

**Reporting Cycle V and VI – Pre-Session 89 (2021)**

**Report of InterAction Switzerland: written inputs to state report and recommendations  
Convention on the Rights of the Child (CRC)**

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**InterAction Switzerland** is a non-governmental national organization (article 60ff 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](http://www.inter-action-suisse.ch) / [www.inter-action-schweiz](http://www.inter-action-schweiz)

## 1 Who we are

**Most members of our association have gone through experiences** as mentioned in margin2 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.<sup>1</sup>

Of course, intersex bodies can have health problems, as every human being, but mostly, intersex children have healthy bodies at birth.<sup>2</sup> 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 FGM<sup>3</sup>.

**We understand Intersex Genital Mutilation** as all forms of modifying internal or external sex / genital characteristics (margin2) and as harmful practices, as FGM too (margins5ff).

**Intersex is an umbrella term** or a spectrum to describe all variations of sex characteristics/development (VSC/VSD) (margin3).

**Intersex children are either boys or girls** (margin4). As every human being, they may develop later in life a non-binary gender-identity.

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

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<sup>1</sup> 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, bissexuelles, transgenres et intersexes, Juillet 2018, p. 45 ([gouvernement.lu](#), visité avril 2021).

<sup>2</sup> Our LOIPR: INT.CRC.NGO.CHE.36878, 22.08.2019; INT.CEDAW.NGO.DEU.26315, 20.01.2017; [UNOHCHR Fact Sheet Intersex](#).

<sup>3</sup> 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/](https://www.who.int/reproductivehealth/publications/sexual_health/sexual-health-human-rights-law/en/)).

## 2 Our written inputs to the State report and recommendations

In the State Report (CRC/CHE/5-6<sup>4</sup>, Switzerland does not fully respond to either the Concluding observations (CRC/C/CHE/CO/2-4)<sup>5</sup> or to the questions prior to the submission of the sixth periodic report (CRC/C/CHE/QPR/5-6),<sup>6</sup> regarding intersex children.

### a. (II.) Rights under the Convention (QPR/5-6, paras.4-32)

#### i. (A.) General measures of implementation

##### 1) Comprehensive policy (para.5.) and data collection (para.6.)

In SPR/5-6, Switzerland does not respond either to the COB, paras.42f or to the QPR/5-6, 5ff regarding intersex children. A comprehensive policy, strategy, a coherent national approach and coordination regarding intersex children does not exist in Switzerland (art. 4: **RECOMMENDATION 6a.1-3; 6c.** (margins41-43) **and referring to art. 17 as content of strategies or an action plan: RECOMMENDATION 8.a.-b.** (margins49-50)). Holistic measures should include also parental, family or/and caregivers, education of health and medical professionals' support (art. 4: **RECOMMENDATION 6.c.**).

Annex III. does describe a model of an action plan.

In the "Rapport du Conseil fédéral [Federal Council] du 19 décembre 2018" 8, (SPR, 5-6, 17) the Federal Council mentions: "... on trouve ...les mesures à prendre pour protéger les enfants des pratiques préjudiciables *telles que les mutilations génitales féminines ou les interventions chirurgicales sur les enfants intersexués*, ainsi que des mauvais traitements, abus, négligences et violences domestiques. L'insuffisance des données recueillies au sujet de ces crimes et délits fait également l'objet de critiques au niveau international." It seems to us that the Swiss government recognizes that modifications of internal or external sex / genital characteristics (margin2) are very serious human rights violations and may be based on similar socio-cultural rationales as FGM (margins5f; COB, para.42f). We appreciate that. However, we criticise the fact that the Swiss government has not undertaken concrete measures yet. The situation has not changed as several hospitals still offer openly modifications/mutilations of internal or external sex characteristics (below: Violence against children: harmful practices).<sup>7</sup>

Also, no government measures have been undertaken, neither to monitor medical practice (art. 4: **RECOMMENDATION 6.a.4.** (margins41-43), nor to collect independent data (see also QPR/5-6, 15(b)) of harmful practises and other forms of violence against intersex children (art. 4: **RECOMMENDATION 6.a.3.**; COB, para.41(a)).

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. Taking into account a veiling shift of medical diagnostics, a change of actual medical practice and nomenclature/classification, detailed statistics have therefore to include all forms of modifying "sex characteristics" on Intersex children in particular and children in general.

##### 2) Independent monitoring and cooperation with civil society (para.7f)

The Swiss Parliament had accepted in 2020 [Motion 19.3633](#) of 17.06.2019 for an Ombuds Office Children's Rights. The Federal Council will now have to present a legal basis for a children Ombuds Office under public law (SPR/5-6, 33). We demand the Federal Council to include rights of intersex children as topic of this work of the new Ombuds Office Children's Rights. The Ombuds Office Children's Rights should have independent monitoring competences. In addition, the Federal Office for Gender Equality FOGE should also address the issue of discrimination of intersex children.

On 13 December 2019, the Federal Council approved the proposal to establish a national human rights institution, NHRI (SPR/5-6, 31). However, the commitment to human rights of the Federal Council is in our view limited. The NHRI should – according to the Principles relating to the Status of National Institutions (The Paris Principles), as adopted by General Assembly resolution 48/134 of 20 December 1993 – not only

<sup>4</sup> Hereafter SPR/5-6 (State party report).

<sup>5</sup> Hereafter COB.

<sup>6</sup> Hereafter QPR/5-6.

<sup>7</sup> <https://www.hug.ch/chirurgie-enfant-adolescent/votre-enfant-va-etre-opere-hypospadias>; "Les traitements peuvent être médicamenteux, chirurgicaux" : <https://www.hug.ch/chirurgie-enfant-adolescent/desordre-du-developpement-sexuel>; <https://www.kispi.uzh.ch/de/patienten-und-angehoerige/spezialberatungen/dsd/Seiten/default.aspx#a=akk3> all (visited April 2021).

be independent but also have monitoring competences and include members from child rights associations. The establishment of a NHRI would be a unique opportunity to advance rights of intersex children (and adults) in human rights work through an independent institution. As yet, no efforts have been made to cooperate with children's rights associations, in the planning, implementation, and adoption of laws, policies, plans and programmes (QPR/5-6, 7f).

We appreciate it to profit from cooperation with Child Rights Connect (SPR/5-6, 34). We are aware that Switzerland in general is committed to children's rights. However, the rights of intersex children have not been considered in this work so far at all. Switzerland's SPR/5-6 refers only to statements by medical professionals and not to us as a human rights-based association. The collaboration of cantonal hospitals with InterAction Switzerland is currently insufficient (Bern, Lausanne, Zürich) or even non-existent (Geneva<sup>8</sup>, Basel). In 4 cantonal hospitals we tried to integrate our perspective but nowhere our perspective was taken into account seriously. A scientific project with some doctors is underway as well as the active participation of two persons from our association at a conference at the CHUV, but this conference and scientific project is not part of the CHUV medical team (Lausanne).

Furthermore, we have not received any appointment with a regular ongoing work.<sup>9</sup> Therefore, if Swiss authorities only refer to the medical perspective (SPR/5-6, 113ff), they do not take into account or "neglect" the human rights perspective and do not consider that human rights cannot not depend on medical expertise, but must be guided by this convention, our constitution and the rights described below (margins5ff, 16ff). In SPR/5-6, 115 the report mentions, "les recommandations de la CNE et les standards internationaux sont respectés". Switzerland also declares that the law in force is governing intersex children's rights in an appropriate manner, there would be no need to adapt it. That is simply not correct. Various allegations suggest that the Federal Council did not deal in detail with the Swiss Biomedical Ethics report of 2012 (note 19). Our Recommendations are in accordance (note 9) with medical standards. We respectfully suggest that the Committee recommends to the Swiss Government to undertake proactive measures (art. 3: [RECOMMENDATION 2.b.](#) / art. 6: [RECOMMENDATION 3.b.](#); 3.c. (medical training) / art. 12: [Recommendation 5.b.](#) / (art. 4: [RECOMMENDATION 6](#) / art. 16: [RECOMMENDATION 7.e.](#) / art. 17: [RECOMMENDATION 8.d.](#) / art. 19: [RECOMMENDATION 9.b.](#) / art. 24(3): [RECOMMENDATION 10](#) / art. 28/29: [RECOMMENDATION 13](#)).

## ii. (B.) General principles (10.-12.)

In SPR/5-6, 47-77, Switzerland does not respond to either the COB, paras.42f or to QPR/5-6, 10ff regarding intersex children. The General principles in arts. 2, 3, 6 and 12 are not guaranteed in Switzerland. We respectfully recommend Switzerland to act in accordance with human rights of intersex children. They are in particularly marginalized and disadvantaged situations and their best interest, right to development and right to express their view is by no mean guaranteed by modifying their sex characteristics without any medical need (margins5ff) and without any psychosocial evidence that these interventions will reduce the parents' or the child's distress.

In particular, it is not true that "Quasiment tous les cantons disposent de mesures contre la discrimination des enfants LGBTI et indiquent que la diversité des orientations sexuelles et des LGBTIQ est thématiquée en cours d'éducation sexuelle" (SPR/5-6, 49). This is clearly not the case for variations of sex characteristics-/intersex matters in education: LGBT issues should not be confused with variations of sex characteristics. The ongoing projects are private projects, such as ABQ. The canton of Bern has recently cancelled funding for ABQ.<sup>10</sup> We were also not proactively contacted by cantonal authorities. State authorities should also act on the basis of the Istanbul-Convention (RS 0.108).

Regarding "Changement de sexe et de prénom; introduction d'une troisième catégorie de sexe" (SPR/5-6, 54), see our opinion below (margin37: [RECOMMENDATION 4](#)). This law ([para.4](#) of art. 30b CC) has considerably restricted the legal position of children and their rights (art. 12 CRC, art. 11 FCst., art. 19c CC). It stipulates that children capable of judgement will need the consent of their parents even being capable of judgment: *this was not the case until now*. The views of the child in accordance with the age and maturity was limited by this law proposed by Swiss government! It makes us angry that the SPR is

<sup>8</sup> 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.

<sup>9</sup> This contradicts international *medical standards* (SPR/5-6, 115), see [note42](#).

<sup>10</sup> ABQ Schulprojekt (<https://abq.ch/>, visited: April 2021); Interpellation 149-2020, [2020.RRGR.200](#) (visited April 2021).

presenting as positive what has to be considered a big step backwards from the point of view of the whole civil society, including all child protection organisations and ourselves.

It is also incorrect that criminal law offers sufficient protection, and that the criterion of gender identity is too vague (SPR/5-6, 55). The Swiss government will have to change this position.

