

Intersex Genital Mutilations Human Rights Violations Of Persons With Variations Of Sex Anatomy



NGO Report for LoIPR
to the 8th Report of Switzerland
on the Convention against Torture (CAT)

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Table of Contents

Introduction	4
Background and State Report.....	4
About the Rapporteurs	4
Methodology	4
Concluding Observations on Intersex (CAT/C/CHE/CO/7, para 20)	5
A. IGM practices in Switzerland: State-sponsored and pervasive	6
1. Intersex is NOT THE SAME as LGBT or SOGI.....	6
2. Switzerland: Still no protections for intersex people, State party ignores COs	6
3. Recommendation (a) – Legislative and other measures to prevent IGM	7
4. Recommendation (b) – Free psychosocial support	9
5. Recommendation (c) – Impartial investigation, redress and compensation	9
6. Conclusion: Switzerland is failing its obligations towards intersex people under CAT and CAT/C/CHE/CO/7, para 20.....	10
B. Suggested Questions for the LoIPR	11

Introduction

Background and Concluding Observations

IGM practices are known to cause severe, lifelong physical and psychological pain and suffering, and have been repeatedly **recognised by multiple UN treaty bodies¹ including CAT** as constituting torture or ill-treatment, a harmful practice and violence. This NGO Report demonstrates that the current **harmful medical practice on intersex persons in Switzerland** – advocated, facilitated and paid for by the State party – **persists unchanged in spite of the last Concluding observations by this Committee (para 20)**, as well as of those by **CRC** and **CEDAW**, and constitutes a serious breach of Switzerland’s obligations under the Convention.

About the Rapporteurs

This NGO report has been prepared by the Swiss-based international intersex NGO *StopIGM.org / Zwischengeschlecht.org* in collaboration with Swiss peer support groups *Intersex.ch* and *SI Selbsthilfe Intersexualität*:

- **StopIGM.org / Zwischengeschlecht.org** is an international intersex human rights NGO based in Switzerland, working to end IGM Practices and other human rights violations perpetrated on intersex people, according to its motto, “*Human Rights for Hermaphrodites, too!*”² According to its charter,³ StopIGM.org works to support persons concerned seeking redress and justice and regularly reports to UN treaty bodies.
- **Intersex.ch** is a Swiss intersex peer support group founded in 2005.⁴
- **SI Selbsthilfe Intersexualität** is a Swiss peer support group for parents of intersex children founded in 2003.

Methodology

This thematic NGO report follows up on the **2015 thematic CAT NGO Report** by the same rapporteurs,⁵ and the resulting Concluding observations by this Committee (para 20).

1 **CAT, CRC, CRPD, SPT, SRT, SRSG VAC, COE, ACHPR, IACHR** (2016), “End violence and harmful medical practices on intersex children and adults, UN and regional experts urge”,

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>

2 <http://Zwischengeschlecht.org/> English pages: <http://StopIGM.org/>

3 <http://zwischengeschlecht.org/post/Statuten>

4 <http://intersex.ch/>

5 <http://intersex.shadowreport.org/public/2015-CAT-Swiss-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

Concluding Observations on Intersex (CAT/C/CHE/CO/7, para 20)

Intersex persons

20. The Committee welcomes the Federal Council decision to give an opinion by the end of 2015 on the recommendations of the National Advisory Commission on Biomedical Ethics with regard to the unnecessary and in some cases irreversible surgical procedures that have been carried out on intersex persons (i.e. persons with variations in sexual anatomy) without the effective, informed consent of those concerned. However, the Committee notes with concern that these procedures, which reportedly caused physical and psychological suffering, have not as yet given rise to any inquiry, sanction or reparation (arts. 2, 12, 14 and 16). The Committee recommends that, in light of the forthcoming decision by the Federal Council, the State party:

(a) Take the necessary legislative, administrative and other measures to guarantee respect for the physical integrity and autonomy of intersex persons and to ensure that no one is subjected during infancy or childhood to non-urgent medical or surgical procedures intended to decide the sex of the child, as recommended by the National Advisory Commission on Biomedical Ethics and the Committee on the Rights of the Child (see CRC/C/CHE/CO/2 - 4, para. 43 (b));

(b) Guarantee counselling services and free psychosocial support for all persons concerned and their parents, and inform them that any decision on unnecessary treatment can be put off until the person concerned are able to decide for themselves;

(c) Undertake investigation of reports of surgical and other medical treatment of intersex people without effective consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation.

