Intersex Genital Mutilations

Human Rights Violations Of Children With Variations Of Sex Anatomy

NGO Report
to the 8th Report of New Zealand
on the Convention on the Elimination of
All Forms of Discrimination against Women (CEDAW)

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A. Executive Summary

All typical forms of IGM practices are still practised in New Zealand today, promoted, facilitated and **paid for by the State party** via the **public health system,** both domestic under the authority of the **Medical Council of New Zealand** and overseas under the **Special High Cost Treatment Pool.** In 2016, **CRC** already denounced **IGM in New Zealand** as a **harmful practice**. Nonetheless, to this day the **Government fails to act.**

New Zealand is in breach of its obligations under the Convention on the Elimination of All Forms of Discrimination against Women to **(a)** take effective legislative, administrative, judicial or other measures to **prevent involuntary, non-urgent surgery and other medical treatment and harmful practices of intersex persons based on prejudice**, and **(b)** to ensure **access to redress**, and the right to fair and adequate **compensation** and **rehabilitation** for victims (CEDAW Arts. **1** and **5(a)**, General Recommendations No. **19** and **31**).

This Committee has consistently recognised IGM practices to constitute a serious human rights violation under the Convention in Concluding Observations, referring to General Recommendation No. 31.

Also **CRC**, **CAT**, **CCPR**, the UN Special Rapporteur on Torture (**SRT**), 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**), the Council of Europe (**COE**) and others have consistently recognised IGM practices as a breach of international law, and have so far issued **32 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.

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 based on prejudice** 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, 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, and lifelong mental suffering and trauma.

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 **Thematic NGO Report** has been compiled by the international intersex NGO **StopIGM.org**. It contains **Suggested Recommendations** (see p. 19).

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B. Introduction

1. Intersex, IGM and Human Rights in New Zealand

During its 19th Session, the Committee will draft the List of Issues prior to Reporting (LOIPR) for **New Zealand**. In New Zealand, **doctors in public, university and private clinics** are regularly performing **IGM practices**, i.e. non-consensual, unnecessary genital surgeries, sterilising procedures, and other harmful treatments to "correct" intersex children, which have been described by survivors as genital mutilation and torture. In addition, New Zealand is also **sends intersex children overseas to Australia** for IGM.

IGM practices are known to cause **severe, lifelong physical and psychological pain and suffering**, and have been repeatedly **recognised by this Committee**[1] and other **UN and Regional human rights bodies**[2] as constituting a violation of the **integrity of the person**, **torture or ill-treatment**, **non-consensual medical or scientific experimentation**, **violence and abuse** and a **harmful practice**, respectively. UN Treaty bodies have so far issued **28 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.[3]

This NGO Report demonstrates that the current **medical treatment of intersex infants and children in New Zealand** constitutes a serious violation of New Zealand's obligations under the Convention on the Rights of Persons with Disabilities.

New Zealand not only does nothing to prevent this abuse, but in fact directly finances it via the public health system and via funding the public university clinics and paediatric hospitals, as well as sending intersex children abroad for IGM under the High Cost Treatment Pool, thus violating its duty to prevent torture or ill-treatment. To this day the New Zealand Government **refuses to take appropriate legislative, administrative and other measures** to protect intersex children, and refuses survivors the right to justice, redress and compensation, despite already having been **explicitly obliged to do so by CRC in 2016** (CRC/C/NZL/CO/5, para 25).

2. About the Rapporteurs

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!"* [4]

According to its charter,[5] StopIGM.org works to support persons concerned seeking redress and justice, and regularly reports to UN treaty bodies, mostly in collaboration with local intersex advocates and organisations.[6]

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1 CRPD/C/DEU/CO/1, paras 37-38; CRPD/C/CHL/CO/1, paras 41-42; CRPD/C/ITA/CO/1, paras 45-46; CRPD/C/URY/CO/1, paras 43-44; CRPD/C/GBR/CO/1, paras 40-41; CRPD/C/MAR/CO/1, paras 36-37

2 **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

3 For a regularly updated list, see http://stop.genitalmutilation.org/post/IAD-2016-Soon-20-UN-Reprimands-for-Intersex-Genital-Mutilations

4 http://Zwischengeschlecht.org/ English pages: http://StopIGM.org/

5 http://zwischengeschlecht.org/post/Statuten

6 http://intersex.shadowreport.org/

In **2016** StopIGM.org, together with Intersex Trust Aotearoa New Zealand (ITANZ) and the New Zealand Human Rights Commission, first reported the on-going practice in New Zealand, including referral of intersex children to Australia for IGM, to **CRC**,[7] leading to the very first Concluding Observation on intersex and IGM for New Zealand,[8] and the State party for the first time admitting to facilitating IGM 2 both in domestic children's clinics and overseas at the Royal Children's Hospital Melbourne in Australia.[9]

In **2017** StopIGM.org and ITANZ reported IGM in New Zealand and overseas also to **CAT**,[10] leading to the Committee currently investigating IGM in New Zealand for the first time.[11] In **2018** StopIGM.org further reported IGM in New Zealand and overseas to **CRPD**,[12] again prompting investigations.[13]

3. Methodology

This thematic NGO report is a localised and updated version of the **2018 thematic CRPD LOIPR NGO Report for New Zealand**[14] by the same Rapporteurs.

