

Universal Periodic Review of Switzerland - 4th cycle

42nd session (23 January 2023 - 3 February 2023)

I. Key words and Executive Summary

What does Intersex mean?

Intersex is an umbrella term, a spectrum to describe innate variations of sex characteristics (**VSC**) regarding reproductive organs / internal or external sex / genital characteristics, hormonal structure and/or levels and/or chromosomal patterns that are different from the definition of male or female. – Intersex children are either boys or girls. Intersex should be distinguished from gender identity (e.g., non-binary gender identity, men/boys or women/girls).

Mostly, medical interventions are not proportionate but aim to fit the child into a socio-medical norm.ⁱ We understand **modifications of sex characteristics** as all forms of modifying internal or external sex / genital characteristics and as harmful practices. As every human being, intersex people may later in life have a non-binary gender-identity or have any kind of sexual orientation (lesbian, gay, bisexual or heterosexual etc.). People with a VSC are therefore as diverse as the rest of the Swiss population (endosex people).

Key words

Intersex or Variations of sex characteristics; Reproductive health; Sterilizing procedures; Forced and coercive medical interventions; Bodily integrity; Modifications of sex characteristics; Children's and human rights; Swiss Criminal Code (RS 311.0)¹ and Swiss Civil Code (RS 210)²; Fundamental rights; Legal security; Best interest of the child, Harmful practices; Discrimination; Violence against intersex women/girls, intersex men/boys, intersex non-binary people; Access to justice; Access to education and health care; Stereotypes of gender and sex; Discrimination against LGBTI-people; Adequate compensation; Peer-to-peer counselling; Psychological counselling; Action plan; Public awareness-raising measures; Practices modifying a child's innate sex characteristics without medical need.

Executive Summary

This report is submitted by InterAction Switzerland. We may also refer to the joint NGO submission of the Swiss NGO Platform for Human Rights we are working with in this UPR cycle. Our report examines the human rights situation in Switzerland with a focus on the rights of intersex children and adults:

- lack of the implementation and legal security of existing laws and the Swiss Constitution³,
- human rights of intersex persons are not explicitly protected,
- lack of access to justice and compensation,
- absence of a strategy or action plan to promote awareness, health and rights.

In this report, we evaluate Switzerland's highly limited progress in implementing human and fundamental rights of intersex persons as children and adults and harmful practices in childhood.

¹ Hereafter Criminal Code.

² Hereafter Civil Code.

³ Hereafter Fed.Cst. (RS 101 : "Recueil systématique" (<https://www.fedlex.admin.ch/eli/cc/1999/404/fr>).

II. Development since preceding Review

There is currently no awareness of the serious violations of children with a variation of sex characteristics, the surgical-hormonal interventions, and the thereby caused serious consequences in adulthood. Instead, reference is regularly made to issues of civil register status, which are of secondary importance and often a consequence of misdirected, sex-altering interventions in bodily integrity. In A/HRC/WG.6/28/CHE/1 intersex issues were mentioned once only in a confusing and even misleading way (no. 51).

Recommendation	NGO 2017* State**	UN- No.	Implementation	Comment
Supported recommendations (without inclusion of intersex children/people)				
Provide training to security forces, prosecutors, judges and social workers to prevent discrimination based on sexual orientation and gender identity	** Israel	146.45	Very limited improvements for LGBT-people: Some cantonal parliaments supported the demand for training for prosecution authorities, little training is provided, none for intersex people. No national action plan was accepted.	Without training of professionals who take charge of people who experience violence, the consequences for LGBTI victims violates human rights. People with a VSC have not been mentioned by this recommendation regarding being Intersex.
Redouble efforts in all the cantons to avoid discrimination based on race, origin and sexual orientation and gender identity	** Colombia	146.47	Canton BS ⁱⁱ (Independent from the UPR process) as best practice. No improvement at the federal level.	People with a VSC (Intersex) have not been mentioned by this recommendation as Intersex. Intersex people would be concerned if this cantonal law were to enter into force.
Adopt legislation to eliminate the sterility prerequisite for legal change of gender, in conformity with the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)	** Sweden * No. 14	146.48	Implemented (new article 30b paragraph 1 and 2 Civil Code).	Worsened for children capable of judgement under the age of 16 (article 19c Civil Code), while children not capable of judgement above the age of 16 will be allowed to change their legal gender. (new article 30b paragraph 4 Civil Code) ⇒ IV. Recommendation: Withdraw para. 4.

