation of the Istanbul Convention in Switzerland

InterAction Switzerland is a non-governmental organization (article 60ss. Swiss Civil Code, RS 210) 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 (see our by-laws [on our website \(French\)](#)). www.inter-action-suisse.ch / www.inter-action-schweiz. We are committed to the criminal prohibition of non-consensual and non-vital treatments through political advocacy, public awareness-raising and at least monthly community meetings.

Who we are

Most members of our association have gone through experiences as mentioned in margin number 1¹ below. Others have not known for a large part of their lives that they are intersex and have suffered from social isolation, shame and psychological challenges including physical and psychological impairment. We are committed to the criminal prohibition of non-consensual and non-vital treatment through political advocacy, public awareness-raising and at least monthly community meetings. We are currently not granted by any financial assistance from state institutions. Some intersex members of InterAction who have undergone deferrable, surgical, sometimes multiple non-consensual normalizing surgical procedures, and hormone treatment often face lifelong health problems, such as vaginal stenosis, or being assigned to a gender with which the individual does not identify later in life, reliance on artificial hormones (leading to osteoporosis). We experienced these procedures as experimental, with negative consequences, including infection etc. – they have to be considered as violations of our bodily integrity and autonomy.²

Of course, intersex bodies can have health problems, as every human being, but mostly, intersex children have healthy bodies at birth. Such medical interventions are not proportionate but aim to fit the child into a socio-medical norm. We are calling to recognize a zero tolerance towards IGM, as it is the case for FGM³.

We understand Intersex Genital Mutilation/Cutting as all forms of modifying internal or external sex / genital characteristics (margin 1) and as harmful practices, as FGM too (margin 4ss).

Intersex is an umbrella term or a spectrum to describe all variations of sex characteristics/development (VSC/VSD) (margin 2).

Intersex children are either boys or girls (margin 3).

Modifications of internal or external sex / genital characteristics should be considered as violence against intersex women and girls, and as domestic violence against boys and men too (margin 21).

¹ Abbreviations: margin number: margin / page: p. / following and following: f and ff / paragraph(s): par(s). / number(s): No(s). / article(s): art(s). – **for this convention: article(s)** / Footnote: note / RS: Recueil systématique ([plateforme de publication du droit fédéral](#)).

² See also: Fae Garland/Mitchell Travis, Making the State Responsible: Intersex Embodiment, Medical Jurisdiction, and State Responsibility, *Journal of Law and Society* 2020(47)/2, 298–324, 304; Ministère de la Famille, de l'Intégration et à la Grande Région, Grand-Duché de Luxembourg, Plan d'action national pour la promotion des droits des personnes lesbiennes, gays, bisexuelles, transgenres et intersexes, Juillet 2018, p. 44 ff. (gouvernement.lu, visité avril 2021).

³ WHO, Sexual health, human rights and the law, June 2015, Sections 3.4.9, 5.2.7. visited April 2021. (https://www.who.int/reproductivehealth/publications/sexual_health/sexual-health-human-rights-law/en/).

1 Introduction, definitions and legal framework in Switzerland

a. All forms of modifying internal or external sex /genital characteristics

- 1 We understand Intersex Genital Mutilation/Cutting (IGM) as **all forms of modifying internal or external sex / genital characteristics**, such as surgical interventions encompassing *genital surgery, gonadectomy, partial clitoris amputation, dilation of a surgically created vagina on girls without any medical need, plastic surgery on vulva, vagina, clitoris, and perineum, plastic surgery of the scrotum, testicles, and penis, including ‘corrections’ of hypospadias (relocation of the urethral opening on the top of the penis), and other irreversible interventions as, sterilizing procedures or/and hormonal respectively medical treatment, ovariectomy, hysterectomy, involving medical treatment that terminates or permanently reduces the reproductive capacity or with permanent, irreversible infertility, “blind” prenatal “therapy” with dexamethasone and selective abortion, without personal, free and fully informed consent of the person with a variation of sex characteristics/development* – unless the intervention is life saving and of crucial importance for the health of the child.⁴ The term IGM may be considered inaccurate. We understand genital as internal and external genital structures/sex characteristics. Interventions on intersex girls and boys affect internal and external genitalia. In exceedingly rare cases, these interventions are justified if they are *lifesaving and vital to prevent a serious danger to the child's health*.

b. Intersex is an umbrella term describing several variations of sex characteristics

- 2 Intersex is an umbrella term or a spectrum to describe all **variations of sex characteristics/development (VSD/VSC)** of women and men, which are in most cases healthy variations of the human body. However, the above mentioned surgical and hormonal, respectively medical practices (=modifications of sex characteristics), based on stereotypes and gender-based violence, result in discrimination, exclusion and violations of several constitutional provisions. The United Nations estimates that at least 1.7% of the population (globally speaking, as of 2019, 131 million people) have been born with intersex traits.⁵ Of the 8,667,100 people living in Switzerland (2020), 147,341 would have a VSD/VSC. Intersex girls or boys are born with sex characteristics (anatomy, reproductive organs, hormonal functioning, chromosomal variations) that do not fit the average definition of male or female sex characteristics.

c. Intersex children / people are either girls or boys / woman or men

- 3 The framework of this convention, in our view, is also valid for intersex women and girls but also for intersex children in general. It is important not to group intersex people in a new category, as “third-sex-people”, which would exist alongside men and women. We repeatedly have to emphasize that the vast majority of intersex people usually have a gender identity as man or woman. Gender identity (= men and women/boy and girls/non-binary persons) must be distinguished from sex characteristics (margin 2). Any human being may have a gender identity as man, woman, or non-binary. Sex characteristics are also different for any human being who is not qualified as intersex or does not have a variation of sex characteristics.⁶ Mentioning the "gender perspective" in article 6 should take this distinction into account. In particular, a distinction must be made between sexual orientation (lesbian, gay and bisexual woman or men), gender identity (trans women or men; non-binary people) and inborn variations of sex characteristics of (intersex women and men).

⁴ Melinda Jones, Intersex Genital Mutilation – A Western Version of FGM, *International Journal of Children's Rights*, 2017, 396-411, 399 f.

⁵ Melanie Blackless/Anthony Charuvastra/Amanda Derryck/Anne Fausto-Sterling/Karl Lauzanne/Ellen Lee. How sexually dimorphic are we? Review and synthesis. *American Journal of Human Biology*. 2000(12/2): 151-66.

⁶ Explanatory Report - CETS 210, No. 53; 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; 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.

d. Intersex Genital Mutilation and Female Genital Mutilation are Harmful Practices

We are calling to recognize a zero tolerance, as it is the case for FGM⁷. “Both groups of children are denied basic human rights particularly 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.”⁸ The same author continues, saying (p. 403): “For intersex children, too, the removal of or *damage to healthy*, normal genital tissue interferes with the natural functioning of the body and *causes several immediate and long-term health consequences*. 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, problems with desire, 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 dependency on artificial hormones.