7 http://intersex.shadowreport.org/public/2016-CRC-NZ-NGO-Zwischengeschlecht-Intersex-IGM.pdf
8 CRC/C/NZL/CO/5, paras 25 + 15
9 Additional info from State party to CRC73 (20.09.2016), p. 1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fAIS%2fNZL%2f25497&Lang=en
10 http://intersex.shadowreport.org/public/2017-CAT-New-Zealand-LOIPR-Zwischengeschlecht-Intersex-IGM.pdf
11 CAT/C/NZL/QPR/7, para 32
12 http://intersex.shadowreport.org/public/2018-CRPD-New-Zealand-LOIPR-NGO-Intersex-StopIGM.pdf
13 CRPD/C/NZL/QPR/2-3, para 16(a)
14 http://intersex.shadowreport.org/public/2018-CRPD-New-Zealand-LOIPR-NGO-Intersex-StopIGM.pdf

C. Background: Intersex, IGM and Harmful Misrepresentations

1. IGM Practices: Involuntary, unnecessary medical interventions based on prejudice

IGM practices include **non-consensual, medically unnecessary, irreversible, cosmetic genital surgeries**, and/or other similar medical treatments, including imposition of hormones, performed on **children with variations of sex anatomy**,[15] without evidence of benefit for the children concerned, but justified by *"psychosocial indications [...] shaped by the clinician's own values"*, the latter informed by **societal and cultural norms and beliefs**, enabling clinicians to withhold crucial information from both patients and parents, and to submit healthy intersex children to risky and harmful invasive procedures that would not be considered for "normal" children, *"simply because their bodies did not fit social norms"*.[16]

Typical forms of IGM include "feminising" or "masculinising", "corrective" genital surgery, sterilising procedures, imposition of hormones (including prenatal "therapy"), forced genital exams, vaginal dilations, medical display, human experimentation, selective (late term) abortions and denial of needed health care.

IGM practices are known to cause **lifelong severe physical and mental pain and suffering**,[17] including loss or impairment of sexual sensation, poorer sexual function, painful scarring, painful intercourse, incontinence, problems with passing urine (e.g. due to urethral stenosis after surgery), increased sexual anxieties, problems with desire, less sexual activity, dissatisfaction with functional and aesthetic results, lifelong trauma and mental suffering, elevated rates of self-harming behaviour and suicidal tendencies comparable to those among women who have experienced physical or (child) sexual abuse, impairment or loss of reproductive capabilities, lifelong dependency on daily doses of artificial hormones.

Individual doctors, national and international medical bodies, public and private health care providers have traditionally been **framing and "treating" intersex variations as a form of illness or disability** in need to be "cured" surgically, often **with racist, eugenic and supremacist undertones**,[18] [19] [20] [21] describing intersex people as *"inferior"*, *"abnormal"*, *"deformed"*.

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15 See "What is Intersex?", 2015 CRC Ireland NGO Report, p. 23–25, http://intersex.shadowreport.org/public/2015-CRC-Ireland-NGO-Zwischengeschlecht-Intersex-IGM.pdf

16 For references, see "What are Intersex Genital Mutilations (IGM)?", 2015 CRC Ireland Report, p. 29

17 See "IGM Practices – Non-Consensual, Unnecessary Medical Interventions", 2015 CRC Ireland NGO Report, p. 29–34

18 2014 CRC NGO Report, p. 52, 69, 84, http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

19 In the WHO "World Atlas of Birth Defects (2nd Edition)", many intersex diagnoses are listed, including *"indeterminate sex"* and *"hypospadias"*, http://web.archive.org/web/20160305152127/http://prenatal.tv/lecturas/world%20atlas%20of%20birth%20defects.pdf

20 "The Racist Roots of Intersex Genital Mutilations", http://stop.genitalmutilation.org/post/Racist-Roots-of-Intersex-Genital-Mutilations-IGM

21 See **"Intersex, IGM and Prejudice"**, in: 2018 CRPD New Zealand NGO Report, Annexe 1, p. 15-19, http://intersex.shadowreport.org/public/2018-CRPD-New-Zealand-LOIPR-NGO-Intersex-StopIGM.pdf
For **500 years of "scientific" prejudice** in a nutshell, see 2016 CEDAW France NGO Report, p. 7, http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf

UN Treaty bodies and other human rights experts have consistently recognized IGM practices as a serious breach of international law.[22] **UN Treaty bodies have issued 31 Concluding Observations condemning IGM practices.**[23]

2. Intersex is NOT THE SAME as LGBT or SOGI

Unfortunately, there are also other, often interrelated **harmful misconceptions about intersex** still prevailing in public, notably 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, or as a form of sexual orientation.

