Intersex Genital Mutilations

Human Rights Violations Of Children With Variations Of Reproductive Anatomy

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

Compiled by:

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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,** arguably both domestic under the authority of the **Medical Council of New Zealand** and overseas under the **Special High Cost Treatment Pool**. Despite previous Concluding Observations by this Committee (2016) and CEDAW (2018) denouncing **IGM in New Zealand** as a **harmful practice**, to this day the **Government fails to act.**

New Zealand 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".

This Committee has consistently recognised IGM practices to constitute a harmful practice under the Convention in Concluding Observations.

In total, UN treaty bodies **CRC, CEDAW, CAT, CCPR** and **CRPD** have so far issued **49 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 human rights.**

Intersex people are born with **Variations of Reproductive 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.

For more than **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 **NGO Report** has been compiled by **StopIGM.org / Zwischengeschlecht.org**, an international intersex NGO. It contains **Suggested Questions** (see p. 18).

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IGM Practices in New Zealand (p. 5-18)

Introduction

1. New Zealand: Intersex, IGM and Human Rights

This Committee (2016) and **CEDAW** (2018) have denounced **IGM in New Zealand** as constituting a **harmful practice**, urging the State party to

- *"[a]dopt clear **legislative provisions explicitly prohibiting the prohibiting** the performance of unnecessary surgical or other medical treatment on intersex children before they reach the legal age of consent"*
- *"[p]romptly **investigate incidents** of surgical and other medical treatment of intersex children without informed consent"*
- *"adopt **legal provisions to provide redress** to victims of such treatment, including adequate **compensation**"*
- *"provide the families of intersex children with **adequate counselling and support**"*

To this day, the **State party fails to act.**

This Thematic NGO Report demonstrates that **all typical forms of IGM are still practised in New Zealand today,** promoted, facilitated and **paid for by the State party** via the **public health system,** arguably both domestic under the authority of the **Medical Council of New Zealand** and overseas under the **Special High Cost Treatment Pool**, constituting a **serious breach** of New Zealand's obligations under the Convention.

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!"* [1] According to its charter,[2] StopIGM.org works to support persons concerned seeking redress and justice and regularly reports to relevant UN treaty bodies, often in collaboration with local intersex persons and organisations, [3] substantially contributing to the so far 49 Treaty body Concluding Observations recognising IGM as a serious human rights violation.[4]

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**,[5] leading to the very first Concluding Observation on intersex and IGM for New Zealand,[6] 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.[7]

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[1] http://Zwischengeschlecht.org/ English homepage: http://stop.genitalmutilation.org

[2] http://zwischengeschlecht.org/post/Statuten

[3] http://intersex.shadowreport.org

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

[5] http://intersex.shadowreport.org/public/2016-CRC-NZ-NGO-Zwischengeschlecht-Intersex-IGM.pdf

[6] CRC/C/NZL/CO/5, paras 25 + 15

[7] 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

In **2017** StopIGM.org and ITANZ reported IGM in New Zealand and overseas also to **CAT**,[8] leading to the Committee currently investigating IGM in New Zealand for the first time.[9] In **2018** StopIGM.org further reported IGM in New Zealand and overseas to **CRPD**,[10] again prompting investigations,[11] as well as to **CEDAW**,[12] again leading to Concluding Observations on intersex and IGM.

3. Methodology

This thematic NGO report is an update to the **2016 CRC New Zealand NGO Report (for Session)**[13] by the same Rapporteurs.

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[8] http://intersex.shadowreport.org/public/2017-CAT-New-Zealand-LOIPR-Zwischengeschlecht-Intersex-IGM.pdf

[9] CAT/C/NZL/QPR/7, para 32

[10] http://intersex.shadowreport.org/public/2018-CRPD-New-Zealand-LOIPR-NGO-Intersex-StopIGM.pdf

[11] CRPD/C/NZL/QPR/2-3, para 16(a)

[12] http://intersex.shadowreport.org/public/2018-CEDAW-New-Zealand-NGO-Intersex-StopIGM.pdf

[13] http://intersex.shadowreport.org/public/2016-CRC-NZ-NGO-Zwischengeschlecht-Intersex-IGM.pdf

A. Precedents: Concluding Observations, LOIPR

1. Harmful Practices and CRC-CEDAW Joint General Comment No. 18/31

a) CRC 2016 Concl Obs: CRC/C/NZL/CO/5, para 25(b)-(e)

