v1.0

Intersex Genital Mutilations

Human Rights Violations Of Persons With Variations Of Sex Anatomy

NGO Report
for the LOIPR for New Zealand
on the Convention against Torture (CAT)

Compiled by:

StopIGM.org / Zwischengeschlecht.org (International Intersex Human Rights NGO)

Markus Bauer
Daniela Truffer

Zwischengeschlecht.org
P.O.Box 2122
CH-8031 Zurich
Switzerland

info_at_zwischengeschlecht.org
http://Zwischengeschlecht.org/
http://StopIGM.org/

January 2017

This NGO Report online:
http://intersex.shadowreport.org/public/2017-CAT-New-Zealand-LOIPR-Zwischengeschlecht-Intersex-IGM.pdf

NGO Report
for the LOIPR of New Zealand
on the Convention against Torture (CAT)

Table of Contents

IGM Practices in New Zealand

A. Suggested Questions for the List of Issues

The Rapporteurs respectfully suggest that in the LOIPR the Committee asks the New Zealand Government the following questions with respect to the treatment of intersex children:

- **How many non-urgent, irreversible surgical and other procedures have been undertaken on intersex children before an age at which they are able to provide informed consent? Please provide detailed statistics on sterilising, feminising, masculinising procedures and imposition of hormones, including prenatal procedures, both in New Zealand hospitals and abroad under the Special High Cost Treatment Pool.**
- **Does the State party plan to stop this practice? If yes, what measures does it plan to implement?**
- **Please indicate which criminal or civil remedies are available for intersex people who have undergone involuntary sterilisation or unnecessary and irreversible medical or surgical treatment when they were children and whether these remedies are subject to any statute of limitations?**

B. Executive Summary

All typical forms of IGM practices are still practised in New Zealand today, facilitated and paid for by the State party, both domestic and abroad under the Special High Cost Treatment Pool. Parents and children are misinformed, kept in the dark, sworn to secrecy, kept isolated and denied appropriate support. (**D**).

New Zealand is thus in breach of its **obligations** under the Convention against Torture to **(a)** take effective legislative, administrative, judicial or other measures to **prevent involuntary, non-urgent surgery and other medical treatment on intersex persons** without the effective, informed consent of those concerned, causing severe mental and physical pain and suffering, and **(b) to ensure impartial investigation, access to redress**, and the right to fair and adequate **compensation** and **rehabilitation for victims**. (Arts. 2, 12, 14 and 16, General Comments 2 and 3). (**D, E**)

This Committee has already recognised IGM practices as a breach of the Convention in previous **Concluding Observations** for Germany, Switzerland, Austria, Denmark, Hong Kong and France, and called for **legislation** to **(a)** end the practice, **(b)** ensure redress and compensation, and **(c)** to provide access to free counselling.

Amongst others also **CRC**, **CEDAW**, **CRPD**, the UN Special Rapporteur on Torture (**SRT**), the UN High Commissioner for Human Rights (**UNHCHR**), the World Health Organisation (**WHO**) and the Council of Europe (**COE**) have called for **legislative remedy** and **access to redress and justice** for victims, and for **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** that would not be considered for "normal" children, without evidence of benefit for the children concerned, but justified by societal and cultural norms and beliefs. **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 on artificial hormones, significantly elevated rates of self-harming behaviour and suicidal tendencies, lifelong mental suffering and trauma, increased sexual anxieties, less sexual activity, dissatisfaction with functional and aesthetic results.

For almost 25 years, intersex people have criticised IGM as **harmful** and **traumatising**, as a form of **genital mutilation** and **child sexual abuse**, as **torture or ill-treatment**, and called for legislation to prevent it and to ensure remedies.

This **Thematic NGO Report** has been compiled by the international intersex NGO **StopIGM.org / Zwischengeschlecht.org**.

It contains **Suggested Questions for LOIPR** (**see opposite page left**).

C. Introduction

a) Intersex and Human Rights in New Zealand

During its 60th Session, the Committee against Torture 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, medically unnecessary, irreversible cosmetic genital surgeries, sterilising procedures, and other harmful treatments on intersex children, which have been described by survivors as genital mutilation and torture. IGM practices are known to cause severe, lifelong physical and psychological pain and suffering, and have been repeatedly **recognised by this Committee** and other **UN bodies** as constituting **torture or ill-treatment**, **violence** and a **harmful practice.**

This NGO Report demonstrates that the current **medical treatment of intersex infants and children in New Zealand** constitutes a serious breach of New Zealand's obligations under the Convention against Torture.

