COMMITTEE ON THE RIGHTS OF THE CHILD
Reporting Cycle V and VI - Session 84 (2019) - Pre-Sessional Working Group
List of issues and questions in relation to the V/VI periodic report of Switzerland

I. Introduction and Definitions

InterAction Suisse is a non-governmental organization (art. 60 ss. Swiss Civil Code, RS 210) and is therefore part of the civil society of Switzerland; InterAction Suisse is not granted by any financial assistance from the state institutions.¹

We understand Intersex Genital Mutilation (IGM) as all forms (as it is the case for FGM too) of altering "sex characteristics", such as surgical interventions encompassing genital surgeries, gonadectomies, partial clitoris amputations, plastic surgeries on vulva, vagina, clitoris, and perineum, plastic surgeries of the scrotum, testicles, and penis, including 'corrections' of hypospadias (relocation of the urethral opening on the top of the penis), but also other irreversible interventions as, sterilizing procedures, hormonal respectively medical treatment, "blind" prenatal "therapy" and selective abortion, without personal, free and fully informed consent of the person with a variation in their sex characteristics.

We are calling to recognize a zero tolerance towards IGM, as it is the case for FGM². "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."³ The same author continues, saying (p. 403, italic by InterAction Suisse): "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."⁴

Other authors, like Ehrenreich and Barr⁵ argue that FGM and IGM are analogous and equivalent (psychological Consequences, Sexual Impairment; Violations of Sexual Autonomy and Bodily Integrity, FGC [and IGM] as "Cultural" Practice, Gender Subordination, p. 81 ss.). "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, 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).

¹ See appendix with our statutes.
⁴ Jones, p. 403; see also Mirjam Werlen, Persönlichkeitsschutz des Kindes, höchstpersönliche Rechte und Grenzen elterlicher Sorge im Rahmen medizinischer Praxis. Das Beispiel von Varianten der Geschlechtsentwicklung und DSD, Bern 2014, N 323.
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 children disregarding their** – and our – **right of self-determination (art. 10 of our Constitution)** – as these practices are not in the child’s best interest.

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.”

"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.”

Responsible physicians, doctors, hospitals and the Swiss Government do not explicitly reject such practices – they emphasize however, that treatment practice has changed. However, IGM is still practiced in Switzerland: All these altering interventions of "sex characteristics" or of 'unspecified malformation of the female/male genitalia’ remain constant or even increase and must be understood as **harmful practices**. In several concluding observations Switzerland and other countries have been reprimanded on the basis of the joint general recommendation.

Because these practices done on children with a **variation of sex development (VSD)** as quite well described in international statements (e.g. in 2006) are performed without any timely pressing or medical need with the aim of removing gender ambiguity; they are grave violations of the integrity and human rights of the person with the above mentioned consequences and making the intersex person 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 the two Conventions” (a); they "constitute discrimination against [...] children” and are harmful (above

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7 KATRINA ROEN, Intersex or Diverse Sex Development: Critical Review of Psychosocial Health Care Research and Indications for Practice, The Journal of Sex Research, 56:4-5, 511-528, p. 526.

8 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 7 above).

9 ULRIKE KLOPP, Zur Aktualität kosmetischer Operationen „uneindeutiger“ Genitalien im Kindesalter, Zentrum für transdisziplinäre Geschlechterstudien, Bulletin Texte 42, Berlin 2016; JOSCH HOENES/EUGEN JANUSCHKE/ULRIKE KLOPP, 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.

10 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 (CEDAW/C/GC/31 // CRC/C/GC/18).

11 In 2015: CAT/C/CH/CO/7, no 20a (no legislative, administrative and other measures to guarantee respect for the physical integrity and autonomy of intersex children were undertaken since) and CRC/C/CH/CO/2-4, no 43b (Harmful practices: intersex children are still subjected to unnecessary medical or surgical treatment during infancy or childhood); in 2016: CEDAW/C/CH/CO/4-5, no 25c (Harmful practices: intersex children are still subjected to unnecessary medical or surgical treatment during infancy or childhood and no legislation to protect their bodily integrity, autonomy and self determination is into force) and in 2017: CCPR/C/CH/CO/4, no 25 (intersex children are still subjected to treatment or surgical procedures without their effective consent).

