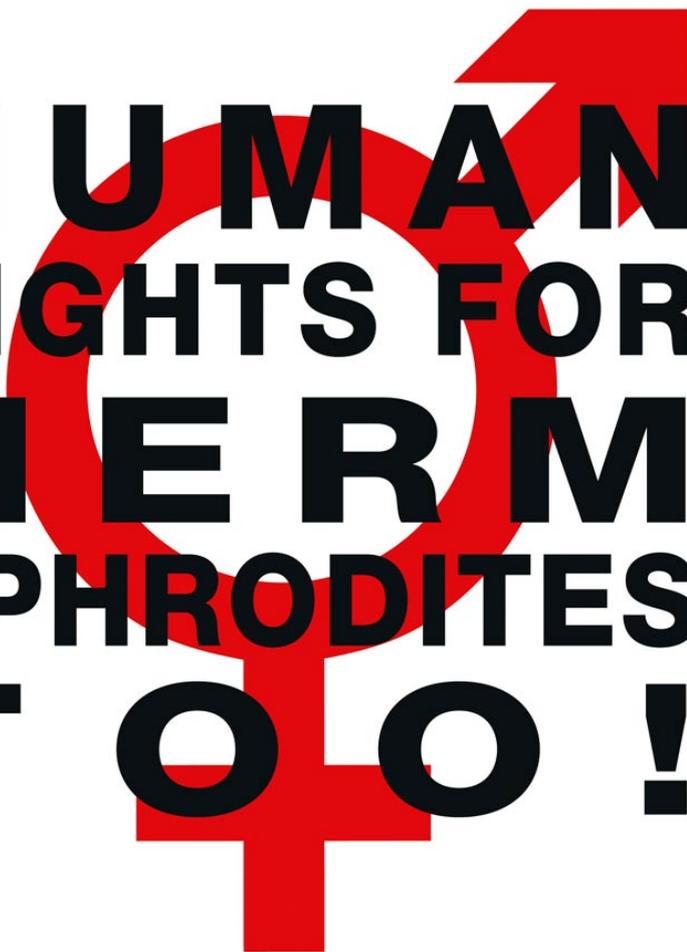


Intersex Genital Mutilations

Human Rights Violations Of Children With Variations Of Reproductive Anatomy



**HUMAN
RIGHTS FOR
HERM
APHRODITES
TOO !**

NGO Report (for LOIPR)
to the 5th and 6th Report of Switzerland on the
Convention on the Rights of the Child (CRC)

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Executive Summary

All typical forms of IGM practices are still practiced in Switzerland today, facilitated and paid for by the State party via the Disability Insurance. Switzerland openly and explicitly “*rejects*” to implement the Concluding Observations. Emboldened by such official protection, Swiss doctors and University Clinics continue to advocate and practice IGM, while at the same time denying the practice in the media.

Switzerland is thus in breach of its obligations under CRC to (a) take effective legislative, administrative, judicial or other measures to prevent harmful practices on intersex children causing severe mental and physical pain and suffering of the persons concerned, and (b) ensure access to redress and justice, including fair and adequate compensation and as full as possible rehabilitation for victims, as stipulated in CRC art. 24 para. 3 in conjunction with the CRC-CEDAW Joint general comment No. 18/31 “on harmful practices”.

This Committee has already recognised IGM practices in Switzerland to constitute a harmful practice under the Convention in Concluding Observations, as did CEDAW, and CAT and CCPR as cruel, inhuman or degrading treatment.

In total, UN treaty bodies CRC, CEDAW, CAT, CCPR and CRPD have so far issued 42 Concluding Observations on IGM, typically obliging State parties to enact legislation to (a) end the practice and (b) ensure redress and compensation, plus (c) access to free counselling. Also, the UN Special Rapporteurs on Torture (SRT) and on Health (SRH), the UN High Commissioner for Human Rights (UNHCHR), the World Health Organisation (WHO), the Inter-American Commission on Human Rights (IACHR), the African Commission on Human and Peoples’ Rights (ACHPR) and the Council of Europe (COE) recognise IGM as a serious violation of non-derogable human rights.

Intersex people are born with Variations of Reproductive Anatomy, including atypical genitals, atypical sex hormone producing organs, atypical response to sex hormones, atypical genetic make-up, atypical secondary sex markers. While intersex people may face several problems, in the “developed world” the most pressing are the ongoing Intersex Genital Mutilations, which present a distinct and unique issue constituting significant human rights violations.

IGM practices include non-consensual, medically unnecessary, irreversible, cosmetic genital surgeries, and/or other harmful medical procedures that would not be considered for “normal” children, without evidence of benefit for the children concerned. Typical forms of IGM include “masculinising” and “feminising”, “corrective” genital surgery, sterilising procedures, imposition of hormones, forced genital exams, vaginal dilations, medical display, involuntary human experimentation and denial of needed health care.