Promote awareness-raising campaigns on preventing discrimination and bullying based on sexual orientation and gender identity to the broader public, and in particular to students and teachers	** Israel	147.32	Very limited improvements for LGBTQ+-people. Great disparity of application between the cantons, no national law (no improvement for Intersex people).	People with a VSC have not been mentioned by this recommendation regarding being Intersex.
Take the necessary steps to put an end to discrimination faced by same-sex couples, in particular, by ensuring they can marry and adopt children	** Germany *No. 13	147.34	Marriage for same sex couples, in force since 1 July 2022, but some discriminations still remain especially regarding lesbian woman.	Remaining discrimination of e.g., intersex and endosex lesbian woman compared to intersex and endosex gay men.
Noted recommendations (refused)				
Recommendation	NGO 2017* State**	UN-No.	Implementation and/or Comment	
Protection against discrimination of LGBT	** Ireland *No. 11	148.42	Protection only based on sexual orientation (LGB) regarding article 261bis Criminal Code, trans and intersex people excluded from protection. Recommendation: adopt a policy of general law on equal treatment and take explicitly into account discrimination of LGBTI- and, disabled persons, migrants, and other minority groups.	
Equality of LGBTI-minorities	** Greece * No. 11	148.43	no improvement on federal level	
Action plan to combat discrimination of LGBTI	** Honduras	148.44	no improvement	
Include transgender people in Statistics	** Slovenia	148.45	no improvement	
Family as the natural and fundamental group unit	** Kenya	148.58	See 147.34	
Legislation prohibiting discrimination	** Australia	147.33	no improvement	
Awareness-raising and education via a national action plan in cooperation with LGBTI-people	**Netherlands	147.35	no improvement	
Rights of transgender people	**Portugal, South Africa	147.36, 147.37	Training is provided based on individual initiatives only, no improvement.	

Recommendations of the NGO-report, not included in the UPR report				
Recommendation	NGO 2017* State**	UN- No.	Implementation	Comment
“Cosmetic genital operations” practised on intersex children	* No. 15	-		⇒IV. Recommendation Motion 22.3355 was submitted in in the Council of States on 18 March 2022 (not debated yet in the national Parliament and independent from the previous UPR process).

* JS2 - Joint Submission 2 (JS1 – Joint Submission 2, No. 15)

** A/HRC/37/12

Intersex *girls and boys* have been a blind spot for the Swiss administration and legislation and in the past UPR-cycle.ⁱⁱⁱ They are still surgically-hormonally forced into male or female sex categories without medical need.

III. Implementation of international children's rights and legal framework

In several concluding observations of **UN treaty bodies**, Switzerland had been recommended to stop non-voluntary, deferrable, irreversible modifications of sex characteristics of intersex children.^{iv} On the **regional level**, ECRI required the same in 2019^v; GREVIO will publish recommendations this year.^{vi} We described in Annex I of our report on the CRC, Cycle V/VI in a more precise way the legal framework for the protection of children.

