

Intersex Genital Mutilations Human Rights Violations Of Children With Variations Of Reproductive Anatomy



**HUMAN
RIGHTS FOR
HERM
APHRODITES
TOO!**

StopIGM.org

NGO Report (for LOIPR)
to the 6th to 7th Report of Chile on the
Convention on the Rights of the Child (CRC)

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Executive Summary

In response to this Committee's previous recommendations, in 2015 the **Chilean Ministry of Health** issued the "**Circular No. 18**", instructing doctors to stop with "*unnecessary [...] irreversible genital surgeries, until [the children] are old enough to decide about their bodies.*" However, this was not enforced, and in 2016 the Ministry of Health issued a **newer "Circular No. 7"**, which **re-prescribed all forms of IGM**. In the meantime, also **CEDAW** has already **considered IGM in Chile** as a **harmful practice** (CEDAW/C/CHL/CO/7, paras 22-23), and **CRPD** as a **violation of the integrity** (CRPD/C/CHL/CO/1, paras 41-42).

Nonetheless, **all typical forms of IGM practices are still practised in Chile today, facilitated and paid for by the State party via the public health care system, including the Ministry of Health and the Fondo Nacional de Salud (FONASA).**

Chile 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".

In total, UN treaty bodies **CRC, CEDAW, CAT, CCPR** and **CRPD** have so far issued **46 Concluding Observations** recognising **IGM** as a **serious violation of non-derogable human rights**, 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 rights**.

Intersex people are born with **Variations of Sex 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.

This **Thematic NGO Report** was compiled by the intersex NGOs **Brújula Intersexual** and **StopIGM.org**. It contains **Suggested Questions (p. 18)**.

**NGO Report to the 6th and 7th Report of Chile (for LOIPR)
on the Convention on the Rights of the Child (CRC)**

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Introduction

Intersex, IGM and Human Rights in Chile

In 2015, this Committee has already recognised IGM practices in Chile to constitute a **harmful practice** in its previous Concluding Observations (paras 48-49). In response, the **Chilean Ministry of Health** issued the “**Circular No. 18**”, instructing doctors to stop with “*unnecessary [...] irreversible genital surgeries [on intersex children].*” However, “Circular No. 18” was never enforced, and in 2016 the Ministry of Health issued a **newer “Circular No. 7”**, which in fact **re-prescribed all forms of IGM**. In the meantime, also **CEDAW** has already **considered IGM in Chile** as a **harmful practice** (CEDAW/C/CHL/CO/7, paras 22-23), and **CRPD** as a **violation of the integrity** (CRPD/C/CHL/CO/1, paras 41–42).

This NGO Report demonstrates that the current **harmful medical practice on intersex persons in Chile** – advocated, facilitated and paid for by the State party via the public health care system including the **Fondo Nacional de Salud (FONASA)**, and already considered in Concluding Observations by this Committee and **CEDAW** as a harmful practice and by **CRPD** as a violation of the integrity of the person¹ – constitutes a **harmful practice** and a **serious breach** of Chile’s obligations under the Convention.

About the Rapporteurs

This **thematic NGO report** has been prepared by the Mexican-based international intersex NGO *Brújula Intersexual* in collaboration with the international intersex NGO *StopIGM.org / Zwischengeschlecht.org*:

- **Brújula Intersexual** (English translation: Intersex Compass) is a Mexican-based NGO founded by Laura Inter in 2013. Its main objectives are to inform, disseminate and make visible everything related to intersex, mainly for Spanish-speaking people. We give priority to the opinion of intersex people over medical opinion. It is also a space that offers help and guidance to Spanish-speaking intersex people and their families, from countries such as Mexico, Argentina, Spain, Chile, Colombia, Peru, among others.²
- **StopIGM.org / Zwischengeschlecht.org** founded in 2007, is an international intersex human rights NGO based in Switzerland. It is led by intersex persons, their partners, families and friends, and works to eliminate IGM practices and other human rights violations perpetrated on intersex people, according to its motto, “*Human Rights for Hermaphrodites, too!*”³ According to its charter,⁴ StopIGM.org works to support persons concerned seeking redress and justice and regularly reports to UN treaty bodies on IGM practices.⁵

1 CRC/C/CHL/CO/4-5, paras 48–49; CRPD/C/CHL/CO/1, paras 41–42; CEDAW/C/CHL/CO/7, paras 22-23

2 <https://brujulaintersexual.org/>

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

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

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

The Rapporteurs would like to **acknowledge** the work of the organisation **Intersexuales Chile**⁶ (formerly Brújula Intersexual Chile) for their work in raising awareness about intersex human rights. And we would like to acknowledge the work of **Camilo Godoy**.^{7 8 9 10}

Methodology

This thematic NGO report is a localised and updated **addition to the 2019 thematic CRC NGO Report for Portugal**¹¹ by partly the same rapporteurs.