12 What the Federal Council does not take into account in his Avis du Conseil fédéral du 02.03.2018 (see note 9 above).

13 Convention on the Rights of the Child (RS 0.107) and Convention on the Elimination of All Forms of Discrimination against
mentioned consequences) (b); they “are traditional, re-emerging or emerging practices that are prescribed and/or kept in place by social norms” (c) and they “are imposed on ... 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” (CEDAW/C/GC/31 // CRC/C/GC/18, no 16).

In summary it can be said: “Intersex” is an umbrella term to describe all VSD, which are in most cases healthy variations of the human body. However, the above mentioned surgical and hormonal respectively medical practices (=Alterations of “sex characteristics”), based on stereotypes and gender-based violence, result in discrimination, exclusion and (Gender-based) violations of several constitutional provisions and the Convention on the Rights of the Child (RS 0.107). Health problems, lack of health care, inadequate support and irreversible consequences are a also a result of such 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, 23e) and CEDAW/C/CHE/CO/4-5, 24c).

As intersex children are protected by the CRC their best interests shall be a primary consideration, in all activities of the state party concerning them, whether undertaken by public or private bodies (e.g. Education, Medicine, Politics), courts of law, administrative authorities or legislative bodies.

Our List of Issues therefore contains the following elements:

a. Harmful Practices (Gender-based Violence)
b. Stereotypes: Data Collection / Education / Medicine and Science / Society / Politics / Media
c. Equality/Gender Mainstreaming
d. Health Care: Adult Intersex Persons and Children and Family
e. Implementation Istanbul Convention (RS 0.311.35)

First, we would like to note some legal remarks (II.) and general notes on the most important issues (III.).

II. Legal framework for the protection of intersex children rights at national and international level

Constitutional protection, especially (Federal Constitution of the Swiss Confederation, RS 101):

• Human dignity (art. 7);
• Equality before the law and non-discrimination (art. 8);
• The right to life and personal freedom (art. 10);
• The protection of children and young people (art. 11);
• The right to privacy (art. 13);
• The right to marriage and a family (art. 14);
• Freedom of opinion and information (art. 16);
• The right to basic education (art. 19);
• Freedom of association (art. 23).

Art. 35 stipulates, that fundamental rights must be exercised throughout the legal system; the authorities are obliged to contribute to their implementation. The meaning of art. 35 is not only a “defensive” one (limiting the influence of the state on the individual), but also positive, saying, that the state is obligated to act in accordance with the fundamental right(s).15

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14 Women (RS 108).
15 See: HRI/CORE/CHE/2017, 92 ss.
Furthermore, any restriction on fundamental rights must have a legal basis, must be justified as public interest and be proportionate; above all, the essence of fundamental rights is inviolable – even if a public interest or legal basis is given.

We consider and argue that IGM and all forms (as it is the case for FGM too) of altering “sex characteristics” do fall under art. 36 paragraph 4 and that various fundamental rights of our constitution are violated by such practices.

As far as the Convention on the Rights of the Child (RS 0.107 - CRC) is concerned different provisions of the Convention are relevant for children with variations in sex characteristics. The following articles of the Convention are relevant (General Comments):

Art. 2: Non-discrimination (CRC/C/GC/7/Rev.1, no. 11 ss.)
Art. 3 The best interest of the child enjoys constitutional status and is considered the highest maxim of children’s rights in Switzerland (CRC/C/GC/14).  
Art. 5+6: Parental guidance and the child’s evolving capacities AND Children’s right to life and maximum survival and development

Art. 8: Preservation of identity
Art. 12: Right of the child to be heard (CRC/C/GC/12)
Art. 16: Child’s right to privacy
Art. 19: Child’s right to protection from all forms of violence (CRC/C/GC/8 and CRC/C/GC/13)
Art. 23: Rights of children with disabilities (considering that some intersex children are disabled as a consequence of IGM-practices)

Art. 24: Child’s right to health and health services (CRC/C/GC/15 and CEDAW/C/GC/31 // CRC/C/GC/18)
Art. 37: Torture, degrading treatment and deprivation of liberty (see: CAT/C/CHE/CO/7, no. 20)

Criteria for determining harmful practices

Harmful practices (Joint general recommendation: CEDAW/C/GC/31 // CRC/C/GC/18) have a negative impact on dignity, physical, psychosocial and moral integrity and development, participation, health, education and economic and social status and they are imposed on the basis of sex to children by traditional practices regardless of whether they are able to provide, full, free and informed consent.

