

Committee on the Elimination of Discrimination against Women

Reporting Cycle VI - Session 76 (2019)

List of issues and questions in relation to the sixth periodic report of Switzerland

## 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]](#footnote-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 of sex development.

We are calling to recognize a zero tolerance towards IGM, as it is the case for FGM[[2]](#footnote-2). “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]](#footnote-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.”

Authors, like Ehrenreich and Barr[[4]](#footnote-4)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).

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).** 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.”[[5]](#footnote-5)

*“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.*”[[6]](#footnote-6)

Physicians, doctors, hospitals and the Swiss Government do not explicitly reject such practices – they emphasize however, that treatment practice had changed.[[7]](#footnote-7) 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[[8]](#footnote-8) and must be understood as **harmful practices[[9]](#footnote-9)**. In several concluding observations Switzerland has been was reprimanded on the basis of the joint general recommendation.[[10]](#footnote-10)

Because these practices done on children with a **variation of sex development (VSD)** 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);[[11]](#footnote-11)
* they “constitute discrimination against […] children” and are harmful (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 … or society at large, regardless of whether the victim provides, or is able to provide, full, free and informed consent” (d) (a-d in: 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.
**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) and CEDAW/C/CHE/CO/4-5, 24c).

**CEDAW prohibits every form of discrimination based on sex and gender:** The term "'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex” (Article 1). Intersex people are therefore protected by the CEDAW and they experience the same discriminations as non-intersex persons, and, in addition, they face severe, intersectional human rights violations and discriminations due to their **variation of sex development** (e.g. right to sexual and reproductive health, art. 8 (Equality before the law), art. 10 (Right to personal freedom and in particular to physical and mental integrity), art. 11 (Right of special protection of integrity and of development of the child) in combination with art. 36 of the Federal Constitution, but also Art. 7 (human dignity) of our Constitution (RS 101) and art. 28 CC, (RS 210). These rights are not guaranteed yet in Switzerland for people with VSD.

## Legal framework for the protection of intersex children rights at national and international level[[12]](#footnote-12)

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).

Art. 35 stipulates, that fundamental rights must be exercised throughout the legal system; the authorities are obliged to contribute to their implementation.[[13]](#footnote-13)

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. **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 explicitly 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-‘normalizing’ 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 or urgency.

As far as educational programs are concerned, 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. 5, 10 of CEDAW; art. 17CRC).

## Main areas of concern (see: CEDAW/C/CHE/CO/4-5)

**Violences against children born with variations of sex developments are widespread and cause lack of visibility of intersex people in our society.** The recommendations of the national bioethics report (see footnote 5) are far from being realized. **We are therefore calling to:**

* 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 sex characteristics and
* fight against stereotypes which leads to these harmful, traditional practices.

## List of Issues (1) – (23)

#### Harmful Practices

##### IGM

We require adding a paragraph 1bis to article 124 Swiss Criminal Code (SR 311.0) according to which also all forms of altering of “sex characteristics” (as it is the case for FGM too) of children with a VSD are punishable.

1. Will the State Party ensure that, in line with recommendations from the Swiss Ethics Commission (see above footnote 5), 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 prohibit** all non-life saving genital surgeries and 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)[[14]](#footnote-14)

##### Forced Sterilization

1. Which steps the State Party will take to ban sterilization on children[[15]](#footnote-15) with variations of sex development?

##### Health Care

**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 on healthy children – **health problems of intersex people result from these interventions!** Therefore, we ask Switzerland:

1. Which steps will be taken to guarantee access to healthcare for adult people with a variation of sex development? Intersex people should not be victims twice, as children by altering their “sex characteristics” and as adults by insufficient access to health.
2. Switzerland 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).
3. Will Switzerland **extend the retention period for medical records** to at least 40 years, beginning with the age of maturity (CEDAW/C/CHE/CO/4-5, 24d).

**Children**

1. Please provide information, how Switzerland will offer support to parents of children born with variations of sex development *not to “consent” (under emotional and psychological pressure, we should mention!)* for so called “medical procedures”. (CEDAW/C/CHE/CO/4-5, 24d). ***Neither a psychosocial indication nor the cultural context justifies irreversible medical interventions violating seriously the bodily autonomy and self-determination of intersex people, being violations of fundamental rights.***[[16]](#footnote-16)

**Family**

1. Which means of psychosocial/peer support are available for intersex children and their families? Is Switzerland willing to finance an infrastructure for peer-counselling for people with variations of sex development *and their families* nationwide (e.g. training, networking, spaces for counselling opportunities)? Currently, there is no or insufficient support for persons with VSD, who have undergone involuntary, medically deferrable disfiguring surgical procedures. (CEDAW/C/CHE/CO/4-5, 24c // CRC/C/CHE/CO/2-4, 43b).