The underlying reasons for such harmful misconceptions include **lack of awareness**, third party groups **instrumentalising intersex as a means to an end**[24] [25] 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,[26] maintaining that IGM practices 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.[27]

Regrettably, **these harmful misrepresentations seem to be on the rise also at the UN**, for example in recent **UN press releases** and **Summary records** 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"*,[28] and again IGM survivors as *"transgender children"*,[29] *"transsexual children who underwent difficult treatments and surgeries"*, and IGM as a form of *"discrimination against transgender and intersex children"* [30] and as *"sex*

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22 **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

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

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

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

26 For references, see 2016 CEDAW France NGO Report, p. 45. http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf

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

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

29 CRC77 Spain, http://stop.genitalmutilation.org/post/UN-Press-Release-mentions-genital-mutilation-of-intersex-children

30 CRC76 Denmark, http://stop.genitalmutilation.org/post/UN-Press-Release-calls-IGM-survivors-transsexual-children-CRC-Denmark-UNCRC67

assignment surgery" while referring to *"access to gender reassignment-related treatments"*.[31]

Particularly **State parties** are constantly **misrepresenting intersex and IGM as sexual orientation or gender identity issues** in an attempt to **deflect from criticism** of the serious human rights violations resulting from IGM practices, instead referring to e.g. *"gender reassignment surgery"* (i.e. voluntary procedures on transsexual or transgender persons) and *"gender assignment surgery for children"*,[32] *"a special provision on sexual orientation and gender identity"*, *"civil registry"* and *"sexual reassignment surgery"* [33], transgender guidelines[34] or *"Gender Identity"* [35] [36] when asked about IGM by e.g. Treaty bodies.

What's more, **LGBT organisations** (including "LGBTI" organisations without actual intersex representation or advocacy) are using the ubiquitous misrepresentation of intersex = LGBT to **misappropriate intersex funding**, thus depriving actual intersex organisations (which mostly have no significant funding, if any) of much needed resources.[37]

3. Misrepresenting Genital Mutilation as "Health Care"

An interrelated, alarming new trend is the **increasing misrepresentation of IGM as *"health-care issue"*** instead of a serious human rights violation, and the **promotion of *"self-regulation"* of IGM by the current perpetrators** [38] [39] [40] – instead of effective measures to finally end the practice (as repeatedly stipulated also by this Committee).

Even worse, **Health** ministries construe UN Treaty body Concluding observations falling short of explicitly recommending legislation to criminalise or adequately sanction IGM as an **excuse for "self-regulation" promoting state-sponsored IGM practices to continue with impunity.**[41]

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31 CAT/C/DNK/QPR/8, para 32

32 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

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

34 CAT56 Austria, http://stop.genitalmutilation.org/post/Geneva-UN-Committee-against-Torture-questions-Austria-over-Intersex-Genital-Mutilations

35 CAT60 Argentina, http://stop.genitalmutilation.org/post/CAT60-Argentina-to-be-Questioned-on-Intersex-Genital-Mutilation-by-UN-Committee-against-Torture

36 CRPD18 UK, http://stop.genitalmutilation.org/post/UK-Questioned-over-Intersex-Genital-Mutilations-by-UN-Committee-on-the-Rights-of-Persons-with-Disabilities-CRPD

37 For example in Scotland (UK), LGBT organisations have so far collected at least £ 135,000.– public intersex funding, while actual intersex organisations received ZERO public funding, see 2017 CRPD UK NGO Report, p. 14, http://intersex.shadowreport.org/public/2017-CRPD-UK-NGO-Coalition-Intersex-IGM.pdf
Typically, during the interactive dialogue with CRPD, the UK delegation nonetheless tried to sell this glaring misappropriation as "supporting intersex people", but fortunately got called out on this by the Committee, see transcript (Session 2, 10:53h + 11:47h), http://stop.genitalmutilation.org/post/UK-Questioned-over-Intersex-Genital-Mutilations-by-UN-Committee-on-the-Rights-of-Persons-with-Disabilities-CRPD

38 For example Amnesty (2017), see http://stop.genitalmutilation.org/post/Amnesty-Report-fails-Intersex-Children-and-IGM-Survivors

39 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

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

41 See for example Ministry of Health Chile (2016), http://stop.genitalmutilation.org/post/Circular-7-step-back-for-intersex-human-rights-in-Chile

D. IGM practices in New Zealand: State-sponsored and pervasive

1. Overview: IGM persists, still no protections, Government fails to act

All typical forms of IGM practices are still practised in New Zealand today, promoted, facilitated and **paid for by the State party** via the **public health system,** both domestic under the authority of the **District Health Boards (DHB)** and the **Medical Council of New Zealand,** as well as overseas under the **Special High Cost Treatment Pool** – as the **State party** itself **publicly admits**:

> *"Until 2007, the High Cost Treatment Pool in the Ministry of Health funded genital surgery for intersex infants, provided at the Royal Children's Hospital in Melbourne.. **Between 1999 and 2007, the High Cost Treatment Pool funded treatment for 15 girls with congenital adrenal hyperplasia, for genital feminisation.** […] **More recently, two paediatric surgeons have begun to undertake these operations in New Zealand.** These operations continue at about the same rate as before."* [42]

In **New Zealand** (CRC/C/NZL/CO/5, para 25), same as in *Germany* (CEDAW/C/DEU/CO/7-8, paras 23-24; CAT/C/DEU/CO/5, para 20; CRPD/C/DEU/CO/1, paras 37-38), *France* (CEDAW/C/FRA/CO/7-8, paras 17e-f + 18e-f; CRC/C/FRA/CO/5, paras 47-48; CAT/C/FRA/CO/7, paras 32–33**)**, *Switzerland* (CEDAW/C/CHE/CO/4-5, paras 38-39; CRC/C/CHE/CO/2-4, paras 42-43; CAT/C/CHE/CO/7, para 20), and in **many more State parties**,[43] there are

- **no legal or other protections** in place to ensure the rights of intersex children NOT to be submitted to non-consensual, medically unnecessary, irreversible surgery and other harmful treatments a.k.a. 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

To this day, the **New Zealand government refuses to *"take effective legislative, administrative, judicial or other measures"*** to protect intersex children, but instead allows IGM practices to continue with impunity and against better knowledge, as admitted by the New Zealand Government:

> *"In respect to intersex […], do we have a legally binding system to prevent genital normalization on children? **The answer is that we do not currently have a legislative framework for this, and there is no plan in place for that at the present time.** However, all New Zealand citizens are covered by health and disability bill of rights, and all medical practitioners work **under the authority of the Medical Council of New Zealand."*** [44]

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42 Additional info from State party to CRC73 (20.09.2016), p. 1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fAIS%2fNZL%2f25497&Lang=en

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

44 NZ Delegate Dr Patrick Tuohy (Paediatrician, Chief Adviser, Ministry of Health, Wellington, NZ) during the 73rd CRC session, Geneva 15.09.2016. Full transcript: http://stop.genitalmutilation.org/post/NZ-to-be-

2. Most Common IGM Forms[45] advocated by NZ Medical Council, DHBs, Clinics

Despite **typical knee-jerk denials** (*"no surgery since 2006"*),[46] to this day **all forms of IGM practices remain widespread and ongoing** in New Zealand, advocated, prescribed and perpetrated by doctors in **public University** and **Regional Children's Clinics**, working under the authority of **District Health Boards (DHB)** and the **Medical Council of New Zealand**.

In addition, New Zealand intersex children have been, and arguably still are, being **sent overseas to Australia** for "DSD surgery",[47] which is offered under the New Zealand **Special High Cost Treatment Pool** scheme to this day,[48] for example to the Australian **Royal Children's Hospital Melbourne (RCH).**[49] [50] While the New Zealand Government recently admitted to having sent intersex children to RCH at least since 1999, it also claimed, *"The Royal Children's Hospital then stopped providing this treatment [after 2007]"*.[51] However, according to both above referenced statements by RCH doctors, at least in 2009 such intersex referrals were still current, and according the **RCH homepage** persist to this very day:

> ***"The [RCH]department of paediatric urology*** *was established in February 2006. [...] In addition to the provision of paediatric urological services for the greater Melbourne metropolitan area and regional Victoria* ***we provide tertiary and quaternary level paediatric urology services for patients from*** *Tasmania, Western Australia, southern New South Wales and* ***New Zealand."*** [52]

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45 For more information, see 2016 CAT France NGO Report (p. 39–43), http://intersex.shadowreport.org/public/2016-CAT-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf

46 On 15.09.2016 during the 73rd CRC session, NZ Delegate Dr Patrick Tuohy (Paediatrician, Chief Adviser, Ministry of Health, Wellington, NZ) at first claimed, *"We have around 30, between maybe 20 to 30 children a year. [...] The information from hospital coding records show that* ***no surgery has taken place*** *in New Zealand related to gender reassignment* ***from the time 2006."*** Full transcript: http://stop.genitalmutilation.org/post/NZ-to-be-Questioned-over-Intersex-Genital-Mutilations-by-UN-Committee-on-the-Rights-of-the-Child