Authors, like Ehrenreich and Barr⁹ argue that FGM and IGM are analogous and equivalent (psychological consequences, sexual impairment; violations of autonomy and bodily integrity, FGC [and IGM] as “Cultural” Practice, Gender Subordination, p. 81ss.). “By labeling African genital cutting a ‘cultural practice’ but not applying the same label to North American [and European] intersex surgery, FGC opponents imply that medical treatment around intersex cutting is culture free” (Ehrenreich/Barr, p. 88). In that sense, IGM is a cultural practice like female genital cutting. Arguing that IGM would not be a cultural practice may be understood as racist. Intersex surgery, like female circumcision, “is a cultural practice that enacts patriarchal gender norms”. (Ehrenreich/Barr, p. 138).

By no means, the “psycho-social benefits to families or parents” of such kind of integrity violations (physical and psychological / with short- and long-term consequences) are appropriate to justify **altering sex characteristics of girls and boys disregarding their right of self-determination** (art. 10, 11 FCst.).¹⁰

The national bioethics report concluded: “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.”....”**If such interventions are performed solely with a view to integration of the child into its family and social environment, then they run counter to the child’s welfare.** In addition, there is no guarantee that the intended purpose (integration) will be achieved.”¹¹ Therefore, neither a psychosocial indication nor the cultural context justifies irreversible medical interventions violating seriously the bodily autonomy and self-determination. What is needed for children’s development is involving parents, care givers, teachers, medical practitioners, *and us as a peer group* to support them emotionally.¹² **Note that the recommendations from the Swiss Ethics Commission are by no means implemented in Switzerland.**

“There is not clear psychosocial evidence that genital differences lead to unmanageable parental distress; nor is there good psychosocial evidence that genital interventions such as ‘normalizing’ surgery actually address parental distress. There is not clear psychosocial evidence that genital surgery on minors reduces psychosocial issues for the children themselves. There is, however, strong psychosocial evidence that genital examinations are aversive, and it is clear that genital interventions such as surgery necessitate repeated examination.”¹³

⁷ WHO, [Sexual health, human rights and the law, 2015](#) (visited April 2021), Section 3.4.9, 5.2.7.

⁸ Jones, note 4, 397 f.

⁹ Nancy Ehrenreich/Mark Barr, Intersex Surgery, Female Genital Cutting, and the Selective Condemnation of «Cultural Practices», *Harvard Civil Rights-Civil Liberties Law Review* 2005/1, 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.

¹⁰ Federal Constitution of the Swiss Confederation (RS 101), hereafter FCst.

¹¹ Swiss National Advisory Commission on Biomedical Ethics, Opinion No. 20/2012, On the management of differences of sex development., Berne 2012, p. 13 (www.nek-cne.admin.ch); Loé Petit, De l’objet médical au sujet politique : récits de vies de personnes intersexes, Paris 2017-2018, Chapitre 3. Traumatismes physiques et psychologiques, Experiences of intersex people talking about their medical manipulations, pain, humiliations, multiple infections following vaginoplasty, resistances, p. 46 ff.

¹² As recommended in the 2005 Consensus Statement by medical professionals : see I.A Hughes/et al., Consensus Group, Consensus statement on management of intersex *disorder*, *Arch. Dis. Child.* 2006(91/7), 554-563 – and considered since as international standard: S.Krege/et al., Variations of sex development: The first German interdisciplinary consensus paper, *Journal of Pediatric Urology* 2019(15), 114-123, 116: “The positive influence provided by contact with other parents in a similar position as well as advocacy groups and peers as a part of a system of social support is to be underlined”.

¹³ Katrina Roen, Intersex or Diverse Sex Development: Critical Review of Psychosocial Health Care Research and Indications for Practice,

- 9 Medical professionals and the Swiss Government do not explicitly reject or act against such practices – they emphasize that treatment practice had changed.¹⁴ However, modifying sex characteristics is still practiced in Switzerland: all these interventions of ‘unspecified malformation of the female/male genitalia’ remain constant or even increase¹⁵ and must be understood as **harmful practices**¹⁶.
- 10 Because these practices done on girls and boys with a VSD/VSC are performed without any time pressure or medical need,
- they are grave violations of the integrity and human rights of the person with the above-mentioned consequences and make the intersex girl or boy a victim of gender norms and stereotypes;
 - they “constitute a denial of the dignity and/or integrity of the individual and a violation of the human rights and fundamental freedoms enshrined in two UN-Conventions” (a);¹⁷
 - they “constitute discrimination against women or children and are harmful” in various regards (b);
 - 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” (c) and
 - they “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” (d)¹⁸.
- 11 In regards to Female genital mutilation (FGM), a new provision (art. 124 CrimC)¹⁹ was added to the **Criminal Code** (FGM, HRI/CORE/CHE/2017, 162). **In order to combat harmful medical treatment of intersex girls and boys, no such provision exists.** Nor is there any legislation (law) to protect explicitly intersex children’s right to bodily integrity and the right to be informed and included in decisions concerning themselves during their whole life.
- 12 **Health problems, lack of health care**, inadequate support and irreversible consequences, **are a result of such harmful practices** (e.g. long term physical and psychological suffering / lifelong need for Hormone Replacement Therapy (HRT) to emphasize the “assigned” sex (CEDAW/C/DEU/CO/7-8, 23(e), CEDAW/C/CHE/CO/4-5, 24(c), CRC/C/CHE/CO/2-4, 43).
- 13 **The Convention on the Rights of the Child (RS 0.107) protects** the best interests of the child as a primary consideration, in all actions, whether undertaken by public or private institutions (art. 3). According to the **CEDAW (RS 0.108)** the interests of the children shall be paramount (art. 16(1) let. d). **In several concluding observations of UN treaty bodies Switzerland was reprimanded.**²⁰
- 14 Intersex people experience the same discriminations as non-intersex persons, and, in addition, they face severe, intersectional human rights violations and discriminations due to their intersex traits, e.g. in our **Federal Constitution of the Swiss Confederation (FCst.)** and art. 28 CC²¹.

The Journal of Sex Research, 2019(56)/4-5, 511-528, 526.

¹⁴ E.g. Kinderspital Zürich, Medienmitteilung, Zürich, 13. Mai 2019; Avis du Conseil fédéral du 02.03.2018, dans Interpellation 17.4183, Personnes intersexuées: In his statement the Federal Council declares that the law in force is governing such cases (variations du développement sexuel, VDS) in an appropriate manner, there would be no need to adapt it. That is simply not correct. Various allegations in this statement of the Federal Council also suggest that the Federal Council did not deal in detail with the national bioethics report of 2012 (see note 11 above). 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 note 15 for Germany where the situation is probably the same than in Switzerland

¹⁵ 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: «The study shows clearly that nothing has changed – notwithstanding discourse, reports and opinions. Surgeries continue to be carried out, no matter how many rounds of tables and hearings there may be. » We have no reason to believe that the situation is different in Switzerland.

¹⁶ 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).

¹⁷ Convention on the Rights of the Child (RS 0.107); Convention on the Elimination of All Forms of Discrimination against Women (RS 0.108).

¹⁸ Joint general recommendation CEDAW/C/GC/31-CRC/C/GC/18, No. 16.

¹⁹ Hereafter CrimC (Swiss Criminal Code, RS 311.0).

²⁰ In 2015: CAT/C/CHE/CO/7, No. 20(a-c) and CRC/C/CHE/CO/2-4, No. 43b (Harmful practices); in 2016: CEDAW/C/CHE/CO/4-5, No. 25c-e (Harmful practices) and in 2017: CCPR/C/CHE/CO/4, No. 25.