#### Stereotypes and statistics

##### Data Collection

1. How will Switzerland provide 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?
2. How many non-urgent, irreversible surgical and other IGM-practices / altering “sex characteristics” – as described above – have been undertaken since 2016 on intersex children before they were able to provide informed consent?

**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 altering “sex characteristics” *on Intersex persons (e.g. ‘unspecified malformations of the female/male genitalia’), as defined in the Chicago Consensus Statement (2006), including Hypospadias).***

##### Education

1. How Switzerland intends to implement intersex / variations of sex development as a healthy variation of the human body in all school books and in the medical curricula. How will Switzerland improve access of educational professionals to the reality of intersex children or students and address these in a non-pathological way.
2. In what way will Switzerland 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)?
3. Which steps will the State Party take to ensure that intersex issues are understood as non-medicalized, non-pathologizing in a human right based perspective in counselling centers or spaces? However, we have to emphasize that such measures/steps cannot replace the end of the above-mentioned genital surgeries and medical/hormonal treatment.

##### Medicine/Science

1. Please provide information on existing programs to educate, raise awareness and train medical professionals on the harmful impacts of unnecessary resp. non urgent surgical or other medical interventions on intersex children with a variation of sex development (CEDAW/C/CHE/CO/4-5, 25e).

##### Society

1. How does the State Party raise awareness in media and society for equal rights, especially development opportunities of children with a variation of sex development (CEDAW/C/CHE/CO/4-5, 24d)?
2. Intersex women experience the same discrimination as non-intersex women, in addition, they face specific human rights violations, discriminations and social exclusion due to their variation of sex development. How the State Party will implement measures regarding their inclusion?

##### Politics

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

#### Equality/Gender Mainstreaming

##### Data Collection

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

##### Trainings/Sensitizing

1. Which steps will Switzerland take to establish independent and interdisciplinary working groups (composed in equal measure, including intersex peer experts (CEDAW/C/CHE/CO/4-5, 25e)?
2. How does Switzerland 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?

##### Sex education

1. Is Switzerland 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.

#### Implementation Istanbul Convention (RS 0.311.35)

1. 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?

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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.

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

1. See appendix with our statutes. [↑](#footnote-ref-1)
2. WHO, Sexual health, human rights and the law, 2015, Section 3.4.9, 5.2.7. (<https://www.who.int/reproductivehealth/publications/sexual_health/sexual-health-human-rights-law/en/>) [↑](#footnote-ref-2)
3. Melinda Jones, Intersex Genital Mutilation – A Western Version of FGM, International Journal of Children’s Rights (2017), 396-411 p. 397. [↑](#footnote-ref-3)
4. 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, S. 71-140. [↑](#footnote-ref-4)
5. 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](http://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 ss. [↑](#footnote-ref-5)
6. 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. [↑](#footnote-ref-6)
7. 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 statemant 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 5 above). [↑](#footnote-ref-7)
8. 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. [↑](#footnote-ref-8)
9. 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). [↑](#footnote-ref-9)
10. In 2015: CAT/C/CHE/CO/7, no 20a-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. [↑](#footnote-ref-10)
11. Convention on the Rights of the Child (RS 0.107) and Convention on the Elimination of All Forms of Discrimination against Women (RS 0.108). [↑](#footnote-ref-11)
12. See: HRI/CORE/CHE/2017, 92 ss. [↑](#footnote-ref-12)
13. BBl 1997 I 191: Botschaft über eine neue Bundesverfassung, 20. November 1996, <https://www.amtsdruckschriften.bar.admin.ch/viewOrigDoc.do?id=10054111>. [↑](#footnote-ref-13)
14. See our consultation report : Révision du code civil suisse : Changement de sexe à l’état civil, septembre 29, 2018 > <https://www.inter-action-suisse.ch/post/2018/09/29/re-vision-du-code-civil-suisse-changement-de-sexe-a-l-e-tat-civil> [↑](#footnote-ref-14)
15. See art. 3 and 7 of Swiss sterilization law, RS 211.111.1. [↑](#footnote-ref-15)
16. The recommendations from the Swiss Ethics Commission (see above footnote 5) are by no means implemented by Swiss Government. [↑](#footnote-ref-16)