IGM practices cause known lifelong severe physical and mental pain and suffering, including loss or impairment of sexual sensation, painful scarring, painful intercourse, incontinence, urethral strictures, impairment or loss of reproductive capabilities, lifelong dependency of artificial hormones, significantly elevated rates of self-harming behaviour and suicidal tendencies, lifelong mental suffering and trauma, increased sexual anxieties, and less sexual activity.

For 25 years, intersex people have denounced IGM as harmful and traumatising, as western genital mutilation, as child sexual abuse and torture, and called for remedies.

This NGO Report has been compiled by the international NGO StopIGM.org / Zwischengeschlecht.org, and the Swiss peer support groups Intersex.ch and SI Selbsthilfe Intersexualität. It contains Suggested Questions for the LOIPR (see p. 18).

**NGO Report for LOIPR
to the 5th and 6th Report of Switzerland
on the Convention on the Rights of the Child (CRC)**

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A. Introduction

1. Intersex, IGM and Human Rights in Switzerland

IGM practices are known to cause severe, lifelong physical and psychological pain and suffering, and have been repeatedly **recognised by multiple UN treaty bodies¹ including CRC** as constituting a harmful practice, violence and torture or ill-treatment. This NGO Report demonstrates that the current **harmful medical practice on intersex persons in Switzerland** – advocated, facilitated and paid for by the State party – **persists unchanged in spite of the last Concluding observations by this Committee (paras 42-43)**, as well as of those by CEDAW, CAT and CCPR, and constitutes a serious breach of Switzerland’s obligations under the Convention. Indeed, Switzerland **openly and explicitly “rejects” to implement** the Concluding Observations.

2. About the Rapporteurs

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

- **StopIGM.org / Zwischengeschlecht.org** is an international intersex human rights NGO based in Switzerland, working to end IGM Practices and other human rights violations perpetrated on intersex people, according to its motto, “*Human Rights for Hermaphrodites, too!*”² According to its charter,³ StopIGM.org works to support persons concerned seeking redress and justice and regularly reports to UN treaty bodies.⁴
- **Intersex.ch** is a Swiss intersex peer support group founded in 2005.⁵
- **SI Selbsthilfe Intersexualität** is a Swiss peer support group for parents of intersex children founded in 2003.

3. Methodology

This thematic NGO report follows up on the **2014 thematic CRC NGO Report** by the same rapporteurs,⁶ and the resulting Concluding observations by this Committee (paras 42-43).

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

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

2 <http://Zwischengeschlecht.org/> English pages: <http://stop.genitalmutilation.org/>

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

4 <http://intersex.shadowreport.org/>

5 <http://intersex.ch/>

6 http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

B. Precedents: Concluding Observations on IGM in Switzerland

1. Harmful Practices and CRC-CEDAW Joint General Comment No. 18/31

a) CRC 2015, CRC/C/CHE/CO/2-4, paras 42-43

D. Violence against children (arts. 19, 24, para. 3, 28, para. 2, 34, 37 (a) and 39) [...]

Harmful practices

42. *While welcoming the adoption of a new provision of criminal law prohibiting genital mutilation, the Committee is deeply concerned at:*

[...]

(b) 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.

43. *The Committee draws the attention of the State party to the joint recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices (2014), and urges the State party to:*

[...]

(b) In line with the recommendations of the National Advisory Commission on Biomedical Ethics on ethical issues relating to intersexuality, ensure that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to the children concerned, and provide families with intersex children with adequate counselling and support.

b) CEDAW 2016, CEDAW/C/CHE/CO/4-5, paras 24-25

Harmful practices

24. *The Committee welcomes the adoption of legislative and other measures to combat harmful practices, including female genital mutilation, intersex genital mutilation, child marriage and forced marriage. Nevertheless, the Committee is concerned about:*

[...]

(c) Insufficient support for intersex persons who have undergone involuntary and medically unnecessary disfiguring surgical procedures when they were babies and children, often with irreversible consequences, resulting in significant physical and psychological suffering;

(d) The pressure placed on parents of intersex children by medical professionals, the media and society at large, which often forces them to give their consent for so-called “medical procedures”, justified by psychosocial indications; and the fact that intersex children and adults are often unaware of the procedures to which they have been subjected, while access to legal remedies for intersex persons affected by unnecessary medical procedures is extremely limited, with the statute of limitations often expiring by the time that intersex children reach adulthood;

(e) The lack of integration of intersex persons and their families into interdisciplinary working groups and the failure to consult those directly affected by these procedures in decisions that affect their lives.

25. *In the light of 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), the Committee recommends that the State party:*

(a) Systematically collect disaggregated data on harmful practices in the State party
[...]