²¹ Swiss Civil Code (RS 210).

According to art. 19c CC children can exercise their rights themselves to the extent that they are *capable of judgment, regardless of their age*. Above all, the essence of fundamental rights is inviolable – even if a public interest or legal basis is given (art. 36(4)). **These rights are not guaranteed yet in Switzerland, neither for boys and girls nor for adults with a VSC.**²²

e. Legal framework for the protection of children at national level²³

Constitutional protection, especially (**Federal Constitution of the Swiss Confederation**):

15

- a. Human dignity (art. 7);
- b. Equality before the law and non-discrimination (art. 8);
- c. The right to life and personal freedom (art. 10);
- d. The protection of children and young people (art. 11), their integrity and the encouragement of their development; this art. mentions that children can exercise their rights themselves to the extent that they are capable of making decisions (art. 19c CC);
- e. The right to privacy (art. 13);
- f. The right to marriage and a family (art. 14);
- g. Freedom of opinion and information (art. 16).

According to art. 35 FCst. fundamental rights must be exercised throughout the legal system; the authorities are obliged to contribute to their implementation.²⁴ The Swiss Constitution contains not only an obligation of the State to refrain from any conduct that may harm fundamental rights, but also an obligation to protect and serve fundamental rights. Par. 3 of art. 35 FCst. contains the principle of the horizontal effect (positive function, effect on relations between individuals) of these rights (FF 1997 I 1, 194 ff.). The Convention obligates Parties to take the necessary legislative and other measures to act with due diligence to prevent, investigate, punish, and make reparation for acts of violence covered by the scope of the Convention.

Above all, the application of art. 3 ECHR (inhuman or degrading treatment as a positive obligation of the state to provide effective protection, in particular for intersex women/girls and men/boys) obliges Switzerland to take reasonable measures to prevent ill-treatment of which the authorities were or should have been aware in medical institutions (e.g., hospitals).

Furthermore, any restriction on fundamental rights must have a legal basis, must be justified in the public interest and be proportionate; above all, the essence of fundamental rights is inviolable (art. 36(4) FCst., margin 14). **Civil law** is essentially codified in the Swiss Civil Code of 10.12.1907, especially relevant are art. 19c, arts. 28 ss., arts. 296-317. Regarding FGM, a new provision (art. 124) was added to the **Criminal Code** to put an end to the problems of definition and evidence that had previously obtained (margin 11), no such provision or legislation exists against harmful medical treatment of intersex children to protect explicitly intersex children's right to bodily integrity and the right of the child to be heard (art. 11 FCst.). Irreversible sex-'normalizing' surgery and hormonal practices (margin 1) are carried out on intersex girls without their free and informed consent and without any medical need or urgency. Neither the general principles nor a *de jure and de facto* equality or even awareness-raising are taken into account by the Swiss government.

Non-urgent, health threatening medical treatment of children under the age of 18 (e.g., reduction of the clitoris, or plastic surgery of the penis, see margin 1) is a form of violence against children within the meaning of the Istanbul-Convention.

²² On the regional level see: 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); FRA - EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, A long way to go for LGBTI equality, 2020, 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.

²³ See: HRI/CORE/CHE/2017, 92 ff.

²⁴ [Feuille fédérale N° 1 du 14 janvier 1997](#), Message relatif à une nouvelle constitution fédérale du 20 novembre 1996.

2 Analyses

Chapitre I: Purposes, definitions, equality and non-discrimination, general obligations

- 21 A comprehensive approach to protecting all victims of violence against women and domestic violence is in our opinion based on human rights. Consequences for victims on their future development, physical and psychological health are disastrous for intersex women and girls. It should in our view be taken into account that men and boys can also be victims of domestic violence (Explanatory Report Nos. 27, 36f, 45). The scope of this Convention covers either “violence against women” and/or “domestic violence” and the term woman includes girls under 18. States must give particular attention to women as victims of gender-based violence. Switzerland is encouraged to apply this Convention to all victims of domestic violence, in particular to intersex women and girls and to all intersex children and adults.
- 22 Turkey's recent denunciation of the Istanbul Convention should not be a reason limiting the scope of the Convention. We hope that GREVIO will resist this attempt and understand the Convention in a dynamic sense. Fundamental values of this Convention are also values of the European Council and the European Union.
- 23 We encourage Switzerland to apply the Convention to domestic violence (article 3(b)), regardless of sex characteristics of the victims (article 2(2)). In our view, domestic violence also includes violence between parents and children (article 3(b); Explanatory Report, No. 41). The victim can be a woman/girl, a man/boy (article 3(e, f)). Gender refers to the socially constructed role that society considers appropriate for women and men (article 3(c)). In our view, the Convention explicitly recognizes the link between violence against women and different social roles assigned to women and men. And “gender-based violence against women” refers to any violence against a woman or girl because she is disproportionately affected.
- 24 Current intersex treatment protocols not only reinforce norms of sex characteristics, but construct variations of sex development by pathologizing healthy body variations. Interventions on intersex girls and boys not only enforce binary cultural norms regarding sex characteristics they also contribute to the maintenance of subordination of women. Like FGM, these interventions reinforce stereotypical norms and control over female sexuality and bodies. There is actually no control over the practices of medical professionals.
- 25 The protection of women, to live free of violence also in their private sphere is elementary. As with FGM, effective protection against violence, against the physical and psychological integrity of girls must also be achieved for intersex girls against the interests of their parents (private sphere), if a certain threshold of intervention is reached, if a medical intervention is irreversible and without any medical need (see margin 13: noting that the interests of the children shall be paramount (art. 3 CRC)). Intersex girls would be discriminated if they are not protected for comparable or identical interventions in their integrity compared to other girls who are at risk of being mutilated. Switzerland should condemn all forms of discrimination (article 4(3)) against women or girls or boys. The protection of the rights of victims and vulnerable persons must be guaranteed without discrimination on the basis of the sex characteristics of intersex women and girls (article 4(3) and 12(3) and art. 14 ECHR).
- 26 In our view, the convention should also address discrimination between women. E.g., Dexamethasone (DEX) is used in pregnancies at risk of “congenital adrenal hyperplasia (CAH)”, a variation of sex development, to prevent an enlarged clitoris in an affected female foetus. The safety and long-term consequences of prenatal DEX exposure are however largely unknown. We have to assume that these DEX-treatments still take place in Switzerland. It should be mentioned that DEX treatment is also practised on pregnant women regarding with foetuses *who are not “at risk” of an “enlarged” clitoris; DEX-treatments are therefore experimental.*²⁵ If families immigrate to Switzerland and if the mother did not receive DEX-treatment during pregnancy, this could be understood as unequal treatment.
- 27 We are aware that Switzerland in general is committed to children's rights. However, the rights of intersex children have not been considered so far at all. Switzerland refers only to statements by medical professionals. These are pathological and continue to see intersex people as “abnormalities”. The Swiss government does not take human rights-based argumentations and resources into consideration.