47 Personal communication Mani Bruce Mitchell, Intersex Awareness New Zealand (ITANZ)

48 Under *"Examples of medical treatments covered"*, the Ministry of Health homepage on the Special High Cost Treatment Pool lists e.g. *"Congenital Adrenal Hyperplasia"* , i.e. the most common diagnosis associated with IGM 2: "Feminising" Genital Surgeries ("Clitoral Reduction", "Vaginoplasty"): http://www.health.govt.nz/our-work/hospitals-and-specialist-care/high-cost-treatment-pool

49 *"[...] at the* ***Royal Children's Hospital (RCH), Melbourne, the*** *Australian and* ***New Zealand referral centre for DSD management,*** *its multidisciplinary management team* ***continues to offer early surgical intervention as part of a holistic treatment plan."*** Jennifer M. Crawford, Garry Warne, Sonia Grover, Bridget R. Southwell, John M. Hutson, "Results from a pediatric surgical centre justify early intervention in disorders of sex development", J Pediatr Surg. 2009 Feb;44(2):413-6, http://www.ncbi.nlm.nih.gov/pubmed/19231546

50 *"According to Professor Garry Warne, Senior Endocrinologist, and surgeon, Professor John Hutson, from the RCH, they [...] receive approximately two referrals per month from other centres in Australia or New Zealand. They see approximately 10 boys with severe hypospadias per year and 4-5 girls per year discovered to have intersex condition in childhood or adolescence (e.g. complete androgen insensitivity syndrome or gonadal dysgenesis)."* Australian Human Rights Commission, "Surgery on intersex infants and human rights (2009)", https://www.humanrights.gov.au/sites/default/files/content/genderdiversity/surgery_intersex_infants2009.pdf

51 Additional info from State party to CRC (20.09.2016), p. 1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fAIS%2fNZL%2f25497&Lang=en

52 http://www.rch.org.au/urology/

Thus, despite that the New Zealand Government so far only admits to IGM 2, in fact **all most common forms of IGM practices** remain advocated by the Medical Council and District Health Boards (DHB), and perpetrated by New Zealand and/or associated Children's Clinics abroad:

a) IGM 3 – Sterilising Procedures: Castration / "Gonadectomy" / Hysterectomy / Removal of "Discordant Reproductive Structures" / (Secondary) Sterilisation[53]

As currently advocated by the Royal Children's Hospital Melbourne (RCH),[54] the *"New Zealand referral centre for DSD management"* (see above), justified by an alleged[55] high cancer risk:

> ***"Removal of the testes***
>
> *[...] However, it is the opinion of most authorities that this risk of cancer after puberty is too high, and that removal of the testes* ***before the age of 20 is advisable.***
>
> *The timing of this operation is a matter for* ***individual choice:*** *[...]* ***removal of the testes in early childhood*** *[...] is chosen partly to eliminate the risk of cancer (which many parents worry about) and because parents and doctors may consider that* ***the girl will suffer less distress if she does not have to be involved in the decision*** *about the removal of her testes.*
>
> ***Early removal of the testes is essential in babies with partial AIS who are being raised as girls*** *because failure to do so would result in progressive masculine development. In these girls,* ***surgery to reduce the size of the clitoris and to separate the fused labia is also offered."***

RCH's continued advocacy for early gonadectomies was also noted by the Australian Senate Community Affairs References Committee:[56]

> ***"****3.52 The multidisciplinary team described one of the issues with delayed action to undertake* ***gonadectomy:***
>
> *"The potential difficulty with this more conservative approach is that* ***for some young people*** *(e.g. those who definitely identify as female and do not wish to retain their testes),* ***the perceived delay in surgery*** *and the associated need for gonadal surveillance (with ultrasound or MRI)* ***can be very frustrating.*** *[65] [Disorder of Sex Development multidisciplinary team at Royal Children's Hospital, Melbourne, Submission 92, p. 5.]****"***

While no data on gonadectomies in New Zealand clinics could be found, the practice is arguably also perpetrated in domestic hospitals, and the New Zealand government thus should be obliged to **collect and disclose all relevant data** in order to allow for monitoring (see Suggested Questions for LOIPR, p. 5).

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53 For general information, see 2016 CEDAW NGO Report France, p. 47, http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.docx

54 Garry L. Warne, "Complete Androgen Insensitivity Syndrome", p. 17, http://www.rch.org.au/emplibrary/chas/CAIS.pdf

55 Actual malignancy risks: CAIS 0.8%, PAIS 15%, see 2016 CRC UK NGO Report (p. 63, Table 1), http://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

56 2nd Report "Involuntary or coerced sterilisation of intersex people in Australia" (2013), p. 66-67, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/~/media/Committees/Senate/committee/clac_ctte/involuntary_sterilisation/second_report/report.ashx

b) IGM 2 – "Feminising" Procedures: Clitoris Amputation/"Reduction", "Vaginoplasty", "Labioplasty", Dilation[57]

As admitted to by the New Zealand Government in a written response to CRC:[58]