A. IGM practices in Switzerland: State-sponsored and pervasive

1. Intersex is NOT THE SAME as LGBT or SOGI

Unfortunately, there are several **harmful misconceptions about intersex** still prevailing in public, including if intersex is counterfactually described as being the same as or a subset of LGBT or SOGI, e.g. if intersex and/or intersex status are represented as a sexual orientation (like gay or lesbian), and/or as a gender identity, as a subset of transgender, as the same as transsexuality,⁶ or as a form of sexual preference.

The underlying reasons for these harmful misconceptions include **lack of awareness**, third party groups **instrumentalising** intersex as a means to an end for their own agenda, and State parties **trying to deflect** from criticism of involuntary intersex treatments.

Intersex persons and their organisations have spoken out clearly against instrumentalising or misrepresenting intersex issues,⁷ maintaining that Intersex Genital Mutilations present a distinct and unique issue constituting significant human rights violations, which are different from those faced by the LGBT or SOGI community, and thus need to be adequately addressed in a separate section as specific intersex issues.

Nonetheless, the **pervasiveness and persistence** of these harmful misconceptions remains, as illustrated for example in two recent UN press releases misrepresenting IGM as “*sex alignment surgeries*” (i.e. voluntary procedures on transsexual or transgender persons), and IGM survivors as “*transsexual children*”,⁸ and State parties referring to e.g. transgender guidelines,⁹ “*Gender Identity Law*”¹⁰ or “*Civil Status Act*”¹¹ when asked about IGM by Treaty bodies.

2. Switzerland: Still no protections for intersex people, State party ignores COs

In **Switzerland (2015: CAT/C/CHE/CO/7, para 20; 2015: CRC/C/CHE/CO/2-4, paras 42-43; 2016: CEDAW/C/CHE/CO/4-5, paras 24–25, 38–39)**, same as in the **neighbouring states** of *France* (CAT/C/FRA/CO/7, paras 32–33; CRC/C/FRA/CO/5, paras 47-48; CEDAW/C/FRA/CO/7-8, paras 17e-f + 18e-f), *Germany* (CAT/C/DEU/CO/5; para 20; CRPD/C/DEU/CO/1, paras 37-38; CEDAW/C/DEU/CO/7-8, paras 23–24), *Austria* (CAT/C/AUT/CO/6, paras 44-45), and *Italy* (CRPD/C/ITA/CO/1, paras 45-46), **there are still**

- **no legal or other protections** in place to ensure the rights of intersex children to physical and mental integrity, autonomy and self-determination, and to prevent non-consensual, medically unnecessary, irreversible surgery and other harmful treatments a.k.a. IGM practices

6 E.g. the **Swiss Federal Government** in 2011 in answers to parliamentary questions consistently described intersex as “*True and Untrue Transsexualism*”, e.g. 11.3286, http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=20113286

7 For references, see 2016 CEDAW NGO Report France, p. 40, fn 49.

8 For relevant excerpts and references, see <http://stop.genitalmutilation.org/post/UN-Press-Release-calls-IGM-survivors-transsexual-children-CATArgentina-UNCAT60>

9 CAT56 Austria, see <http://stop.genitalmutilation.org/post/Geneva-UN-Committee-against-Torture-questions-Austria-over-Intersex-Genital-Mutilations>

10 CAT 60 Argentina, unofficial transcript see <http://stop.genitalmutilation.org/post/CAT60-Argentina-to-be-Questioned-on-Intersex-Genital-Mutilation-by-UN-Committee-against-Torture>

11 7th and 8th Periodic Report of Germany on CEDAW, para 202, see 2016 CEDAW PSWG NGO Report, p. 2, <http://intersex.shadowreport.org/public/2016-CEDAW-Germany-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