²⁵ Annelies van't Westeinde et al., First-Trimester Prenatal Dexamethasone Treatment Is Associated With Alterations in Brain Structure at Adult Age, *Journal of Clinical Endocrinology & Metabolism* 2020(105/8), 1–12, 10, mentioning “strengthens the concern and points toward a decision that early prenatal treatment should not be used in fetuses that do not benefit from the treatment per se.”

The collaboration of cantonal hospitals with InterAction Switzerland is currently insufficient (Bern, Lausanne, Zürich) or even non-existent (Geneva²⁶, Basel). Despite discussions in cantonal hospitals, human rights-based and non-pathological perspectives are not taken into account sufficiently.

Chapitre II: Integrated policies and data collection

In Switzerland, strategies, action plans, legislative and other measures needed to adopt and implement strategies/action plans on violence against intersex women/girls do not exist.²⁷ The literature provides significant evidence of the harmful effects of procedures that modify sexual characteristics of intersex women/girls: surgeries with a high complication rate and repeated interventions during school years, (based on socio-cultural stereotypes, prejudices and medical traditions); life-long urinary tract infections, vaginoplasties with manual follow-up in the form of penetrating dilation by a doctor or a parent – experienced by intersex women as sexual abuse; permanent medication due to the interventions; refusal of necessary medical treatment for adult women; difficulties in accessing expert adult care after adolescence; infertility; chronic pain, and the feeling of being inferior or being a “disease” which can also be exacerbated by medical treatment; forms of psychological violence (trauma, shame, social situation of psychological distress, depression, rejection, social isolation, stigmatisation).²⁸

To our knowledge, in Switzerland there are no separate Federal bodies responsible for the evaluation and monitoring of policies and measures to prevent and combat violence against intersex girls in particular and domestic violence in general against intersex children. Financial resources are not allocated to the implementation of policies concerning violence against intersex children and adult persons (article 8). Currently, Switzerland does not yet concretely support our work as a civil society organisation (article 9). We would need start-up or pre-project funding to enable us to carry out our work against all forms of violence against intersex girls/women, including domestic violence, so that we do not depend (solely) on donations and volunteer work. It seems important to us that the expertise is not limited to medical professionals, not being based on a human rights perspective.

Detailed statistics on medical practices in relation to hormonal/surgical treatments of intersex woman, men are not available in Switzerland (article 11). Recently the Swiss government was consulted on this issue. 141 intersex infants aged 0-2 years received medical treatments in a hospital in Switzerland between 2010 and 2017. These infants were not able to consent to treatment that would most likely change their sexual characteristics.²⁹ Insofar Switzerland has not taken measures to facilitate systematic, adequate and sound data collection regarding numbers of non-urgent and irreversible surgical and other sex-modifying practices. We are aware of a veiling shift of diagnostics without a change of the actual medical practice; detailed statistics have therefore to include all forms of altering “sex characteristics” *on any children*. Detailed statistics on medical practices have to be independent and include outcomes of the above-mentioned interventions (margin 2). A reliable national data collection system, disaggregated by age, sex, innate variation of sex development and of all other forms of irreversible modifications of sex characteristics should be implemented by the Federal Statistical Office.

²⁶ The website of the HUG still quotes that the ideal age to perform an operation for hypospadias variation is between 1 and 2 years; also in other cantonal hospitals such operations are performed.

²⁷ E.g. Plan d’action national de Luxembourg, 2018 (note 2) ; Department of Health and Human Services, Health and wellbeing of people with intersex variations, Information and resource paper, March 2019.

²⁸ World Health Organization, Sexual health, human rights and the law, Geneva 2015, p. 26 f.; Health and wellbeing of people with intersex variations, Information and resource paper, State of Victoria, March 2019, section 4.2 (with additional data); Erik Schneider, Les droits des enfants intersexes et trans’ sont-ils respectés en Europe ? Une perspective Conseil de l’Europe, Luxembourg 2013, chap. 4/Nos. 131 ff.; Karsten Schützmann/Lisa Brinkmann/Melanie Schacht/Hertha Richter-Appelt, Psychological Distress, Self-Harming Behavior, and Suicidal Tendencies in Adults with Disorders of Sex Development. Archives of Sexual Behavior 2009(38)/1, p. 16–33 (*using harmful medical terms like “DSD”: We oppose to be considered as a “Disorder”*).

²⁹ See our [media release of 23 of July 2019](#) : note 14; 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](#); and above note 15 for Germany where the situation is probably the same than in Switzerland.

Chapitre III: Prevention

- 31 The Istanbul Convention (article 12(1)) (as CEDAW too) includes the obligation to eradicate prejudices, stereotypes, customs, traditions and practices and to “modify the social and cultural patterns of behaviour of women and men with a view to end prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men”.³⁰
- 32 The right of women to equality and justice, visibility, participation in political and public life, education, equal pay, employment etc. are in our view based on these stereotypes. Saying “certain roles or stereotypes reproduce unwanted and harmful practices and contribute to make violence against women acceptable”³¹, is especially true for intersex women (and men). Intersex human beings are considered by these stereotypes as inferior to other human beings. The eradication of prejudices, customs, traditions, based on the idea of their inferiority, is of high importance for intersex human rights.
- 33 Measures that are necessary to promote changes in mentality and attitudes, prejudices, stereotypes and customs or traditions are particularly required to change the consequences of modifying internal or external sex / genital characteristics (margin 2). For intersex women/girls the situation is similar or equivalent to that of women who are subjected to female genital mutilation. Positive action to ensure that prevention measures specifically address the needs of vulnerable intersex men and women (article 12(3)) is urgent, given the seriousness and irreversibility of modifying sex characteristics.
- 34 Concerning article 12(5) we are aware that the culture of the binarity of *SEX* is deeply rooted in the Swiss legal system and society. On the other hand, however, the Federal Council will soon be examining the question of a third *GENDER* in a report in response to postulates 17.4121 and 17.4185 (www.parlament.ch). As mentioned in margin 3 gender identity has to be distinguished from sex characteristics. As far as intersex persons are concerned, a high pressure to adapt intersex children to the binarity of *SEX* by medical interventions in order to fit their physical appearance and function to binary sex characteristics still exists in Switzerland. This justifies the need for further implementation under article 12(5) of the Convention, which requires States to ensure that Gender-based violence, IGM/C and FGM/C are not culturally justified.
- 35 We would like to highlight a particularly important aspect (article 12(3)): this par. speaks of “the specific needs of persons made vulnerable by particular circumstances”. VSC (margin 2) do not threaten health, although in very exceptional cases medical treatment may be necessary. On the contrary, medical treatment causes many health problems and violates physical and psychological integrity.
- 36 We have a total lack of policy to prevent acts of violence against intersex children and public awareness-raising campaigns or programmes (Explanatory Report, No. 91), sensitization and understanding consequences of different forms of violence on intersex girls and boys. Changes in mentality must be achieved in society in general. We propose programmes with the aim of empowering children by teaching materials at all levels of education. Intersex children are strengthened in their self-esteem, if they can meet others who made similar experiences (empowerment, depathologisation, identity). InterAction offers monthly meetings and support. This work is currently offered on a volunteer basis.
- 37 Regarding article 14, the development of educational material for all levels of education, dealing with non-stereotypical roles, the right to physical and psychological integrity, and specifically concerning intersex girls and boys and the diversity of variations of sex characteristics is non-existent. The official teaching material does not contain such specific awareness or education. – And encouraging the inclusion of training of professionals and young students (article 15(1)) seems to us to be an important preventive measure, especially in the medical field. Neither doctors nor teaching staff (primary, secondary and tertiary sectors) receive specific training regarding violations against intersex girls and boys.
- 38 Finally, we propose that Switzerland especially encourages the media to inform about violence against intersex children and adults. This commitment can relate to a comprehensive campaign for integrated policies, prevention, protection and support against all forms of violence and discrimination.