It is correct that the term "Kindeswohl/bien de l'enfant" essentially corresponds to the term "best interest" (SPR/5-6, 60). However, there is a rich practice on this term in Swiss law, but this practice must also apply to intersex children. No one would agree leaving a medically harmful intervention without medical need on a child to parents or to medicine. This is the case of intersex children (e.g. / [RECOMMENDATION 1](#) / [RECOMMENDATION 2.a.](#)). State-funded counselling services, independent of medicine, - as we InterAction Switzerland offer it - for parents of intersex children and intersex adolescents and adults does not exist in Switzerland (margins33, 40, 58; note44; art. 6: [RECOMMENDATION 3.c.](#), to help parents not to consent to harmful practices on their children/art. 12: [RECOMMENDATION 5.b.](#)). It is true that the scope of art. 12 in Swiss law and practice needs to be improved (SPR/5-6, 63). However, the rights of intersex children need to be considered in this context ([RECOMMENDATION 5](#)). This is particularly relevant for the right to an open future and the right to development (art. 11 FCst. - [RECOMMENDATION 3](#)) of intersex children.

It seems to us that intersex children are currently not recognized as subjects with their own right (SPR/5-6, 67). It is not enough mentioning in the SPR that the rights of intersex children are protected under current law (SPR/5-6, 113ff), but completely forgetting about them in government policies. We are shocked reading the statement: "En principe, les parents qui se trouvent dans cette situation éprouvante" (SPR/5-6, 115). This statement confirms that the FC relies solely on medical expertise. Intersex children are born healthy, with very few exceptions. What is needed is intensive counselling for their parents, not only in a medical context, but also through peer counselling (note9).

### iii. (D.) Violence against children

#### 3) Freedom of the child from all forms of violence (15.)

In SPR/5-6, 90-109, Switzerland does not respond to either the COB, paras.42f or to QPR/5-6, 15 regarding intersex children. It is true that children and young people benefit from special protection of their integrity (art. 11 FCst.) (SPR/5-6, 90) which is not guaranteed for intersex children. An obligation to notify the APEA to reinforce the protection of intersex children against violence and mutilation (SPR/5-6, 91) is not an adequate solution. Above all, these authorities are not qualified yet and would rely, as is currently the case, on medical expertise. Medical institutions do consider intersex variations as a health problem and are not willing to include a human rights perspective in their work with parents. We call for a prohibition by criminal law, as is the case for FGM, in order to have legal security as it is the case for FGM too. The project "Your Story Counts" is in our view "good practice". We encourage to start such a project on the topic of intersex children (SPR/5-6, 100).

Intersex children suffer from different forms of violence (margins55ff): Violence among or by their peers, mental violence, physical violence, psychological or emotional neglect or negligent treatment, educational neglect. State action should therefore include interdisciplinary measures (art. 19: [RECOMMENDATION 9.a.-d.](#)). We argue that parents are also victims of these forms of violence because they are not sufficiently informed about the risks of these interventions and do not have the opportunity to get in touch with other parents and exchange experiences of adult intersex persons, like us (margin63; art. 24(3): [RECOMMENDATION 10](#)).

**We would like to suggest to the Committee to formally include in the CEDAW/C/GC/31-CRC/C/GC/18 as harmful practices all forms of irreversible modifications of innate sex characteristics, if they are *not lifesaving and not vital to prevent a serious danger to the child's health*.** Such an approach could hinder medical professionals claiming that there is no VSD at all. This would exempt "genital-matching" operations on children, classified as "male" or "female" from a ban (note 8). Our recommendation does therefore demand a ban of any modifications of sex characteristics of every child (art. 24(3): [RECOMMENDATION 10](#) / art. 37(a): [RECOMMENDATION 11](#)).



We are aware that male circumcision does concern specific issues.

#### 4) Harmful practices (16.)

In SPR/5-6, 110-125, Switzerland does not respond to either the COB, paras.42f or to QPR/5-6, 16 regarding intersex children. We have to note (margin8, note19 and 9): the recommendations of the National Advisory Commission on Biomedical Ethics have not been implemented yet (SPR/5-6, 113). We have already explained that current medical practice does not respect the rights of intersex people (SPR/5-6, 114). The SPR apparently refers exclusively to the information provided by medical practice. In Germany there is no decrease in modifications of sex characteristics (margin2 and Klöppel, 2016/2019, note22).

The report also mentions the "Prise de position de la Commission Centrale d'Éthique de l'ASSM concernant les "variations du développement sexuel", 16 décembre 2016. para.2.2: the care of affected families in Switzerland is said to have been improved and the recommendations of the CNE and international standards are said to be respected as far as possible (SPR/5-6, 115). In our experience, this is not the case. And here too it should be repeated that care, counselling and support cannot be provided by medical professionals alone. Incidentally, this is also a recommendation of the CCE: "il serait judicieux d'élaborer des directives nationales ou d'adapter des directives internationales. Celles-ci devraient être conçues **en collaboration avec** les experts et **les personnes concernées**, en tenant compte des développements nationaux et internationaux." (para.3) In fact, international standard are also based on inclusion of peer groups (note9).

Finally, in an interdisciplinary team (SPR/5-6, 120f), persons concerned (intersex persons) must also be involved, *focusing on the protection of the child and not only on the rights of the parents*. There are also regular meetings of all specialists involved in the care of intersex children. So far, InterAction Switzerland has not been involved in interdisciplinary teams or in meetings of specialists. In our opinion, the statements of the report are not independent and reliable, without any legal security, as they only reflect a medical perspective. Therefore, our demands and recommendation are well founded: art. 2: art. 2: **RECOMMENDATION 1** / art. 3: **RECOMMENDATION 2.a.b.** / art. 6: **RECOMMENDATION 3.a.c.** / art. 12: **RECOMMENDATION 5** / art. 4: **RECOMMENDATION 6.c.** /art. 19: **RECOMMENDATION 9.c.** / art. 24(3): **RECOMMENDATION 10.a.b.d.e.**

#### iv. (G.) Basic health and welfare

##### 5) Health (23ff) and Education (26ff)

Health problems, lack of health care, inadequate support, and irreversible consequences, result from harmful practices (note20). These irreversible interventions are performed without free and informed consent. In very rare cases, these interventions are justified if they are *lifesaving and vital to prevent a serious danger to the child's health*.

First data and statistics do exist about health and welfare and for violence (note41). To overcome stigma, isolation, and psychosocial exclusion – and as a possible consequence developmental disorders – of intersex children and adolescents, medicalization and forced treatments on intersex adolescents do not resolve these problems. 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 and by empowering them. The following health problems should be mentioned:

- Violation of the physical and psychological integrity of intersex people (e.g., problems with healing, side effects of hormones, higher rates of infection, difficulties in accessing medical records, ongoing interventions, infertility, chronic pain, incontinence, enduring infertility, loss of sexual sensation, lifelong mental suffering, depression, trauma);
- the level of distress of intersex women is comparable to that of women who are victims of sexual or physical violence;
- the rate of suicide attempts appears to be significantly higher than in the general population;
- discrimination, stigmatization and institutional violence (the scientific literature attests

- harmful effects of procedures that modify the sexual characteristics of intersex children);
- the feeling of being inferior or "sick" or a "disorder" may be exacerbated by medical treatment.<sup>11</sup>

As with FGM, health harms of harmful practices should be a priority in public discourse and for research. The consequences are significant. Some people in our association need frequent health care. For example, problems with bone density are a regular problem of HRT (margin13).

In SPR/5-6, 196-204, Switzerland does not discuss questions of education regarding intersex children. Neither the COB nor the QPR/5-6 mentions this issue regarding intersex children. The curricula (Lehrplan 21) in the German-speaking part of Switzerland, PER in French-speaking Switzerland, contain references to human rights and the rights of the child (SPR/5-6, 202). We would like to mention that discrimination in education remains a matter of concern for intersex children. The actual curriculum (Lehrplan 21) should in our view reflect the diversity of sex development in the sections "Nature, People, Society" and "Ethics, religions, community"; this diversity is not explicitly mentioned yet. CRC/C/GC/14, para.79 emphasizes this view and considers this goal as part of the best interest, saying education is an investment in the future, and "enhancing children's responsibilities to overcome the limitations of their vulnerability" (margins70ff; art. 28/29: [RECOMMENDATION 13](#) / art. 6: [RECOMMENDATION 3.b.](#) / art. 12: [RECOMMENDATION 5.b.](#)), and referring to art. 17 as content of strategies or an action plan: [RECOMMENDATION 8](#).

#### b. **Additional observations on harmful practises and "access to effective remedies"**

In SPR/5-6 Switzerland does not respond to either the COB, para.41(b)/43(b) or to QPR/5-6, 16(b) regarding access to effective remedies of intersex children/adults. As mentioned above, the recommendations of the National Advisory Commission on Biomedical Ethics have not been implemented yet (SPR/5-6, 113; margin8, note19). The National Commission on Biomedical Ethics recommends (Rec.12): "There should be a legal review of the liability implications of unlawful interventions in childhood, and of the associated limitation periods." (original german version: "Haftungsfolgen von rechtswidrigen Eingriffen im Kindesalter sowie in diesem Zusammenhang die Verjährungsfristen"). It seems to us that it is not acceptable to consider modifications of internal or external genital characteristics (margin2) as harmful practices without providing effective legal protection, access to effective remedies and redress for those affected. In this report, the very serious consequences of such medical practices have been repeatedly pointed out (margins5/13/33/67/69). Precise data and independent research do not exist.

**Moreover**, it is of essential importance for an effective legal protection that these practices be clearly prohibited in the penal code ([several RECOMMENDATIONS](#)). Medical recommendations or guidelines or oral statements cannot guarantee legal protection: on the one hand they are non-binding before a court and on the other hand there is no possibility to monitor medical practice. A solution may be a decision by an ethics committee *for lifesaving and vital medical interventions to prevent a serious danger to the child's health* (margin2). Finally, intersex children should be guaranteed access to their records held by educational, health care, childcare and protection services and justice systems (CRC/C/GC/20, para.46). As children have a right to know their biological origin ((QPR/5-6 14(b); margin46), they also have a right to know or be informed about earlier interventions in their bodily integrity. A retention period **in a nationwide central register** for such interventions should be extended to 40 years after the age of majority (margin47). **We strongly disagree with the Swiss authorities when they refer to the "European "Disorder!" of Sex Development Registry"** (SPR/5-6, 120) in this regard. This registry is not under the surveillance of Swiss authorities, and it is a registry supervised and introduced by medical services/sciences. Access to the medical files is therefore not guaranteed in adulthood. – We respectfully suggest that the Committee recommends to the Swiss Government our [RECOMMENDATION 7.d.](#) and [RECOMMENDATION 12](#) (art. 39).

<sup>11</sup> See note41.