> ***"1. Has the High Cost Treatment Pool in the Ministry of Health previously funded genital surgery for intersex infants, provided at the Royal Children's Hospital in Melbourne?***
>
> *We have previously stated that there has been no surgery related to gender assignment in New Zealand since 2006. This statement was based on what now appears to be an* ***incomplete review*** *of hospital coding records. The Ministry of Health has undertaken a more detailed search and we would like to draw the committee's attention to the following updated information on this issue.*
>
> *Until 2007, the High Cost Treatment Pool in the Ministry of Health funded genital surgery for intersex infants, provided at the Royal Children's Hospital in Melbourne..* ***Between 1999 and 2007, the High Cost Treatment Pool funded treatment for 15 girls with congenital adrenal hyperplasia, for genital feminisation.*** *The Royal Children's Hospital then stopped providing this treatment.*
>
> ***More recently, two paediatric surgeons have begun to undertake these operations in New Zealand. These operations continue at about the same rate as before.*** *The incidence of these cases in New Zealand is estimated to be around one or two a year."*

However, according to the **RCH homepage**, intersex referrals from New Zealand persist to this day (see above). And as noted by the Australian Senate Community Affairs References Committee in 2013,[59]

> *"3.51 The Melbourne multidisciplinary team [...]* ***defended early surgery in part on the basis of a lack of evidence*** *of the advantages of delay, though conceding there is no evidence in relation to females"*

And as noted above, according to the homepage of the **New Zealand Ministry of Health**, the Special High Cost Treatment Pool lists *"Congenital Adrenal Hyperplasia"* under *"Examples of medical treatments covered"*, i.e. the most common diagnosis associated with IGM 2 "Feminising Surgery", to this very day.[60]

The New Zealand government should thus be **obliged to undertake a yet more detailed search to collect and disclose all relevant data** on feminising surgeries, both domestic and abroad, in order to allow for monitoring (see Suggested Questions for LOIPR, p. 5).

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57 For general information, see 2016 CEDAW NGO Report France, p. 48, http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.docx

58 Additional info from State party to CRC73 (20.09.2016), p. 1, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC%2fAIS%2fNZL%2f25497&Lang=en

59 2nd Report "Involuntary or coerced sterilisation of intersex people in Australia" (2013), p. 66, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/~/media/Committees/Senate/committee/clac_ctte/involuntary_sterilisation/second_report/report.ashx

60 http://www.health.govt.nz/our-work/hospitals-and-specialist-care/high-cost-treatment-pool

c) IGM 1 – "Masculinising" Surgery: Hypospadias "Repair"[61]

As advocated by the **Auckland District Health Board (Auckland DHB)**:[62]

> ***"Incidence***
>
> *Hypospadias is a very common congenital anomaly (1 in 300 male births). It is most often an isolated finding but may be associated with other abnormalities. [1]*
>
> *The incidence is increased if first degree relatives are affected. Up to 26% of male offspring of an affected father may have hypospadias, and the risk in subsequent siblings is 12%. [2]*
>
> *It is more common in male infants who are growth restricted and premature. Other risk factors include parental subfertility. [3]"*
>
> ***"Surgical Management***
>
> *Parents should be reassured that hypospadias is* ***a common condition which can be corrected with surgery.***
>
> *Surgery is performed by the* ***Paediatric Urologists at Starship Children's Hospital.***
>
> ***Surgery is usually undertaken between 6 and 18 months,*** *although timing will depend on the surgeon and other factors. Often more than one procedure is required and it is preferable to complete all stages in early childhood. [...]"*

The **Starship Hospital, Auckland,** Department of Paediatric Surgery:[63]

> ***"Aims of Surgery:***
> *To provide a straight penis*
> *A urethral opening as forward as possible for normal micturition and intercourse."*
>
> ***"Complications:***
> *Fistula*
> *Meatal stenosis (narrowing of urethral opening)*
> *Infection*
> *Complete breakdown*
> *Abnormal appearance*
> *Urethral stricture*
> *Rotation"*

The **Wellington Children's Hospital**:[64]

> ***"Hypospadias***
>
> *"Hypospadias is a condition where the penis is not correctly formed. [...]* ***If your child has hypospadias they will be referred to a paediatric surgeon or a paediatric urologist*** *who will assess the problem. For mild forms of hypospadias no surgery may be needed, but* ***for the more severe forms one or two operations may be required. These are usually done in early childhood from 9 months on*** *as required."*

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61 For general information, see 2016 CEDAW NGO Report France, p. 48-49, http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.docx

62 http://www.adhb.govt.nz/newborn/Guidelines/Anomalies/Hypospadias.htm

63 https://www.healthpoint.co.nz/download,618769.do

64 http://www.healthpoint.co.nz/public/paediatrics/wellington-childrens-hospital/hypospadias/