6 <https://www.facebook.com/intersexchilenos/>

7 Open Letter to the President of the Republic, <https://intersexday.org/en/chile-letter-2015/>

8 Centro de Derechos Humanos, Facultad de Derecho, Universidad Diego Portales (Tomás Vial Solar, editor general), Informe anual sobre Derechos Humanos en Chile 2016, chapter on intersex: Camilo Godoy, Derechos Humanos de las Personas Intersex en Chile (p. 321-355), http://www.derechoshumanos.udp.cl/derechoshumanos/images/InformeAnual/2016/Godoy_ddhhpersonasintersex.pdf

9 Godoy, Camilo (2015). Análisis del tratamiento de la intersexualidad a la luz del derecho internacional de los derechos humanos y su realidad en Chile, <http://bibliotecadigital.indh.cl/handle/123456789/1022>

10 Instituto Nacional de Derechos Humanos (INDH), Informe Anual Situación de los Derechos Humanos en Chile 2017, chapter 3 on intersex, https://www.indh.cl/bb/wp-content/uploads/2017/12/01_Informe-Anual-2017.pdf

11 <http://intersex.shadowreport.org/public/2019-CRC-Portugal-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

A. Precedents: Concluding Observations, Gov Regulations on IGM

1. CRC 2015: Harmful Practices, CRC-CEDAW Joint General Comment No. 18/31 (CRC/C/CHL/CO/4-5, paras 48-49)

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

Harmful practices

48. While noting the proposed development of a protocol on the health care of intersex babies and children, the Committee is seriously concerned about cases of medically unnecessary and irreversible surgery and other treatment on intersex children, without their informed consent, which can cause severe suffering, and the lack of redress and compensation in such cases.

49. In the light of its general comment No. 18 (2014) on harmful practices, adopted jointly with the Committee on the Elimination of Discrimination against Women, the Committee recommends that the State party expedite the development and implementation of a rights-based health-care protocol for intersex children that sets the procedures and steps to be followed by health teams in order to ensure that no one is subjected to unnecessary surgery or treatment during infancy or childhood, protect the rights of the children concerned to physical and mental integrity, autonomy and self-determination, provide intersex children and their families with adequate counselling and support, including from peers, and ensure effective remedy for victims, including redress and compensation.

2. Ministry of Health 2015 + 2016: Circulars No. 18 and No. 7

a) Circular No. 18 (2015): Instruction to stop unnecessary genital surgery

Referring to this Committee's Concluding Observations (CRC/C/CHL/CO/4-5, see above), in December 2015 the **Chilean Ministry of Health** issued the "**Circular No. 18**", which explicitly stated: "*We instruct the stopping of unnecessary "normalization" treatment of intersex children, including irreversible genital surgeries, until they are old enough to decide about their bodies.*"¹² However, Chilean IGM doctors ignored "Circular No. 18" (see p. 10, 12-15).

b) Circular No. 7 (2016): Retracting Circular No. 18, re-prescribing IGM

After **massive pressure by Chilean IGM doctors and some parents**¹³ determined to continue with involuntary, non-urgent surgery and other procedures on intersex children, in August 2016 the Ministry of Health in fact replaced "Circular No. 18" by a **newer "Circular No. 7"**,¹⁴ which

12 Ministry of Health (2015), Circular No. 18: Instructions on aspects of health care to intersex children, p. 1, <https://brujulaintersexual.files.wordpress.com/2017/07/circular-18-english.pdf>

For a scan of the Spanish original, see

http://stop.genitalmutilation.org/public/Chile_Circular-No-18_22-12-2015_Instruye-Ninos-y-Ninas-Intersex_OCR_web.pdf

13 "*The adoption of the new circular is explained because a group of doctors dedicated to the treatment of the so called "disorders of sex development" (DSD) objected to the adoption of Circular 18 arguing that it used the wrong language and because it interfered with the practice of irreversible genital surgeries.*

The main support to this group of doctors came from a group of parents of girls with congenital adrenal hyperplasia (CAH), who told the Ministry that their daughters didn't have gender ambiguity and that if they not intervened early, they could have physical and psychological problems."

Instituto Nacional de Derechos Humanos (INDH), Annual report on the human rights situation in Chile 2017 ("Informe anual sobre la situación de derechos humanos en Chile 2017"), p. 74,

https://www.indh.cl/bb/wp-content/uploads/2017/12/01_Informe-Anual-2017.pdf

14 Ministry of Health (2016), Circular No. 7: Complement to Circular No. 18 that instructs on certain aspects of the treatment of intersex children, <https://brujulaintersexual.files.wordpress.com/2017/07/circular-7-chile-ministry-of-health.pdf>
For a scan of the Spanish original, see <https://brujulaintersexual.files.wordpress.com/2017/06/circular-7.pdf>

not only retracts the reservations of the former “Circular No. 18”, but actually **re-prescribes the full range of involuntary, non-urgent genital surgery, sterilising procedures and other harmful treatments on intersex children**¹⁵ (see p. 12-15).

3. CRPD 2016: Integrity of the Person (CRPD/C/CHL/CO/1, paras 41-42)

Protecting the integrity of the person (art. 17)

41. *The Committee is concerned by the fact that sterilizations continue to be performed in the State party on persons with disabilities, especially women and girls, without their free and informed consent and at the mere request of their families or guardians, and by evidence that the procedure is commonly performed on persons with psychosocial disabilities admitted to psychiatric centres.*

42. *The Committee requests the State party to amend Act No. 20.584 and Decree No. 570 to require in all cases, without exception, the free and informed consent of persons with disabilities, including those whose legal capacity has been revoked, as an essential prerequisite for any surgery or medical treatment, especially those of an invasive nature and whose effects are irreversible, such as sterilization and procedures on intersex children.*