Civil law is essentially codified in the Swiss Civil Code of 10 December 1907 (RS 210), especially relevant are art. 19c, arts. 28 ss., arts. 296-317. Regarding gender-based violence, a new provision (art. 124) was added to the Criminal Code on 1 July 2012 to put an end to the problems of definition and evidence that had previously obtained (FGM, HRI/CORE/CHE/2017, 162). In order to combat Intersex Genital Mutilation, no such provision in favor of intersex children exists. Neither exists any legislation (law) to protect intersex children’s right to bodily integrity and the right to be informed and included in decisions concerning themselves during their whole life.

Irreversible sex-normalising’ surgery and hormonal practices (all forms of altering “sex characteristics”) are carried out on intersex children without their free and informed consent and without any medical need. "Medical institutes act of their own accord and do what they see fit. There are no guidelines at hand for them to follow. Healthcare should be multidisciplinary, holistic and patient-centered. Psychosocial support should be made available both to intersex people and their families.”

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16 See: Decisions of the Federal Supreme Court BGE 142 III 481, 2.6; 8C_25/2018, 4.1).
17 See: Situation of LGBTI children in Belgium, Shadow Report Rights of the Child, Author: Kaj Poelman, Session 80 (2019) -
As far as educational programs are concerned, the dissemination of information and training on the Convention on the Rights of the Child (RS 0.107) take place within the framework of assemblies of the Conference of cantonal officials and other committees (HRI/CORE/CHE/2017, 142). However, there is no inclusion or integration of intersex associations at all, like InterAction Suisse, to combat stereotypes, e.g. in favor of the production and dissemination of children's books or other educational material in schools or medical trainings (art. 17 of the Convention).

III. Main areas of concern (see: CRC/C/CHE/CO/2-4)

InterAction Suisse recommends that Switzerland develops and implements, in consultation with civil society, a national policy and strategy for the overall implementation of the principles and provisions of the Convention for intersex children and adults (cantonal plans and strategies). Neither general measures nor the implementation of the above-mentioned legal framework for the protection of intersex children rights at national and international level are realized in Switzerland (II.) – we have to point out that we have a complete lack of policy and protection for intersex children.

But first, violence against children born with variations in sex characteristics (art. 19, art. 24 para. 3, art. 28 para. 2, art. 34, art. 37 a) and art. 39), is widespread and intersex people are not visible in our society. The recommendations of the national bioethics report (see footnote 7) are far from being realized. We are therefore calling to:

1) explicitly legally ban (in the Criminal Code, RS 311.0, as it is the case for FGM) all non-life saving and normalizing, harmful practices – including genital surgeries and other medical treatment – which are performed to alter variations of sex characteristics (see section 2 above, I. Introduction) (see CEDAW/C/DEU/C/7-8, 24d) and

2) fight against stereotypes which leads to these harmful, traditional practices.

IV. List of Issues

a. Harmful Practices
   1. IGM

As so called “medical procedures” aren’t justified by psychosocial indications (CEDAW/C/CHE/CO/4-5, 24d), we require adding a paragraph 1bis to article 124 Swiss Criminal Code (SR 311.0) according to which all forms of altering of “sex characteristics” (as it is the case for FGM too) of children with a VSD is punishable.

1. Will the State Party ensure that, in line with recommendations from the Swiss Ethics Commission18, that no child is subjected to unnecessary medical or surgical treatment during infancy or childhood (unless free and fully informed consent)? Is the State Party willing to adopt legislation to protect bodily integrity, autonomy and self-determination of intersex children? Will the State Party provide families with intersex children with adequate counselling and support (CEDAW/C/CHE/CO/4-5, 25c // CRC/C/CHE/CO/2-4, 43)?