³⁰ Johanna Niemi/Lourdes Peroni/Vladislava Stoyanova, Introduction: The Istanbul Convention as a Response to Violence against Women in Europe, p. 7, Johanna Niemi/Lourdes Peroni/Vladislava Stoyanova (Eds.), International Law and Violence Against Women Europe and the Istanbul Convention, London/New York 2020.

³¹ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.V.2011, No. 43.

Chapitre IV: Protection and support

Irreversible non-vital or non-urgent interventions for the health of the child (either girl or boy) are never justified. If, after psychological counselling, parents continue to insist on non-urgent or non-therapeutic interventions, the child's right to self-determination and development must be considered of paramount interest. These findings call into question whether parents are adequately informed about the consequences. As already mentioned, (margin 8), psychosocial evidence that variations of sex characteristics lead to unmanageable parental distress do not exist. Intersex girls and boys should therefore be legally protected by this Convention, because:

1. violence and discrimination are based in particular on sex, gender (article 4(3)) and rooted in society by prejudices, customs, traditions and any other practices based on the idea of the inferiority of intersex girls and boys (article 12(1));
2. Switzerland has not taken necessary legislative or other measures to act with due diligence (article 5(2));
3. society and the private and media sector are not aware of these forms of violence against children (article 13, 17);
4. education and training of professionals is completely missing (article 14, 15);
5. national (especially in the Civil Code), fundamental (Constitution) and human rights (UN and European Council) are seriously violated (see above margins 14 ss.).

It seems to us (personal experiences and scientific studies), that this situation is comparable to the situation of girls who are victims of FGM (e.g. irreversibility, social situation, health consequences).³²

In our opinion, prevention (Chapter III) and protection (Chapter IV) measures should consider the specific needs of so-called vulnerable persons and secondary victimisation (articles 12(3) and 18(3), such as mothers and their intersex children. Several studies have shown that there is currently little evidence that surgical practices have changed in recent years. Supporting families in parenting intersex children has not been fully developed or supported by governmental healthcare systems.³³ Moreover, learning from empowerment and peer-to-peer concepts and counselling, such as initially developed by psychologist patient groups, the exchange between lived-experience, relatives and experts should be promoted to enhance understanding of the different perspectives – but not be instrumentalized.³⁴

There is a lack of counselling services for intersex people, which we currently provide on a voluntary basis (article 22). A comprehensive understanding of variations of sex characteristics and different needs is widely lacking. A 24-hour counselling service needs to be established in cooperation with us, InterAction Switzerland, to ensure the quality of counselling as a first point of contact and to ensure referral to us (article 24).

Currently, after the birth of an intersex child, medical professionals are not obliged to report to the relevant organisations or authorities if there is a danger to the child's best interests (arts. 11 FCst., 3 CRC). This situation is due to the invisibility of such violence against intersex children. Domestic law should not be an obstacle to the possibility of reporting to the competent organisations or authorities if a child is at risk of becoming a victim of such violence, which is still determined by prejudices, customs and traditions.

Chapitre V: Substantive law

The medicalisation of intersex girls and boys violates their sexual integrity. Certain irreversible, non-vital or non-urgent interventions are performed without the free consent of the girls concerned and without the fully informed consent of the parents. It should be emphasized that early interventions for girls with variations of sex development depend on the advice received by health professionals, to an extent that neither parents nor professionals seem to be fully aware of. Psychosocial evidence that intersex variations lead to unmanageable parental distress do not exist.³⁵

³² See note 4 and 9 above.

³³ 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.

³⁴ Ute Lampalzer/Peer Briken/Katinka Schweizer, 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, 239.

³⁵ E.g.: Roen (note 13) and margin 8.

- 43 Intersex girls are particularly vulnerable to acts of violence, such as IGM/C (article 38), including forced sterilisation (article 39) (margin 1). Regarding sexual integrity, we would like to point out that young adult intersex women report a level of distress considered equal to that of other women victims of sexual or physical violence and rape. This is the case, for example, for girls who experience pain during non-consensual neovaginal dilation, experienced as sexual abuse and traumatic consequences (article 36). Such interventions in the sexual integrity of the child must be considered as a violation of art. 40 of the Medical Profession Act (RS 811.11). Other damages are the loss of reproductive capacity (*sterilizing procedures, see arts. 3 and 7 of Swiss sterilization law, RS 211.111.1*) or sexual sensitivity. Furthermore, based on studies, the rate of (attempted) suicide is significantly higher than average.³⁶ These damages are comparable to FGM. Social pressure on women (not to continue pregnancy because of a potential VSC of her child) and lack of information are relevant regarding article 33. It should be remembered that physical violence (article 35) has a very broad scope, irrespective of the context in which it occurs.
- 44 Medical treatment of variations of sex development is only necessary in rare cases. The medicalisation of intersex women/girls violates physical and psychological integrity (e.g. problems with scarring, feelings of inferiority or "sickness" which can also be exacerbated by medical treatment, repeated interventions during the school years, reduced sexual sensation and function, painful intercourse, side effects from hormones that also affect mental health, difficulties in accessing medical records, trauma, infertility, chronic pain, incontinence, psychological distress, depression, rejection, social isolation, stigmatisation, lack of self-confidence and empowerment). According to studies, the health consequences of these non-vital and non-urgent irreversible interventions are comparable to FGM – and sometimes even more severe. We argue that social pressure on women (not to continue their pregnancy because of a potential VSC of her child) must be considered a form of psychological violence (article 33) and that these practices of abortions should be prohibited. We doubt that in such a situation a pregnant woman is fully informed of the consequences of their consent (see analysis in article 36; Explanatory Report No. 205). We also emphasize: If a pregnant woman is fully informed about all risks regarding herself and her future child and gives prior consent, she has full reproductive freedom on the basis of the FCst. (Explanatory Report No. 206). Some foetuses are aborted for no other reason than their sex characteristics at birth; other cases may involve a chromosomal variation (47,XXY) with an abortion rate of up to 88%. We consider this form of selective abortion to be incompatible with the Convention (see also the Council of Europe Convention on Human Rights and Biomedicine (STE No. 164/RS 0.810.2), which prohibits discrimination on the basis of a person's genetic heritage (art. 11) as well as the use of medically assisted reproduction techniques "for the purpose of choosing a future child's sex, except where serious hereditary sex-related disease is to be avoided" (arts. 5a and 14 of Swiss Reproductive Medicine Act, RMA, RS 810.11). Article 39(a) is therefore relevant for the women concerned.
- 45 Some girls under 10 years of age experience pain from unconscious neo-vaginal dilation (bougirage) and traumatic damage. Others lose their reproductive capacity (sterility) or sexual sensitivity. It should be noted that early interventions for girls with a VSC depend only on the advice received by health professionals, to an extent that parents do not seem to be fully aware of. In the medical-scientific literature, surgical techniques are still discussed broadly, while in the field of psychological literature, these practices are meanwhile rejected.
- 46 Finally, operations that reduce or eliminate reproductive capacity (removal of the gonads of girls, without medical urgency) are performed before the girl can give her informed consent to the procedure. In such circumstances prohibitions on involuntary sterilisation are at issue. Non-consensual sterilisation is recognised in Switzerland as a violation of fundamental rights. Regardless of how medical professionals view these procedures, all medically unnecessary operations on intersex children that compromise fertility may compromise their fundamental right to reproductive freedom (article 39(b)).
- 47 Therefore, intersex adults should have the right to claim compensation too (article 30). Some members of our association have undergone severe experiences (margin 1), need lifelong hormone replacement therapies, were surgically-hormonally "normalized". We therefore consider that they deserve redress for the human rights violations they have suffered and are suffering from. Specific funds for reparations should be established (CEDAW/C/GC/35, par. 35(b)).