4. CEDAW 2018: Harmful Practices, CRC-CEDAW Joint General Comment No. 18/31 (CEDAW/C/CHL/CO/7, paras 22-23)

Harmful practices

22. *The Committee is concerned about:*

(a) *The lack of clear legislation prohibiting the performance of unnecessary medical procedures on intersex infants and children until they reach an age when they are able to give their free, prior and informed consent;*

(b) *The lack of support and effective remedies for intersex persons who have undergone medically unnecessary surgical procedures at a very early age, often with irreversible consequences and resulting in long-term physical and psychological suffering.*

23. *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 of the Rights of the Child (2014) on harmful practices, the Committee recommends that the State party:*

(a) *Adopt legislation to explicitly prohibit the performance of unnecessary surgical or other medical treatment on intersex children until they reach an age when they are able to give their free, prior and informed consent, ensure that medical practitioners are informed about such legislation and provide families with intersex children with adequate counselling and support;*

(b) *Ensure that intersex persons who have undergone unnecessary surgical or other medical treatment without their free, prior and informed consent have effective access to justice and consider establishing a State compensation fund for them.*

15 For an detailed analysis of how Circular No. 7 re-instates and justifies IGM practices, see: Laura Inter and Hana Aoi (2017), Circular 7, 2016: A step back in the fight for the human rights of intersex people in Chile, <https://brujulaintersexual.files.wordpress.com/2017/07/circular-7-english.pdf>

B. Background: Intersex, IGM and Non-Derogable Human Rights

1. Intersex is NOT THE SAME as LGBT(I) or SOGIE(SC)

Unfortunately, there are several, often interrelated **harmful misconceptions and stereotypes about intersex** still prevailing in public, notably if intersex is counterfactually described as being the same as or a subset of LGBT(I) or SOGIE(SC), e.g. if intersex is misrepresented as a sexual orientation (like gay or lesbian), and/or as a gender identity.

The underlying reasons for such harmful misrepresentations include **lack of awareness**, third party groups **instrumentalising intersex as a means to an end**^{16 17} for their own agenda, and State parties **trying to evade** the issue at hand.

Intersex persons, intersex organisations and human rights experts have spoken out clearly against instrumentalising or misrepresenting intersex issues.^{18 19}

Nonetheless, **State parties** are constantly **misrepresenting intersex and IGM as sexual orientation or gender identity issues** (or as a “discrimination” or “health care” issue, see below) in an attempt to **deflect from criticism** of the serious violations of non-derogable rights constituted by IGM practices when asked about IGM e.g. by Treaty bodies.²⁰

2. IGM is NOT a “Discrimination” Issue

An interrelated diversionary tactic is the **increasing misrepresentation by State parties of IGM as “discrimination issue”** instead of a serious violation of non-derogable human rights, namely inhuman treatment and a harmful practice, often in combination with the **misrepresentation of intersex human rights defenders as “fringe elements”**, and their legitimate demands and criticism of such downgrading and trivialising of IGM as **“extreme views”**. However, **downgrading genital mutilation to a “discrimination issue” deprives** intersex children at risk of effective **protections**, and **enables IGM practitioners**.

3. IGM is NOT a “Health” Issue

An interrelated, alarming new trend is the **increasing misrepresentation of IGM as “health-care issue”** instead of a serious violation of non-derogable human rights, and the **promotion of “self-regulation” of IGM by the current practitioners**^{21 22 23} – instead of necessary measures to effectively end the practice (as repeatedly stipulated also by this Committee). However, **downgrading genital mutilation to a “health care issue” deprives** intersex children at risk of effective **protections**, and **enables IGM practitioners**. **Chile is a prime example** of how “self-regulation” of IGM by the current practitioners is **failing to effectively protect intersex children** from harmful practices (see p. 10-15)

16 CRC67 Denmark, <http://stop.genitalmutilation.org/post/CRC67-Intersex-children-used-as-cannon-fodder-LGBT-Denmark>

17 CEDAW66 Ukraine, <http://stop.genitalmutilation.org/post/Ukraine-Instrumentalising-Intersex-and-IGM-for-LGBT-and-Gender-Politics>

18 For references, see 2016 CEDAW France NGO Report, p. 45

<http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

19 For example ACHPR Commissioner Lawrence Murugu Mute (Kenya), see

<http://stop.genitalmutilation.org/post/ACHPR-African-Commissioner-warns-Stop-conflating-intersex-and-LGBT>

20 For some practical examples, see 2019 CRC Portugal NGO Report, p. 19-20,

<http://intersex.shadowreport.org/public/2019-CRC-Portugal-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

21 For example Amnesty (2017), see

<http://stop.genitalmutilation.org/post/Amnesty-Report-fails-Intersex-Children-and-IGM-Survivors>

22 For example FRA (2015), see Presentation OHCHR Expert Meeting (2015), slide 8,

http://stop.genitalmutilation.org/public/S3_Zwischengeschlecht_UN-Expert-Meeting-2015_web.pdf

23 For example CEDAW Italy (2017), see <http://stop.genitalmutilation.org/post/Major-Setback-for-Intersex-Human-Rights-at-the-UN>

C. IGM in Chile: State-sponsored and pervasive, Gov fails to act

1. Overview: Lack of Protection for Intersex Persons, Violations state-sponsored

In **Chile** (see CRC/C/CHL/CO/4-5, paras 48–49; CRPD/C/CHL/CO/1, paras 41–42; CEDAW/C/CHL/CO/7, paras 22-23, 12(d)-13(d), 14(d)-15(d)), same as in the **Latin American states** of *Mexico* (CEDAW/C/MEX/CO/9, para 21-22), *Uruguay* (CRPD/C/URY/CO, para 44) and *Argentina* (CRC/C/ARG/CO/5-6, para 26) , and in **many more State parties**,²⁴