New Zealand not only does nothing to prevent this abuse, but in fact directly finances it via the public health assurances and via funding the public university clinics and paediatric hospitals, or pays to have intersex children sent abroad for IGM procedures via 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).

b) About the Rapporteurs

This thematic NGO report has been prepared by the international intersex NGO *StopIGM.org / Zwischengeschlecht.org*.

- **StopIGM.org / Zwischengeschlecht.org,** founded in 2007, is an international Human Rights NGO based in Switzerland. It is led by intersex persons, their partners, families and friends, and works to represent the interests of intersex people and their relatives, raise awareness, and fight IGM practices and other human rights violations perpetrated on intersex people, according to its motto, *"Human Rights for Hermaphrodites, too!"*[1] According to its charter,[2] Zwischengeschlecht.org works to support persons concerned seeking redress and justice. StopIGM.org regularly reports to UN treaty bodies.

c) Methodology

This thematic NGO report is a localised and updated **addition to the 2016 thematic CAT NGO Report** for **France** by partly the same rapporteurs, also containing the additional **thematic supplements** *"What is Intersex?"* (p, 32–37), *"What are Intersex Genital Mutilations?"* (p. 38–47), *"IGM as a Breach of the Convention against Torture"* (p. 48–57) and *"IGM in Medical Textbooks: History + Current Practice"* (p. 59–69).[3]

The evidence presented under ***"D. IGM Practices in New Zealand"*** is an updated addition to the same section in our **2016 CRC NGO Report for New Zealand.**[4]

---

1 http://Zwischengeschlecht.org/, English pages: http://StopIGM.org/
2 http://zwischengeschlecht.org/post/Statuten
3 http://intersex.shadowreport.org/public/2016-CAT-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf
4 http://intersex.shadowreport.org/public/2016-CRC-NZ-NGO-Zwischengeschlecht-Intersex-IGM.pdf

D. IGM Practices in New Zealand

1. Background: IGM Practices – Involuntary, unnecessary medical interventions

IGM practices include non-consensual, medically unnecessary, irreversible, cosmetic genital surgeries, and/or other similar medical procedures, including imposition of hormones, performed on children with variations of sex anatomy,[5] 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"*.[6]

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**,[7] 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.

2. Intersex is NOT THE SAME as LGBT

Unfortunately, there are several **harmful misconceptions about intersex** still prevailing in public, notably if intersex is counterfactually described as being the same as or a subset of LGBT, 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 preference.

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

Intersex persons and their organisations have spoken out clearly against instrumentalising intersex issues,[8] maintaining that IGM practices present a **distinct and unique issue** constituting significant human rights violations, which are different from those faced by the LGBT community, and thus need to be **adequately addressed in a separate section** as **specific intersex issues.**

---

5 See "What is Intersex?", 2016 CAT France NGO Report, p. 32–37, http://intersex.shadowreport.org/public/2016-CAT-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf

6 For references, see "What are Intersex Genital Mutilations (IGM)?", 2016 CAT France NGO Report, p. 38.

7 See "IGM Practices – Non-Consensual, Unnecessary Medical Interventions ", 2016 CAT France NGO Report, p. 38–47

8 For references, see 2016 CAT France NGO Report France, p. 35, fn 40. http://intersex.shadowreport.org/public/2016-CAT-France-NGO-Zwischengeschlecht-Intersex-IGM.pdf

3. IGM practices in New Zealand: Pervasive and unchallenged

a) Lack of Protection for Intersex Persons in New Zealand

In **New Zealand** (see CRC/C/NZL/CO/5, para 25), same as for example in *Switzerland* (CAT/C/CHE/CO/7, para 20; CRC/C/CHE/CO/2-4, paras 42-43), *Germany* (CAT/C/DEU/CO/5; para 20; CRPD/C/DEU/CO/1, paras 37-38) and *France* (CAT/C/FRA/CO/7, paras. 32-33; CRC/C/FRA/CO/5, paras 47-48), *Denmark* (CAT/C/DNK/CO/6-7, paras 42–43) *Austria* (, CAT/C/AUT/CO/6, paras 44) and *Hong Kong* (CAT/C/CHN-HKG/CO/4-5, paras 28), there are **no legal or other protections** in place to ensure the rights of intersex children to physical and mental integrity, autonomy and self-determination, and to prevent non-consensual, medically unnecessary, irreversible surgery and other harmful treatments a.k.a. IGM practices.