³⁶ Schneider, note 28, Nos. 189, 191.

Chapitre VI: Investigation, prosecution, procedural law and protective measures

After the birth of an intersex child, medical professionals are not obliged to report to the competent organisations or authorities (article 28). The parents do not realise that their consent to a modification of internal or external sex / genital characteristics is not in accordance with the requirements of Swiss law. If a criminal complaint is nevertheless filed, the criminal authorities must have the necessary information to be able to give victims the possibility to contact non-governmental organisations such as InterAction Switzerland, to give them the necessary support (article 55(2) of the Convention). 48

It is difficult or impossible for adult intersex people to obtain redress from state authorities because the statute of limitations is too short³⁷ to guarantee the necessary diligence for initiating any legal proceedings with regard to the offences established in accordance with articles 36, 37, 38 and 39 of this Convention. The right to information of the persons concerned (access to medical records) is very often not guaranteed. Many intersex persons only learn about the interventions on their bodies in early childhood very late. Therefore, a sufficiently long period of time, proportionate to the seriousness of the offence in question and to allow for effective prosecution, after the victim has reached the age of majority, is not guaranteed in Swiss law. 49

Furthermore, interventions on characteristics of intersex children take place several times during childhood. If the person concerned is not informed of these interventions, it is not possible to file a complaint in adulthood. Offences regarding modifications of internal or external sex characteristics respectively articles 36, 37, 38 and 39 of this Convention should therefore be excluded from the limitation period (art. 101 CrimC) and qualified as offences against the sexual integrity of a child – they also affect sexuality in adulthood (see margin 1, 4, 24, 28, 43-45). 50

3 Recommendations to GREVIO

We strongly criticize the government's legislative proposal of a *simplified* gender recognition in the civil status register: in this bill, the government has linked the *simplified* gender recognition with a **previously non-existent consent of the parents for minors capable of judgement**.³⁸ As mentioned (margin 14), according to current law, children/minors capable of judgement exercise their strictly personal rights independently, without the consent of her parents. This important an exceptional achievement of Swiss law has been abandoned by the proposed law. **This is of particular importance for the Convention, because children are often victims of domestic violence and as the best interests of the child and his development is hindered (arts. 3, 12 CRC and art. 11 FCst.)**. Therefore, the government's proposal is a huge step backwards compared to the current legislation. 51

An unacceptable step backwards compared to the current legislation, regarding par. 4 of art. 30b CC only. A step backwards being rejected by all child protection organizations in Switzerland, child protection experts, the "Conférence en matière de protection des mineurs et des adultes", [COPMA/KOKES](#) and the Swiss National Advisory Commission on Biomedical Ethics, [CNE/NEK](#), Amnesty International, some cantons, and ourselves (InterAction Switzerland).³⁹ 52

RECOMMENDATION 1: We demand that the amendment mentioned in margin 51f be reversed by the Swiss government as soon as possible and to cancel par. 4 of art. 30b CC.

³⁷ Art. 60 par. 1bis, Code of Obligations, SR 220 and arts. 97, 98, 99 CrimC (note 19).

³⁸ FF 2020 9623, (new)art. 30b par. 4 Swiss Civil Code (see: <https://www.fedlex.admin.ch/eli/fga/2020/2689/fr>), limiting [art. 19c CC](#).

³⁹ See our common statement here: <https://us8.campaign-archive.com/?e=&u=d73952ab7f346daa87bfece51&id=fa589b31f4>.

Chapitre I: Purposes, definitions, equality and non-discrimination, general obligations

- 53 Non-consensual, irreversible modifications of sex characteristics, *not intended to*
1. prevent considerable and actual health risks or
 2. non-life saving medical treatment of a child (either intersex or not)
- have to be considered by the Swiss government as a violation of the child's best interests within the meaning of our constitution (art. 11) and the Convention on the Rights of the Child (margin 13ff). In our opinion, therefore, such medical treatment is a form of domestic violence (article 3(b)), regardless of the sex characteristics of the child (article 4(3)).
- 54 Such medical treatment of girls under 18 years of age is a form of violence in the sense of article 3(a) of the Convention, since such treatment, whether occurring in public or in private life (article 4(1)), causes long-term damage or suffering of a physical, sexual or psychological nature and deprives them of self-determination/freedom.

RECOMMENDATION 2.a: We recommend applying the Convention to intersex women and girls with variations of sex characteristics who are disproportionately affected by all forms of violence against women – regardless of the inborn sex characteristics of the victim.

We recommend applying this Convention to all victims of domestic violence, in particular to intersex girls and to all intersex children. Non-consensual, irreversible modifications of sex characteristics, not intended to 1) prevent considerable and actual health risks of the intersex or any other non-intersex child, or 2) non-life saving medical treatment of an intersex and any other non-intersex child should be considered as a purpose of this Convention.

RECOMMENDATION 2.b: The pathologisation of intersex children by the medical community on the one hand and the refusal of the cantonal hospitals to cooperate with InterAction Switzerland on the other hand must be considered as a violation of State obligations and due diligence.

Chapitre II: Integrated policies and data collection

In Switzerland a strategy, legislative or other measures needed to combat violence against intersex women/girls and men/boys and detailed, systematic, independent, and adequate data/statistics on medical practices in relation to intersex woman and men are not available (margin 28ff).⁵⁵

The Federal Statistical Office (FSO), in collaboration with SwissDRG and the Federal Social Insurance Office FSIO (regarding health and disability insurance data⁴⁰), should compile statistics on the interventions carried out on all intersex children since 2005 (Consensus Statement, Hughes et al., note 12), using ICD-10-keys (Version 2010, International Statistical Classification of Diseases and Related Health Problems). These statistics should be disaggregated by sex (m/f), age, type of violence, variation of sex development, type of intervention, hospital and relationship between victim and perpetrator.