### c. Recommendations as a summary

**We respectfully suggest that the Committee recommends to the Swiss Government...**

A legal ban in the Swiss Criminal Code of all forms of irreversible modifications of innate sex characteristics is our primary recommendation (arts. 2, 3, 6, 12, 24(3), 37(a)). Such a ban is necessary for reasons of legal security (margin25). As mentioned, the statements of the SPR only reflect a medical perspective.

#### i. Non-discrimination (art. 2)

**RECOMMENDATION 1: ...to respect and ensure the rights of intersex children – especially the right to health, self-determination, and physical integrity – in a non-discriminatory manner and to implement in the Swiss Criminal Code a legal provision prohibiting all forms of irreversible modification of innate sex characteristics (margin2).**

**Positive action is needed (→Recommendation to art. 4).**

**Keywords of margins22-26:** Elements for the principle of non-discrimination: differentiation of similar situations (i.), the absence of legitimate ends (ii.), the lack of proportionality of means to ends (iii.) the use of suspect classifications (*Besson, 435, note32*); a norm of customary international law and even a norm of jus cogens (*Besson, 440f, note32*). Would medical professional argue that *not lifesaving and unnecessary, involuntary, and irreversible treatments which do not prevent a serious danger to the child's health* should be performed on a non-intersex child?

Lack of objective justification of IGM/C; IGM/C based on medico-social stereotypes is as much harmful as FGM/C. Such interventions may be understood as torture (CAT/C/CHE/CO/7, para.20).

Psychosocial indications do not require surgical/hormonal treatment but psychological care.

#### ii. The best interest of the child (art. 3)

**RECOMMENDATION 2: ...to undertake all actions in public and private hospitals for the best interests of the child, especially concerning the right to health, self-determination, physical integrity, an open future for the intersex child, psychological wellbeing.**

**Concrete measures to be undertaken should include:**

**a) legal prohibition in the Swiss Criminal Code of all forms of irreversible modification of innate sex characteristics (margin2);**

**b) psychological support for parents and the promotion of training for health professionals, including peer support.**

**Positive action is needed (→Recommendation to art. 4).**

**Keywords of margins27-30:** Full and effective enjoyment of *all the rights* and holistic development of the child (CRC/C/GC/14, para.4). The Swiss national bioethics report (note19, p.13) concludes: "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".

The best interests of the child (CRC/C/GC/14, para.15(a)(h)) enjoys constitutional status (art. 11 FCst.) but is not guaranteed.

Lack of redress and compensation in such cases" (CRC/C/CHE/CO/2-4, para.42(b)).

Art. 3 CRC refers to actions – including inaction or failure to take action – undertaken by public or private actors/ institutions.



iii. The right to development (art. 6)

**RECOMMENDATION 3:** ...to ensure the development of intersex children – especially concerning the right to health, self-determination, and physical integrity.

**We ask the Swiss government to implement concrete measures:**

- a) **Legal prohibition in the Swiss Criminal Code of all forms of irreversible modification of innate sex characteristics (margin2)**, as a minimal standard of protection of their integrity and development. Forced medicalization intensifies vulnerability and reduces the resilience of intersex children as victims of social norms. Therefore, the Swiss government shall implement
- b) educational and support measures to raise public awareness in schools (Lehrplan 21) in education, and especially medical training in the tertiary level (comprising universities and universities of applied sciences).

As parents play an essential role for the child's right to a maximum development, we ask the Swiss government

- c) to implement in the social insurance system services independent psychological support and counselling for parents to help them not to consent to harmful practices on their children. Peer groups should be included in counselling.

Positive action is needed (→Recommendation to art. 4).

**Keywords of margins31-34:** States must ensure a holistic development of every child and ensure full respect for the inherent right to development (CRC/C/GC/14, para.42; art. 11 FCst.).

Medical interventions take place without the valid consent of the child, are based on harmful norms and stereotyping, harm their physical and psychological integrity and their open future and evolving autonomy (CRC/C/GC/20, paras.28, 34).

Raising public awareness, implementing educational and support measures is essential.

To overcome stigma, isolation, suicide, self-harm, depression, mental health and psychosocial exclusion – and as a possible consequence developmental disorders – of intersex children and adolescents, medicalization and forced treatments on intersex boys and girls do not resolve these problems.

iv. Respect for the views of the child (art. 12)

**RECOMMENDATION 4:** ...to ensure the development of intersex children – especially concerning the right to health, self-determination and bodily integrity. **We demand that the amendment mentioned in margin34/37 be reversed by the Swiss government as soon as possible and to cancel para.4 of art. 30b CC.**

**Keywords of margins35-37:** According to current law (margins15/34), children/minors capable of judgement exercise their strictly personal rights independently, without the consent of their parents.

The government's proposal is a huge step backwards compared to the current legislation, regarding **para.4** of art. 30b CC only – 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](#), most NGOs and ourselves InterAction Switzerland (see note48).

**RECOMMENDATION 5:** ...to undertake all actions for the best interests of the intersex child (open future, psychological wellbeing and their full right to be heard) before irreversible decisions are taken. **Concrete measures to be undertaken should include:**

- a) **legal prohibition in the Swiss Criminal Code of all forms of irreversible modification of innate sex characteristics without informed consent (as FGM too);**
- b) psychological and counselling support for parents and promotion of training for health professionals by peer experts as appropriate measure instead of the above mentioned (margin2) medical treatments.

**Keywords of margins 38-40:** Especially concerning the right to health, self-determination or autonomy, the intersex child's physical, mental, and psychological well-being would be contravened by not *lifesaving and unnecessary, irreversible* – and by *involuntary treatments* – which do not prevent a serious danger to the actual child's health.

v. Governmental action plan (art. 4 CRC) of the Swiss government

**RECOMMENDATION 6:** ...to undertake proactive measures for intersex children: Actions of the Swiss government have to meet all the general principles in the Convention.

**Concrete measures should include:**

- a) 1. the development and implementation of a comprehensive national strategy or/and a plan of action, 2. studies, 3. a comprehensive and reliable national data collection system of all forms of irreversible modifications of innate sex characteristics, 4. a monitoring-system;
- b) inclusion of national child rights organisations like us, InterAction Switzerland, for the implementation of such a strategy/plan of action and independent data collections.
- c) Such a strategy or/and plan of action should include e.g. psychosocial parental, family or/and caregivers support to understand and implement respectable intersex-child-rearing; the promotion of training and education for medical health professionals, development of new curricula for schools; de-stigmatization, visibility, de-medicalization of intersex children; awareness raising measures against stereotyped sex characteristics, preventive measures after legal prohibition in the Swiss Criminal Code.

**Keywords of margins 41-43:** Irreversible and forced interventions do not fulfil the obligations either of existing legislation, or our Constitution or this Convention. Switzerland has not a coherent comprehensive political strategy either for the protection, prevention of violence against intersex children or for the parental, family or/and caregivers, education or medical professionals' support.

Proactive and holistic measures to ensure positive outcomes for intersex children in relation to legislation, policies and programmes by mobilizing sufficient funds accordingly are lacking (CRC/C/GC/19, para.42; CRC/C/GC/13).

Switzerland should establish a reliable national data collection system (CRC/C/GC/13, para.42(a)v) – considering a veiling shift of medical diagnostics/classifications (see above).

Programmes are a matter of urgency but do not replace a legal ban.

vi. Civil rights and freedoms (arts. 7, 8, 16, 17)

**RECOMMENDATION 7:** ...

- a) A flexible and provisional birth registration (relating to gender/sex) of all children;
- b) birth registration should not force parents or medical professionals to reveal a child's intersex status;
- c) gender recognition should be provisional and allow the child to make the final decision once it is capable of judgement in a transparent, rapid and respectful way and without having to apply to the court;
- d) extension of 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 as an important element of their identity (see also margin 68f) and the introduction of a national central register for the subsequent comprehension/transparency of the medical treatment;
- e) administrative, and awareness building measures.

**Keywords of margins 44-48:** Parents of children with VSC/VSD often face pressure to agree to surgeries or hormonal treatments on their child and they are rarely informed about alternatives or all potential negative consequences/risks of such treatments.

vii. Child's access to appropriate information (art. 17)

**RECOMMENDATION 8:** ...to undertake concrete measures, including:

- a) provide information to the public on not-lifesaving medical interventions on intersex children and that such non-consensual procedures (margin2) may not be justified by psychosocial reasons;
- b) disseminate public information programmes of intersex as a healthy variation of the human body;
- c) ensure that children with a variation of sex characteristics find themselves reflected as healthy human beings in schoolbooks in a positive, non-pathologizing, empowering way (art. 17(c);
- d) ensure that positive, non-pathologizing teaching materials are available for children in the extra-curricular sector.

**Keywords of margins 49-50:** Dissemination of information and material of social and cultural benefit to the child and in accordance with the spirit of art. 29 (children's books, training of medical professionals).

viii. All forms of physical or mental violence (art. 19)

**RECOMMENDATION 9:** ...to undertake all appropriate legislative, administrative, social, and educational measures to protect intersex children from all forms of violence (art 19).

**Concrete measures should include protection and prevention of:**

- a) violence among children or by their peers, mental and physical violence, physical and/or psychological or emotional neglect or negligent treatment and educational neglect;
- b) providing positive, non-pathologizing teaching materials for adolescent children in the extra-curricular sector;
- c) introducing counselling services and free psychosocial support for all persons concerned and their parents (CAT/C/CHE/CO/7, para.20), including peer groups; any harmful, not live saving and unnecessary treatment can be put off until the child will be able to decide itself;
- d) providing adequate budget allocations for the implementation of adopted measures (CRC/C/GC/13, para.39, 41(e)).

ix. Measures to prohibit and eliminate all forms of harmful practices (art. 24(3))

**RECOMMENDATION 10:** ...to abolish in the Swiss criminal Code all forms of irreversible modification of innate sex characteristics.

**Concrete measures to be undertaken should include (CRC/C/GC/13) legislative measures referring**

- a) to both legislation and implementation of enforcing measures (para.40),
- b) adequate budget allocations for the measures adopted to end harmful practices against intersex children (para.41(e)),
- c) effective access to redress and reparation (para.41(f), see also: margin68),
- d) establishing social programmes to promote optimal positive intersex child-rearing and for those who have the care of the child (para.41(h)).
- e) We suggest to the CRC to formally include all forms of irreversible modification of innate sex characteristics in the CEDAW/C/GC/31-CRC/C/GC/18 as harmful practices.

x. Right not to be subjected to torture, other cruel, inhuman or degrading treatment (art. 37(a))

**RECOMMENDATION 11:** ....with respect to the treatment of intersex children not be subjected to torture or inhuman or degrading treatment. Switzerland shall ban in the Swiss Criminal Code all forms of irreversible modification of innate sex characteristics (margin2).

xi. Compensation, Rehabilitation / Social reintegration of a child victim (art. 39)

**RECOMMENDATION 12:** ....

- a) to provide rehabilitation as well as fair and adequate compensation to intersex people affected by medical treatments not necessary to prevent a concrete danger to life or a severe and concretely existent danger to the health of the child without their free, prior and informed consent (CEDAW/C/CHE/CO/4-5, 25(d) // CRC/C/CHE/CO/2-4, 42(b) and
- b) 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 (see also margin47) and the introduction of a national central register for the subsequent comprehension / transparency of the medical treatment.

