

## List of Issues and Written Replies of the Swiss Government

2<sup>nd</sup> – 4<sup>th</sup> Periodic Report of Switzerland on the Convention on the Rights of the Child (CRC)

*Zwischengeschlecht.org is an international Intersex human rights NGO based in Switzerland.*

**This submission is endorsed by: Intersex.ch** (Swiss peer support group), **SI Selbsthilfe Intersexualität** (Swiss parent's peer support group), **Terre des Femmes Switzerland** (Women's and girls' human rights NGO)

**Our concern is seconded by: Child Rights Network Switzerland**

5 December 2014

Dear Committee on the Rights of the Child

We would like to express our **grave concern regarding the Committee's decision not to mention the non-consensual, irreversible, medically unnecessary, cosmetic genital surgeries on intersex children justified by psychosocial indications** in the List of Issues for Switzerland (LoI) (CRC/C/CHE/Q/2-4)<sup>1</sup>, but to exclusively focus on LGBTI stigmatisation instead (section I, para 7). The Committee thus misses a window of opportunity to change the fate of intersex children in Switzerland.

As referenced in our thematic NGO report (INT/CRC/NGO/CHE/18022/E)<sup>2</sup>, this ongoing harmful practice of unnecessary surgeries imposed on defenceless children (p. 13), and in consequence

- the **need for legal review** to stop it (p. 20),
- the **lack of data collection and monitoring** (p. 20), and
- the **lack of disinterested research** (p. 19),

have again and again been **identified as the most harmful and pressing issue faced by intersex children**, both by persons concerned and their organisations (p. 11-12), as well as by human rights bodies including OHCHR, CAT, Special Rapporteur on Torture, Council of Europe, and the Swiss National Advisory Commission on Biomedical Ethics (p. 28–30).

The following **new developments** that have taken place since we submitted our thematic NGO report last spring, further stress the importance of the topic and the need to act:

- on 12 May, the CRPD asked for data collection regarding “*irreversible surgical procedures have been undertaken on intersexual children*” and “*to stop this practice*” in the LoI for Germany (CRPD/C/DEU/Q/1<sup>3</sup>, paras 12-14), and

1 [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHE%2fQ%2f2-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHE%2fQ%2f2-4&Lang=en)

2 [http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM\\_v2.pdf](http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf)

3 [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fDEU%2fQ%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fDEU%2fQ%2f1&Lang=en)

- a May 2015 interagency statement by WHO, UNICEF, OHCHR, UN Women, UNAIDS, UNDP and UNFPA “Eliminating forced, coercive and otherwise involuntary sterilization”<sup>4</sup> explicitly highlighted not only sterilising procedures but also generally harmful genital surgeries on intersex children:

*“Children who are born with atypical sex characteristics are often subjected to cosmetic and other non-medically indicated surgeries performed on their reproductive organs, without their informed consent or that of their parents, and without taking into consideration the views of the children involved [...] As a result, such children are being subjected to irreversible interventions that have lifelong consequence for their physical and mental health [...].”* (p. 7)

To prevent such harmful interventions, and in accordance with the recent Joint general 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 (CEDAW/C/GC/31-CRC/C/GC/18<sup>5</sup>, especially paras 14, 30-54), the interagency statement explicitly calls for “[a]ccountability, participation and access to remedies” (p. 12) including “[to] review, amend and develop laws” (p. 13), as well as for “[m]onitoring and compliance” including “[to] [c]ollect data” (p. 16).

(These and more recent developments have also been transmitted to the Committee by the NGO Zwischengeschlecht.org via Child Rights Connect on June 9, 2014.)

In addition, during a hearing with WHO representatives in September 2014, a OHCHR Human Rights Officer pointed out that

- also the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health already in 2009 explicitly highlighted “*intersex genital surgery, which is a painful and high-risk procedure with no proven medical benefits*” (A/64/272<sup>6</sup>, para 49, Fn 67).