Statistics should in our view also include domestic violence (to include interventions on intersex boys). However, we are aware of a veiling shift of diagnostics without a change of the actual medical practice; detailed statistics have therefore to include *all forms of modifying “sex characteristics” of the child and regardless of whether or not the child has a VSD/VSC*. Detailed statistics on medical practices have to be independent and include outcomes of the above mentioned interventions (margin 1, 4, 30).⁵⁶

RECOMMENDATION 3.a: We recommend that Switzerland

1) collect systematic, disaggregated (sex, age, medical reasoning, qualified as VSD/VSC), adequate data regarding numbers of any kind of surgical and other sex-modifying irreversible practices of children – concerning children in general. Taking into account a veiling shift of medical diagnostics without a change of actual medical practice, detailed statistics have therefore to include all forms of modifying “sex characteristics” on intersex children in particular and children in general and

2) include variations of sex characteristics in health surveys and registers.

RECOMMENDATION 3.B: We recommend start-up or pre-project funding for associations and organisations that work against all forms of violence against women, including domestic violence, so that they are not (solely) dependent on donations and voluntary work.

In an Australian survey, 272 people with intersex variations were asked to describe any ideas, features, or action they recommended.⁴¹ The most common suggestion (68 comments) advised providing more information about intersex variations both to staff and students, more inclusive puberty/sex education, descriptions of intersex variations and their features, varying body types, genital development, chromosome types, reproductive options including not having children, safe space for the possibility of disclosure and to make it clear to students that nobody is under any pressure to disclose any variations.⁵⁷

RECOMMENDATION 4.a: InterAction Switzerland calls for an action plan to adopt and implement necessary legislative and other measures regarding violence against intersex women/girls and intersex men/boys who are victims of domestic violence. InterAction Switzerland should be included in the realisation of such an action plan.

We recommend a strategy, action plan, and other measures to implement intersex variations / variations of sex development as a healthy variation of the human body in schoolbooks and in medical curricula with the aim to improve access of professionals and students to the reality of intersex children and address this in a non-pathological and human rights-based perspective.

An appendix describes a model of an action plan regarding this Recommendation.

⁴⁰ Invalidity Insurance, RS 831.20 and Health insurance, RS 832.10,

⁴¹ Tiffany Jones, The needs of students with intersex variations, Sex Education 2016(16)/6, 602-618, 16; see also FRA – European Union Agency for Fundamental Rights. A long way to go for LGBTI equality. 2020, No. 2.4.3.

Chapitre III: Prevention

- 58 What must be taken into account: stereotypes, customs, traditions and practices affect intersex women and people not based on their social role or their gender identity (gender) or sexual orientation but are based on their sex characteristics (margins 3, 31ss.).
- 59 Discriminatory stereotypes regarding intersex women and men, in sex education and training of medical professionals, against medical authority, for media professionals, politics and society in general, e.g. guidelines and measures to eliminate discriminatory stereotypes against intersex women, are still not considered as an instrument for intersex human rights.
- 60 For children with variations of sex characteristics (Intersex) it is important that they are included in textbooks in a positive, non-pathologizing and empowering way. A non-pathologizing understanding of VSC/intersex should be implemented in medical curricula.

RECOMMENDATION 4.b: We recommend a strategy, action plan, and other measures needed to prevent and combat all forms of violence against intersex women, men and non-binary intersex persons. An action plan – before and after a legal ban of IGM/C should

- 1) offer a holistic response to violence,
- 2) include our involvement,
- 3) prevent all forms of violence against intersex persons covered by this Convention and
- 4) not be defined by medical expertise.

We would welcome concrete cooperation with the Federal Office for Gender Equality FOGE. An appendix describes a model of an action plan regarding this recommendation.

Chapitre IV: Protection and support

We recommend:

- (1) effective inter-institutional cooperation specialised support services and
- (2) protection and support measures to help prevent victimisation and
- (3) measures within the meaning of article 18(3) of the Convention and
- (4) measures against violence against intersex women/girls and domestic violence against intersex men/boys.

In our view, this form of protection and support should be linked with Chapters II and III, resulting in a comprehensive campaign or plan of action for all intersex persons (see Recommendation 6a. and 6b.).

With specific reference to articles 19ff of the Convention, we recommend that intersex women receive information (article 19), general support services (article 20), specialised support and assistance tailored to their specific needs, e.g. short and long-term psychological counselling and trauma care (article 22), as victims of sexual violence (article 25). We recommend that intersex teenagers in general can benefit from telephone helplines (article 24) too. Through this helpline professional, non-pathologizing (not as medical substitute) support should be offered for intersex teenagers. Contact via this hotline can enable and empower intersex children and adolescents to receive peer support from InterAction Switzerland and thus escape isolation.

We recommend that all health professionals, have a right and obligation to report to the authorities all violence against intersex girls and women and domestic violence covered by the Convention (article 28).

All forms of modifying sex characteristics (margin 1) are human rights violations on mostly healthy children – e.g. long-term health problems, lack of health care, inadequate support and irreversible result from these interventions. Access to healthcare for adult people with a variation of sex characteristics is not guaranteed. Reference to, and documentation on intersex women, men and non-binary intersex persons in national health surveys and registers are lacking. The above mentioned medical interventions (margin 1), based on stereotypes and gender-based violence, result in discrimination, exclusion and violations of several constitutional provisions (margins 2, 4, 9 ss.).

RECOMMENDATION 5:

We recommend that Switzerland take the necessary legislative or other measures to ensure

1. that intersex women receive information (article 19), have access to adequate health care and social services (article 20), specialised support and assistance tailored to their specific needs, e.g. short and long-term psychological counselling and trauma care (article 22), as victims of sexual violence (article 25),
2. that intersex teenagers in general can benefit from telephone helplines (article 24) too,
3. that all health professionals, or any person may be committed or have a right and obligation to report to the authorities all violence against intersex girls and women and domestic violence covered by the Convention (article 27, 28).

We recommend that Switzerland addresses specific health matters of intersex women and men and non-binary intersex persons – e.g. long-term health problems, lack of health care, inadequate support and irreversible results from the above mentioned interventions.

We recommend that Switzerland provides families with intersex children with adequate, non-pathologizing counselling, empowering support and peer-to-peer counselling.

Chapitre V: Substantive law

- 66 Strengthening legal protection and reparation should be guaranteed also to intersex children. They suffer from medicalisation of their healthy sex characteristics without their consent and without full (or even without at all) informed consent of their parents (margin 42-47). The pathologisation of intersex women/girls and men/boys and non-binary persons regarding violence against women and domestic violence violates physical (article 35), psychological (article 33) integrity⁴² and sexual violence without the girl's free will (article 36): intersex women report a level of distress considered equal to that of other women victims of sexual or physical violence and rape (margin 43, 45). This is the case, e.g., for girls who experience pain during non-consensual neovaginal dilation, experienced as sexual abuse. Regarding article 38 we call for an explicit criminal prohibition of all forms of altering internal or external sex/genital characteristics of children (see margin 43s).⁴³ We consider forms of selective abortion to be incompatible with the Convention; article 39(a) should therefore be applicable for the women (mothers) concerned (margin 44). Article 44(3) of the Convention should be taken into account.
- 67 We also advocate that Switzerland should apply art. 124 of the Swiss Criminal Code (margin 11) also to intersex girls, respectively provide or introduce effective and equal protection by ending these practices, since IGM/C and FGM/C are equivalent (article 4(3)).
- 68 A ban of genital surgeries and hormonal treatments should not be based on medical criteria because the definition of VSD/VSC by medicine changes regularly and it would thus fall under the sovereignty of medical science what may be defined in the law as a variation of sex characteristics (margin 1ff). Such an approach could be undermined by medical professionals claiming that there is no VSD at all. This would exempt "genital-matching" operations on children, classified as "male" or "female" from the ban. Our recommendation does therefore demand a ban of any modifications of sex characteristics of every child if they are not lifesaving and of crucial importance for the health of the child. Such a perspective guarantees the basic principle of this convention (discrimination): on the one hand in relation to girls subjected to FGM and on the other hand to children in general subjected to domestic violence.
- 69 We argue that social pressure on women (not to continue their pregnancy because of a potential VSC of their child) must be considered as a form of psychological violence (article 33) and that these practices of abortions should be prohibited. In our experience in such a situation a pregnant woman is not always fully informed of all consequences of her consent.