(c) Ensure that, in line with recommendations by the Swiss National Advisory Commission on Biomedical Ethics, no child is subjected to unnecessary medical or surgical treatment during infancy or childhood, adopt legislation to protect the bodily integrity, autonomy and self-determination of intersex persons and provide families with intersex children with adequate counselling and support;

(d) Adopt legal provisions, under the guidance of the courts, in order to provide redress to intersex persons affected by cases of surgical or other medical treatment without their free, prior and informed consent by or that of their parents;

(e) Educate and train medical professionals on the harmful impact of unnecessary surgical or other medical interventions for intersex children and ensure that the views of intersex persons are fully considered by the interdisciplinary working groups established to review these procedures.

2. Cruel, Inhuman or Degrading Treatment

a) CAT 2015, CAT/C/CHE/CO/7, para 20

Intersex persons

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

The Committee recommends that, in light of the forthcoming decision by the Federal Council, the State party:

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

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

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

b) CCPR 2017, CCPR/C/CHE/CO/4, paras 24-25

Intersex persons

24. *The Committee takes note of the work of the National Advisory Commission on Biomedical Ethics regarding intersexuality and of the 6 July 2016 press statement by the Federal Council. It remains concerned, however, that the performance of surgical procedures on intersex children, causing physical and mental suffering, is still not strictly regulated. It also wishes to express concern that the conduct of surgery without consent has not yet given rise to any inquiry, sanction or reparation (arts. 3, 7, 24 and 26).*

25. The State party should: (a) take all necessary measures to ensure that no child undergoes unnecessary surgery intended to assign sex; (b) see to it that medical records are accessible and that inquiries are launched in cases where intersex persons are subjected to treatment or surgical procedures without their effective consent; and (c) ensure that psychological assistance and reparation, including compensation, are provided for victims of needless surgical procedures.

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

1. Intersex is NOT THE SAME as LGBT or SOGI

Unfortunately, there are several **harmful misconceptions about intersex** still prevailing in public, including if intersex is counterfactually described as being the same as or a subset of LGBT or SOGI, e.g. if intersex and/or intersex status are represented as a sexual orientation (like gay or lesbian), and/or as a gender identity, as a subset of transgender, as the same as transsexuality,⁷ or as a form of sexual preference.

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

Intersex persons and their organisations have **spoken out clearly against instrumentalising or misrepresenting intersex issues**,⁸ maintaining that Intersex Genital Mutilations present a **distinct and unique issue** constituting significant human rights violations, which are different from those faced by the LGBT or SOGI community, and thus need to be **adequately addressed in a separate section as specific intersex issues**. Also, **human rights experts** are increasingly warning of the **harmful conflation** of intersex and LGBT.⁹

Nonetheless, the **pervasiveness and persistence** of these harmful misconceptions remains, as illustrated for example by UN press releases misrepresenting IGM as “*sex alignment surgeries*” (i.e. voluntary procedures on transsexual or transgender persons), IGM survivors as “*transsexual children*”, and intersex NGOs as “*a group of lesbians, gays, bisexuals, transgender and intersex victims of discrimination*”,¹⁰ and in particular by **State parties** constantly **misrepresenting intersex and IGM as sexual orientation or gender identity issues** in an attempt to **deflect from criticism**, instead referring to e.g. “*gender reassignment surgery*” (i.e. voluntary procedures on transsexual or transgender persons) and “*gender assignment surgery for children*”,¹¹ “*sexual orientation and gender identity*”, “*civil registry*” and “*sexual reassignment surgery*”¹², when asked about IGM by Treaty bodies.

Indeed, **Switzerland officially rejected to implement** this Committee’s recommendations on harmful practices on intersex children, **prioritising civil registry reform instead, i.e. easier change of gender marker mostly for trans people**:

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

8 For references, see 2016 CEDAW NGO Report France, p. 40, fn 49. <http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

9 For example ACHPR Commissioner Lawrence Murugu Mute (Kenya), see <http://stop.genitalmutilation.org/post/ACHPR-African-Commissioner-warns-Stop-conflating-intersex-and-LGBT>

10 CAT60 Argentina, <http://stop.genitalmutilation.org/post/UN-Press-Release-calls-IGM-survivors-transsexual-children-CATArgentina-UNCAT60>

11 CRC73 New Zealand, <http://stop.genitalmutilation.org/post/NZ-to-be-Questioned-over-Intersex-Genital-Mutilations-by-UN-Committee-on-the-Rights-of-the-Child>

12 CCPR120 Switzerland, <http://stop.genitalmutilation.org/post/Pinkwashing-of-Intersex-Genital-Mutilations-at-the-UN-CCPR120>