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

[…]

Harmful practices

25. ***The Committee recommends that the State party:***

[…]

(b) ***Develop and implement a child rights-based health-care protocol for intersex children, setting the procedures and steps to be followed by health teams, ensuring that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guaranteeing the rights of children to bodily integrity, autonomy and self-determination and provide families with intersex children with adequate counselling and support;***

(c) ***Promptly investigate incidents of surgical and other medical treatment of intersex children without informed consent and adopt legal provisions to provide redress to victims of such treatment, including adequate compensation;***

(d) ***Educate and train medical and psychological professionals on the range of biological and physical sexual diversity and on the consequences of unnecessary surgical and other medical interventions on intersex children;***

(e) ***Extend free access to surgical interventions and medical treatment related to their intersex condition to intersex children between the age of 16 and 18.***

b) CEDAW 2018 Concl Obs: CEDAW/C/NZL/CO/8, paras 23-24

Discriminatory stereotypes and harmful practices

23. While noting the efforts made by the State party to eliminate negative stereotypes affecting women, the Committee expresses concern about the following:

(a) The high persistence of cyberbullying in high schools, which disproportionally affects women and girls with disabilities and lesbian, bisexual, transgender and intersex students;

(b) The persistence of, and lack of reliable information on, entrenched harmful cultural norms and practices, including female genital mutilation, early and forced marriage, the use of dowry payments, polygamy and crimes in the name of so-called "honour";

(c) The conduct of medically unnecessary procedures on intersex infants and children before they reach an age at which they are able to provide their free, prior and informed consent, and the inadequate provision of support and counselling for the families of intersex children and of remedies for victims.

24. ***The Committee recommends that the State party adopt a comprehensive strategy to eliminate discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and society, in cooperation with civil society organizations, in particular women's***

groups, community leaders, teachers and the media, in order to create an enabling environment that is supportive of gender equality. It further recommends that the State party:

(a) ***Systematically collect data on harmful practices, including cyberbullying targeting adolescent girls, and implement measures, such as awareness-raising campaigns in schools, to prevent such practices;***

(b) ***Continue to combat harmful practices, in particular female genital mutilation, early and forced marriages, the use of dowry payments, polygamy and crimes in the name of so-called "honour", and systematically collect data disaggregated by age and ethnicity on those harmful practices;***

(c) ***Adopt clear legislative provisions explicitly prohibiting the performance of unnecessary surgical or other medical treatment on intersex children before they reach the legal age of consent, provide the families of intersex children with adequate counselling and support and provide redress to intersex persons who have undergone such unnecessary surgical or medical treatment.***

2. Cruel, Inhuman or Degrading Treatment (CAT art. 16)

CAT 2017 LOIPR: CAT/C/NZL/QPR/7, para 16

Article 16

32. Please comment on reports of premature surgery and other medical treatment to which intersex children are subjected (see the submissions of Intersex Trust Aotearoa New Zealand, and StopIGM.org and Zwischengeschlecht.org to the Committee against Torture in 2017). Please indicate the number of intersex children who have undergone sex assignment surgery during the reporting period.

3. Integrity of the Person (CRPD art. 17)

CRPD 2018 LOIPR: CRPD/C/NZL/QPR/2-3, para 16

Protecting the integrity of the person (art. 17)

16. Please provide information on:

(a) Measures taken to enact legislation prohibiting and preventing the practice of non-consensual treatments on persons with disabilities, including forced sterilization, genital mutilation and conversion surgeries of intersex persons, with particular attention to children with disabilities;

(b) The practice of Ashley Treatment or growth attenuation procedures in the State party, as well as current legal and policy framework of such treatments.