RECOMMENDATION 6.a: We recommend that Switzerland explicitly legally prohibits in the Criminal Code genital surgeries and hormonal treatments – which are performed to modify any sex characteristics of a child - unless the intervention is life saving and of crucial importance for the health of the child.

Sterilizing procedures on young intersex girls (margin 1) should be included in such a ban.

RECOMMENDATION 6.b: We recommend that pathologisation of intersex women/girls and men/boys regarding violence against women and domestic violence violates physical (article 35), psychological (article 33) integrity and sexual violence without the person's free will (article 36).

RECOMMENDATION 6.c: We recommend that violation of sexual integrity of intersex girls, experiencing pain during non-consensual neovaginal dilation in their childhood, is considered as sexual or physical violence and rape (article 36).

RECOMMENDATION 6.d: We recommend that forms of selective abortion should be considered as incompatible with the Convention (article 39(a)).

⁴² E.g. scarring problems, feelings of inferiority or "sickness" which may be worsened by medical treatment, side effects due to hormonal treatment also affecting mental health, difficulties in accessing medical records, trauma, infertility, chronic pain, incontinence, psychological distress, depression, rejection, social isolation, stigmatization, lack of self-confidence and empowerment.

⁴³ Such a prohibition does not prohibit interventions on trans children, as the facts are different: An intervention in the physical integrity of the trans child is undertaken in order to adapt physical characteristics to gender identity of the child. These interventions on trans children are in the best interests of the child. After all, gender identity cannot be changed.

Chapitre VI: Investigation, prosecution, procedural law and protective measures

We finally recommend that the retention period for medical records be extended to at least 40 years from the age of maturity to allow intersex people to access their records as adults (article 58). 70

Some members of our association have undergone severe experiences (margin 1), need lifelong hormone replacement therapies, they/they were surgically-hormonally “normalized” without their free, prior consent. We therefore consider that they/they deserve redress for human rights violations they/they have suffered and are suffering (margin 48-50). Specific funds for reparations should be established. Switzerland should ensure that the limitation period for initiating legal proceedings (articles 36, 37, 38 and 39) continues for a sufficient period of time to allow prosecutions to be effectively initiated after the victim has reached the age of majority (Explanatory Report No. 296). Finally, intersex people are often missing access to their medical records as erasing important aspects of their biography and identity. Compensation or prosecution is rendered impossible if evidence (medical records) is not available in the adulthood of the intersex person.

RECOMMENDATION 7.a: We recommend that redress and adequate compensation should be provided to intersex people (intersex women, men and non-binary intersex persons) affected by surgical or other medical treatment without their free, prior and informed consent. In order to be able to claim legal protection before a court, the retention period for medical records should be extended to at least 40 years from the age of maturity.

Establishing specific funds for compensation should be examined by the Swiss government.

RECOMMENDATION 7.b: In order to allow intersex people to access their records as adults as an important element of their identity, we recommend the introduction of a national central register of medical records for a subsequent comprehension/transparency of the medical treatment.

RECOMMENDATION 7.c: As a non-governmental organisation we recommend: We should be contacted when the parents of an intersex child (children with a variation of sex development) or the child himself/herself submits a criminal complaint (article 55(2)).

4 Appendix

Shape of an action plan regarding recommendation 4

We recommend the following plan of action in general...

- Awareness raising measures: demonstrate that variations of sex development are not a disease, and that culture, custom, tradition should not be considered as justification for violence against intersex girls.
- Establish independent and interdisciplinary working groups (including intersex peer experts).
- Education and awareness-raising in hospitals and schools.
- Awareness-raising and training of medical staffs (e.g. midwives) on the harmful effects of non-urgent medical interventions on intersex girls.
- Raising media awareness (article 17) to draw attention to intersectional discrimination.
- Increase the visibility of intersex girls and boys in society and reduce isolation and stigmatization.

...and in particular

an information (article 13), counselling and prevention campaign by the Federal Social Insurance Office FSIO – comparable to the measures against female genital mutilation. In our opinion, such a campaign should include us, InterAction Switzerland as a specialized NGO on harmful consequences of violence against women (intersex girls) and domestic violence against all intersex children.

A campaign should underline the negative consequences that violence against women (intersex girls) and domestic violence can have on children - e.g., regarding their right to empowerment, their development, and their physical and mental health. On the other hand, such a campaign should raise awareness to reveal that variations of sex development are not a disease.

The following aspects should be included in the Lehrplan21 (article 14) – with a positive effect against stereotypes:

- understanding the differences in variations of sex development of girls and boys;
- understanding variations of sex characteristics, and that the development of intersex variations may be different from the traditional understanding of “male” or “female” bodies;
- understanding that children born intersex are usually as healthy as all other children and that, as a rule, no medical intervention is necessary;
- understanding that not all intersex children are equal, but can be very different from each other (variations) and that these variations are not as rare as often assumed;
- understand that intersex children should not be grouped as a new category, as “third-sex-children”, as the vast majority of people with a variation of sex characteristics have a gender identity as woman or man.

Educational curricula, teaching and vocational materials (article 15) should:

- integrate intersex and VSD/VSC as a healthy variation of the human body into all medical education and regular medical training programs;
- ensure that sensitive teaching materials are available, including information on VSD/VSC;
- implement intersex variations / variations of sex development as a healthy variation of the human body in schoolbooks and in medical curricula;
- implement measures to ensure that girls and boys with a variation of sex characteristics are portrayed in textbooks as healthy human beings in a non-pathologizing and empowering manner;
- address the lack of consultation and advice of intersex people in interdisciplinary working groups at all stages and professions of medical training/education as a non-pathologizing and human rights-based perspective.

Other prevention and protection measures:

- Leaflets and other informations for authorities (e.g., police, judiciary, medicine, Child and Adult Protection Authority) on all forms of violence against intersex children should be developed in order to make violence against intersex children visible. Only in this way will effective protection be possible.
- Health, counselling and prevention services and psychological care for parents and adolescent intersex people are to be set up apart from of medical care in the cantonal hospitals.
- In cooperation with InterAction Switzerland, counselling services independent of medicine are to be set up for pregnant women who are expecting a child with a variation of sex characteristics (intersex). Many of these women consent to abortion because of inadequate and pathologizing counselling.
- 24-hour counselling must not replace peer-to-peer counselling for people with a variation of sex development (intersex). InterAction Switzerland must be involved and financed for such counselling services.

An action plan does not replace legislative action for a criminal prohibition due to legal security considerations.

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