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

In **Switzerland** (2015: CRC/C/CHE/CO/2-4, paras 42-43; 2015: CAT/C/CHE/CO/7, para 20; 2016: CEDAW/C/CHE/CO/4-5, paras 24–25, 38–39; CCPR/C/CHE/CO/4, paras 24-25), same as in the **neighbouring states** of *France* (CRC/C/FRA/CO/5, paras 47-48; CAT/C/FRA/CO/7, paras 32–33; CEDAW/C/FRA/CO/7-8, paras 17e-f + 18e-f), *Germany* (CAT/C/DEU/CO/5; para 20; CRPD/C/DEU/CO/1, paras 37-38; CEDAW/C/DEU/CO/7-8, paras 23–24), *Austria* (CAT/C/AUT/CO/6, paras 44-45), *Italy* (CRC/C/ITA/CO/5-6, para 23; CRPD/C/ITA/CO/1, paras 45-46), and *Liechtenstein* (CEDAW/C/LIE/CO/5, paras 35+36(c)), **there are** still

- **no legal or other protections** in place to ensure the rights of intersex children to physical and mental integrity, autonomy and self-determination, and to prevent IGM practices
- **no measures** in place to ensure **data collection and monitoring** of IGM practices
- **no legal or other measures** in place to ensure the **accountability** of IGM perpetrators
- **no legal or other measures** to ensure **access to redress and justice** for adult IGM survivors

All forms of **IGM practices remain widespread and ongoing**¹³ – advocated, facilitated and **paid for by the State party** via the **Swiss federal Disability Insurance** (Invalidenversicherung IV) according to its **List of Birth Defects** (Liste der Geburtsgebrechen) covering intersex surgeries on children until the age of 20, but not for consenting adults¹⁴

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

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

In particular, the **Swiss government officially rejected to implement this Committee’s recommendations on harmful practices on intersex children**, as documented in its December 2018 report “*Measures to close gaps in the implementation of the Convention on the Rights of the Child. Report of the Federal Council as a result of the recommendations of the UN Committee on the Rights of the Child to Switzerland of 4 February 2015*”.¹⁵

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

14 Swiss National Advisory Commission on Biomedical Ethics NEK-CNE (2012), On the management of differences of sex development. Ethical issues relating to “intersexuality”, No. 20/2012, at 15-17, http://www.nek-cne.ch/fileadmin/nek-cne-dateien/Themen/Stellungnahmen/en/NEK_Intersexualitaet_En.pdf
For the relevant numbers in the List of Birth Defects, see <http://blog.zwischengeschlecht.info/pages/Kosmetische-Genitaloperationen-Ziffern-Liste-der-Geburtsgebrechen>
For relevant numbers in most frequent current IGM practices see 2017 CCPR Swiss NGO Report, p. 8-10, <http://intersex.shadowreport.org/public/2017-CCPR-Swiss-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

15 Full report (19.12.2018), <https://biblio.parlament.ch/e-docs/1901442546.pdf>
Media release (19.12.2018), “*Convention on the Rights of the Child: Report on further measures for implementation*”, <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-73468.html>

On the bright side, the Swiss government report **officially acknowledged** the Committee’s “criticism” of the “*handling of harmful practices such as female genital mutilation or surgical interventions on intersex children*” under “*Violence against children*”.¹⁶

However, in the end the **Swiss Federal Council** explicitly decided **not to implement** recommendation 43(b), but to officially “*reject*” it, **prioritising civil registry reform instead**, i.e. easier change of gender marker mostly for trans people (“*Amendment of the Civil Code (CC; SR 210). Currently in the evaluation phase at the normative approach level*”).¹⁷ Despite the fact that **civil registry reform is in no way a remedy for IGM practices**, and despite that neither intersex NGOs, nor this or other Committees **ever called for it**, but to **effectively address harmful practices** against intersex children.

Emboldened by such official protection, in spring 2019 Swiss IGM doctors announced a new “*Switzerland-wide agreement of DSD treatment teams*”. While the agreement itself was **kept secret and not published**, the Press release nonetheless makes it clear that in the end non-consensual, unnecessary genital surgery and other treatment on intersex children **at the behest of doctors and parents** will continue:¹⁸

“The treatment teams have agreed on a basic attitude for the treatment of patients: The surgical interventions on the child’s genitals, which were strongly criticised in the past, should no longer be an independent treatment method in all Swiss clinics, but should only be carried out in conjunction with comprehensive care and accompaniment of the family - and whenever possible with the informed consent of the adolescent affected person.”

This insistence on continuing with **cosmetic procedures justified by psycho-social indications** was also reaffirmed in a media interview on the agreement by **surgeon Rita Gobet** (Zurich University Children’s Hospital):¹⁹

“Do not forbid surgeries

Sex-aligning surgeries should still be possible and not banned, as demanded by an initiative in the Geneva cantonal parliament last year. ‘If, despite the counseling, the parents cannot bear to live with the “shame” and a whole team comes to the conclusion that surgery is the best solution, it should remain possible,’ says Rita Gobet. Otherwise, there is a risk that a black market will develop or that those affected will go abroad for the operation’.”