### **The CRC LoI not mentioning unnecessary intersex genital surgeries has immediate consequences for intersex children in Switzerland:**

Of all the **measures and actions listed by the state party** in their reply regarding LGBTI stigmatisation (CRC/C/CHE/Q/2-4/Add.1<sup>7</sup>, “Mesures relatives aux jeunes LGBTI”, p. 9), **not a single one actually tackles intersex stigmatisation/discrimination**. Nonetheless, we are pleased to report that in accordance with the LoI, the Swiss Centre of Expertise in Human Rights (SCHR) under the auspices of the Swiss Federal Department of Justice is at least conducting a **scientific study “Access to Justice in Cases of Discrimination”**, which explicitly includes intersex persons and children (but disregards the factual lack of access to justice in case of non-consensual childhood surgeries).

On the other hand, regarding the most serious and pressing issue of the **ongoing unnecessary and harmful genital surgeries on intersex children**, despite the clear 2012 recommendations by the Swiss National Advisory Commission on Biomedical Ethics calling for legal review, **the state**

4 [http://www.who.int/iris/bitstream/10665/112848/1/9789241507325\\_eng.pdf](http://www.who.int/iris/bitstream/10665/112848/1/9789241507325_eng.pdf)

5 [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/CEDAW\\_C\\_GC\\_31\\_CRC\\_C\\_GC\\_18\\_7557\\_E.doc](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_31_CRC_C_GC_18_7557_E.doc)

6 <http://www.refworld.org/pdfid/4aa762e30.pdf>

7 [http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/CHE/CRC\\_C\\_CHE\\_Q\\_2-4\\_Add-1\\_18733\\_F.doc](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/CHE/CRC_C_CHE_Q_2-4_Add-1_18733_F.doc)

**party still refuses to take any action at all**, but allows the non-consensual surgeries to continue with factual impunity despite the evidence of harm done by such surgeries obviously in violation of human rights covenants.

What is more, since doctors specialising in genital surgeries on intersex children are known to monitor and consider relevant UN proceedings,<sup>8</sup> there is **reasonable cause for concern** that both international and **Swiss doctors will construe further silence by the Committee as encouragement to continue with unnecessary surgeries on intersex children**, directly resulting in more harm done to defenceless children.

**Therefore, we would like to again urge the Committee to address unnecessary genital surgeries on intersex children justified by psychosocial indications** in the forthcoming 68<sup>th</sup> Session, and, in accordance with above mentioned UN bodies and the recommendations by the Swiss National Advisory Commission on Biomedical Ethics<sup>9</sup>, in their concluding observations **to recommend that Switzerland**

- **initiates a legal review** of harmful unnecessary genital surgeries on intersex children in order to prevent further harm, and to ensure access to legal redress, in consultation with persons concerned and their organisations
- **facilitates data collection and independent monitoring** of births of children with variations of sex anatomy, and their medical treatment, in consultation with persons concerned and their organisations
- **facilitates disinterested research** on long-term patient satisfaction of surgical and other procedures on intersex children, in consultation with persons concerned and their organisations

We thank you very much for your consideration.

Kind regards

Daniela Truffer, Markus Bauer  
Zwischengeschlecht.org / StopIGM.org

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8 • Pierre Mouriouand et al., “The ESPU/SPU standpoint on the surgical management of Disorders of Sex Development (DSD)”, *Journal of Pediatric Urology* (2014) 10, 8-10, at 8  
 • Faisal S. Ahmed et al., 19th April 2013. *Letter to Mr JE Mendez Special Rapporteur on Torture Office of the High Commissioner for Human Rights on the A/HRC/22/53 – Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, <http://aiclegal.org/endocrinologists-respond-to-un-statement-on-genital-normalizing-surgery/>  
 • Peter A Lee et al., “Advances in Diagnosis and Care of Persons with DSD over the Last Decade,” *International Journal of Pediatric Endocrinology* (2014). 1: 19, p. 4, <http://www.ijpeonline.com/content/pdf/1687-9856-2014-19.pdf>  
 • Olaf Hiort et al., “Management of disorders of sex development”, *Nature Reviews Endocrinology* (2014) 10: 520–529, at 525

9 Opinion No. 20/2012, “On the management of differences of sex development. Ethical issues relating to ‘intersexuality’”, [http://www.nek-cne.ch/fileadmin/nek-cne-dateien/Themen/Stellungnahmen/en/NEK\\_Intersexualitaet\\_En.pdf](http://www.nek-cne.ch/fileadmin/nek-cne-dateien/Themen/Stellungnahmen/en/NEK_Intersexualitaet_En.pdf)