As no data on the frequency of IMG 1 "Masculinising Surgeries" is available (usually by far the most frequent involuntary non-urgent procedure carried out on intersex children), the New Zealand government thus should be **obliged to collect and disclose all relevant data** in order to allow for monitoring (see Suggested Questions for LOIPR, p. 5).

d) IGM 4 – Other Unnecessary and Harmful Interventions and Treatments

Other frequent harmful treatments include (as detailed in the **2014 CRC NGO Report**):[65]

- **Forced Mastectomy** (p. 70)
- **Misinformation and Directive Counselling for Parents** (p. 70)
- **Systematic Lies and Imposition of "Code of Silence" on Children** (p. 72)
- **Imposition of Hormones** (p. 73)
- **Forced Excessive Genital Exams, Medical Display, (Genital) Photography** (p. 73)
- **Non-Consensual Human Experimentation** (p. 74)
- **Denial of Needed Health Care** (p. 75)
- **Prenatal "Therapy"** (p. 75)
- **Selective (Late Term) Abortion** (p. 76)
- **Preimplantation Genetic Diagnosis (PGD) to Eliminate Intersex Fetuses** (p. 76)

3. Lack of Independent Data Collection and Monitoring

With no statistics available on intersex births, let alone surgeries 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.

Also in New Zealand, there are **no statistics on intersex births and on IGM practices** available.

However, the Joint general recommendation No. 31 CEDAW / Joint general comment No. 18 CRC "on harmful practices" (2014) clearly **stipulates comprehensive disaggregated data collection and monitoring** (paras 37-39).

4. Lack of legislative provisions, impunity of the perpetrators

Article 5 (a) of the Convention in conjunction with the Joint general recommendation No. 31 CEDAW / Joint general comment No. 18 CRC "on harmful practices" (2014) underline state parties' obligations to *"**explicitly prohibit by law and adequately sanction or criminalize** harmful practices"* (JGR 31/18, para 13), as well as to *"**adopt or amend legislation** with a view to effectively addressing and eliminating harmful practices"* JGR 31/18, para 55), and specifically to ensure *"that the **perpetrators and those who aid or condone such practices are held accountable**"* (JGR 31/18, para 55 (o)).

Also Article 1 of the Convention in conjunction the Committee's **General recommendation No. 19** obliges State parties, inter alia, to ***"take appropriate and effective measures to overcome all forms of gender-based violence"*** (para 24 (a)), to *"encourage the **compilation of statistics***

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

and research *on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence"* (para 24 (c)), to provide ***"Effective complaints procedures and remedies, including compensation"*** (para 24 (I)), ***"take all legal and other measures*** *that are necessary to provide effective protection of women against gender-based violence"* (para 24 (t)).

Accordingly, with regards to IGM practices, **this Committee** as well as the **Committee on the Rights of the Child (CRC)**, referring to Article 24 para 3 CRC and the Joint general recommendation No. 31 CEDAW / Joint general comment No. 18 CRC, already explicitly recognised the obligation for State parties to ***"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"*, as well as to ***"Adopt legal provisions in order to provide redress to intersex persons*** *affected by cases of surgical or other medical treatment without free, prior and informed consent by the intersex person or his/her parents under the guidance of the court"*.[66]

Also in **New Zealand** there are still **no legal or other protections** in place to ensure the protection of intersex children from IGM practices, nor to ensure the **accountability of perpetrators and accessories**.

5. Obstacles to redress, fair and adequate compensation

Article 5 (a) of the Convention in conjunction with the CRC/CEDAW Joint General Comment No. 18/31 "on harmful practices" clearly stipulates the right of victims of IGM practices to ***"equal access to legal remedies and appropriate reparations"***, and specifically to ensure that *"children subjected to harmful practices have* ***equal access to justice,*** *including by* ***addressing legal and practical barriers*** *to initiating legal proceedings,* ***such as the limitation period"***.

However, also in **New Zealand** the **statutes of limitation** 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.[67] So far, in New Zealand there has been **no case of a victim of IGM practices succeeding in going to court**.

The **New Zealand government** so far fails to ensure that non-consensual unnecessary IGM surgeries on minors are recognised as a form of **genital mutilation** or **cruel, inhuman or degrading treatment**, which would formally prohibit parents from giving "consent". In addition, the state party **refuses to initiate impartial investigations**, as well as data collection, monitoring, and disinterested research.[68] Also, hospitals are often **unwilling to provide full access to patient's files**.

This situation is clearly not in line with New Zealand's obligations.

66 CEDAW/C/CHE/CO/4-5, para 25.

67 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.

68 For more on this topic see 2016 CEDAW NGO Report France, p. 55: http://intersex.shadowreport.org/public/2016-CEDAW-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf

6. NZ Doctors and Government consciously dismissing Human Rights Concerns

Both New Zealand doctors and the Government are admittedly aware of the human rights implications of IGM practices, but still refuse to take action accordingly.