**Keywords of margins 51-69:** *Remembering* that in our view pathologization of intersex variations must be considered as harmful practices (CEDAW/C/GC/31-CRC/C/GC/18), we consider that Switzerland violates art. 19 (margins54ff), art. 24 (margins61ff), art. 37 (margins66ff) and that Switzerland has not yet acted in accordance with art. 39 (margins68ff) of this Convention. Regarding art. 39 the Committee has routinely called upon states to ensure victims of such treatment receive reparation or compensation.

Upcoming comparative studies will not change the law; irreversible, unnecessary, and involuntary modifications of innate sex characteristics remain violations of UN, European and national law.

xii. Education (art. 28, 29)

**RECOMMENDATION 13:** ....to specifically implement comprehensive education about variations of sex development and gender sensitive teaching materials in school-curricula.

**Keywords of margins 70-74:** Public awareness about the importance of inclusive education will be essential after a legal ban; education is an investment in the future (CRC/C/GC/14).

## ANNEX I: DEFINITIONS AND LEGAL FRAMEWORK AT NATIONAL LEVEL

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

We understand Intersex Genital Mutilation as **all forms of modifying internal or external sex / genital characteristics**, such as surgical interventions encompassing *genital surgeries, gonadectomies, partial clitoris amputations, dilation of a surgically created vagina on girls without any medical need, 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), and other irreversible interventions as, sterilizing procedures, hormonal 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.<sup>12</sup> The term IGM may be considered inaccurate. We understand genital as internal and external genital structures/sex characteristics. In exceedingly rare cases, these interventions are justified if they are *lifescaping and vital to prevent a serious danger to the child's health and therefore not deferrable to a later date*.

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

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.<sup>13</sup> 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 (sexual anatomy, reproductive organs, hormonal functioning and/or levels and/or chromosomal variations) that differs from what is generally expected of 'male' or 'female' bodies. These variations are inborn/congenital and may be chromosomal, gonadal, anatomical or hormonal.

### c. Intersex children are either boys or girls

The framework of this convention, in our view, is valid for intersex girls and boys. Intersex children are either boys or girls and not a category as «third-sex-people». They are not protected by a «third-sex» category. We repeatedly have to emphasize that the vast majority of intersex people usually have a gender identity as man or woman. Gender identity has to be distinguished from sex characteristics which are also different for men or women who are not qualified as intersex or do not have a variation of sex characteristics.<sup>14</sup>

### 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 FGM<sup>15</sup>. “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.”<sup>16</sup> The same author continues, saying (note16, 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

<sup>12</sup> Melinda Jones, Intersex Genital Mutilation – A Western Version of FGM, International Journal of Children’s Rights, 2017, 396-4117, 399f.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> [WHO, Sexual health, human rights and the law, 2015](#) (visited April 2021), Section 3.4.9, 5.2.7.

<sup>16</sup> Jones, note12, 397f.



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.

- 6 Authors, like Ehrenreich and Barr<sup>17</sup> 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. 81ff). “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).
- 7 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.).<sup>18</sup>
- 8 **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.”<sup>19</sup> Therefore, neither a psychosocial indication nor the cultural context justifies irreversible medical interventions violating seriously the bodily autonomy and self-determination. Note that the recommendations from the Swiss Ethics Commission are by no means implemented by Swiss Government.
- 9 “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.”<sup>20</sup>
- 10 Medical professionals and the Swiss Government do not explicitly reject or act against such practices – they emphasize, that treatment practice had changed.<sup>21</sup> However, modifying sex characteristics is still practiced in Switzerland: all these interventions of ‘unspecified malformation of the female/male genitalia’ remain constant or even increase<sup>22</sup> and must be understood as **harmful practices**<sup>23</sup>.
- 11 Because these practices done on girls and boys with a VSD/VSC are performed without any timely pressing or medical need,

<sup>17</sup> 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.

<sup>18</sup> Federal Constitution of the Swiss Confederation (RS 101), hereafter FCst.

<sup>19</sup> Swiss National Advisory Commission on Biomedical Ethics, Opinion 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. 46ff.

<sup>20</sup> Katrina Roen, Intersex or Diverse Sex Development: Critical Review of Psychosocial Health Care Research and Indications for Practice, The Journal of Sex Research, 2019(56)/4-5, 511-528, 526.

<sup>21</sup> 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<sup>19</sup> 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<sup>22</sup> for Germany where the situation is probably the same than in Switzerland

<sup>22</sup> 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.

<sup>23</sup> 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).

- 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);<sup>24</sup>
- 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)<sup>25</sup>.

In regard to Female genital mutilation (FGM), a new provision (art. 124 CP)<sup>26</sup> was added to the **Criminal Code** (FGM, HRI/CORE/CHE/2017, 162). **In order to combat harmful medical treatment of intersex women and men, no such provision exists.** Nor is there any legislation (law) to protect explicitly intersex children’s right to bodily integrity, the right to be informed and included in decisions concerning themselves during their whole life.

**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).

**This Convention 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 the interests of the children shall be paramount (art. 16(1)let.d). **In several concluding observations of UN treaty bodies Switzerland was reprimanded.**<sup>27</sup>

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 CC<sup>28</sup>. **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, either for boys and girls or adults with a VSC/intersex traits.**<sup>29</sup>

#### e. **Legal framework for the protection of children at national level**<sup>30</sup>

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), 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);
- The right to privacy (art. 13);
- The right to marriage and a family (art. 14);
- Freedom of opinion and information (art. 16).

<sup>24</sup> Convention on the Rights of the Child (RS 0.107); Convention on the Elimination of All Forms of Discrimination against Women (RS 0.108).

<sup>25</sup> Joint general recommendation CEDAW/C/GC/31-CRC/C/GC/18, No.16.

<sup>26</sup> Hereafter CrimC (Swiss Criminal Code, RS 311.0).

<sup>27</sup> 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.

<sup>28</sup> Swiss Civil Code (RS 210).

<sup>29</sup> 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.

<sup>30</sup> See: HRI/CORE/CHE/2017, 92ff.

- 17 According to art. 35 fundamental rights must be exercised throughout the legal system; the authorities are obliged to contribute to their implementation.<sup>31</sup> 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. Para. 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, 194ff). 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.
- 18 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).
- 19 Furthermore, any restriction on fundamental rights must have a legal basis, must be justified as being in the public interest and be proportionate; above all, the essence of fundamental rights is inviolable (art. 36(4) FCst., margin15). **Civil law** is essentially codified in the Swiss Civil Code of 10.12.1907, especially relevant are art. 19c, arts. 28ff, arts. 296-317. Regarding FGM, 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 (margin12), no such provision or legislation exists against harmful medical treatment of intersex children to protect explicitly intersex children's right to bodily integrity (arts. 19, 24 (3), 37a, CRC; margins51ff) and the right of the child to be heard (art. 12 CRC; margins35ff).
- 20 Irreversible sex-'normalizing' surgery and hormonal practices (margin2) are carried out on intersex girls and boys 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 campaigns (art. 4 CRC; margins41ff) are taken into account by the Swiss government.
- 21 Non-urgent, health threatening medical treatment of children under the age of 18 (e.g., reduction of the clitoris of a girl, and other, health threatening medical treatment mentioned) is in our opinion a form of violence against children within the meaning of this Convention.

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<sup>31</sup> BBl 1997 I 191: Botschaft über eine neue Bundesverfassung, 20. November 1996, <https://www.amtsdruckschriften.bar.admin.ch/viewOrigDoc.do?id=10054111>.

## ANNEX II: ANALYSES

### a. General Principles

#### i. Non-discrimination (art. 2)

Discrimination against intersex children is a serious violation of the CRC. Children with variations of sex development/characteristics (margin3) may be e.g. victims of selective abortion or genital mutilation, when their sex appearance does not fit within social norms of male and female bodies. Art. 2 protects intersex children irrespective of their sex characteristics/appearance and not only formal but also material (de facto) equality.<sup>32</sup> The de facto equality (or equality of results) examines the effect of the right of children with a VSD/VSC.

The essence of non-discrimination is expressed by the principle that all children should be able to enjoy their rights regardless of characteristics such as race, sex, or any other ground. This “principle of non-discrimination prohibits treating differently similar situations without an objective justification.” Four elements may be important: “the differentiation of similar situations (i.), the absence of legitimate ends (ii.), the lack of proportionality of means to ends (iii.) and the use of suspect classifications” (Besson, 435, note32). Furthermore, the principle of non-discrimination can also be considered as a norm of customary international law and even, as a norm of jus cogens at least with respect to discrimination based on race and sex (Besson, 440f, note32). Intersex people may face discriminatory practices in all areas of life, in school, education, medicine.<sup>33</sup>

As a result, medically not lifesaving, involuntary, and irreversible treatments<sup>34</sup> performed during infancy and childhood must not be performed on children with VSD/VSC either, as they are not performed on other children either. No medical professional would argue that *not lifesaving and unnecessary, involuntary, and irreversible treatments which do not prevent a serious danger to the child's health* should be performed. Intersex children are in most cases healthy and medical treatment is performed to adjust their sex characteristics to medico-cultural norms of male or female. Current practices indicate “that clinicians are attempting to base their decisions on medical science, but on social and cultural factors as well”.<sup>35</sup>

FGM/C and intersex surgeries and hormonal treatments present similarities specifically regarding their socio-cultural background and their harmful outcomes that violate basic human rights.<sup>36</sup> As FGM is prohibited in Switzerland by the Swiss Criminal Code, Intersex mutilations (margins2f) should be forbidden too, for reasons of legal security. **“Addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes”** (CRC/GC/2003/5, para.12) and medico-social stereotypes. Irreversible and health damaging “normalizing” of sex characteristics must be considered as a discrimination in the sense of art. 2 (CRC/C/GC/20, para.34, as the word ‘urges’ indicates that it is a very strong recommendation).<sup>37</sup>

Art. 2 prohibits treating differently similar situations without an objective justification (Besson, 450, note32). As there is a lack of objective justification of IGM/C, we are convinced that IGM/C based on medico-social stereotypes is as much harmful as FGM/C. Also, there must be a reasonable relationship of *proportionality* between the means employed (not lifesaving and unnecessary, involuntary, and irreversible treatments with no need for child's health) and the aim (to have to fit in social norms of male and female bodies) sought to be achieved (Besson, 451, note32). This principle is well known in Swiss Constitutional law.