B. IGM in New Zealand: State-sponsored and pervasive, Gov fails to act

1. Overview: IGM practices in New Zealand: Pervasive and unchallenged

In **New Zealand** (CRC/C/NZL/CO/5, para 25), same as in *Australia* (CRC/C/AUS/CO/5-6, paras 25(b)+26(e); CEDAW/C/AUS/CO/8, paras 25(c)-26(c); CCPR/C/AUS/CO/6, paras 25-26; CRPD/C/AUS/CO/2-3, paras 33(b)+34(b)), *Nepal* (CRC/C/NPL/CO/3-5, paras 41-42; CEDAW/C/NPL/CO/6, paras 18(c),(d)-19(a),(d),(e)), the *United Kingdom* (CRC/C/GBR/CO/5, paras 46-47; CRPD/C/GBR/CO/1, paras 10(a)-11(a), 38-41; CAT/C/GBR/CO/6, paras 64-65), *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**,[14] there are

- **no legal or other protections** in place to **prevent all IGM practices** as stipulated in art. 24(3) and the CRC-CEDAW Joint General Comment No. 18/31,
- **no legal measures** in place to ensure **access to redress and justice** for adult IGM survivors,
- **no legal measures** in place to ensure the **accountability** of all IGM perpetrators and accessories,
- **no measures** in place to ensure **data collection** and **monitoring** of IGM practices.

2. Most Common IGM Forms[15] advocated by NZ Medical Council, DHBs, Clinics

Despite **typical denials** (for example during the last interactive dialogue: *"no surgery since 2006"*),[16] 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",[17] which is arguably still offered under the New Zealand **Special High Cost Treatment Pool** scheme,[18] for example to the Australian **Royal Children's Hospital Melbourne (RCH).**[19] [20] While the New Zealand Government during the last interactive dialogue

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

[15] 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

[16] 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

[17] Personal communication Mani Bruce Mitchell, Intersex Awareness New Zealand (ITANZ)

[18] Under *"Examples of medical treatments covered"*, the Ministry of Health homepage on the Special High Cost Treatment Pool explicitly listed *"Congenital Adrenal Hyperplasia"*, i.e. the most common diagnosis associated with IGM 2: "Feminising" Genital Surgeries ("Clitoral Reduction", "Vaginoplasty") until at least February 2018: https://web.archive.org/web/20180208173423/https://www.health.govt.nz/our-work/hospitals-and-specialist-care/high-cost-treatment-pool
At some point after the July 2018 CEDAW Concluding Observations, the list of diagnoses covered was removed from the homepage: http://www.health.govt.nz/our-work/hospitals-and-specialist-care/high-cost-treatment-pool

[19] *"[...] 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***

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]"*.[21] 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 at the department of paediatric urology whose team consists mostly of surgeons,[22] and which explicitly offers[23] surgery for *"Penile abnormalities: hypospadias"* and *"Disorders of sexual differentiation"*:

> ***"The [RCH] department of paediatric urology** was established in February 2006. [...] Our team comprises of dedicated health professionals and administrative staff working together to improve health outcomes of infants, children and adolescents with **disorders of the urinary tract and genitalia**. [...] **we provide tertiary and quaternary level paediatric urology services for patients from** Tasmania, Western Australia, southern New South Wales and **New Zealand."*** [24]

Thus, 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[25]

As currently advocated by the **Royal Children's Hospital Melbourne (RCH)**,[26] the *"New Zealand referral centre for DSD management"* (see above), justified by an alleged[27] cancer risk of *"6%"*, recommending the *"young person"* could 'consent' to early gonadectomy (while they wouldn't recommend prophylactic removal of breasts or prostate for *"young persons"* despite even higher cancer risk):

> ***"Testes***
>
> *Testes that remain in the abdominal cavity, particularly those that are being overstimulated by the pituitary gland, are **prone to develop cancer** although the risk is very low before puberty. In adulthood there are varying estimates for the risk of a cancer developing in gonadal tissue, a recent review of the literature found that there to be about a **6% risk** in early adulthood, as our*

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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

[20] *"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

[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] https://www.rch.org.au/urology/team/Urology_Team/

[23] https://www.rch.org.au/urology/clinical_services/Conditions_Treated/

[24] http://www.rch.org.au/urology/

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

[26] https://www.rch.org.au/endo/cais/Surgery_for_girls_with_AIS/

[27] 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

> *knowledge in this area is evolving, medical specialists can provide up-to-date information to individuals about the risk of a malignancy.*
>
> ***The risk of malignant change** depends on factors such as the position of the testes (risk is highest in abdominal testes) and age (increases as one gets older) and so differs for each person. Monitoring the gonads using imaging technology such as ultrasound can be used as an alternative to having a gonadectomy.*
>
> *The **decision to have a gonadectomy** or to plan surveillance for their testes should be made by the **young person** with AIS, with support from their **family and medical team**.*
>
> *Surgery to remove the testes (gonadectomy) would take place after the person with CAIS had been fully informed about their medical diagnosis and implications of surgical intervention, and after they had been given the opportunity to discuss the feelings that arise under these circumstances. It is important to note that for girls and women with CAIS, there is a **number of potential benefits to having one's testes left in place** as the production of testosterone which is converted in the body into oestrogen can occur in a more natural / physiological manner than can be attained with use of medications to replace these hormones. Replacing hormones with medications can be complicated for some people, challenges such as finding the most suitable dose/type and having to take daily long-term medication."*