On the **national level**, the NCE recommended already twice to prohibit sex modifying procedures in intersex children lacking capacity.^{vii} – In addition to constitutional law, civil law is of particular importance, especially the protection of children's rights (**articles 19c and 296ff. Civil Code**). Any restriction on fundamental rights must have a legal basis and must be justified as being in the public interest and be proportionate; above all, the essence of fundamental rights is inviolable (article 36(4) Fed.Cst.). Regarding female genital mutilation, FGM, a new provision (article 124) was added to the **Criminal Code** in 2012 to put an end to the lack of legal security. No such provision in the Criminal Code, *hence* legal security exists against harmful medical treatment of intersex children (e.g., articles 12, 19, 24(3), 37a CRC). Their constitutional and human rights are not protected.

IV. Best practices

There are currently no best/good practices in Switzerland regarding effective and concrete protection of intersex children/adults. Regarding Motion 22.3355^{viii} the government has correctly stated that the decision on which anatomical sex a child belongs to constitutes an absolutely strictly personal right (article 19c paragraph 2 Civil Code), thus the parents cannot represent the child in this area and cannot validly consent to an intervention (if not lifesaving). Yet, the Federal Council ignores the fact that there is no legal security. It is as well not correct that in Switzerland surgical or/and hormonal interventions are no longer performed until the child has the necessary capacity of judgement (see endnote xiv).

V. Recommendations for the State under Review

Meanwhile, several statements and reports have addressed violence against intersex children and adults.^{ix} During past UPR-cycles, specific intersex issues were not supported or noted (margin5). The following recommendations aim to promote the human rights situation of intersex people and especially children in Switzerland.

(1) EXPLICITLY PROHIBIT ANY PRACTICE THAT MODIFIES CHILDREN'S SEX CHARACTERISTICS WITHOUT MEDICAL REASONS AND FULL AND INFORMED CONSENT UNLESS THE INTERVENTION IS LIFESAVING OR OF CRUCIAL IMPORTANCE FOR THE CHILD'S HEALTH.

Position / NGO 2017 / State: Not submitted/noted /

JS2 - Joint Submission 2 (JS1 / Joint Submission 2, No. 15) /

Themes: Right to health; Equality and non-discrimination; Self-determination; Implementation of legal security; Constitutional and legislative framework; Children: definition; general principles; Prohibition of torture and ill-treatment.

Comment: Motion [22.3355](#) was submitted in the Council of States on 18 March 2022. We refer to the joint general recommendation of CEDAW and CRC^x and definitions of harmful practices. Explicit legislation to protect the bodily integrity and self-determination of intersex children doesn't exist yet. A prohibition in the Criminal Code of modifications of sex characteristics of children not capable of judgement is crucial to ensure legal security. The legal situation is essentially the same as it was before the ban on female genital mutilation in article 124 Criminal Code. The recommendations from the Swiss Ethics Commission have not been implemented by the Swiss Government (endnote viii).

(2) WITHDRAW PARAGRAPH 4 OF ARTICLE 30B SWISS CIVIL CODE (HERE: SCC).

Position / NGO 2017 / State: Supported / 146.48 / No. 14 / Sweden

Themes: Equality and non-discrimination; Right to health; Constitutional and legislative framework; Children: definition; Gender recognition; Rights related to name and gender identity

Comment:

In the State Report (CEDAW/C/CHE/6)⁴, Switzerland did not respond to the Concluding Observations (CEDAW/C/CHE/CO/4-5). Instead, SPR/6 mentions a simplified gender recognition in the civil status register that affects intersex persons only marginally.

With respect to a “third **legal** gender status” (SPR/6, no.155f.), having a non-binary gender identity is not limited to trans or intersex people. **We support the legal gender recognition of all gender identities, regardless of whether the person is intersex or endosex.**

We also 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* legal gender recognition with a **previously non-existent consent of parents for minors capable of judgement**.^{xi} Paragraph 4 of article 30b SCC does discriminate against children under the age of 16 who are capable of judgement (article 19c SCC), while children *not capable of judgement* above the age of 16 can change their civil register without the consent of their legal representative.