- **no effective 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** in place to ensure **access to redress and justice** for adult IGM survivors

The current situation in Chile can be summarised as follows:

- After the UN Committee on the Rights of the Child (CRC) criticised Chile for “*cases of medically unnecessary and irreversible surgery and other treatment on intersex children, without their informed consent, which can cause severe suffering, and the lack of redress and compensation in such cases*” in its October 2015 Concluding Observations, referring to CRC art. 24(3) and the CEDAW-CRC Joint General Recommendation/Comment No. 31/18 “on harmful practices” (see CRC/C/CHL/CO/4-5, paras 48–49), in December 2015 the **Chilean Ministry of Health** issued the “**Circular No. 18**”, which inter alia referred to the CRC Concluding Observations, and explicitly stated: “*We instruct the stopping of unnecessary “normalization” treatment of intersex children, including irreversible genital surgeries, until they are old enough to decide about their bodies.*”²⁵

Unfortunately, as evidenced by the post-2015 sources for IGM 1-4 (see p. 12-15), **nothing changed in the Chilean practice** after the publication of “Circular No. 18”.

What’s worse, after **massive pressure by Chilean IGM doctors and some parents**²⁶ determined to continue with involuntary, non-urgent surgeries and other treatments on

24 Currently we count **46 Concluding observations on IGM practices for 24 State parties in Europe, South America, Asia and Oceania**, see

<http://stop.genitalmutilation.org/post/IAD-2016-Soon-20-UN-Reprimands-for-Intersex-Genital-Mutilations>

25 Ministry of Health (2015), Circular No. 18: Instructions on aspects of health care to intersex children, p. 1, <https://brujulaintersexual.files.wordpress.com/2017/07/circular-18-english.pdf>

For a scan of the Spanish original, see

http://stop.genitalmutilation.org/public/Chile_Circular-No-18_22-12-2015_Instruye-Ninos-y-Ninas-Intersex_OCR_web.pdf

26 “*The adoption of the new circular is explained because a group of doctors dedicated to the treatment of the so called “disorders of sex development” (DSD) objected to the adoption of Circular 18 arguing that it used the wrong language and because it interfered with the practice of irreversible genital surgeries.*

The main support to this group of doctors came from a group of parents of girls with congenital adrenal hyperplasia (CAH), who told the Ministry that their daughters didn’t have gender ambiguity and that if they not intervened early, they could have physical and psychological problems.”

Instituto Nacional de Derechos Humanos (INDH), Annual report on the human rights situation in Chile 2017 (“Informe anual sobre la situación de derechos humanos en Chile 2017”), p. 74, https://www.indh.cl/bb/wp-content/uploads/2017/12/01_Informe-Anual-2017.pdf

intersex children, in August 2016 the Ministry of Health in fact replaced “Circular No. 18” by a **newer “Circular No. 7”**,²⁷ which not only retracts the reservations of the former “Circular No. 18”, but actually **re-prescribes the full range of involuntary, non-urgent genital surgery, sterilising procedures and other harmful treatments on intersex children**²⁸ (see also below under evidence for IGM 1-4).

This situation persists despite that in the meantime also **CRPD** and **CEDAW** unmistakably condemned IGM in Chile as a **serious violation of non-derogable human rights**, namely as a **harmful practice**, referring to the CRC-CEDAW Joint General Comment No. 18/31, and recommending the State party to, inter alia, “[a]dopt legislation to explicitly prohibit” IGM practices and to “[e]nsure [...] effective access to justice” for IGM survivors.²⁹

Conclusion, **Chile** is a **prime example** of how “self-regulation” of IGM by the current practitioners **is failing to effectively protect intersex children from harmful practices**.

- While some official agencies, such as the National Human Rights Institute (*Instituto Nacional de Derechos Humanos, INDH*)³⁰ and the Centre for Human Rights of the Faculty of Law of the University of Diego Portales (*Centro de Derechos Humanos UDP*)³¹ have expressed their interest in protecting intersex people’s human rights and criticise the (re-instated) ongoing practice in Chile, **most relevant institutions remain indifferent or even support IGM**.
- While a segment of the Chilean **Ministry of Health** has shown interest in reviewing medical protocols constituting serious human rights violations of intersex people, for example by issuing the 2015 “Circular No. 18” aimed at stopping involuntary non-urgent procedures, the Ministry quickly caved in under pressure from IGM doctors and parents by **re-prescribing the full range of IGM practices** via the newer “**Circular No 7**” and thus abandoning its earlier human rights-based approach (see above).
- Intersex people in Chile, particularly IGM survivors, generally find it **impossible to get access to justice, rehabilitation and reparations**.
- Intersex people in Chile face **difficulties in accessing their medical records**, and accurate **information about procedures** performed on them during infancy and childhood.