RCH's continued advocacy for early gonadectomies was also noted by the Australian Senate Community Affairs References Committee:[28]

> **"***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.]***"**

The **Urological Society of Australia and New Zealand (USANZ)** is associated with the European Association of Urology (EAU)[29] which in turn is affiliated with the European Society for Paediatric Urology (ESPU).[30] The ***"ESPU/SPU standpoint on the surgical management of Disorders of Sex Development (DSD)"***[31] advocates "gonadectomies":

> ***"Testes are** either brought down in boys or **removed** if dysgenetic with tumour risk or **in complete androgen insensitivity syndrome or 5 alpha reductase deficiency.** Testicular prostheses can be inserted at puberty at the patient's request.**"***

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[28] 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

[29] The Urological Society of Australia and New Zealand (USANZ) also endorses all EAU Guidelines, see current 2019 EAU Guidelines, p. 5, https://www.scribd.com/document/411683225/EAU-2019-Full-Guidelines

[30] The Urological Society of Australia and New Zealand (USANZ) also endorses the ESPU/EAU "Paediatric Urology" Guidelines included in the EAU Guidelines, see ibid., p. 14

[31] P. Mouriquand, A. Caldamone, P. Malone, J.D. Frank, P. Hoebeke, "The ESPU/SPU standpoint on the surgical management of Disorders of Sex Development (DSD)", Journal of Pediatric Urology vol. 10, no. 1 (2014), p. 8-10, http://www.jpurol.com/article/S1477-5131(13)00313-6/pdf

Also, the **"2016 Global Disorders of Sex Development Consensus Statement",**[32] which is co-authored by paediatric endocrinologist Anna Nordenström (Women's and Children's Health, Karolinska Institutet, Karolinska University Hospital, Stockholm) and refers to the *"ESPU/SPU standpoint"*, advocates *"gonadectomy"* – even when admitting *"low"* cancer risk for CAIS (and despite explicitly acknowledging CRC/C/CHE/CO/2-4)[33].