Gobet’s allegations of a dangerous foreign black market in turn highlight **how little has changed** in Switzerland, as they strikingly resemble the **2011 sentiments** of fellow IGM doctor **Christian Kind** (then President “Central Ethics Commission (ZEK)” of the “Swiss Academy of Medical

16 p. 8 of the report (p. 18 in PDF):

“Violence against children [...] In addition to the demand for an explicit ban on corporal punishment, this topic also includes the handling of harmful practices such as female genital mutilation or surgical interventions on intersex children, the handling of mistreatment, abuse, neglect and domestic violence. The lack of data on these crimes and offences is also the subject of international criticism.”

17 p. 58 of the report (p. 70 in PDF)

18 Zurich University Children's Clinic, Media Release (13.05.2019): “DSD: Switzerland-wide agreement of treatment teams”,

https://www.kispi.uzh.ch/de/medien/medienmitteilungen/2019/Documents/190513_Medienmitteilung_DSD%20Einigung%20Behandlung.pdf

19 Katrin Oller: “Intersexualität: Operation soll letzte Option sein”, Der Landbote (13.05.2019),

<https://www.landbote.ch/front/Intersexualitaet-Operation-soll-letzte-Option-sein/story/31642497>

Sciences (SAMW-ASSM)” and President of the Association “Swiss Pediatrics (SSP)”:²⁰

“[...] For Chief Physician Christian Kind, the demands of ‘Zwischengeschlecht.org’ go too far. [...] According to Christian Kind, whether or not a child will undergo a sex-aligning surgery has a lot to do with the parents: ‘If the parents cannot accept an intersex child, then it may be better for the child’s well-being to operate.’

‘Better here than in the East’

Daniela Truffer disagrees. ‘The integrity of the child must have the highest priority. If a child screams too loudly for the parents’ taste, you don’t remove his vocal chords either.’

Christian Kind sees this pragmatically: ‘I prefer to treat the children here rather than have the parents go to the East and have the operation carried out there’. [...]”

3. Recommendations and their (Non-)Implementation

a) Legislative and other measures to prevent IGM

43. *The Committee draws the attention of the State party to the joint recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices (2014), and urges the State party to: [...]*

(b) In line with the recommendations of the National Advisory Commission on Biomedical Ethics on ethical issues relating to intersexuality, ensure that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to the children concerned [...].

The **CRC-CEDAW Joint General Comment/Recommendation No. 18/31 “on harmful practices”** invoked by the Committee “*call[s] upon States parties to **explicitly prohibit by law and adequately sanction or criminalize** harmful practices, in accordance with the gravity of the offence and harm caused, provide for means of prevention, protection, recovery, **reintegration and redress for victims and combat impunity** for harmful practices”* (para 13).

Particularly, the Joint General Comment/Recommendation further underlines the need for a “**Holistic framework** for addressing harmful practices” (paras 31–36), including “**legislative, policy and other appropriate measures** that must be taken to ensure full compliance with [state parties’] obligations under the Conventions to eliminate harmful practices” (para 2), as well as

“*Legislation and its enforcement*” (paras 40–55), particularly:

“*adequate civil and/or administrative legislative provisions*” (para 55 (d))

“*equal access to legal remedies and appropriate reparations in practice*” (para 55 (q)).

And **Recommendation No. 12** of the recommendations of the **National Advisory Commission on Biomedical Ethics** also invoked by the Committee explicitly stipulates:²¹

“12. There should be a legal review of the liability implications of unlawful interventions in childhood, and of the associated limitation periods. Questions of criminal law, such as the applicability of offences of assault (Art. 122 and 123, StGB) and the prohibition on genital

20 Jeanette Herzog, Zwist um Zwitter-Operationen, St. Galler Tagblatt (11.02.2011), <https://www.tagblatt.ch/ostschweiz/zwist-um-zwitter-operationen-ld.670674>

21 p. 19, https://www.nek-cne.admin.ch/inhalte/Themen/Stellungnahmen/en/NEK_Intersexualitaet_En.pdf

mutilation (Art. 124, StGB), should also be investigated.”

And explicitly referring to this Committee’s recommendations and the National Advisory Commission on Biomedical Ethics, also the **Committee against Torture** recommended Switzerland to “[t]ake the necessary legislative, administrative and other measures” to end the practice (CAT/C/CHE/CO/7, para 20).

And the **Committee on the Elimination of Discrimination against Women**, again explicitly referring to CRC-CEDAW Joint General Comment/Recommendation No. 18/31 “on harmful practices” and the National Advisory Commission on Biomedical Ethics, recommended Switzerland to “adopt legislation to protect the bodily integrity, autonomy and self-determination of intersex persons” (CEDAW/C/CHE/CO/4-5, paras 24-25).

And the **Human Rights Committee**, again explicitly referring to the National Advisory Commission on Biomedical Ethics, recommended Switzerland to “take all necessary measures” to end the practice (CCPR/C/CHE/CO/4, paras 24-25).