2. Will Switzerland explicitly legally ban all non-life saving and non-necessary genital surgeries and all medical or hormonal treatment – which are performed to alter variations of sex characteristics (i.e. all forms of IGM, as it is the case for FGM too)19

2. Forced Sterilization

3. Which steps the State Party concerned will take for a ban of sterilization on children20 with variations in their sex characteristics? (Data Collection (see b. Stereotypes)

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18 See note 7 above, National Advisory Commission on Biomedical Ethics
20 See art. 3 and 7 of Swiss sterilization law, SR 211.111.1.
b. Stereotypes

1. Data Collection

4. Please provide information (detailed statistics) on medical practices in relation to hormonal/surgical treatments of intersex people. Has the State Party any measures in effect or planned to facilitate data collection and monitoring IGM practices?

5. How many non-urgent, irreversible surgical and other IGM-practices (variations of sex development (VSD) as quite well described in international statements, e.g. in 2006) have been undertaken since 2016 on intersex children before an age at which they were able to provide informed consent? Why the State party did not so far explicitly legally ban these practices?

We are aware of a veiling shift of diagnostics without a change of the actual surgical practice; detailed statistics have therefore to include all forms of practices on intersex persons (e.g. 'unspecified malformations of the female/male genitalia'), as defined in the Chicago Consensus Statement (2006), including Hypospadias).

2. Education

(1) Educational Curricula

6. Please provide information, how the State Party intends to implement intersex as a healthy variation of the human body in all medical curricula and further training.

(2) Educational Material

7. Has the State Party put any measures in place (or planning) to ensure that children with a variation in their sex characteristics find themselves reflected as healthy human beings in schoolbooks in a positive, non-pathologizing, empowering way?

(3) Vocational Training/Higher Education

8. In what way will the State Party ensure to fill the lack of integration, consulting and views of intersex people in interdisciplinary working groups at all stages and professions of medical training/education (CEDAW/C/CHE/CO/4-5, 24e/25e)?

9. Which steps the State Party will take to ensure that intersex issues are understood as non-medicalized, non-pathologizing and human right based perspective in existing and future professional counselling centers?

3. Medicine/Science

10. Please provide information on existing programs to educate and train medical professionals on harmful impact of unnecessary and not urgent surgical or other medical interventions on children with a variation in their sex characteristics (CEDAW/C/CHE/CO/4-5, 25e).

4. Society

11. How does the State Party sensitize medical professionals, media and society at large for equal rights, especially development opportunities of children with a variation in their sex characteristics (CEDAW/C/CHE/CO/4-5, 24d)?

12. How does the State Party facilitate the acknowledgement by society of the suffering experienced by children born with variations in sex characteristics, caused by medical practices, guided by traditional sociocultural values incompatible with fundamental human rights?

5. Politics

13. Is the State Party willing to prevent and raise awareness about IGM as severe violation of children’s human and fundamental rights and to develop and implement a national strategy? Are there plans of the federal government to make financial resources available to attain this objective?

6. Media

(1) Language / Visual Language / Hate speech

14. How does the State Party prohibit intersexphobic speech in media (Print, digital, social media)?

What the Federal Council does not take into account in his Avis du Conseil fédéral du 02.03.2018 (see note 9 above).
c. Equality/Gender Mainstreaming

1. Data Collection
15. How does the State Party intend to improve inclusion of intersex people in health surveys and registers (CEDAW/C/CHE/CO/4-5, 38c/d)?
16. How does the State Party facilitate independent data collection and monitoring, as well as disinterested, representative review, analysis, and outcome studies, in direct collaboration with intersex representatives and organizations?

It should be mentioned that these registers and Data Collection must be realized or collected by the Swiss Federal Statistical Office and not by private institutions or children’s hospitals.