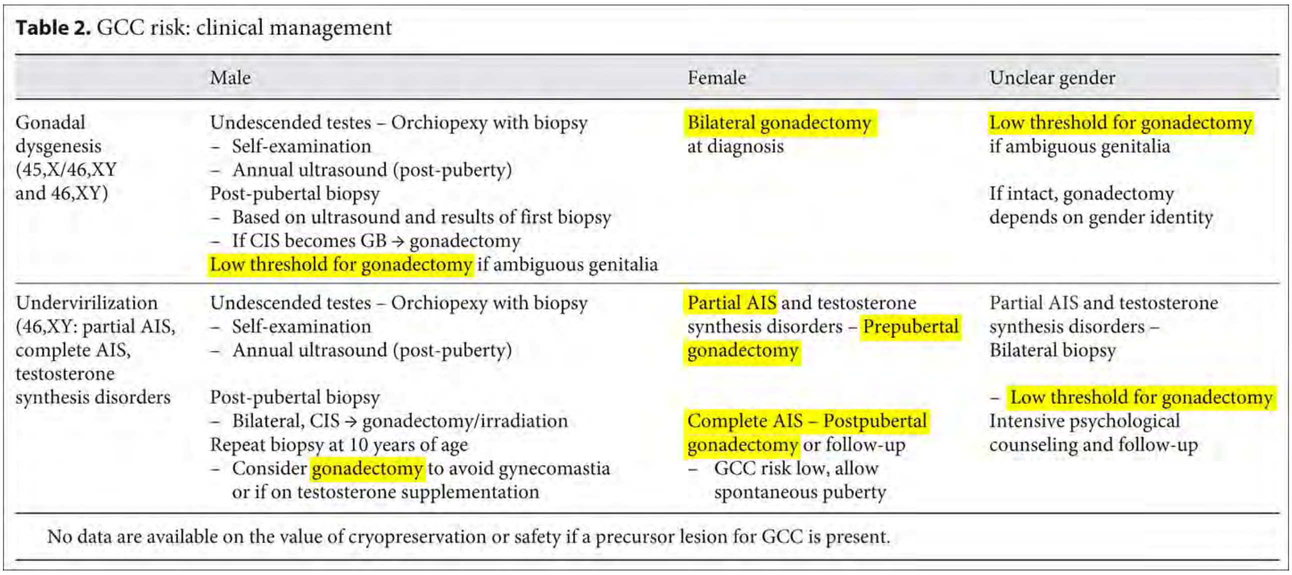

Table 2. GCC risk: clinical management

	Male	Female	Unclear gender
Gonadal dysgenesis (45,X/46,XY and 46,XY)	Undescended testes – Orchiopexy with biopsy – Self-examination – Annual ultrasound (post-puberty) Post-pubertal biopsy – Based on ultrasound and results of first biopsy – If CIS becomes GB → gonadectomy Low threshold for gonadectomy if ambiguous genitalia	Bilateral gonadectomy at diagnosis	Low threshold for gonadectomy if ambiguous genitalia If intact, gonadectomy depends on gender identity
Undervirilization (46,XY: partial AIS, complete AIS, testosterone synthesis disorders	Undescended testes – Orchiopexy with biopsy – Self-examination – Annual ultrasound (post-puberty) Post-pubertal biopsy – Bilateral, CIS → gonadectomy/irradiation Repeat biopsy at 10 years of age – Consider gonadectomy to avoid gynecomastia or if on testosterone supplementation	Partial AIS and testosterone synthesis disorders – Prepubertal gonadectomy Complete AIS – Postpubertal gonadectomy or follow-up – GCC risk low, allow spontaneous puberty	Partial AIS and testosterone synthesis disorders – Bilateral biopsy – Low threshold for gonadectomy Intensive psychological counseling and follow-up

No data are available on the value of cryopreservation or safety if a precursor lesion for GCC is present.

Source: Lee et al., in: Horm Res Paediatr 2016;85:158-180, at 174

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. 18).

b) IGM 2 – "Feminising" Procedures: Clitoris Amputation/"Reduction", "Vaginoplasty", "Labioplasty", Dilation[34]

As admitted to by the New Zealand Government in its written response to CRC during the last interactive dialogue:[35]

> ***"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***

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[32] Lee et al., "Global Disorders of Sex Development Update since 2006: Perceptions, Approach and Care", Horm Res Paediatr 2016;85:158–180, https://www.karger.com/Article/Pdf/442975

[33] Ibid., at 180 (fn 111)

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

[35] 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

> ***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,[36]

> *"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"*

Further, the **Urological Society of Australia and New Zealand (USANZ)** endorses the current **2019 Guidelines of the European Association of Urology (EAU)**,[37] which (see p. 14) include the current **2019 ESPU/EAU "*Paediatric Urology*" Guidelines**[38] of the European Society for Paediatric Urology (ESPU) and the European Association of Urology (EAU). In **chapter 3.16 "*Disorders of sex development*"**,[39] despite admitting that *"Surgery that alters appearance is not urgent"* [40] and that *"adverse outcomes have led to recommendations to delay unnecessary [clitoral] surgery to an age when the patient can give inform consent"*,[41] the ESPU/EAU Guidelines nonetheless explicitly **refuse to postpone non-emergency surgery**, but in contrary **insist to continue with non-emergency genital surgery** (including partial clitoris amputation) on young children based on ***"social and emotional conditions"*** and **substituted decision-making by *"parents and caregivers*** *implicitly act[ing] in the best interest of their children"* and making *"well-informed decisions […] on their behalf"*, and further **explicitly refusing *"prohibition regulations"*** of unnecessary early surgery,[42] referring to the 2018 ESPU Open Letter to the Council of Europe (COE),[43] which further invokes **parents' *"social, and cultural considerations"*** as justifications for early surgery (p. 2).

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. 18).