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 plans 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."*[9]

b) Most Common IGM Forms[10] advocated by NZ Medical Council, DHBs, Clinics

Despite **typical official denials** (*"no surgery since 2006"*),[11] 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 abroad to Australia** for "DSD surgery",[12] which is offered under the New Zealand **Special High Cost Treatment Pool** scheme to this day,[13] for example to the Australian

---

9 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-Questioned-over-Intersex-Genital-Mutilations-by-UN-Committee-on-the-Rights-of-the-Child

10 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

11 On 15.09.2016 during the 73rd CRC session, NZ Delegate Dr Patrick Tuohy (Paediatrician, Chief Adviser, Ministry of Health, Wellington, NZ) 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

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

13 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

Royal Children's Hospital Melbourne (RCH).[14] [15] 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]"*.[16] 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."*** [17]

Thus, **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:

- **IGM 3: Sterilising Procedures** plus arbitrary imposition of hormones, as currently advocated by the Royal Children's Hospital Melbourne (RCH), the *"New Zealand referral centre for DSD management"* (see above), justified by an alleged[18] high cancer risk:[19]

  > ***"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."***

---

14 *"[...] 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

15 *"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

16 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

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

18 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

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

RCH's continued advocacy for early gonadectomies was also noted by the Australian Senate Community Affairs References Committee:[20]

> *"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. 4).

- **IGM 2: "Feminising" Genital Surgeries**, as admitted to by the New Zealand Government:[21]

> ***"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,[22]

> *"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"*

---

20 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

21 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

22 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

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.[23]

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. 4).

- **IGM 1: "Masculinising" Genital Surgeries,** as advocated by:

The Auckland District Health Board (Auckland DHB):[24]

"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:[25]

"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:[26]

"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."*

---

23 http://www.health.govt.nz/our-work/hospitals-and-specialist-care/high-cost-treatment-pool
24 http://www.adhb.govt.nz/newborn/Guidelines/Anomalies/Hypospadias.htm
25 https://www.healthpoint.co.nz/download,618769.do
26 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. 4).

c) 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:[27]

> *"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:[28]

> ***"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):[29]

> *"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 the Pacific. On*

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

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

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

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:[30]

"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).

4. The Treatment of Intersex Persons in New Zealand as Torture

a) Infliction of Severe Pain or Suffering

It is well established that IGM Practices generally inflict lifelong, severe pain and suffering. Testimonies of New Zealand IGM survivors documented by the New Zealand Human Rights Commission (NZHRC)[31] [32] (see above 3.c) and in NZ intersex NGO reports[33] prove in an exemplary manner that this is also true in **New Zealand**.

b) Intention

It is generally established that surgery on intersex persons is **always intentionally performed** and not merely the result of negligence, and that it does not detract from the intention if doctors perform surgery **for *well-meant* purposes.** Above referenced testimonies prove that this is also true in **New Zealand.**

c) Purpose of Discrimination

It is generally established that on the basis of their "indeterminate sex," intersex children are singled out for experimental harmful treatments that would be *"considered inhumane"* on "normal" children. Thus intersex children are penalised **compared to "normal" infants**, even where the perpetrator has benign intentions. The evidence from New Zealand clinics and public and Government bodies prove this also to be true in **New Zealand**, as do above referenced testimonies.

d) Involvement of a State Official

In **New Zealand** with its **public health services** paying for the medical ill-treatment of

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

31 NZHCR (2010): "To Be Who I Am – Kia noho au ki toku ano ao: Intersex material from TGI", https://www.hrc.co.nz/files/3014/3501/0683/25-Jan-2010_08-38-44_Intersex_material_from_TGI.doc

32 NZHRC (2010): "Intersex Round Table, Auckland, February 2010 - convened by the Human Rights Commission", https://www.hrc.co.nz/files/5414/3501/0684/24-Sep-2010_11-11-56_February2010Intersex_Roundtable_Minutes_.doc

33 Intersex Awareness New Zealand (ITANZ), 2016 CRC NGO Report (private)

intersex persons and its **District Health Boards, the Medical Council of New Zealand and the Ministry of Health advocating and perpetrating IGM**, it is self-evident that, even if IGM practices would take place in a Private Clinic or abroad, it is directly attributable to the state, and was committed at the very least with the **acquiescence** of a person acting in an official capacity; and even more so in the case of government or government-appointed institutions. As is the **failure of the State to exercise due diligence** to protect this group of citizens from torture.

e) Lawful Sanction

Non-consensual unnecessary surgery performed on an intersex child or adult does not constitute a sanction in **New Zealand**. It is therefore not covered by the exception clause.