The government's proposal was a profoundly serious step backwards regarding article **paragraph 4** of article 30b SCC. A step backwards rejected by all child protection organizations in Switzerland, criticized by child protection experts (COPMA/KOKES) by the National Advisory Commission on Biomedical Ethics (NCE), and all human rights NGO.^{xii}

(3) COLLECT SYSTEMATIC, DISAGGREGATED (I.A. AGE, MEDICAL REASONING) DATA REGARDING THE NUMBERS OF IRREVERSIBLE SEX-MODIFYING PRACTICES ON CHILDREN WITH A VSC.

Position / NGO 2017* / State:** none

Themes: Data collection & research; Right to health; Statistics and indicators; Peace, justice and strong institutions

Comment:

Detailed statistics on medical practices in relation to hormonal/surgical treatments of intersex girls and boys are not available. 141 intersex infants aged 0-2 years received medical treatments in a hospital in Switzerland between 2010 and 2017. According to data from the Children's Hospital in Zurich (Jan 2022), 85-135 genital operations are performed each year on children with a VSC.^{xiii}

⁴ Hereafter SPR/6 (State party report).

(4) PROVIDE FAMILIES WITH INTERSEX CHILDREN AND INTERSEX PEOPLE WITH ADEQUATE COUNSELLING, EMPOWERING SUPPORT AND PEER-TO-PEER COUNSELLING.

Position / NGO 2017* / State:** none

Themes: Sexual and gender-based violence; Violence against women; Support to victims and witnesses; Access to justice & remedy

Comment:

Several studies have shown that there is currently little evidence that surgical practice has changed in recent years. Supporting families in parenting intersex children has not been developed or supported by governmental healthcare systems.^{xiv} Moreover, learning from empowerment and peer-to-peer concepts and counselling, such as initially developed by psychiatric patient groups, the exchange between lived-experience experts, relatives and experts should be promoted to enhance mutual understanding of the different perspectives – but not be instrumentalized.^{xv} In Switzerland no such independent counselling services exist.

(5) A) PROVIDE ADEQUATE COMPENSATION TO INTERSEX PEOPLE AFFECTED BY SURGICAL OR OTHER MEDICAL TREATMENT WITHOUT THEIR FREE AND FULL INFORMED CONSENT AND ESTABLISH SPECIFIC FUNDS FOR COMPENSATION.

B) EXTEND THE RETENTION PERIOD FOR MEDICAL RECORDS TO 40 YEARS, BEGINNING WITH THE AGE OF MATURITY, AND ESTABLISH A FEDERAL CENTRAL REGISTER.

Position / NGO 2017* / State:** none

Themes: Right to an effective remedy; Administration of justice and fair trial

Comment:

Intersex people in Switzerland have undergone severe experiences, need lifelong hormone replacement therapies and have been surgically-hormonally “normalized”. We therefore consider that they deserve compensation for the human rights violations they have suffered and are suffering from.^{xvi} Should be noted: access to legal remedies is rendered impossible, as the retention period for medical records often expired by the time intersex children reach adulthood. Therefore, access to justice or compensation is rendered impossible.

(6) ADOPT A NATIONAL ACTION PLAN TO PREVENT ALL FORMS OF VIOLENCE AGAINST INTERSEX CHILDREN/ADULTS, INCLUDING E.G.: AWARENESS-RAISING MEASURES, TEACHING OF MEDICAL STUDENTS AND PUPILS IN MEDICAL CURRICULA, SCHOOLBOOKS, LACK OF HEALTH-CARE, INTERSEX IN HEALTH SURVEYS AND REGISTERS, GENDER AND SEX STEREOTYPES.

Position / NGO 2017* / State:** noted/148.44 / Honduras

Themes: Right to an effective remedy; Administration of justice and fair trial

Comment:

As for female genital mutilation under article 124 Criminal Code, intersex-specific supplementary measures to a criminal ban (Recommendation 1) will be necessary.