<sup>32</sup> Hereafter: The UN Convention on the Rights of the Child: A Commentary (Ed. John Tobin), Oxford Commentaries on International Law, Oxford University Press, 2019: Citation: Author(s), art. x, in: Tobin 2019 (note32), page(s).

Samantha Besson/Eleonore Kleber, in: Tobin 2019, art. 2, 57; Samantha Besson, The Principle of Non-Discrimination in the Convention on the Rights of the Child, The International Journal of Children's Rights, 2005(13), 433-461, 438.

<sup>33</sup> Dan Christian Ghattas, Standing up for the Human Rights of Intersex People, 429-444, 435f, in: Jens M. Scherpe/Anatol Dutta/Tobias Helms (eds.), The Legal Status of Intersex Persons, Cambridge 2018.

<sup>34</sup> See CRC-Submission of German Institute for Human Rights, 13.05.2013 (INT\_CRC\_IFN\_DEU\_15945\_E), para.2(b), mentioning that “substituted decision-making is irreconcilable with General Comment No.12 of the CRC Committee, unless there is medical evidence that a surgery or treatment is necessary to save the child's life”.

<sup>35</sup> Jameson Garland/Milton Diamond, Evidence-Based Reviews of Medical Interventions relative to the Gender Status of Children with Intersex Conditions and Differences of Sex Differences, 81-101, 100, in: Scherpe/et al., note33.

<sup>36</sup> Nikolettta Pikramenou, Intersex Rights. Living Between Sexes, Springer Switzerland (Cham) 2019, 42; CRC/C/GC/7/Rev.1, para.11(b)i.

<sup>37</sup> “Based on the general comments [...], there is no doubt that intersex status is covered as a prohibited ground for discrimination”, Kirsten Sandberg, Intersex Children and the UN Convention on the Rights of the Child, 515-535, 520, in: Scherpe/et al., note33.

In Swiss legal doctrine it has been argued for some time that a so-called psychosocial indication does not require medical (surgical and hormonal treatment) but psychosocial measures – such as psychological care for parents and support of peer groups like us, InterAction.

**RECOMMENDATION 1 > above**

Implement in the Swiss Criminal Code a legal provision prohibiting all forms of irreversible modification of innate sex characteristics (margin2).

Positive action is needed (→Recommendation to art. 4).

ii. The best interest of the child (art. 3)

- 27 The concept of the child's best interests<sup>38</sup> is aimed at ensuring both the full and effective enjoyment of *all the rights recognized in the Convention* and the holistic development of the child (CRC/C/GC/14, para.4). However, human rights violations of intersex children result in various forms such as stigmatization of children and their families, sterilization, surgical and hormonal interventions etc. (margin2). These human rights violations take place in medical settings, intended to make intersex bodies fit into social norms as “females” or “males”. Medical interventions are most often not essential for life or health of the children concerned and take place without valid consent. It seems to us that such interventions violate e.g. the dignity of children, the right to health, physical integrity and self-determination, protected by our constitutional law (art. 7 and 11) and may be understood as torture (CAT/C/CHE/CO/7, para.20). As yet there are no substantive changes to clinical practice.
- 28 **The 2012 Swiss national bioethics report** (note19, p.13) **concludes**: “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”. Psycho-social-cultural rationales for surgical interventions are – as mentioned by this bioethics report – lacking the child’s welfare or the best interests.
- 29 The best interests of the child as a primary and even paramount consideration in all actions; (CRC/C/GC/14, para.15(a)(h)) are not guaranteed in cases of “medically unnecessary surgical and other procedures on intersex children, without their informed consent, which often entail irreversible consequences and can cause severe physical and psychological suffering, and the lack of redress and compensation in such cases” (CRC/C/CHE/CO/2-4, para.42(b)).  
Art. 3 CRC refers to actions – including inaction or failure to take action – undertaken by “public or private social welfare institutions, courts of law, administrative authorities or legislative bodies”. The principle requires active measures, parliament and the judiciary. As mentioned, the best interest of the child enjoys constitutional status (art. 11 FCst.) and are considered the highest maxim of children's rights in Switzerland (CRC/C/GC/14).<sup>39</sup>
- 30 The elements to be considered for determining the child’s best interests are listed by the Committee on the Rights of the Children (CRC/C/GC/14, paras.52ff, 72). the Committee mentions: “Emotional care is a basic need of children; if parents or other primary caregivers do not fulfil the child’s emotional needs, action must be undertaken so that the child develops a secure attachment”. Attachment to the family environment should be empowered by psychological support for parents instead of surgical and other procedures violating several human rights of the girl or boy. In our view, this approach is what may be a “holistic” understanding of the best interests.

**RECOMMENDATION 2 > above**

a) Legal prohibition in the Swiss Criminal Code of all forms of irreversible modifications of innate sex characteristics (margin2);

b) psychological support for parents and the promotion of training for health professionals, including peer support.

Positive action is needed (→Recommendation to art. 4).

<sup>38</sup> In Swiss legislature the expression the “best interests of the child” (*intérêt supérieur de l’enfant*) is not used but rather “well-being of the child” (*bien de l’enfant*). The concept of the “well being of the child” is a constitutional and fundamental right since 1 January 2000 (art. 11 of the Swiss Federal Constitution).

<sup>39</sup> See: Judgments of the Federal Supreme Court BGE 142 III 481, cons.2.6; Decision 8C\_25/2018, cons.4.1).



### iii. The right to development (art. 6)

According to art. 11 of our Constitution children have the right to special protection of their integrity and to the encouragement of their development. This is in accordance with the view of the committee saying: States must create an environment that ensures the holistic development of every child; the State must ensure full respect for his or her inherent right to development (CRC/C/GC/14, para.42). However, what legal professionals call in German "Grundrechtswirklichkeit" (i.e. Reality of fundamental rights) is not yet realized for intersex children concerning their right to development.

Medical interventions in intersex children which are not lifesaving or essential for the health of the child and which take place without valid consent are based on harmful norms and stereotyping, harm their physical and psychological integrity and evolving autonomy (CRC/C/GC/20, paras.28, 34). Therefore, the committee condemns imposition of forced surgeries or treatments on intersex adolescents. "It urges States to eliminate such practices [...] and adopt laws prohibiting discrimination on those grounds" (CRC/C/GC/20, para.34). Raising public awareness, implementing educational and support measures is – before and after a legal ban – essential.

The same General Comment refers also to protection from all forms of violence (para.49) and to basic health and welfare (para.56ff). First data and statistics do exist about health and welfare and for violence.<sup>40</sup> To overcome stigma, isolation, suicide, self-harm, depression, mental health and psychosocial exclusion – and as a possible consequence developmental disorders – of intersex children and adolescents, medicalization and forced treatments on intersex adolescents do not resolve these problems. Telling children, you are "sick" or a "disorder" may not only be exacerbated by medical treatment but will also hinder inclusion, the right of development and reinforce isolation, depression.<sup>41</sup> 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.<sup>42</sup> Emotional stability, encouragement and support will help them to accept themselves as they were born. Whether they will decide later in their life to have medical interventions or not should be their self-determined decision.

It should be noted that according to art. 19c of our Swiss Civil Code (margin15) children, *regardless of their age*, can make their own decisions about their strictly personal rights without any necessary consent of parents. Some strictly personal rights are *absolutely* strictly personal and therefore not "open" to a consent of their parents. Meanwhile it is acknowledged by legal authors that irreversible not-lifesaving and non-therapeutic interventions which are not essential to protect the child's health are not "open" to a consent of their parents.<sup>43</sup> The principle of the best interests of the child requires (as a procedural rule) that everyone who makes a decision that concerns the child ensures that the best interest of the child is the primary consideration. As described, our Civil Code provides the free decision of the child capable of judgement, as part of the intersex child's well-being and his or her best interest. As the Convention is indivisible and its articles interdependent, art. 6 is related to

<sup>40</sup> See text in following note 11.

<sup>41</sup> Karsten Schutzmann/et al., Psychological Distress, Self-Harming Behavior, and Suicidal Tendencies in Adults with Disorders of Sex Development, *Archives of Sexual Behavior* 2009(38/1), 16-33; Jantine van Lisdonk, Living with intersex/DSD: An exploratory study of the social situation of people with intersex, *The Netherlands Institute of Social Research* 2014; Alexander Springer, Assessment of outcome in hypospadias surgery - a review. *Front Pediatr* 2014(20 January 2014)2:2, 1-7; Tatja Hirvikoski/et al., Prenatal Dexamethasone Treatment of Children at Risk for Congenital Adrenal Hyperplasia: The Swedish Experience and Standpoint, *The Journal of Clinical Endocrinology & Metabolism* 2012(97/6), 1881-1883; Martine Cools/et al., Caring for individuals with a difference of sex development (DSD): a Consensus Statement, *Nature Reviews Endocrinology* 2018(14/7), 415-429; J. Alderson/et al., Fear of devaluation: Understanding the experience of intersexed women with androgen insensitivity syndrome. *British Journal of Health Psychology*. 2004(9/1), 81-100; Liao Lih-Mei/et al., Clitoral surgery on minors: an interview study with clinical experts of differences of sex development, *BMJ Open* 2019(9/6), 1-7; Georgiann Davis, *Contesting Intersex: The Dubious Diagnosis*, New York 2015.

<sup>42</sup> 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"; Hughes/et al., 2006, 555: "Support groups have an important role in the delivery of care to DSD patients and their families (see appendix 1)"; Martine Cools/et al., Caring for individuals with a difference of sex development (DSD): A Consensus Statement, *Nature Reviews/Endocrinology* 2018(14), 414-429, 420: "Promote contact with support groups and participation of appropriately trained peers in the decision- making process or in the multidisciplinary team".

<sup>43</sup> E.g. : Aurélie Gandoy/Patricia Meylan, La répression pénale des opérations effectuées sur des enfants intersexes, 133-149, in: Perrin Bertrand et al. (éds.), *Droit pénal et criminologie, Mélanges en l'honneur de Nicolas Queloz*, Bâle 2020; already: Mirjam Werlen, Kinderschutz für Kinder mit bei der Geburt nicht klar zuweisbarem Geschlecht, *AJP* 2004/11.

- the child's right to maximum development (arts. 18(3), 24(1-3), 27(1,2), 28 (1), 29(1), 31);
- art. 37(a): prohibition of torture or other cruel, inhuman or degrading treatment;
- measures of "empowerment", especially in in schools (Lehrplan 21, margin72, note44).