5. The Treatment of Intersex Persons in New Zealand as Ill-Treatment

Even if it would be considered that the treatment of intersex people in New Zealand does not constitute torture, it certainly constitutes cruel, inhuman and degrading treatment (Art. 16). Ill-treatment is equally prohibited by the Convention in absolute and non-derogable terms.[34] According to the Committee's General Comment 3, for CIDT also Article 14 applies.[35]

6. Lack of Legislative Provisions, Impunity of the Perpetrators

Art. 2 of the Convention obliges State parties to ***"take effective legislative, administrative, judicial or other measures*** *to prevent acts of torture in any territory under its jurisdiction."* General Comment 2 states, *"The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture,"* and similarly obliges State parties to ***"to eliminate any legal or other obstacles*** *that impede the eradication of torture and ill-treatment; and* ***to take positive effective measures*** *to ensure that such conduct and any recurrences thereof are effectively prevented."*

Accordingly, with regards to IGM practices, this Committee already explicitly recognised the obligation for State parties to ***"Take the necessary legislative, administrative and other measures*** *to guarantee respect for the physical integrity and autonomy of intersex persons and* ***to ensure that no one is subjected during infancy or childhood to non-urgent medical or surgical procedures"***.[36]

However, the **New Zealand State party**, despite also having been made aware of the illegal nature of IGM practices by the Committee on the Rights of the Child (CRC/C/NZL/CO/5, para 25), undeviatingly **refuses to *"take effective legislative, administrative, judicial or other measures"*** to protect intersex children, but so far simply **denies the ongoing practice** or **only admits to small parts of it** (see above 3. a).

7. Obstacles to Redress, Fair and Adequate Compensation

The **statutes of limitation** prevent survivors of early childhood IGM Practices to call a court because persons concerned often **do not find out** about their medical history until much later in life, which in combination with severe trauma caused by IGM Practices often proves to amount to a severe obstacle.[37] Also in **New Zealand** the statutes of limitations

34 Committee against Torture (2008), General comment No. 2, CAT/C/GC/2, para. 3-4.

35 Committee against Torture (2012), General comment No. 3, CAT/C/GC/3, para. 1.

36 CAT/C/CHE/CO/7, 14 August 2015, para 20: http://intersex.shadowreport.org/public/CAT_C_CHE_CO_7-Concl-Obs-Switzerland-2015_G1520151.pdf

37 Globally, no survivor of early surgeries **ever** managed to have their case heard in court. All rel-

effectively **prohibit survivors of early childhood IGM practices to call a court,** as 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. So far in New Zealand no victim of IGM practices succeeded in going to court ever.

To this day, the **New Zealand government** refuses to ensure that non-consensual unnecessary IGM surgeries on minors are **recognised** as a form of **torture or ill-treatment** (see above), or as a form of **genital mutilation** or **harmful practice** respectively (see CRC/C/NZL/CO/5, para 25), 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**. In addition, also **New Zealand hospitals are often unwilling to provide full access to patient's records.**[38]

This situation is not in line with **New Zealand's** obligations under the Convention.

E. Conclusion: New Zealand is Failing its Obligations towards Intersex People under the Convention against Torture

The 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 torture or at least ill-treatment, committed under the Authority of the Medical Council of New Zealand and the District Health Boards (DHB) by publicly funded doctors, clinics, and universities, as well as in private clinics, both domestic and overseas, all relying on money from the mandatory health insurance, and public grants. Although meanwhile the pervasiveness of IGM practices has been established amongst others by the New Zealand Human Rights Commission (NZHRC) and by CRC, the State party 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.

Thus New Zealand is in breach of its obligation to take **effective legislative, administrative, judicial or other measures** to prevent acts of torture (Art. 2 CAT) or other forms of cruel, inhuman or degrading treatment (Art. 16 CAT, General Comment 2).

Also in New Zealand, victims of IGM practices encounter **severe obstacles** in the pursuit of their right to an **impartial investigation** (Arts. 12, 13 CAT), and to **redress** and fair and adequate compensation, including the means for as **full rehabilitation** as possible (Art. 14 CAT, General Comment 3).

Also 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 (Art. 10 CAT).

---

evant court cases (3 in Germany, 1 in the USA) were either about surgery of adults, or initiated by foster parents.

38 NZHCR (ed.) 2010: "To Be Who I Am – Kia noho au ki toku ano ao: Intersex material from TGI", p. 2: *"This section documents **major concerns expressed by intersex people** about medical interventions, **access to and retention of medical records** [...]"*, https://www.hrc.co.nz/files/3014/3501/0683/25-Jan-2010_08-38-44_Intersex_material_from_TGI.doc

STOP Intersex Genital Mutilation!

StopIGM.org / Zwischengeschlecht.org