

23rd January 2017

Dear Committee Members,

ITANZ is a New Zealand registered charitable trust that provides information, education and training for organisations and professionals who provide services to intersex people and their whānau (family). We submit the following information in preparation for the review of New Zealand’s obligations under the Convention Against Torture.

We wish to draw attention to the committee that the term “Intersex and DSD" is a Western centric way of looking at sex, gender and gender identity. Here in Aotearoa New Zealand we have an indigenous Māori construction of these identities, Takatāpui[[1]](#footnote-1), as well as indigenous knowledge from our Pacific neighbors and other migrant communities. We acknowledge all of these culturally diverse understandings of bodies and identities in Aotearoa, New Zealand.

ITANZ last submitted a report on the experiences of intersex people who are living in Aotearoa, New Zealand to the committee on the 13th of January 2015. We provide this report as an updated document.

This submission has been prepared on behalf of ITANZ by our human rights and research intern, Aych McArdle, in consultation with Board members and key stakeholders.

**1. The preservation of life and right to genital autonomy**

We are concerned that current medical practice for intersex/DSD children in Aotearoa, New Zealand continues to include genital surgery for reasons other than the preservation of life. We note the Special Rapporteur on Torture’s comments on regarding non- consensual medical interventions on intersex children, which were described as resulting in “permanent, irreversible infertility and causing severe mental suffering.”[[2]](#footnote-2)

At the fifth periodic review by the Committee on the Rights of the Child in 2016 the New Zealand government was asked to clarify if “corrective” surgeries are still being performed on intersex children. In response to this line of questioning, we believe Dr Patrick Tuohy (pediatrician) confused intersex surgical interventions with transgender surgical interventions (which are not available in New Zealand due to the retirement of the only surgeon working in this field) and denied the occurrence of “normalizing surgeries” on intersex children. Dr Tuohy stated that this has been the case since 2006.[[3]](#footnote-3)

We counterclaim that non-consensual infant genital surgeries *are* still being performed in Aotearoa, New Zealand. These surgeries are driven by aesthetic concerns, heteronormative bias and binary constructions of gender, and on this basis undermine a child’s right to bodily integrity.

**2. Bodily integrity**

We affirm the Child Rights International Network description of bodily integrity as being “the right of each human being, including children, to autonomy and self-determination over their own body”[[4]](#footnote-4) and we endorse their position that “unconsented physical intrusion” is a human rights violation. Surgeries that are performed on us without our consent and/or a full understanding of the impact of these decisions, compromise our bodily integrity.

We call on the New Zealand government to implement effective legislative and professional standards for the medical profession to protect intersex children from surgical decisions that compromise the bodily integrity of intersex persons.

**3. Legal protections**

In Aotearoa, New Zealand there is no legal protective legislation under our Human Rights Act that specifies intersex status, gender identity and gender expression as grounds of non-discrimination.

We call on the New Zealand government to *immediately* include intersex status, gender identity and gender expression as grounds of non-discrimination in Aotearoa, New Zealand.

**4. Education and professional development**

There is no mandatory training for medical students or health practitioners in Aotearoa, New Zealand to learn about intersex characteristics, the experiences of intersex patients, or international best practice in regard to healthcare for intersex people.

We call on the New Zealand government to ensure that medical professionals working with intersex people engage in ongoing professional development on a human rights based model of healthcare that protects intersex people from unnecessary medical interventions and invasive medical practice, including but not limited to: non-consensual cosmetic surgeries, unnecessary invasive physical examinations and the medical photographing of intersex children’s genitals and bodies. We call on the New Zealand government to ensure that appropriate support is provided for parents/caregivers of intersex children and their wider whānau (family) throughout their lives.

Our strong recommendation is that intersex people must play a crucial role in developing competency standards and professional training tools for the medical profession. We believe in the saying “Nothing about us, without us!” We call on the New Zealand government to ensure the involvement of intersex people in the ongoing professional development of clinicians working with intersex people.

We call on the New Zealand government to ensure medical training institutions include compulsory learning modules on the health needs of peoples with diverse sex, gender and sexualities.

We call on the New Zealand government to fund research on and about the experiences of intersex people living in Aotearoa, New Zealand. We call on the New Zealand government to support the development of a comprehensive database and support network for clinicians working in this area.