However, to this day the **Swiss government**, despite 2016 finally acknowledging IGM practices having been “denounced at the political level by the Federal Parliament and Council as well as by the National Ethics Commission in its Opinion No. 20/2012 ‘On the management of differences of sex development. Ethical issues relating to intersexuality’” (2016 CCPR State Report, para 188),²² and further acknowledging that IGM practices result in “considerable consequential damage and severe suffering of persons concerned” (2016 Statement on NEK-CNE recommendations),²³ **undeviatingly refuses** to take effective legislative, administrative, judicial or other measures to protect intersex children, nor to facilitate data collection, but instead **counterfactually claims**:

- IGM practices would be **strictly a thing of the “past”**²⁴
- the recommendations of the **Swiss National Ethics Commission (NEK-CNE)** concerning the Federal Government would all be “**already implemented or in the process of being implemented**” (with the only exception of the “free psychosocial support” for persons and families concerned which would be “impossible” to finance, see below).²⁵

On Human Rights Day, 10 December 2015 the NGO StopIGM.org had **urged the Swiss government** in an Open Letter to legislate against IGM practices, referring to the **Swiss National Ethics Commission NEK-CNE** and the **CAT** and **CRC** Concluding observations.²⁶ The government decided to accept the Open Letter as a Petition.²⁷

Based on above listed **counterfactual claims** by the Federal government, the **Legal Affairs Committees** both of the Council of States (**LAC-S**, 23.01.2017)²⁸ and the National Council

22 CCPR/C/CHE/4,

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

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

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

25 ibid.

26 http://zwischen-geschlecht.org/public/Offener_Brief_Zwischengeschlecht_Bern_10-12-2015.pdf

27 ibid., p. 3

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

(LAC-N, 06.04.2017),²⁹ while conceding that “*premature unnecessary*” genital surgery “*constitutes a violation of the right to physical integrity*”, stated the existing **legislation would be “sufficient” to protect** intersex children, and there would be “*no further need for legislation*”, with LAC-N further claiming, “*We believe medical professionals are nowadays sufficiently sensitised to the issue and only undertake such interventions when they are justified.*”³⁰

In consequence, both LAC-N and LAC-S then **moved to reject** legislation as recommended by CAT, CRC, CEDAW and NEK-CNE, with both the **Council of the State** (16.03.2017)³¹ and the **National Council** (16.06.2017)³² following suit.

To this day, the Canton of Geneva remains the only community where the Parliament actually moved to prohibit IGM practices: On 10 April 2019, the **Great Council of the Republic and Canton of Geneva** adopted **two motions** calling on the Cantonal government to explicitly “*prohibit*” the “*mutilations of intersex persons*”.³³ Notably, during the debate before the adoption, both a member of the **Great Council** and a member of the **Cantonal government** proclaimed that at the Geneva University Hospital (HUG) **allegedly there had been “no operations since 2012”**.³⁴ Unfortunately, this is far from the truth.³⁵ As the next step, the Cantonal government should propose a draft law at some point.

b) Free psychosocial support

(b) *In line with the recommendations of the National Advisory Commission on Biomedical Ethics on ethical issues relating to intersexuality, [...] provide families with intersex children with adequate counselling and support.*

The Federal Council, in its **2016 Statement on NEK-CNE recommendations**,³⁶ stated “*free psychosocial support*” for persons and families concerned would be “*impossible*” to finance, and therefore according to the Federal Council this CRC, CEDAW, CAT, CCPR and NEK-CNE **recommendation would not be implemented** (while claiming all other recommendation would “*already [be] implemented or in the process of being implemented*”, see above p. 13).

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

30 *ibid.*

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

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

33 Motion 2491 “*to end the mutilations of intersex people*”, <http://ge.ch/grandconseil/search?search=2491>

Motion 2541 “*No more mutilations practiced on intersex people*”, <http://ge.ch/grandconseil/search?search=2541>

Protocol of the Great Council of the Republic and Canton of Geneva (10 April 2019, 21:00-22:35, Item 123),

<http://ge.ch/grandconseil/sessions/seances-pv-lion/22/?session=66>

See also statement of StopIGM.org to the Great Council (26.09.2018),

<http://stop.genitalmutilation.org/public/StopIGM-Geneve-M2491-mutilations-personnes-intersexes.pdf>

34 See statements of Céline Zuber-Roy (21h47:21) and Mauro Poggia (21h48:21),

<http://ge.ch/grandconseil/sessions/video/020111/66/>

35 For example, Dr Jacques Birraux’s 2017 thesis “*Management of disorders of sexual development: State of the art. A Surgeon’s perspective in Western Switzerland*”, openly promotes “*early surgery*” regarding