- i Already: WHO, Sexual health, human rights and the law, June 2015, sections 3.4.9, 5.2.7, visited June 2022 (<https://www.who.int/publications/i/item/9789241564984>); see also Appendix 2 of our submission.
- ii [Kantonales Gleichstellungsgesetz](#) (visited July 2022).
- iii About 10% of intersex people have a non-binary gender identity; Ramesh Babu/Utsav Shah, Gender identity “disorder” (GID) (sic!) in adolescents and adults with differences of sex development (DSD): A systematic review and meta-analysis, *Journal of Pediatric Urology* (17/1) 2021, p. 39-47: mean: 15%; however, men with hypospadias (one of the most common variations) are not included in surveys; European Union, Agency for Fundamental Rights, A long way to go for LGBTI equality, Luxembourg 2020, p. 60: 7%.
- iv 2015: CAT/C/CHE/CO/7, para.20(a-c) and CRC/C/CHE/CO/2-4, para.43(b) (Harmful practices); 2016: CEDAW/C/CHE/CO/4-5, para.25(a-e) (Harmful practices) and 2017: CCPR/C/CHE/CO/4, para.25(a-c); **2021: CRC CRC/C/CHE/CO/5-6**, para.29(a-d), para.39(d); para.15(a); see our website or in the [TB database](#) (88. Session)).
- v ECRI Report on Switzerland (sixth monitoring cycle), on 10 December 2019 (rec. no. 5 "effectively protected"/"prohibition of sex-“normalising” surgery”).
- vi First (baseline) evaluation regarding the Istanbul Convention and our report, supported in the common Alternative report: <https://www.coe.int/en/web/istanbul-convention/switzerland> (visited June 2022).
- vii National Advisory Commission on Biomedical Ethics, NCE (<https://www.nek-cne.admin.ch/en/publications/opinions>):
- On the management of differences of sex development, no.20/2012, rec. 3 and 4;
 - Officially recorded gender. Ethical considerations on the management of the recording of gender in the civil register, no.36/2020, p. 29.
- viii Motion 22.3355: Interdiction pénale des interventions visant à modifier le sexe biologique des enfants nés avec une variation des caractéristiques sexuelles (enfants intersexués).
- ix See [Appendix 2](#) to our submission.
- x Committee on the Elimination of Discrimination against Women, and Committee on the Rights of the Child, 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.
- xi Art. 30b al. 4 Swiss Civil Code (see [article 19c CC](#)).
- xii See Conférence en matière de protection des mineurs et des adultes (**COPMA**): (https://www.kokes.ch/application/files/8015/9110/2452/Vernehmlassung_KOKES.pdf, visited July 2022) and National Advisory Commission on Biomedical Ethics NCE (https://www.nek-cne.admin.ch/inhalte/Themen/Vernehmlassungsantworten/NEK-CNE_CC_changement_de_sexe_a_l_etat_civil_final.pdf), para. 5; our joint statement here: <https://us8.campaign-archive.com/?e=&u=d73952ab7f346daa87bfece51&id=fa589b31f4> (visited June 2022).
- xiii See our [media release of 23 of July 2019](#) (French): 4ème rapport périodique de la Suisse sur la mise en œuvre de la Convention internationale relative aux droits économiques, sociaux et culturels; 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: Surgeries continue to be carried out. - **Voir Canton de Zurich RRB-2022-0125** : selon les données de l'Hôpital pour enfants de Zurich, 85 à 135 opérations génitales sont effectuées chaque année sur des enfants présentant des "variantes du développement sexuel": Postulat du 15.11.2021, Extrait du procès-verbal du Conseil d'Etat du canton de Zurich du 26.01.2022, KR-Nr. 394/2021 (visited June 2022).
- xiv 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.
- xv 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, 238 f.; Susanne Krege/et al., Variations of sex development: The first German interdisciplinary consensus paper, *Journal of Pediatric Urology* 2019(15), 114-123, 115 f.
- xvi CEDAW/C/GC/35, no.33.