Particularly the **New Zealand Government** has been repeatedly made aware of the human rights violations inflicted by IGM practices, as also the NHRI, the **New Zealand Human Rights Commission**, has repeatedly documented the grievances of intersex people in New Zealand, e.g. in 2010:[69]

> ***"****7.13 Intersex people expressed serious concerns about the ongoing effects of medical interventions they received because their bodies had both male and female characteristics. Some were operated on as infants or young children and said their parents were not always aware of the procedures involved or the likely ramifications.*
>
> *"7.14 The overwhelming view of the intersex people who met with the Inquiry was that, except in the case of medical emergencies, intersex children should not be operated on to remove ambiguous reproductive or sexual organs. They described the life-long impact of surgeries that had been performed without their consent, including all or partial loss of sensation in their genitals:*
>
> ***"In my eyes it is wrong and it should never have been***
>
> ***done to me. I would have liked to have been left to***
>
> ***make up my own mind. (Intersex person)."***

Also the discrepancy that clitoris amputation on "normal" girls is illegal in New Zealand under FGM laws, but **amputation on intersex girls is considered to be excluded from sanctions** and remains financed by the State party, has been noted by the Human Rights Commission as early as 2010:[70]

> ***"Female genital mutilation is a crime***
>
> *Sections 204A and B of the Crimes Act 1961 criminalise female genital mutilation. Could it also criminalise some forms of genital surgery?*
>
> *Section 204A does not apply to a medical or surgical procedure that is performed by a medical practitioner for the benefit of that person's physical or mental health.*
>
> *Section 204A states that cultural or religious beliefs or other custom or practice about "what is necessary or desirable" shall not be taken into account when determining if such a procedure should be performed.*
>
> *Prior to 1996 when these sections were added, the only issue was whether or not a patient had consented to the procedures."*

Same by a 2016 Manual issued by the Asia Pacific Forum of National Human Rights Institutions (APF) and the United Nations Development Programme (UNDP):[71]

> ***"****However, there is no evidence to suggest that intersex people's right to physical integrity is protected explicitly in domestic laws, regulations or practice guidelines in any country in Asia and*

69 https://www.hrc.co.nz/files/3014/3501/0683/25-Jan-2010_08-38-44_Intersex_material_from_TGI.doc

70 https://www.hrc.co.nz/files/5414/3501/0684/24-Sep-2010_11-11-56_February2010Intersex_Roundtable_Minutes_.doc

71 http://www.asiapacificforum.net/media/resource_file/SOGI_and_Sex_Characteristics_Manual_86Y1pVM.pdf

the Pacific. On the contrary, laws and policies that prohibit female genital mutilation may give explicit permission for genital surgeries to 'normalise' the bodies of intersex infants and children. [266] [Examples include exceptions in section 5.1.37 of Australia's Criminal Code, Division 9 – Female Genital Mutilation, and in section 204A of New Zealand's Crimes Act 1961.]"

Also 2016 again by the NZHRC in its submission to the 73rd CRC session:[72]

> ***"**40. Infants born in New Zealand with an intersex or Disorder of Sex Development (DSD) may undergo surgery and other medical interventions intended to make their genitalia appear more typically "male" or 'female". As such interventions take place when the child is still an infant, consent is procured from the parents or legal guardian of the child. The practice has given rise to concern in New Zealand regarding its impact on the child's right to bodily autonomy, as it effectively prevents intersex children from participating in the consent and decision making process."*

Nonetheless **IGM practices continue with impunity in New Zealand, directly funded by the State party.**

What's worse, this comes **after the State party has already been reprimanded by CRC for IGM practices** (CRC/C/NZL/CO/5, para 25).

This is clearly **not in line with New Zealand's obligations** under CEDAW **Articles 1 and 5(a)** and **General Recommendations No. 19 and 31.**

72 http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NZL/INT_CRC_COC_NZL_25459_E.pdf

E. Suggested Recommendations

The Rapporteurs respectfully suggest that, with respect to the treatment of intersex persons in New Zealand, the Committee includes the following measures in their recommendations to the Mexican Government (in line with this Committee's and CRC's previous recommendations on IGM practices).

Harmful practices: Intersex genital mutilation

The Committee remains 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.

In the light of its joint general comment No. 31 (2014) and No. 18 of the Committee on the Rights of the Child on harmful practices, the Committee recommends that the State party:

(a) Ensure that no-one is subjected to unnecessary medical or surgical treatment during infancy or childhood, adopt legislation with a view to guarantee bodily integrity, autonomy and self-determination to persons concerned, and provide families with intersex children with adequate counselling and support;

(b) Undertake investigation of incidents of surgical and other medical treatment of intersex persons without informed consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation;

(c) Systematically collect disaggregated data on harmful practices in the State party and make information on the ways to combat these practices widely available;

(d) 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.

(e) Ensure that all intersex children have access to legal documents including birth certificates.