“*masculinization genitoplasty*”, as well as “*feminization genitoplasty*” (p. 37 in thesis, p. 40 in PDF),

<https://archive-ouverte.unige.ch/unige:103975>

Also the HUG homepage continues to openly advocate various IGM practices, stressing “*The ideal age to*

perform the surgery is between 1 and 2 years.”, see statement of StopIGM.org to the Great Council

(26.09.2018), p. 8, <http://stop.genitalmutilation.org/public/StopIGM-Geneve-M2491-mutilations-personnes-intersexes.pdf>

36 Swiss Federal Council, press release 06.07.2016, *Personnes aux caractéristiques sexuelles ambiguës :*

sensibiliser davantage, <https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-62507.html>

c) Impartial investigation, redress and compensation

43. *The Committee draws the attention of the State party to the joint recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices (2014), and urges the State party to: [...]*

(b) *In line with the recommendations of the National Advisory Commission on Biomedical Ethics on ethical issues relating to intersexuality, ensure that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to the children concerned [...].*

The **CRC-CEDAW Joint General Comment/Recommendation No. 18/31 “on harmful practices”** invoked by the Committee “*call[s] upon States parties to [...] provide for means of prevention, protection, recovery, **reintegration and redress for victims and combat impunity for harmful practices**” (para 13).*

Particularly, the Joint General Comment/Recommendation further underlines the need for

“Data collection and monitoring” (paras 37–39)

*“provisions on **regular evaluation and monitoring**, including in relation to implementation, enforcement and follow-up” (para 55 (n))*

*“**equal access to justice**, including by **addressing legal and practical barriers to initiating legal proceedings, such as the limitation period**, and that the **perpetrators and those who aid or condone such practices are held accountable**” (para 55 (o))*

*“equal access to **legal remedies and appropriate reparations in practice**” (para 55 (q)).*

And **Recommendation No. 12** of the recommendations of the **National Advisory Commission on Biomedical Ethics** also invoked by the Committee explicitly stipulates:³⁷

“12. There should be a legal review of the liability implications of unlawful interventions in childhood, and of the associated limitation periods. Questions of criminal law, such as the applicability of offences of assault (Art. 122 and 123, StGB) and the prohibition on genital mutilation (Art. 124, StGB), should also be investigated.”

And explicitly referring to this Committee’s recommendations and the National Advisory Commission on Biomedical Ethics, also the **Committee against Torture** recommended Switzerland to “*[u]ndertake investigation of reports of surgical and other medical treatment of intersex people without effective consent and **adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation**” (CAT/C/CHE/CO/7, para 20).*

And the **Committee on the Elimination of Discrimination against Women**, again explicitly referring to CRC-CEDAW Joint General Comment/Recommendation No. 18/31 “on harmful practices” and the National Advisory Commission on Biomedical Ethics, recommended Switzerland to “*[a]dopt **legal provisions**, under the guidance of the courts, in order to **provide redress to intersex persons affected by cases of surgical or other medical treatment without their free, prior and informed consent by or that of their parents**” (CEDAW/C/CHE/CO/4-5, paras 24-25).*

And the **Human Rights Committee**, again explicitly referring to the National Advisory Commission on Biomedical Ethics, recommended Switzerland to “*(b) see to it that medical records*

37 p. 19, https://www.nek-cne.admin.ch/inhalte/Themen/Stellungnahmen/en/NEK_Intersexualitaet_En.pdf

are accessible and that *inquiries are launched in cases where intersex persons are subjected to treatment or surgical procedures without their effective consent*; and (c) ensure that *psychological assistance and reparation, including compensation, are provided for victims of needless surgical procedures.*” (CCPR/C/CHE/CO/4, paras 24-25)

Nonetheless, in 2016 the **Zurich University Hospital** was allowed to **destroy about 80% of its historic medical files documenting IGM practices**³⁸ as part of a “*scientific review of the treatment of children with differences of sex development (DSD children)*” funded by the **Swiss National Science Foundation (SNSF)** with Sfr 500’000.–³⁹ and led by the perpetrator institutions **Zurich University Hospital** and **Zurich University** themselves, but **without adequate consultation of intersex persons and their organisations**. As a result, for example a **member of the self-help group Intersex.ch** (see **Case No. 1** in the 2015 CRC Swiss NGO Report) who wanted to access his files, was told that while at the **Zurich State Archives** there was still a note in the register confirming in 1945 and 1946 he was in treatment at the **Department of Surgery of the Zurich University Children’s Hospital**, the **actual files were no longer available**.⁴⁰ This outrageous destruction of evidence was also **corroborated by a Parliamentary inquiry** in the Cantonal Council of Zurich.⁴¹