27 Ministry of Health (2016), Circular No. 7: Complement to Circular No. 18 that instructs on certain aspects of the treatment of intersex children,

<https://brujulaintersexual.files.wordpress.com/2017/07/circular-7-chile-ministry-of-health.pdf>

For a scan of the Spanish original, see <https://brujulaintersexual.files.wordpress.com/2017/06/circular-7.pdf>

28 For an detailed analysis of how Circular No. 7 re-instates and justifies IGM practices, see: Laura Inter and Hana Aoi (2017), Circular 7, 2016: A step back in the fight for the human rights of intersex people in Chile, <https://brujulaintersexual.files.wordpress.com/2017/07/circular-7-english.pdf>

29 CRPD/C/CHL/CO/1, paras 41–42; CEDAW/C/CHL/CO/7, paras 22-23, 12(d)-13(d), 14(d)-15(d)

30 Instituto Nacional de Derechos Humanos (INDH), Informe Anual Situación de los Derechos Humanos en Chile 2017, on intersex: p. 68, 71-74,

https://www.indh.cl/bb/wp-content/uploads/2017/12/01_Informe-Anual-2017.pdf

31 Centro de Derechos Humanos, Facultad de Derecho, Universidad Diego Portales (Tomás Vial Solar, editor general), Informe anual sobre Derechos Humanos en Chile 2016, chapter on intersex: Camilo Godoy, Derechos Humanos de las Personas Intersex en Chile (p. 321-355),

http://www.derechoshumanos.udp.cl/derechoshumanos/imagenes/InformeAnual/2016/Godoy_ddhhpersonasintersex.pdf

- **Intersex advocacy in the country has been active since 2014**, starting with the work of Camilo Godoy and then, since 2016, with the foundation of *Brújula Intersexual Chile*. It has played a key role in supporting survivors and their families, as well as getting support from official institutions on specific cases. **Camilo Godoy** has been working between 2014 and 2017 as a human rights advisor on intersex issues for Chilean government bodies including the Ministry of Health and the National Council of Childhood,³² and reported to UN Treaty bodies. **Ale/Gabriel Is**, ex-coordinator of *Brújula Intersexual Chile* (since October 2019 known as *Intersexuales Chile*)³³ participated in the 2017 hearing on the “Human Rights Situation of Intersex People in the Americas” before the Inter-American Commission on Human Rights (IACHR).³⁴ However, to **no effect regarding the ongoing practice**.
- **To this day, the Chilean government fails to recognise the serious human rights violations and severe suffering caused by IGM practices**, let alone to “*take effective legislative, administrative, judicial or other measures*” to protect intersex children from genital mutilation and other harmful practices and cruel, degrading or inhuman treatment, **in spite of longstanding public criticism and appeals** by intersex persons and their organisations, experts and Chile’s own National Human Rights Institute (*Instituto Nacional de Derechos Humanos, INDH*) and the Centre for Human Rights of the Faculty of Law of the University of Diego Portales (*Centro de Derechos Humanos UDP*), as well as some segments of the Ministry of Health, and **in spite of CRC, CRPD and CEDAW urging the State party to end IGM**.

2. IGM practices in Chile: Pervasive and unchallenged (art. 24(3) + JGC 18/31)

a) IGM 3 – Sterilising Procedures:

**Castration / “Gonadectomy” / Hysterectomy /
Removal of “Discordant Reproductive Structures” / (Secondary) Sterilisation
and Arbitrary Imposition of Hormones³⁵**

The **current intersex guideline issued by the Chilean Ministry of Health, “Circular No. 7”, explicitly advocates non-urgent surgical removal of testes (“gonadectomy”)** justified by psycho-social indications on children with “*forms of DSD/intersex, with potential for both sex assignments*” **without the consent of the person concerned:**³⁶

“surgeries in these patients, such as gonadectomy and/or genital surgery, should be done by mutual agreement between parents and the multidisciplinary team;”

32 <http://www.consejoinfancia.gob.cl/2015/11/04/consejo-se-capacita-en-el-ejercicio-de-derechos-de-ninos-ninas-y-adolescentes-intersexuales/>

33 <https://www.facebook.com/intersexchilenos/>

34 Hearing “Human Rights Situation of Intersex People in the Americas”, 161 session, March 20th, 2017, <https://brujulaintersexual.org/2017/03/23/cidh-audiencia-situacion-intersex-americas-2017/>

35 For general information, see 2016 CEDAW NGO Report France, p. 47,

<http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

36 Ministry of Health (23.08.2016), Circular No. 7, p. 2,

<https://brujulaintersexual.files.wordpress.com/2017/07/circular-7-chile-ministry-of-health.pdf>

Original Spanish version: <https://brujulaintersexual.files.wordpress.com/2017/06/circular-7.pdf>

b) IGM 2 – “Feminising Procedures”:

Clitoris Amputation/“Reduction”, “Vaginoplasty”, “Labioplasty”, Dilation³⁷

The **Pontifical Catholic University of Chile** (“*Pontificia Universidad Católica de Chile*”) **openly advocates non-urgent “surgery” to “correct ambiguous genitalia in girls” without the consent of the person concerned**, describing the possibility “*to postpone surgery until the child is old enough to participate in the decision*” as a mere (secondary) option for “*parents*”.³⁸

Also, the **current intersex guideline issued by the Chilean Ministry of Health**, “*Circular No. 7*”, explicitly advocates non-urgent “feminising” surgery on children diagnosed with CAH justified by psycho-social indications but without the consent of the person concerned:³⁹

“In cases of people with 46XX DSD with classical congenital adrenal hyperplasia, surgeries such as clitoroplasty, uro-genital sinus surgery, and genitoplasty, should be agreed between the specialist multidisciplinary team and the family;”