#### RECOMMENDATION 3 > above

a) legally ban in the Swiss Criminal Code all forms of irreversible modification of innate sex characteristics (margin2), as a minimal standard of protection of their integrity and development. Forced medicalization intensifies vulnerability and reduces the resilience of intersex children as victims of social norms. Therefore, the Swiss government should implement

b) educational and support measures to raise public awareness in schools (Lehrplan 21) in education, and especially medical training in the tertiary level (comprising universities and universities of applied sciences).

As parents play an essential role in the child's right to a maximum development, we ask the Swiss government

c) to implement in the social insurance system services independent psychological support and counselling for parents to help them not to consent to harmful practices on their children. Peer groups should be included in counselling.

Positive action is needed (→Recommendation to art. 4).

#### iv. Respect for the views of the child (art. 12)

- 35 Both articles 3 and 12 apply as principles of interpretation to all rights recognized in the CRC. The right of the child to be heard emphasizes the role of the child as an active participant and applies equally to all measures adopted by States to implement the Convention. As art. 12(1) mentions "matters that affect them", this implies the ascertainment of the views of particular groups of children (CRC/GC/2003/5, para.12; CRC/C/GC/12, para.3). Intersex children are highly affected by decisions without respect of their participation when it comes (e.g.) to deciding on highly personal, intimate, and irreversible decisions about their integrity and future.
- 36 As the Committee emphasizes in General Comment 5 (para.50) in many cases, only children themselves are in a position to indicate whether their rights are being fully recognized and realized (see art. 19c CC, margin15/34). **In that sense, what could affect children more than their own bodily integrity, an open future, gender, sex characteristics and identity?** Sex modification techniques (including decisions relating to conducting or refraining from surgical or hormonal intervention), relating to intersex children, have irreversible and life-long consequences for the child - with consequences far beyond childhood.<sup>45</sup> This raises legal constraints between the wishes or social preferences of parents, the estimation of the medical urgency or necessity by medical professionals and the rights, views and interests of girls and boys.<sup>46</sup>
- 37 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**.<sup>47</sup> As mentioned (margin15/34), according to current law, children/minors capable of judgement exercise their strictly personal rights independently, without the consent of their 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 interest of the child and his development is hindered (arts. 3, 12 CRC and art. 11 FCst.).**

<sup>44</sup> For the Swiss education system see: <https://www.edk.ch/de/bildungssystem>; 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.

<sup>45</sup> See European Union Agency for Fundamental Rights (FRA), *The Fundamental Rights Situation of Intersex People*, 04/2015, p. 5 (hereinafter: "FRA (2015) on Intersex People").

<sup>46</sup> Melanie Newbould, *When Parents Choose Gender: Intersex, Children, and the Law*, *Medical Law Review* 2016(24)/4, 474–496.

<sup>47</sup> FF 2020 9623, (new)article 30b al. 4 Swiss Civil Code (see: <https://www.fedlex.admin.ch/eli/fga/2020/2689/fr>), limiting [article 19c SCC](#).

The government's proposal is a huge step backwards compared to the current legislation, regarding to **para. 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, TGNS and ourselves (InterAction Switzerland).<sup>48</sup>

**RECOMMENDATION 4 > ABOVE**

We demand that the amendment mentioned in margin34/37 be reversed by the Swiss government as soon as possible and to cancel **para. 4** of art. 30b CC.

The **Federal Supreme Court** points out that the right to be heard is an emanation of the inner personality of the child and therefore a highly personal right; as soon as the child is capable of judgement<sup>49</sup> the child takes its claim as part of its right to participate in decisions about its own life. The child who is capable of judgement has the right to decide alone. This legal provision is also part of the Federal Constitution (art. 11). The right to dispose of one's body, is an integral part of the notion of personal autonomy. Being said, the right of the child to be heard and to participate also include medical treatment.<sup>50</sup>

We agree with the Committee in that there may be variations in cultural expectations and treatment of children that should be respected, except where they contravene the rights of the child (CRC/C/GC/7/Rev.1, para.2(e). Especially concerning the right to health, self-determination or autonomy, the intersex child's physical, mental, and psychological well-being would be contravened by not *lifesaving and unnecessary, irreversible* – and by considering art. 12 of the Convention –, *involuntary treatments* – which do not prevent a serious danger to the actual child's health. As for female genital mutilation, such treatments of intersex boys or girls cannot be justified by cultural expectations or customs.

We already mentioned the lack of proportionality of means to ends (margin23). Our Federal Constitution allows restrictions on fundamental rights only if they are proportionate (art. 36(3)). Disproportionate restrictions are in no case allowed – even if they have a legal basis – if the essence of fundamental rights is violated. Not lifesaving and unnecessary, irreversible – and *involuntary treatments* – cannot be proportionate if psychological care for parents and support of peer groups like us can support parents and intersex children to learn how to deal with their VSC/VSD. In such cases the decision on sex modifying interventions has to be left to the child as soon as the child is capable of judgement in accordance with age and maturity. **The principle "the views of the child (shall) being given due weight" is rendered impossible by an irreversible decision of parents or medical authorities, if the child cannot make the decision him-herself.**

**RECOMMENDATION 5 > above**

- a) legal prohibition in the Swiss Criminal Code of all forms of irreversible modification of innate sex characteristics (as FGM too);
- b) psychological and counselling support for parents and promotion of training for health professionals by peer experts as appropriate measure instead of the above mentioned (margin2) medical treatments.

v. Governmental action plan (art. 4 CRC) of the Swiss government

States parties have no discretion as to whether or not to satisfy their obligation of art. 4. The four general principles mentioned form the basis for all State decisions and actions. With regard to intersex children or children with VSC, these principles are not fulfilled yet. Irreversible and forced interventions by medical professionals or parents as described in this chapter do not fulfil the obligations either of existing legislation and our Constitution or of this Convention. Switzerland has not a coherent comprehensive political strategy either for the protection, prevention and combat of violence against intersex children or for the parental, family or/and caregivers, education or medical professionals' support.

<sup>48</sup> See our common statement here: <https://us8.campaign-archive.com/?e=&u=d73952ab7f346daa87bfce51&id=fa589b31f4>.

<sup>49</sup> Art. 19c Swiss Civil code, the court presumes that the child can already be capable of judgement at the age of 12, see BGE 134 II 235 E. 4.3.2.

<sup>50</sup> BGE 131 III 553 E.1.1, 554.

- 42 Switzerland should take proactive and holistic measures to ensure positive outcomes for all intersex children in relation to legislation, policies and programmes by mobilizing sufficient revenue and allocating and spending funds accordingly (CRC/C/GC/19, para.42); Switzerland should also “establish and implement social programmes to promote optimal positive child-rearing by providing, through integrated services, necessary support for the child and for those who have the care of the child” (CRC/C/GC/13, para.41(h) and a reliable national data collection system (CRC/C/GC/13, para.42(a)v)) disaggregated by age, sex and variations of sex development. 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 all girls and boys in general and intersex girls and boys in particular.
- 43 As General Comment 5 mentions, particular attention will need to be given priority to marginalized and disadvantaged groups of children (para.30) such as intersex children, and the State needs to work closely with NGOs in the widest sense (para.58). **We, InterAction, consider programmes as a matter of urgency.**

**RECOMMENDATION 6 > ABOVE**

- a) 1. a comprehensive national strategy or/and a plan of action, 2. studies, 3. reliable national data collection system of all forms of irreversible modifications of innate sex characteristics, 4. a monitoring-system;
- b) inclusion of national child rights organisations like us, InterAction Switzerland, for the implementation of such a strategy/plan of action and independent data collections.
- c) Such a strategy or/and plan of action should include e.g. psychosocial parental, family or/and caregivers support to understand and implement respectable intersex-child-rearing; the promotion of training and education for medical health professionals, development of new curricula for schools; de-stigmatization, visibility, de-medicalization of intersex children; awareness raising measures against stereotyped sex characteristics, preventive measures after legal prohibition in the Swiss Criminal Code.

**b. Civil rights and freedoms (arts. 7, 8, 16, 17)**

- i. Birth registration, name and identity, Protection of private sphere (arts. 7, 8, 16)

- 44 **Parents of children with intersex traits or variations of sex development/characteristics often face pressure to agree to surgeries or hormonal treatments on their children.** They are rarely informed about alternatives or all potential negative consequences of such treatments, which are performed without medical need, urgency or compelling necessity for health of their children. The rationale for this lack of information is frequently based on social prejudice, expectations of parents and stigma associated with “non-normative bodies”.<sup>51</sup> What we would like to emphasize is: administrative requirements to assign or register the sex shortly after the birth of the child may do more harm than good to the child’s future. We are aware that **art. 7 CRC** is limited in its key issues (*John Tobin/Florence Seow, art. 7, in: Tobin 2019 (note32), 239ff*). The child shall be registered *immediately* after birth and shall have the right to a name from birth. If sex characteristics do not correspond to expectations of medical professionals or/and parents, an immediate and definitive registration as male/female may not be useful in any case. Such an immediate and definitive gender/sex registration may even be discriminatory for intersex children. It can lead to hasty decisions (surgeries or/and hormonal treatments).
- 45 Regarding intersex people a European Parliament resolution of 14 February 2019 and the Parliamentary Assembly of the Council of Europe (note29), registration of births should show sufficient flexibility to deal with the situation of intersex children without forcing parents or medical professionals to reveal a child’s intersex status unnecessarily. In Switzerland there is a legal requirement to register birth and the gender/sex of the child within a very short time-frame (3 days). This timeframe should be reconsidered.
- 46 **Art. 8:** State Parties undertake to respect the right of the child *to preserve his or her identity*, including name and family relations. “Preserve” implies both the non-interference in identity and the maintenance of details relating to early infancy that the child could not be expected to remember.

<sup>51</sup> See this ( modified) citation and complete text: End violence and harmful medical practices on intersex children and adults, UN and regional experts urge: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>. - UN Committee against Torture (CAT), UN Committee on the Rights of the Child (CRC), UN Committee on the Rights of People with Disabilities (CRPD), UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).

The term "identity" is an evolving and fluid one and **art. 8 includes not only gender identity but also physical appearance or sex characteristics**. Identity may be shaped by parental or community influences or by the child's own life experiences and psychological development aspects. States have to preserve not only generally static elements of identity but also "dynamic elements of a child's identity and the child's right to define who he or she will become in the future". This said, the child's right in defining his, her, their identity is related to art. 12 of the Convention, to the due weight of the view of the child, to "development, self-determination, and individual autonomy".<sup>52</sup> Finally, the State also has an obligation to "enable the child to access information that will enable him or her to understand the historical [biographical] elements of his or her identity" (*John Tobin/Jonathan Todres, art. 8, in: Tobin 2019 (note32), 295*). Intersex children should be guaranteed **access to their records** held by educational, healthcare, childcare and protection services and justice systems (CRC/C/GC/20, para.46).