- **no measures** in place to ensure **data collection and monitoring** of IGM practices
- **no legal or other measures** in place to ensure the **accountability** of IGM perpetrators
- **no legal or other measures** in place to ensure **access to redress and justice** for adult IGM survivors

All forms of **IGM practices remain widespread and ongoing**¹² – advocated, facilitated and **paid for by the State party** via the **Swiss federal Disability Insurance** (Invalidenversicherung IV) according to its **List of Birth Defects** (Liste der Geburtsgebrechen) covering intersex surgeries on children until the age of 20, but not for consenting adults¹³

At the same time, the **Swiss government**

- **denies** the ongoing practice,
- **ignores** repeated UN recommendations by CAT, CRC, CEDAW,
- claims “*free psychosocial support*” would be “*impossible*” to finance,
- claims the **existing legislation would be sufficient to protect** intersex children,
- **refuses to take effective measures**,
- **enables perpetrator institutions to destroy medical records** during “*scientific review*” of practice funded by the Swiss National Science Foundation (SNSF).

3. Recommendation (a) – Legislative and other measures to prevent IGM

(a) *Take the necessary legislative, administrative and other measures to guarantee respect for the physical integrity and autonomy of intersex persons and to ensure that no one is subjected during infancy or childhood to non-urgent medical or surgical procedures intended to decide the sex of the child, as recommended by the National Advisory Commission on Biomedical Ethics and the Committee on the Rights of the Child (see CRC/C/CHE/CO/2-4, para. 43 (b));*

To this day, the **Swiss government**, despite 2016 finally acknowledging IGM practices having been “*denounced at the political level by the Federal Parliament and Council as well as by the National Ethics Commission in its Opinion No. 20/2012 ‘On the management of differences of sex development. Ethical issues relating to intersexuality’*” (2016 CCPR State Report, para 188),¹⁴ and further acknowledging that IGM practices result in “*considerable consequential damage and*

12 See 2017 CCPR Swiss NGO Report, p. 8-11, <http://intersex.shadowreport.org/public/2017-CCPR-Swiss-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

13 Swiss National Advisory Commission on Biomedical Ethics NEK-CNE (2012), On the management of differences of sex development. Ethical issues relating to “intersexuality”, No. 20/2012, at 15-17, http://www.nek-cne.ch/fileadmin/nek-cne-dateien/Themen/Stellungnahmen/en/NEK_Intersexualitaet_En.pdf
For the relevant numbers in the List of Birth Defects, see <http://blog.zwischengeschlecht.info/pages/Kosmetische-Genitaloperationen-Ziffern-Liste-der-Geburtsgebrechen>

For relevant numbers in most frequent current IGM practices see 2017 CCPR Swiss NGO Report, p. 8-10, <http://intersex.shadowreport.org/public/2017-CCPR-Swiss-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

14 CCPR/C/CHE/4, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCHE%2F4&Lang=en

severe suffering of persons concerned” (2016 Statement on NEK-CNE recommendations),¹⁵ **undeviatingly refuses** to take effective legislative, administrative, judicial or other measures to protect intersex children, nor to facilitate data collection, but instead **counterfactually claims**:

- IGM practices would only be *“approved for between one and three children per year of birth”* (2016 CCPR State Report, para 188)¹⁶
- IGM practices would be **strictly a thing of the “past”**¹⁷
- the recommendations of the **Swiss National Ethics Commission (NEK-CNE)** concerning the Federal Government would all be *“already implemented or in the process of being implemented”* (with the only exception of the *“free psychosocial support”* for persons and families concerned which would be *“impossible”* to finance, see below).¹⁸

On Human Rights Day, 10 December 2015 the NGO StopIGM.org had **urged the Swiss government** in an Open Letter to legislate against IGM practices, referring to the **Swiss National Ethics Commission NEK-CNE** and the **CAT** and **CRC** Concluding observations.¹⁹ The government decided to accept the Open Letter as a Petition.²⁰