Again, the “*possibility [...] of deferring surgery*” is described as a mere (secondary) option for parents and doctors.⁴⁰

Accordingly, a 2009 study by doctors from the Department of Paediatric Urology of the **Hospital Exequiel Gonzalez Cortés - Clínica Alemana (Santiago)** reports for this clinic alone “25 patients” who “*underwent genitoplasty*” between 1996 and 2006, concluding, “In our practice, we prefer to carry out clitoroplasty at an early age, if possible before 6 months”.⁴¹

c) IGM 1 – “Masculinising Surgery”: Hypospadias “Repair”⁴²

The **current intersex guideline issued by the Chilean Ministry of Health**, “*Circular No. 7*”, **explicitly allows “unnecessary genital surgery”** for most cases of hypospadias.⁴³

37 For general information, see 2016 CEDAW NGO Report France, p. 48,

<http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

38 “Surgery can correct ambiguous genitalia in girls. However, parents may choose to postpone surgery until the child is old enough to participate in the decision.”, see

<http://redsalud.uc.cl/ucchristus/VidaSaludable/Glosario/H/hiperplasia-suprarrenal-congenita.act>

39 Ministry of Health (23.08.2016), Circular No. 7, p. 1,

<https://brujulaintersexual.files.wordpress.com/2017/07/circular-7-chile-ministry-of-health.pdf>

Original Spanish version: <https://brujulaintersexual.files.wordpress.com/2017/06/circular-7.pdf>

40 “The possibility should be explained of deferring surgery to an age where the patient may manifest or demonstrate tendencies of a sexual identity.”, *ibid.* Note that the Ministry of Health here not even mentions to postpone surgery until the person concerned can participate in any decision, ut merely long enough for parents and clinicians to take a guess at the child’s “tendencies of a sexual identity”.

41 Jose Manuel Escala, Yair Cadena, Pedro-Jose Lopez, Lorena Angel, Maria G. Retamal, Nelly Letelier, Ricardo Zubieta (2009), Feminizing genitoplasty in adrenal congenital hiperplasia: one or two surgical steps? Paediatric Urology Arch. Esp. Urol.; 62 (9): 724-730,

<https://pdfs.semanticscholar.org/3041/d227575e5199da85de42485cafb7842ea7f.pdf>

42 For general information, see 2016 CEDAW NGO Report France, p. 48-49,

<http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

43 “The recommendation that refers to not performing unnecessary genital surgery, does not refer to pathologies in which there is a clearly defined sex, both genetically and/or somatically, such as: cryptorchidism, isolated **hypospadias**, cloacal malformations and exstrophies.”, Ministry of Health (23.08.2016), Circular No. 7, p. 1,

<https://brujulaintersexual.files.wordpress.com/2017/07/circular-7-chile-ministry-of-health.pdf>
Original Spanish version: <https://brujulaintersexual.files.wordpress.com/2017/06/circular-7.pdf>

Accordingly, the **Pontifical Catholic University of Chile** (“*Pontificia Universidad Católica de Chile*”) **openly advocates non-urgent “hypospadias repair surgery” on babies:**⁴⁴

“Babies with hypospadias shouldn’t be circumcised and the foreskin should be preserved for later surgical repair.

Surgery is usually done before the child begins his school life. Currently, most urologists recommend repair before the child turns 18 months old. The surgery can be done at four months. During surgery, the penis is straightened and hypospadias is corrected, using tissue grafts from the foreskin. The repair may require multiple surgeries.”

The 2016 “*X Curso Internacional de Urología Pediátrica*” organised by the **Hospital Exequiel Gonzalez Cortés (Santiago)** and held at the **Clínica Universidad de los Andes (Las Condes)** featured “*Live surgeries*”.⁴⁵

And a 2015 study by doctors from the **Hospital Exequiel Gonzalez Cortés - Clínica Alemana (Santiago)** reports for this clinic alone: “*340 patients underwent corrective surgery for hypospadias between 1990 and 2013.*”⁴⁶

d) IGM 4 – Other Unnecessary and Harmful Medical Procedures⁴⁷

- **Prenatal treatment:** The use of fetal dexamethasone to prevent “ambiguous genitalia” in “girls with Congenital Adrenal Hyperplasia (CAH)” is **practised in Chile since at least 2001**,⁴⁸ sometimes (but not always) openly admitting that “*This treatment is still experimental and must be carried out with consent*”,⁴⁹ and often **in association with involuntary “feminising” genital surgery:**⁵⁰

“This disease [CAH], in its classical form, produces different degrees of virilization of the female fetus, leading to the need to perform subsequent correction surgeries, and secondarily consequences in the psychological sphere and sexual function of these patients. Prenatal treatment with dexamethasone manages to prevent or reduce the degree of virilization of affected girls, reducing the need for surgical treatment and its consequences.”