In our LOIPR (para.23) we invited therefore Switzerland "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, para.24(d)). Intersex children and adults, *as some of our members*, are often unaware of the procedures to which they have been subjected. They have lost important elements of their identity and/or biographical elements and have been hindered in their right to development. **In addition, a national central register should be introduced** so that medical treatment can be understood or verified later in life and, under given circumstances, to allow legal action.

**In terms of articles 7 and 8** a flexible registration of intersex children relating to her legal sex is essential. This is a way to prevent *irreversible and forced interventions and hasty and non-informed decisions of parents*, based on social stereotypes, expectations of parents. Such decisions should not be favoured by administrative requirements as short-time birth registration.

**Art. 16:** Arbitrary or unlawful interference with the child's right to privacy will overlap not only with articles 7 and 8 but also with arts. 19 and 37, as art. 16 also protects the intersex child's physical and mental integrity. Five dimensions are important: physical and psychological integrity (arts. 19, 37, 24(3)), decisional autonomy (art. 12), personal identity (art. 8), information privacy and physical privacy (*John Tobin/Sarah M Field, art.16, in: Tobin 2019 (note32), 560ff*). Protection extends to actions of public (state actors) and private actors, such as e.g. parents, teachers or medical professionals. If legal protection against such interference or attacks is to be effective, then awareness in government and public sectors about stereotypes of gender and sex characteristics must be promoted.

#### RECOMMENDATION 7 > above

- a) A flexible and provisional birth registration (relating to gender/sex) of all children;
- b) birth registration should not force parents or medical professionals to reveal a child's intersex status;
- c) gender recognition should be provisional and allow the child to make the final decision once it is capable of judgement in a transparent, rapid and respectful way and without having to apply to the court;
- d) extension of 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 as an important element of their identity (see also margins68ff) and the introduction of a national central register for the subsequent comprehension/transparency of the medical treatment.
- e) In terms of art. 16 we suggest administrative, and awareness building measures.

#### ii. Child's access to appropriate information (art. 17)

With regard to art. 17, States Parties shall ensure that the child has access to information, especially aimed at the promotion of his or her well-being and physical and mental health. States Parties shall e.g. encourage to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of art. 29 and the production and dissemination of children's books – bearing in mind also art. 18.

Again, stereotypes in society, schools, medicine and the current traditional training of professionals are the real source of violence against intersex children. The solution consists not in "normalizing" intersex

<sup>52</sup> John Tobin/Jonathan Todres, art. 8, in:Tobin 2019 (note32), 293.



girls and boys and thus violating physical and psychological integrity, autonomy, identity and privacy, but in breaking and weakening the stereotypes mentioned above. We consider that Switzerland is not doing enough in this sense to protect children's rights *in general* - apart from a **complete failure of public awareness-building measures for protection of intersex children**.

**RECOMMENDATION 8 > ABOVE**

- a) provide information to the public on not-lifesaving medical interventions on intersex children and that such non-consensual procedures on intersex children (margin2) may not be justified by psychosocial reasons;
- b) disseminate public information programmes on intersex as a healthy variation of the human body;
- c) ensure that children with a variation of their sex characteristics find themselves reflected as healthy human beings in schoolbooks in a positive, non-pathologizing, empowering way (art. 17(c);
- d) ensure that positive, non-pathologizing teaching materials are available for children in the extra-curricular sector.

**c. Violence against children (arts. 19, 24 (3), 37a, 39)**

51 Resolution 2191 (2017) of the Parliamentary Assembly of the Council of Europe (note<sup>29</sup> ) mentions, that most intersex people are physically healthy at birth and that only a few suffer from harmful medical conditions. However, serious breaches of physical and psychological integrity, identity and bodily autonomy put their health at risk. In fact, **since about the 1950s** intersex children have been treated as a medical issue. **This situation has basically not changed:** from a prevailing medical view, children's bodies should be made to conform to either male or female sex characteristics, often through surgical and/or hormonal interventions. This "pathologisation of intersex variations jeopardises the full enjoyment by intersex people of the right to the highest attainable standard of health as enshrined in the UN Convention on the Rights of the Child" (note<sup>29</sup>: European Parliament Resolution of 14 February 2019, para.7).

52 Remembering also numerous treaty bodies of the United Nations, the Parliamentary Assembly calls on Council of Europe member States (such as Switzerland) to prohibit medically unnecessary sex- "normalising" surgery, sterilisation and other treatments practised on intersex children without their informed consent and to ensure – except in cases *where the life of the child is at immediate risk* – that any treatment that seeks to modify the sex characteristics of the child is deferred until such time as the child is able to participate in the decision, based on the right to self-determination and on the principle of free and informed consent (note<sup>29</sup>: Resolution 2191 (2017), para.7).

53 This introduced, remembering the Istanbul Convention<sup>53</sup>, remembering that in our view pathologization of intersex variations and treatments practised on intersex children without their informed consent must be considered as harmful practices (CEDAW/C/GC/31-CRC/C/GC/18), which are based on social prejudice, expectations of parents and stigma, remembering that health problems of adult intersex people result from these interventions on them in young age and result in discrimination, exclusion and violations of several constitutional provisions, we consider that Switzerland violates art. 19 (margins<sup>54ff</sup>), art. 24 (margins<sup>61ff</sup>), art. 37 (margin<sup>66ff</sup>) and that Switzerland has not yet acted in accordance to Art. 39 (margins<sup>68ff</sup>) of this Convention.

**i. All forms of physical or mental violence (art. 19)**

54 In Swiss law, these forms of violence are protected and violate the best interests of the child.<sup>54</sup> There seems to be no requirement in Swiss law too that the harm reaches a certain threshold to fall within art. 19 – mere exposure to violence will be sufficient (*John Tobin/Judy Cashmores, art.19, in: Tobin 2019 (note<sup>32</sup>), 691*). As the interpretation of a child's best interests must be consistent with the whole Convention, including protection from all forms of violence, the child's human dignity and physical and mental integrity, interpretation of violence against children cannot be used to justify socio-cultural medical practices which have no medical benefit for the (intersex) child, and which are degrading to the child.<sup>55</sup>

<sup>53</sup> Entry into force for Switzerland on 1st of April 2018 (RS 0.311.35).

<sup>54</sup> E.g.: Daniel Rosch/Christiana Fountoulakis/Christoph Heck, Handbuch Kindes- und Erwachsenenschutz, Recht und Methodik für Fachleute, Berne 2018, 444ff; Protection de l'enfance Suisse, [Soupçon de mise en danger du bien de l'enfant](#), (visited April 2021).

<sup>55</sup> Katrina Roen, Intersex or Diverse Sex Development: Critical Review of Psychosocial Health Care Research and Indications for Practice,

The term violence has been chosen here to represent all forms of harm to children, violence has not to be understood to mean only physical harm and/or intentional harm (CRC/C/GC/13, para.4). The following non-exhaustive lists outlining forms of violence apply especially to intersex children (CRC/C/GC/13, para.20ff):<sup>56</sup>

**Violence among children or by their peers.** If the intersex child visibly has sex characteristics that do not correspond to a norm, this can lead to bullying, mobbing and other violations. This harms a child's physical and psychological integrity and may also have a "severe impact on his or her development, education and social integration in the medium and long term" (para.27). It is therefore necessary for the State to take protective measures to inform children in school about variations of sex characteristics in education plans. Schoolmates will learn that intersex variations are not a disease, and they will understand that physical characteristics in general develop differently in all humans. Every other intersex child can be very unsettled too by his or her variation (e.g., a girl with XY-chromosomes) and thus be hindered in his or her development because they feel ashamed.

**Mental violence.** There are psychological implications of harmful and continuing medical practices if e.g., the child is informed that he or she is "diseased", that his/her sex characteristics had to be adapted to the socio-medical norm, that the child is worthless, unloved, unwanted, that he or she has to take hormones for the rest of his or her life. Stirred-up stereotypes in mass media and school are often the source of mental violence.

**Physical violence.** The above mentioned surgical and/or hormonal interventions (see margin2) are not the only forms of violence, but are causal factors in upcoming violence, e.g., when the child is "assigned" to a legal and social gender that does not correspond to its later gender Identity.

**Physical and/or psychological or emotional neglect or negligent treatment.** The failure to meet children's needs may be physical (e.g., adequate basic medical care), psychological or emotional (lack of any emotional support and love). Medical professionals assume that surgical and/or hormonal interventions will resolve teasing by peers, violence, stigma or will help parents to accept their child and give to their intersex child needed emotional support and love. However, there is no scientific basis for this assumption (note55). The child is born intersex and will remain so. To avoid emotional neglect or negligent treatment of parents, they need to understand that their child is healthy. Especially, adequate basic medical care doesn't only, if necessary, mean hormone replacement therapy but empowerment of the children. The child finds empowerment through interaction with other intersex children and integration/inclusion in other groups of children.

**Educational neglect** relates not only to parents and care givers, but to the whole social environment of the child and especially the school sector. Education is hardly possible if the child is socially isolated, stigmatized, humiliated and neglected in its psychological needs. As any other child, an intersex child needs first empowerment through interaction with peers. This seems to be a basic principle for healthy development and equal opportunities in school for all human beings.

**In summary:** "if an intervention is performed with parental consent at an earlier stage without being strictly medically necessary for vital bodily functions, or going further than needed, this is a violation of the child's right to identity under art. 8 and the right to integrity under art. 19, and will be contrary to the best interests of the child under art. 3."<sup>57</sup>

#### RECOMMENDATION 9 > ABOVE

- a) prevent violence among children or by their peers, mental and physical violence, physical and/or psychological or emotional neglect or negligent treatment and educational neglect;
- b) providing positive, non-pathologizing teaching materials are available for adolescent children in the extra-curricular sector;
- c) introducing counselling services and free psychosocial support for all persons concerned and their parents (CAT/C/CHE/CO/7, para.20), any harmful, including peer groups, not live saving and unnecessary treatment can be put off until the child will be able to decide itself;
- d) providing adequate budget allocations for the implementation of adopted measures (CRC/C/GC/13, para.39, 41(e)).

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

<sup>56</sup> Voices of intersex people in: Scherpe/et al., note33: Malta Declaration (2013), 7ff; Darlington Statement (2017), 11ff, Vienna Statement (2017), 19ff, The Moscow Statement (2020), www.intersexrussia.org.