**5. Whole of life approach to health care**

We believe that any intersex adult seeking surgery in relation to their intersex condition should have access to life giving and life affirming surgery. In Aotearoa, New Zealand intersex children up to the age of 16 can access free surgical interventions under our public health system. After this age surgery is not accessible to intersex people.

For intersex people that believe the system assigned them the wrong gender (often in relation to having had 'normalizing' procedures done to them as a children) there is no route for surgical redress. Intersex adults are denied access to surgical interventions based on a funding model designed for transgender people.

We advocate that all people (intersex and/or transgender), with the capacity to consent for themselves, should have access to surgeries that are reparative where needed, that are gender affirming, that support bodily integrity and individual autonomy in line with international best practice guidelines.

We call on the New Zealand government to prioritize access to reparative surgeries for intersex adults. Further we call on the New Zealand government make available funding for surgeries for intersex adults to achieve consensual bodily autonomy.

We call on the New Zealand government to ensure access to safe and appropriate medical care, including surgical interventions when required by the intersex person, for all of their life.

**List of questions and recommended actions**

We support the recommendations made by Committee on the Rights of the Child in their concluding observations on the fifth periodic report of New Zealand in 2016[[5]](#footnote-5). This report identifies four recommendations for New Zealand in regards to harmful practices experienced by intersex children:

(25)(b) Develop and implement a child rights-based health-care protocol for intersex

children, setting the procedures and steps to be followed by health teams, ensuring that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guaranteeing the rights of children to bodily integrity, autonomy and self-determination and provide families with intersex children with adequate counselling and support;

(25)(c) Promptly investigate incidents of surgical and other medical treatment of

intersex children without informed consent and adopt legal provisions to provide redress to victims of such treatment, including adequate compensation;

(25)(d) Educate and train medical and psychological professionals on the range of

biological and physical sexual diversity and on the consequences of unnecessary surgical and other medical interventions on intersex children;

(25)(e) Extend free access to surgical interventions and medical treatment related to

their intersex condition to intersex children between the age of 16 and 18.

We ask that the Committee Against Torture endorse these statements.

Additionally, we ask the committee to:

* Seek assurance from the New Zealand government that they will end the practice of non-life saving surgery on intersex children through legislative protections and the implementation of a set of professional standards for the medical profession that affirm the bodily autonomy of intersex children.
* Require that population data on intersex people is accurately and uniformly recorded, allowing for truthful records to be kept and monitored while preserving the privacy of individual intersex people.
* Question the New Zealand government on what financial commitments it will make to ensure that appropriate advocacy and social support services are made available to intersex people for the whole of their lives.

Our hope is that Aotearoa, New Zealand might be a place where intersex children can grow up without fear of discrimination and unnecessary invasive medical procedures. But urgent action must be taken to realise this vision. Our country continues to torture intersex children and withhold important access to medical redress for intersex adults. We hope that this review will bring the attention needed to address to this urgent situation.

We welcome the opportunity to provide you with any further clarification you may require on the needs and experiences of intersex people in Aotearoa, New Zealand.

Ngā mihi,

The Intersex Trust of Aotearoa New Zealand



1. Kerekere, Elizabeth (2015) Takatāpui: Part of the Whānau. Auckland: Tīwhanawhana Trust and Mental Health Foundation [↑](#footnote-ref-1)
2. United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A.HRC.22.53 (1 February 2013), available from undocs.org/A/HRC/22/53 [↑](#footnote-ref-2)
3. Stop Genital Mutilation (2016). NZ Questioned over Intersex Genital Mutilations by UN Committee on the Rights of the Child, 18 September. Available from <http://stop.genitalmutilation.org/post/NZ-to-be-Questioned-over-Intersex-Genital-Mutilations-by-UN-Committee-on-the-Rights-of-the-Child> [↑](#footnote-ref-3)
4. Child Rights International Network. Bodily Integrity. Available from <https://www.crin.org/en/home/what-we-do/policy/bodily-integrity> [↑](#footnote-ref-4)
5. United Nations, Committee on the Rights of the Child, Concluding observations on the fifth periodic report of New Zealand, CRC/C/NZL/CO/5 (21 October 2016), available from undocs.org/ CRC/C/NZL/CO/5. [↑](#footnote-ref-5)