44 “Surgery can correct ambiguous genitalia in girls. However, parents may choose to postpone surgery until the child is old enough to participate in the decision.”, see

<http://redsahud.uc.cl/ucchristus/VidaSaludable/Glosario/H/hiperplasia-suprarrenal-congenita.act>

45 <https://www.clinicauandes.cl/shortcuts/novedades/x-curso-internacional-urologia-pediatria-workshop-hipospadias>

46 Dr. Ricardo Zubieta, Dr. Alejandra Lopez, Dr. Nelly Letelier, Dr. Francisco Reed, Dr. Danielle Reyes, Dr. Pedro José Lopez (2013), P29) Es el viejo mathieu modificado una alternativa para las hipospadias distales ?, Revista Chilena de Urología | Volumen 78 | No 3, p. 72,

https://www.revistachilenadeurologia.cl/urolchi/wp-content/uploads/2013/11/PO_III_SESION_DE_POSTER_III.pdf

47 See 2016 CEDAW NGO Report France, p. 50,

<http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf>

48 Carlos Fardella B. (2001), Hiperplasia suprarrenal congénita, Revista chilena de pediatría, v.72 n.5 Santiago,

https://scielo.conicyt.cl/scielo.php?script=sci_arttext&pid=S0370-41062001000500003

49 PM. Merino, E. Codner (2010), Hiperplasia suprarrenal congénita no-clásica: avances en la detección, diagnóstico, conducta y tratamiento, Revista Chilena de Endocrinología y Diabetes,

http://www.revistasoched.cl/1_2010/8.html

50 Paulina Merino, Tania Bacheaga, Pablo Céspedes, León Trejo, Ana Elisa Billerbeck, Ethel Codner (2007), Utilidad del estudio molecular de CYP21A2 en el manejo prenatal de hiperplasia suprarrenal congénita: detección de dos nuevas mutaciones en Chile, Rev Méd Chile; 135, p. 1451,

http://repositorio.uchile.cl/bitstream/handle/2250/128911/Merino_Paulina_Captura.pdf?sequence=1&isAllowed=y

- Unnecessary, repeated genital exams and photography abusing intersex children as a “freak show” are frequent in Chile. Testimonies from Chile clearly show the devastating impact of repeated genital exams on an intersex child and the extreme negative consequences for his health and wellbeing.

Forced excessive genital exams, medical display and (genital) photography because of intersex traits in itself constitute a form of IGM and a harmful practice.⁵¹

3. Lack of Impartial Investigation, Independent Data Collection and Monitoring

The CRC-CEDAW Joint General Comment No. 18/31 “on harmful practices” invoked by the Committee recommends under “*Data collection and monitoring*” (paras 37-39) explicitly recommends that State parties “[a]ccord priority to the **regular collection, analysis, dissemination and use of quantitative and qualitative data on harmful practices disaggregated by sex, age, geographical location, socioeconomic status, education level and other key factors and ensure that such activities are adequately resourced.** Regular data collection systems should be established and/or maintained in the health-care and social services, education and judicial and law enforcement sectors on protection-related issues;” (para 39(a)).

However, also in Chile there are **no statistics on intersex births and on IGM practices available**, let alone **impartial investigation** of cases.

With no statistics available on intersex births, treatments and costs, and **perpetrators, governments and health departments colluding to keep it that way as long as anyhow possible**, persons concerned as well as civil society **lack possibilities to effectively highlight and monitor** the ongoing mutilations. What’s more, after realising how intersex genital surgeries are increasingly in the focus of public scrutiny and debate, perpetrators of IGM practices respond by suppressing complication rates, as well as refusing to talk to journalists “on record”.

4. Lack of Legislative Provisions, Impunity of perpetrators

The CRC-CEDAW Joint General Comment 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 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)).

Accordingly, with regards to IGM practices, this Committee repeatedly and explicitly recognised the obligation for State parties to “**prohibit**” IGM practices in order to “**ensure that no one is subjected to unnecessary surgery or treatment during infancy or childhood**”,⁵² and in addition

51 See 2014 CRC NGO Report, p. 73,

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

52 See for example CRC/C/BEL/CO/5-6, paras 25(b)+26(e); CRC/C/ZAF/CO/2, paras 39-40; CRC/C/PRT/CO/5-6, para 28(b); CRC/C/ESP/CO/5-6, para 24

to this Committee, Chile has already also been urged to act in this matter also by **CRPD** and **CEDAW**.⁵³

However, the Chilean State party still **refuses to “explicitly prohibit by law and adequately sanction or criminalize”** IGM practices. What’s worse, after a first step towards protecting intersex children from unnecessary harmful treatments via the 2015 “*Circular No. 18*”, less than a year later the Chilean Ministry of Health not only **took back these protections**, but actually **re-prescribed the full range of involuntary, non-urgent genital surgery, sterilising procedures and other harmful treatments on intersex children** via the 2016 “*Circular No. 7*” (which replaced “*Circular No. 18*”, see above p. 10-11).

5. Obstacles to redress, fair and adequate compensation

Also in **Chile** the **statutes of limitation** generally prohibit 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, and **severe trauma** caused by IGM Practices often prohibits them to act in time once they do.⁵⁴

So far there was no case of an adult victim of early childhood IGM practices succeeding in going to court in Chile. However, there is **one case of a mother of a then 12 years old intersex child** publicly known only by his initials “**B.N.R.**”, which had been submitted to gonadectomy (castration) as a two months old baby, **successfully suing the Maule Health Service** in 2005, and with the **Supreme Court** on 14 November 2012 eventually sentencing the Maule Health Service to pay **100 million Chilean pesos in compensation** for the moral and psychological damage caused to the then 19 years old intersex person concerned, and **5 more millions for each of the parents**, with the court also criticising that the **parents weren’t informed properly** by the doctors.⁵⁵

The **Chilean government** so far refuses to ensure that non-consensual unnecessary IGM surgeries on minors are recognised as a serious violation of non-derogable human rights, namely as a form of **genital mutilation** and a **harmful practice**, which would formally prohibit parents from giving “consent”. In addition, hospitals are often **unwilling to provide full access to patient’s files**.