<sup>57</sup> Sandberg (note37), 528.

ii. Measures to prohibit and eliminate all forms of harmful practices (art. 24(3))

- 61 The main challenges faced by intersex people are coerced, uninformed and unnecessary genital normalizing surgeries, lack of appropriate legal recognition, unfair discrimination in schools resulting in school drop-outs, and discrimination in healthcare facilities.<sup>58</sup>
- 62 The highest attainable standard of health (art. 24(1)) in Switzerland is not yet recognized for intersex children. Medical assistance and health care for intersex children (art. 24(2)b) should focus on psychological support of parents, families and children instead of surgeries or/and hormonal treatment. So we're focusing here on abolishing traditional practices prejudicial to the health of children (art. 24(3)). Such harmful practices are relevant for female genital mutilation but also for intersex mutilation.<sup>59</sup>
- 63 In our view, irreversible modification of innate sex characteristics<sup>60</sup>
- 1) cause physical and/or psychological harm or suffering,
  - 2) have a negative impact on their dignity, physical, psychosocial, and moral integrity and development, participation in society, health, education and economic and social status and
  - 3) hinder or limit intersex girls and boys to develop and reach their full potential. They are traditional, re-emerging or emerging practices that are prescribed and/or kept in place by social norms and
  - 4) they are imposed on children by family members or society at large regardless of whether the victim provides, or is able to provide, full, free and informed consent. We argue that parents are also victims of this form of violence because they are not sufficiently informed about the risks of these interventions and do not have the opportunity to get in touch with other parents and exchange experiences of adult intersex persons, like us. Since more than 10 years medical science argues that no comparative studies are available – nevertheless surgical and sex modifying hormonal interventions are continuing (note22) as forms of unconstitutional and arbitrary experimentations (*cf. John Tobin/Sarah M. Field, art.16, in:Tobin 2019 (note32), 563*).
- 64 **We argue: upcoming (perhaps) comparative studies will not change legal appreciation; irreversible, unnecessary and involuntary modifications of innate sex characteristics being violations of UN and European and national law.**<sup>61</sup>
- 65 “Shall take” is a term which leaves no leeway for the discretion of State parties (CRC/C/GC/13, para.29). Accordingly, Switzerland is under a strict obligation to undertake “all appropriate measures” to fully implement a prohibition of such practices. “Appropriate measures” can neither be interpreted to mean acceptance of some forms of violence (CRC/C/GC/13, para.39) nor harmful medical practices.

**RECOMMENDATION 10 > ABOVE**

abolish in the Swiss criminal Code all forms of irreversible modification of innate sex characteristics. Concrete measures to be undertaken should include (CRC/C/GC/13) legislative measures referring

- a. to both legislation and implementation of enforcing measures (para.40),
- b. adequate budget allocations for the measures adopted to end harmful practices against intersex children (para.41(e)),
- c. effective access to redress and reparation (para.41(f), see also margin68),
- d. establishing social programmes to promote optimal positive intersex child-rearing and for those who have the care of the child (para.41(h)).
- e. We suggest to the CRC to formally include all forms of irreversible modification of innate sex characteristics (margin2) in the CEDAW/C/GC/31-CRC/C/GC/18 as harmful practices.

iii. Right not to be subjected to torture or other cruel, inhuman or degrading treatment (art. 37(a))

- 66 Neither the recommendations of the National Commission on Biomedical Ethics (note19) nor the recommendations of the Committee against Torture (CAT/C/CHE/CO/7, para.20) and of the Committee on the Rights of the Child (CRC/C/CHE/CO/2-4, para.43(b)) have been fulfilled yet.

<sup>58</sup> See: Pikramenou (note36), 81; UN Free & Equal: <https://www.unfe.org/wp-content/uploads/2018/10/Intersex-English.pdf>; yet, the term "necessary" is imprecise and, in our opinion, too open to interpretation.

<sup>59</sup> CRC/C/GC/13, para.29.

<sup>60</sup> CEDAW/C/GC/31-CRC/C/GC/18, para.15ff; see margin2.

<sup>61</sup> CRC/C/CHE/CO/2-4, para.43(b); CRC/C/DNK/CO/5, para.24, CRC/C/ESP/CO/5-6; CRC/C/GBR/CO/5, para.24; CRC/C/IRL/CO/3-4, para.40; CRC/C/FRA/CO/5, para.48.

The Special Rapporteur has expressed unequivocally its opposition to intrusive and irreversible treatments, forced genital-normalizing surgery, involuntary sterilization, unethical experimentation on intersex girls and boys, when enforced or administered without the free and full informed consent (A/HRC/22/53, para.88).<sup>62</sup>

Irreversible and forced treatments can cause e.g., enduring infertility, pain, incontinence, loss of sexual sensation, and lifelong mental suffering, including depression; they are performed without free and informed consent. The child is frequently too young to be part of the decision-making.<sup>63</sup> In a subsequent report the Special Rapporteur on Torture assessed the applicability of the prohibition of torture and other cruel, inhuman or degrading treatment to the unique experiences of intersex persons (A/HRC/31/57, para.50).<sup>64</sup> **Irreversible, unnecessary and involuntary modifications of innate sex characteristics has thus been predominantly considered by UN and European bodies as torture or other cruel, inhuman or degrading treatment.** As for FGM, an explicit prohibition is necessary to ensure the necessary legal security. Medical declarations cannot guarantee legal security and are neither appropriate nor effective.

**RECOMMENDATION 11 > ABOVE**

Intersex children should not be subjected to torture or inhuman or degrading treatment. Switzerland shall ban in the Swiss Criminal Code all forms of irreversible modification of innate sex characteristics (margin2).

iv. Compensation, Rehabilitation / Social reintegration of a child victim (art. 39)

The Committee recommended to Switzerland (CRC/C/CHE/CO/2-4) in particular “the provision of services for the recovery and social reintegration of victims” (para.41(b)). The State’s obligation to provide rehabilitation and compensation to victims of irreversible modifications of innate sex characteristics not being strictly necessary for vital bodily functions and performed without free and fully informed consent have to be subsumed under art. 37(a). The Committee has “routinely called upon states to ensure victims of such treatment receive `adequate reparation` [...] or `compensation`”.<sup>65</sup>

Being born intersex leads to difficult biographies in Switzerland too, particularly with regard to different forms of violence, physical and psychological. Lack of health care and completion of schooling, intersectional discrimination in the workplace, invisibility, being ridiculed, the high suicide rate, rejection of identity, lack of integration in society and missing access to medical records as erasing important aspects of one’s biography are other, non-exhaustive examples.<sup>66</sup> Following ongoing critiques of medical interventions on intersex bodies by European and UN Human Rights Institutions, NGOs and medical and health professionals, especially in the academic social science literature, summarized in a recent review,<sup>67</sup> Switzerland must seriously address these serious and harmful violations of human rights.

**RECOMMENDATION 12 > ABOVE**

- a) provide rehabilitation as well as fair and adequate compensation to intersex people affected by medical treatments not necessary to prevent a concrete danger to life or a severe and concretely existent danger to the health of the child without their free, prior and informed consent (CEDAW/C/CHE/CO/4-5, 25(d) // CRC/C/CHE/CO/2-4, 42(b) and
- b) extend the retention period for medical records to at least 40 years, beginning with the age of maturity, in order to allow intersex men and women or non-binary intersex persons to access their records (see margin47) and the introduction of a national central register for the subsequent comprehension / transparency of the medical treatment.

<sup>62</sup> CAT/C/NLD/CO/7, para.53; CAT/C/DNK/CO/6-7, para.43; CAT/C/AUT/CO/6, para.45; CAT/C/CHE/CO/7, para.20; CAT/C/DEU/CO/5, para.20; CAT/C/FRA/CO/7, para.35.

<sup>63</sup> Pikramenou (note36), 81; UN Free & Equal: <https://www.unfe.org/wp-content/uploads/2018/10/Intersex-English.pdf>; A/HRC/22/53, para.76.

<sup>64</sup> The Rapporteur explored also discriminatory power structures and socialised gender stereotypes; full “integration of a gender perspective into any analysis of torture and ill-treatment”, A/HRC/31/57, para.5f. At European level, torture is prohibited under art. 3 ECHR; see: Resolutions of the European Parliament and of the Parliamentary Assembly of the Council of Europe (note29).

<sup>65</sup> John Tobin/Harry Hobbs, art. 37, in: Tobin 2019 (note32), 1437.

<sup>66</sup> For health issues for selected intersex variations, see: Tiffany Jones/William Leonard/Victorian Department of Health and Human Services, Health and wellbeing of people with intersex variations, 2018, Appendix 2.

<sup>67</sup> Lih-Mei Liao/Peter Hegarty/Sarah Creighton/Tove Lundberg/Katrina Roen, Clitoral surgery on minors: an interview study with clinical experts of differences of sex development, BMJ Open 2019;9:e025821; Roen, note55.

#### d. Education (art. 28, 29)

- 70 Discrimination in education remains a matter of concern for intersex children. It is essential to raise State Parties' awareness of the importance of inclusive education. State parties have to ensure that all children are learning to their fullest capacity and that they have adequate learning materials.
- 71 Intersex – as it is the case for LGBT-children and other minority groups too – need an inclusive, learning-friendly environment. Children need school material that makes them understand «you are okay as you were born». We are aware that in Switzerland the 26 cantons have the primary responsibility for education (see: [www.edk.ch](http://www.edk.ch)). However, the "Conférence suisse des directeurs cantonaux de l'instruction publique (CDIP / EDK)" may submit recommendations to the cantons.
- 72 The actual curriculum (Lehrplan 21: German/Plan d'études romand: French)<sup>68</sup> should reflect the diversity of sex development in the sections "Nature, People, Society" and "Ethics, religions, community"; this diversity is not explicitly mentioned yet. In our view, implementation of diversity of sex characteristics in Swiss curricula is part of the right to education and of equal opportunity (art. 28) and the educational objectives in art. 29 of intersex children.
- 73 In an Australian survey, 272 people with intersex variations were asked to describe any ideas, features, or action they recommended.<sup>69</sup> The most common suggestion 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 variation.
- 74 CRC/C/GC/14 emphasizes this view and considers this goal as part of the best interest, saying education is an investment in the future, and "enhancing children's responsibilities to overcome the limitations of their vulnerability" (para.79). According to the Committee (CRC/C/GC/13, para.44) educational measures should address attitudes, traditions and support children's life skills, knowledge and participation to combat bullying and other forms of violence and promote empowerment (e.g. through school curricula, training for teachers at all levels of the educational system, medical doctors, nurses).

#### RECOMMENDATION 13 > ABOVE

Specifically implement comprehensive education about variations of sex development and gender sensitive teaching materials in school-curricula.

<sup>68</sup> [https://v-fe.lehrplan.ch/container/V\\_FE\\_DE\\_Gesamtausgabe.pdf](https://v-fe.lehrplan.ch/container/V_FE_DE_Gesamtausgabe.pdf) (Lehrplan 21) and <https://www.plandetudes.ch/home> (french part of Switzerland).

<sup>69</sup> 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.



## ANNEX III: SHAPE OF AN ACTION PLAN (ART. 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 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, 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 – 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 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.

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

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