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[36] 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

[37] See p. 5, https://www.scribd.com/document/411683225/EAU-2019-Full-Guidelines

[38] https://uroweb.org/guideline/paediatric-urology/

[39] https://uroweb.org/guideline/paediatric-urology/#3_16

[40] https://uroweb.org/guideline/paediatric-urology/#3_16_4

[41] Ibid.

[42] Ibid.

[43] https://www.espu.org/images/documents/ESPU_Open_Letter_to_COE_2018-01-26.pdf

c) IGM 1 – "Masculinising" Surgery: Hypospadias "Repair"[44]

The evidence of New Zealand District Health Boards (DHB) and public hospitals advocating early hypospadias "repair" documented in our **2016 CRC NGO Report**[45] (namely the **Auckland District Health Board (Auckland DHB)**,[46] the **Starship Hospital, Auckland,** Department of Paediatric Surgery[47] and the **Wellington Children's Hospital**[48]) is still current.

Further, the **Urological Society of Australia and New Zealand (USANZ)** endorses the current 2019 Guidelines of the European Association of Urology (EAU),[49] which include the current 2019 ESPU/EAU *"Paediatric Urology"* Guidelines[50] of the European Society for Paediatric Urology (ESPU) and the European Association of Urology (EAU) (see p. 14). In **chapter 3.5 *"Hypospadias"*,**[51] the ESPU/EAU Guidelines' **section 3.5.5.3 *"Age at surgery"*** nonetheless explicitly promotes, ***"The age at surgery for primary hypospadias repair is usually 6-18 (24) months."***[52] – despite admitting to the *"risk of complications"*[53] and *"aesthetic[...]"* and *"cosmetic"* justifications.[54]

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. 18).

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 comment No. 18 CRC / Joint general recommendation No. 31 CEDAW "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 24(3) of the Convention in conjunction with the Joint general comment No. 18 CRC / Joint general recommendation No. 31 CEDAW "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*

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[44] 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

[45] See p. 9-10, http://intersex.shadowreport.org/public/2016-CRC-NZ-NGO-Zwischengeschlecht-Intersex-IGM.pdf

[46] http://www.adhb.govt.nz/newborn/Guidelines/Anomalies/Hypospadias.htm

[47] https://www.healthpoint.co.nz/download,618769.do

[48] http://www.healthpoint.co.nz/public/paediatrics/wellington-childrens-hospital/hypospadias/

[49] See p. 5, https://www.scribd.com/document/411683225/EAU-2019-Full-Guidelines

[50] https://uroweb.org/guideline/paediatric-urology/

[51] https://uroweb.org/guideline/paediatric-urology/#3_5

[52] https://uroweb.org/guideline/paediatric-urology/#3_5_5_3

[53] https://uroweb.org/guideline/paediatric-urology/#3_5_5_1

[54] Ibid.

effectively addressing and eliminating harmful practices" JGR 18/31, para 55), and specifically to ensure *"that the **perpetrators and those who aid or condone such practices are held accountable"*** (JGR 18/31, para 55 (o)).

Accordingly, with regards to IGM practices, **this Committee** as well as **CEDAW**[55] already explicitly recognised IGM as a harmful practice, as well as 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"*, and to ***"[p]romptly investigate incidents** of surgical and other medical treatment of intersex children without informed consent and **adopt legal provisions to provide redress** to victims of such treatment, including adequate compensation"*.

Nonetheless, 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 24(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.[56] 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.[57] 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 under the Convention and the previous Concluding Observations.

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[55] CEDAW/C/CHE/CO/4-5, para 25.

[56] 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.

[57] 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:[58]

> **"***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:[59]

> ***"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):[60]

> **"***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 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.*

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

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

[60] http://www.asiapacificforum.net/media/resource_file/SOGI_and_Sex_Characteristics_Manual_86Y1pVM.pdf

> *[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:[61]

> ***"****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 for IGM practices** by this Committee (CRC/C/NZL/CO/5, para 25) and by **CEDAW** (CEDAW/C/NZL/CO/8, paras 23-24).

This is clearly **not in line with New Zealand's obligations** under CRC **Article 24(3)** and the **CRC-CEDAW Joint General Comment No. 18/31, and the previous Concluding Observations.**

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

C. Suggested Questions for the LOIPR

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:

Harmful practices: Intersex Genital Mutilation

- **Since the last Concluding Observations (para 25), 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.**
- **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?**
- **How many cases of IGM practices have been investigated? Have there been any convictions in court?**