2. Trainings/Sensitizing
17. Which steps the State Party will take to establish independent working group(s) composed in equal measure of human rights experts, intersex peer experts, psychosocial professionals and medical experts, to review and revise treatment protocols (CEDAW/C/CHE/CO/4-5, 25e)?
18. How does the State Party ensure that all medical professionals know that non-consensual surgical and other procedures on intersex children and adults justified by psychosocial indications constitute a harmful practice?

3. Sex education
19. Is the State Party willing to ensure that gender sensitive teaching materials are available, including information on VSD (CEDAW/C/CHE/CO/4-5, 35a) and what steps he will undertake.

d. Health Care

1. Adult Intersex Persons

IGM i.e. all forms of altering “sex characteristics” are harmful practices (CEDAW/C/GC/31 // CRC/C/GC/18)!

These practices are important human rights violations of healthy children – health problems of intersex people result from these interventions! Therefore, we ask the State Party:
20. Which steps will be taken to guarantee access to healthcare for adult people with a variation in their sex characteristics? Intersex people should not be victims twice, as children by altering their “sex characteristics” and as adults by insufficient access to health.22
21. How will the State Party guarantee offering and accessibility to particular services (e.g. availability of preventive check-ups for certain conditions or general health services)?
22. The State Party is invited to inform about the adoption of legal provisions in order to provide redress and fair and adequate compensation to intersex people affected by surgical or other medical treatment without their free, prior and informed consent (CEDAW/C/CHE/CO/4-5, 25d // CRC/C/CHE/CO/2-4, 42b).
23. The State Party is invited to extend the retention period for medical records to at least 40 years, beginning with the age of maturity, in order to allow intersex people to access their records as adults (CEDAW/C/CHE/CO/4-5, 24d).

2. Children
24. Please provide information, how the State Party will strengthen parents of children born with variations in sex characteristics not to consent for so called “medical procedures” justified by psychosocial indications only, even under emotional and psychological pressure (CEDAW/C/CHE/CO/4-5, 24d). Neither a psychosocial indication, the family nor the cultural context justify irreversible medical interventions violating seriously the personal integrity, bodily autonomy and self-determination of intersex people, being violations of fundamental and personal rights of children.23

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22 Intersex individuals who are for example assigned female but have body parts that are considered to be male (e.g. prostate) will often not be able to obtain a preventive check-up for the respective body part.
23 The recommendations from the Swiss Ethics Commission are by no means implemented by Swiss Government.
3. **Family**

25. Which means of psychosocial/peer support are available for children born with variations in sex characteristics and their families? Is the State Party willing to fund an infrastructure for peer-counselling for people with variations in their sex characteristics and their families throughout the country (e.g. training, networking, creating spaces for counselling opportunities)? At the moment, there is no or insufficient support for persons with VSD, who have undergone involuntary and medically unnecessary disfiguring surgical procedures. (CEDAW/C/CHE/CO/4-5, 24c // CRC/C/CHE/CO/2-4, 43b).

**e. Implementation Istanbul Convention (RS 0.311.35)**

26. When will the cantons and the federal government make available financial resources to implement a national strategy to raise awareness about IGM/VSD? What kind of measures will the cantons use to achieve this aim?

**Note terminologique : Les termes « intersexualité / Intersexualität / intersexuel / intersexuality» sont particulièrement troublants et pathologisants, raison pour laquelle nous les rejetons dans toutes les langues, car l’intersexuation n’a rien à voir avec la sexualité. Nous vous remercions de prendre cela en compte.**

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InterAction Suisse a pour mission de visibiliser les revendications et vécus intersexes, d’offrir du soutien psychologique, juridique et social aux personnes concernées et de s’engager politiquement contre les traitements chirurgicaux, médicaux et hormonaux auxquels sont soumises les personnes intersexuées, sans leur consentement éclairé et exprès. Nous visons à créer une communauté soudée et émancipée, qui saura trouver les ressources nécessaires à mener le travail qu’il reste à faire pour garantir les droits humains des personnes intersexuées.

L’intersexuation est une variation saine et naturelle des caractéristiques sexuelles d’une personne née avec des caractères sexuels (génitaux, gonadiques ou chromosomiques) qui ne correspondent pas aux définitions binaires types des corps masculins et féminins.