Concerning access to **redress and justice**, to this day the **statutes of limitation** prevent survivors of early childhood IGM practices to call a court because persons concerned often **do not find out** about their medical history until much later in life, which in combination with severe trauma caused by IGM practices often proves to amount to a severe obstacle.⁴² Also in **Switzerland** the statutes of limitations effectively **prohibit survivors of early childhood IGM practices to call a court**, as also noted by **Swiss paediatric surgeon Blaise Meyrat**, who in 2015 plainly stated:

*“Things hardly evolve in the medical world. In my opinion, only the fear of the judge will make things change. We need statutes of limitation long enough so that victims may sue as adults.”*⁴³

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

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

40 E-mails Zurich State Archives, 19.01.2017 and 21.03.2017

41 See Zurich Cantonal Council inquiry (328/2018): Destruction of files concerning operations on children with variations of sex development in the Zurich Children’s Hospital,

<http://www.kantonsrat.zh.ch/Geschaefte/Geschaefte.aspx?GeschaefteID=515cf4f3-1641-43f0-8fe4-9e28b9bf28df>

StopIGM.org (28.10.2018), “Zurich University Children’s Hospital: Destruction of medical recrds instead of reappraisal”, <http://stop.genitalmutilation.org/post/Intersex-Awareness-Day-2018>

Fabian Baumgartner, Jan Hudec (2018): Akten von Intersex-Patienten vernichtet, NZZ 01.11.2018, p. 29,

<https://www.nzz.ch/zuerich/die-intersex-kinder-weshalb-akten-zu-umstrittener-behandlung-am-zuercher-kinderspital-vernichtet-worden-sind-ld.1432386>

Katrin Oller: Intersexualität: Bei Aufarbeitung wurden Akten vernichtet, Der Landbote 31.12.2018,

<https://www.landbote.ch/ueberregional/intersexualitaet-bei-aufarbeitung-wurden-akten-vernichtet/story/24989187>

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

43 Tribune de Genève / 24 heures, 03.08.2016, p. 5 respectively 6. English translation:

<http://stop.genitalmutilation.org/post/IGM-Only-Fear-of-the-Judge-Will-Make-Surgeons-Change>

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

Also concerning **data collection and monitoring**, the government continues to **promise but not deliver**. For example, while during the **2015 CRC review of Switzerland**, the Swiss delegation again promised that *“the government wishes to collect information on surgery on intersex grounds. For the time being we have no clear data, the Federal Office for Statistics and the Federal Office for Public Health are now working together to develop a design for the collection of data, and the information on such surgery will allow us to gain a better appraisal of the situation”*,⁴⁴ in 2016 the State party nonetheless just reiterated its **old incomplete 2011 figure** of *“1-3 treatments per age group”* (**2016 CCPR State report**, para 188, fn 97).

To this day **not even reliable figures on IGM practices are available**.⁴⁵ The indefensibility of this situation is even implicitly admitted by IGM doctors themselves, e.g. Jacques Birraux (HUG Geneva), *“Although this may seem absurd, we don't have any figures,” says Dr. Jacques Birraux. “We'll need another decade to get Swiss figures.”*⁴⁶

4. Conclusion: Switzerland is failing its obligations towards intersex people under CRC, CRC-CEDAW JGR No. 18/32 and CRC/C/CHE/CO/2-4, paras 42-43

As substantiated above, **Switzerland is categorically failing to meet its obligations** towards intersex people **resulting from the Concluding observations of this Committee** (paras 42-43).

Regarding IGM practices, Switzerland is **openly rejecting** its obligation to take **effective legislative, administrative, judicial or other measures** to prevent harmful practices on intersex children (Art. 24(3) CRC in conjunction with the CRC-CEDAW JGR No. 18/32), as well as the CRC, CEDAW, CAT, CCPR and NEK-CNE recommendations to guarantee access to **adequate psychosocial and peer support**.

Victims of IGM practices unchangedly encounter **severe obstacles** in the pursuit of their right to an **impartial investigation** and to **redress** and fair and adequate compensation, including the means for as **full rehabilitation** as possible (Art. 24(3) CRC in conjunction with the CRC-CEDAW JGR No. 18/32, see also CEDAW, CAT and CRPD Concluding observations).

Also, Switzerland's efforts on **data collection and monitoring of IGM practices** remain grossly insufficient (Art. 24(3) CRC in conjunction with the CRC-CEDAW JGR No. 18/32).

44 Transcript, <http://stop.genitalmutilation.org/post/Transcript-Intersex-QA-CRC-Geneva-2015>

45 See Interpellation National Council 18.3470, Operations on children affected by a variation of sex development. More transparency, <https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20183470>

46 Lucie Fehlbaum, “Avancée inédite contre la mutilation des intersexes”, 20minutes 18.04.2019, <https://www.20min.ch/ro/news/geneve/story/Un--gigantesque-pas-en-avant--pour-les-intersexes-26455395>

D. Suggested Questions for the LOIPR

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

Harmful Practices: Intersex Genital Mutilation (art. 24(3))

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