This situation is clearly not in line with **Chile’s** obligations under the Convention.

6. Chilean Doctors and Officials consciously dismissing Intersex Human Rights

The persistence of IGM in Chilean public clinics is a **matter of public record**.^{56 57 58 59 60}

53 CRPD/C/CHL/CO/1, paras 41–42; CEDAW/C/CHL/CO/7, paras 22-23, 12(d)-13(d), 14(d)-15(d)

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

55 Gabriela García (2013), Forced identity, Paula 1124, 22.06.2013, <http://www.paula.cl/reportajes-y-entrevistas/identidad-forzada/#>

56 Open Letter to the President of the Republic, <https://intersexday.org/en/chile-letter-2015/>

57 “Conferencia Regional Latinoamericana y del Caribe de personas Intersex” in San José, March 2018, <https://brujulaintersexual.org/2018/04/13/san-jose-de-costa-rica-statement/>

58 Hearing “Human Rights Situation of Intersex People in the Americas”, 161 session, March 20th, 2017, <https://brujulaintersexual.org/2017/03/23/cidh-audiencia-situacion-intersex-americas-2017/>

59 Gabriela García (2013), Forced identity, Paula 1124, 22.06.2013, <http://www.paula.cl/reportajes-y-entrevistas/identidad-forzada/#>

60 Godoy, Camilo (2015). Análisis del tratamiento de la intersexualidad a la luz del derecho internacional de los derechos humanos y su realidad en Chile. Capítulo 5 (pp. 117-136): “La situación intersex en Chile al año

Also the **criticism of persons concerned and their organisations** of involuntary surgeries and other medical treatment is **publicly known**,^{61 62 63} and also in **government bodies** including the National Council of Childhood,⁶⁴ the Ministry of Health Working Group on Intersex (2015-2017), and the National Human Rights Institute (*Instituto Nacional de Derechos Humanos, INDH*).⁶⁵

Nonetheless, government bodies refuse to take any appropriate action, but continue to ignore intersex human rights, and allow IGM doctors to continue practicing with impunity.

D. Conclusion: Chile is Failing its Obligations under the Convention

The non-consensual genital surgeries and other harmful treatments intersex people endure cause severe physical and mental pain and suffering. Doctors perform the surgery for the discriminatory purpose of making a child fit into societal and cultural norms and beliefs, although there is plenty of evidence on the suffering this causes. **The State party is responsible for these violations amounting to a harmful practice**, inhuman treatment and non-consensual medical or scientific experimentation, committed by publicly funded doctors, clinics, and universities, as well as in private clinics, advocated and paid for by the public health care system via the Fondo Nacional de Salud (FONASA). Although meanwhile the pervasiveness IGM practices is common knowledge, and the State party has been made aware of the situation and urged to take action by CRC, CRPD and CEDAW, **Chile nonetheless fails to prevent these grave violations** both in public and in private settings, but allows the human rights violations of intersex children, adolescents and adults to continue unhindered.

Also in Chile, victims of IGM practices 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. And the State party's efforts on **education and information regarding the prohibition against torture in the training of medical personnel** are grossly insufficient with respect to the treatment of intersex people.

Thus, Chile is in breach of its obligation to take **effective legislative, administrative, judicial or other measures to prevent harmful practices** and to **ensure access to justice**, redress and rehabilitation for IGM survivors, and to **educate and train medical professionals** on the harmful consequences of IGM (Art. 24(3) in conjunction with the CRC-CEDAW Joint General Comment No. 18/31).

2015. Realidad y recomendaciones", <http://bibliotecadigital.indh.cl/handle/123456789/1022>

61 <https://brujulaintersexual.org/2016/03/19/articulo-cambiados-de-sexo-al-nacer-revista-ya-de-el-mercurio-chile/>

62 <https://brujulaintersexual.org/2018/03/28/ale-gabriel-entrevista-chile/>

63 Centro de Derechos Humanos, Facultad de Derecho, Universidad Diego Portales (Tomás Vial Solar, editor general), Informe anual sobre Derechos Humanos en Chile 2016, chapter on intersex: Camilo Godoy, Derechos Humanos de las Personas Intersex en Chile (p. 321-355),

http://www.derechoshumanos.udp.cl/derechoshumanos/images/InformeAnual/2016/Godoy_ddhhpersonasintersex.pdf

64 <http://www.consejoinfancia.gob.cl/2015/11/04/consejo-se-capacita-en-el-ejercicio-de-derechos-de-ninos-ninas-y-adolescentes-intersexuales/>

65 Instituto Nacional de Derechos Humanos (INDH), Informe Anual Situación de los Derechos Humanos en Chile 2017, on intersex: p. 68, 71-74, https://www.indh.cl/bb/wp-content/uploads/2017/12/01_Informe-Anual-2017.pdf

E. Suggested Questions for the LOIPR

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

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

- **What measures did the State party implement to stop non-urgent, irreversible surgical and other procedures on intersex children before an age at which they are able to provide informed consent? And what measures to guarantee free psychosocial support for all persons concerned and their parents?**
- **Since the last review, how many such procedures have been undertaken? Please provide detailed statistics on sterilising, feminising, masculinising procedures and imposition of hormones, including prenatal procedures.**
- **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?**