Based on above listed **counterfactual claims** by the Federal government, the **Legal Affairs Committees** both of the Council of States (**LAC-S**, 23.01.2017)²¹ and the National Council (**LAC-N**, 06.04.2017),²² while conceding that *“premature unnecessary”* genital surgery *“constitutes a violation of the right to physical integrity”*, stated the existing **legislation would be “sufficient” to protect** intersex children, and there would be *“no further need for legislation”*, with **LAC-N** further claiming, *“We believe medical professionals are nowadays sufficiently sensitised to the issue and only undertake such interventions when they are justified.”*²³

Both **LAC-N** and **LAC-S** then **moved to reject** legislation as recommended by **CAT**, **CRC**, **CEDAW** and **NEK-CNE**, with both the **Council of the State** (16.03.2017)²⁴ and the **National Council** (16.06.2017)²⁵ following suit.

15 Swiss Federal Council, press release 06.07.2016, Personnes aux caractéristiques sexuelles ambiguës : sensibiliser davantage, <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-62507.html>

16 CCPR/C/CHE/4, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCHE%2F4&Lang=en

17 Swiss Federal Council, press release 06.07.2016, Personnes aux caractéristiques sexuelles ambiguës : sensibiliser davantage, <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-62507.html>

18 ibid.

19 http://zwischenengeschlecht.org/public/Offener_Brief_Zwischengeschlecht_Bern_10-12-2015.pdf

20 ibid., p. 3

21 https://www.parlament.ch/centers/kb/Documents/2015/Kommissionsbericht_RK-S_15.2043_2017-01-23.pdf

22 https://www.parlament.ch/centers/kb/Documents/2015/Kommissionsbericht_RK-N_15.2043_2017-04-06.pdf

23 ibid.

24 <https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=39798>

25 <https://www.parlament.ch/de/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=40660>

4. Recommendation (b) – Free psychosocial support

(b) *Guarantee counselling services and free psychosocial support for all persons concerned and their parents, and inform them that any decision on unnecessary treatment can be put off until the person concerned are able to decide for themselves;*

The Federal Council, in its **2016 Statement on NEK-CNE recommendations**²⁶ mentioned in the first paragraph of the CAT Concluding observations on intersex (*“Federal Council decision to give an opinion by the end of 2015 on the recommendations of the National Advisory Commission on Biomedical Ethics”*), stated **“free psychosocial support”** for persons and families concerned would be **“impossible” to finance**, and therefore according to the Federal Council this CAT, CRC and NEK-CNE **recommendation would not be implemented** (while claiming all other recommendation would *“already [be] implemented or in the process of being implemented”*, see above).

5. Recommendation (c) – Impartial investigation, redress and compensation

(c) *Undertake investigation of reports of surgical and other medical treatment of intersex people without effective consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation.*

In 2016 the **Zurich University Hospital** was enabled to **destroy about 80% of its historic medical files documenting IGM practices**²⁷ as part of a *“scientific review of the treatment of children with differences of sex development (DSD children)”* funded by the **Swiss National Science Foundation (SNSF)** with Sfr 500'000.–²⁸ and led by the perpetrator institutions **Zurich University Hospital** and **Zurich University** themselves, but **without adequate consultation of intersex persons and their organisations**. As a result, for example a **member of the self-help group Intersex.ch** (see **Case No. 1** in the 2015 CAT Swiss NGO Report) who wanted to access his files, was told that while at the **Zurich State Archives** there was still a note in the register confirming in 1945 and 1946 he was in treatment at the **Department of Surgery of the Zurich University Children’s Hospital**, the **actual files were no longer available**.²⁹

Regarding **redress and compensation**, also the Swiss National Ethics Commission **NEK-CNE** explicitly stipulated, *“There should be a legal review of the liability implications of unlawful interventions in childhood, and of the associated limitation periods.”*³⁰

However, to this day the **statutes of limitation** prevent survivors of early childhood IGM practices to call a court because persons concerned often **do not find out** about their medical

26 Swiss Federal Council, press release 06.07.2016, *Personnes aux caractéristiques sexuelles ambiguës : sensibiliser davantage*, <https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-62507.html>

27 i.e. 90% of all cases of IGM 1 “masculinising surgeries (hypospadias corrections)”. Personal communication and e-mails with doctor and historian of the Zurich University Children’s Hospital, April 2016; Personal communication with Zurich State Archives, June 2016

28 see Press Release SFNF 10.10.2016, <http://www.snf.ch/en/researchinFocus/newsroom/Pages/news-161010-press-release-reviewing-the-treatment-of-differences-of-sex-development.aspx>

29 E-mails Zurich State Archives, 19.01.2017 and 21.03.2017

30 Recommendation 12, p. 19, Swiss National Advisory Commission on Biomedical Ethics NEK-CNE (2012), *On the management of differences of sex development. Ethical issues relating to “intersexuality”*, Opinion No. 20/2012, http://www.nek-cne.ch/fileadmin/nek-cne-dateien/Themen/Stellungnahmen/en/NEK_Intersexualitaet_En.pdf

history until much later in life, which in combination with severe trauma caused by IGM practices often proves to amount to a severe obstacle.³¹ Also in **Switzerland** the statutes of limitations effectively **prohibit survivors of early childhood IGM practices to call a court**, as also noted by **Swiss paediatric surgeon Blaise Meyrat**, who in 2013 stated, *“It’s a pity that, because of a lack of ethical clarity in the medical profession, we have to get legislators involved, but in my opinion it’s the only solution,”*³² and in 2015 on occasion of the 55th Session of the Committee against Torture added, *“Only the fear of the judge will make things change. We need statutes of limitation long enough so that victims may sue as adults.”*³³

So far in Switzerland no victim of IGM practices succeeded in going to court or obtaining redress and compensation ever.

6. Conclusion: Switzerland is failing its obligations towards intersex people under CAT and CAT/C/CHE/CO/7, para 20

As substantiated above, **Switzerland is categorically failing to meet its obligations** towards intersex people **resulting from the Concluding observations of this Committee** (para 20).

Regarding IGM practices, Switzerland is unchangedly in breach of its obligation to take **effective legislative, administrative, judicial or other measures** to prevent acts of torture (Art. 2 CAT) or other forms of cruel, inhuman or degrading treatment (Art. 16 CAT, General Comment 2).

Victims of IGM practices unchangedly encounter **severe obstacles** in the pursuit of their right to an **impartial investigation** (Arts. 12, 13 CAT), and to **redress** and fair and adequate compensation, including the means for as **full rehabilitation** as possible (Art. 14 CAT, General Comment 3).

Also Switzerland’s efforts on **education and information regarding the prohibition against torture in the training of medical personnel** remain grossly insufficient with respect to the treatment of intersex people (Art. 10 CAT).

31 Globally, no survivor of early surgeries ever managed to have their case heard in court. All relevant court cases (3 in Germany, 1 in the USA) were either about surgery of adults, or initiated by foster parents.

32 Isabelle Eichenberger (2013), A human right: Third gender fights for recognition, http://www.swissinfo.ch/eng/swiss_news/Third_gender_fights_for_recognition.html?cid=34791620

33 Tribune de Genève / 24 heures, 03.08.2016, p. 5 respectively 6. English translation: <http://stop.genitalmutilation.org/post/IGM-Only-Fear-of-the-Judge-Will-Make-Surgeons-Change>

B. Suggested Questions for the LoIPR

The Rapporteurs respectfully suggest that in the LoIPR the Committee asks the Swiss state party the following questions with respect to the treatment of intersex children:

Intersex persons and IGM practices (arts. 2, 12, 14, 16)

- **How many non-urgent, irreversible surgical and other procedures have been undertaken on intersex children before an age at which they are able to provide informed consent? Please provide detailed statistics on sterilising, feminising, masculinising procedures and imposition of hormones, including prenatal procedures.**
- **What measures does the State party plan to implement to stop this practice? And what measures to guarantee free psychosocial support for all persons concerned and their parents?**
- **Please indicate which criminal or civil remedies are available for intersex people who have undergone involuntary sterilisation or unnecessary and irreversible medical or surgical treatment when they were children and whether these remedies are subject to any statute of limitations?**