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Intersex Genital Mutilations

Human Rights Violations Of Children With Variations Of Sex Anatomy

NGO Report
to the 5th Periodic Report of New Zealand
on the Convention on the Rights of the Child (CRC)

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15 August 2016

This NGO Report online:
http://intersex.shadowreport.org/public/2016-CRC-NZ-NGO-Zwischengeschlecht-Intersex-IGM.pdf

Executive Summary

New Zealand is in breach of its obligations under the Convention on the Rights of the Child to **(a) take effective legislative, administrative, judicial or other measures to prevent harmful practices, i.e. non-urgent, unnecessary surgery and other medical treatment carried out on intersex children** 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**. (Art. 24 para. 3 in conjunction with CRC/CEDAW Joint General Comment No. 18/31 "on harmful practices"). (**A**)

This Committee has already recognised IGM practices as a breach of the Convention in previous **Concluding Observations** for Switzerland, Chile, Ireland, France, the UK and Nepal, and called to **(a)** guarantee bodily integrity, autonomy and self-determination to children concerned, **(b)** adopt legal provisions to ensure redress and compensation, and **(c)** provide access to free counselling. (**A**)

Also **CAT**, **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**) call for **legislative remedy** and **access to redress and justice** for victims.

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 treatments** 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 (**A**).

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.

All typical IGM forms are still practised in New Zealand today. Parents and children are misinformed, kept in the dark, sworn to secrecy, kept isolated and denied appropriate support. (**A, B**).

For more than 20 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 **Concluding Recommendations** (**C**).

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Introduction

State Report and Intersex in New Zealand

New Zealand will be considered for its fifth periodic review by the Committee on the Rights of the Child during its 73rd Session in 2016. 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 a **harmful practice, violence** and **torture or ill-treatment.**

Unfortunately, harmful practices on intersex children weren't mentioned in the State Report. However, this NGO Report demonstrates that the current, involuntary **medical treatment of intersex infants and children in New Zealand** constitutes a harmful practice and a serious breach of New Zealand's obligations under the Convention on the Rights of the Child.

New Zealand not only does nothing to prevent this abuse, but in fact directly finances it via funding the public university clinics and paediatric hospitals, thus violating its duty to prevent harmful practices. To this day, **against better knowledge**, 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.

About the Rapporteurs

This 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, and has continuously collaborated with members of parliament and human rights bodies in order to call on Governments and Clinics to collect and disclose statistics of intersex births and IGM practices, and to prevent them. StopIGM.org has authored and co-authored several international thematic NGO reports resulting in concluding observations on IGM practices by CRC, CAT, CEDAW and CRPD.[3]

1 http://Zwischengeschlecht.org/, English pages: http://StopIGM.org/
2 http://zwischengeschlecht.org/post/Statuten
3 see http://intersex.shadowreport.org

Methodology

This thematic NGO report is a country-specific **addition to the thematic CRC NGO Reports** for **Switzerland (2014) and the UK (2016)** by partly the same rapporteurs.[4]

It further builds on the 2015 CAT New Zealand NGO Report by Intersex Trust Aotearoa New Zealand (ITANZ),[5] public personal testimony by Mani Bruce Mitchell (ITANZ),[6] the "Supplementary submission of the New Zealand Human Rights Commission to the Committee on the Rights of the Child's 73rd Session",[7] research by StopIGM.org, and personal communications with intersex people and allies from New Zealand.

Background: IGM Practices and Intersex Human Rights

Intersex Genital Mutilations are still an **"emerging human rights issue,"** unfortunately often neglected due to lack of access to comprehensive information. To assess the current practice at national level, some general knowledge on the matter is crucial. For more comprehensive information, the rapporteurs refer to the **thematic supplements in earlier thematic CRC NGO reports** (Switzerland, 2014 and the UK, 2016).[8]

The rapporteurs are aware that **IGM practices are a global issue, which can't be solved on a national level alone.** However, this report illustrates why **New Zealand** is a State party to which it would be timely and appropriate to issue strong recommendations.

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4 *2014 CRC Swiss Thematic NGO Report*, online: http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf
2016 CRC UK Thematic NGO Report, online: http://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

5 https://www.hrc.co.nz/files/3914/2950/4674/ITANZ_Submission_on_CAT__13_Jan_2015.pdf

6 http://www.ianz.org.nz/what-is-intersex/
http://www.nzherald.co.nz/lifestyle/news/article.cfm?c_id=6&objectid=10800941

7 http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NZL/INT_CRC_IFN_NZL_24880_E.pdf

8 *"IGM – Historical Overview"* and *"IGM – The 17 Most Common Forms"* contained in the *2014 CRC Swiss Thematic NGO Report*, online: http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf
"D. What is Intersex?", *"E. IGM Practices – Non-Consensual, Unnecessary Medical Interventions"*, *"F. The Treatment of Intersex Persons as a Violation of the Convention on the Rights of the Child"* and *"G. IGM in Medical Textbooks"* contained in the *2016 CRC UK Thematic NGO Report*, online: http://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

A. IGM Practices in New Zealand

1. Lack of Protection for Intersex Persons, IGM Practices Remain Pervasive

a) Overview

In **New Zealand**, same as in the states of *Switzerland* (CRC/C/CHE/CO/2-4, paras 42-43), *Ireland* (CRC/C/IRL/CO/3-4, paras 39-40), *France* (CRC/C/FRA/CO/5, paras 47-48), *Chile* (UN CRC, CRC/C/CHL/CO/4-5, paras 48–49), the *United Kingdom* (CRC/C/GBR/CO/5, paras 45–46) and *Nepal* (CRC/C/NPL/CO/3-5, paras 41–42), there are **no legal or other protections**[9] in place to ensure the rights of intersex children to physical integrity, autonomy and self-determination, or 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.

To this day, all forms of **IGM practices remain widespread and ongoing**, advocated, prescribed and perpetrated by **doctors** in **public University, Regional Children's Clinics**, and Private Clinics, and advocated by **New Zealand medical associations**.

In addition, many New Zealand intersex children are being **sent to Australia** for "DSD surgery",[10] mainly to the **Royal Children's Hospital Melbourne (RCH)**.[11] [12] [13]

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9 ***"New Zealand's legal framework does not contain any specific statutory provision that would require the consideration of such interventions to be deferred until the child is of an age where they have capacity to provide informed consent or express their views."*** "Supplementary submission of the New Zealand Human Rights Commission to the Committee on the Rights of the Child's 73rd Session", para 43, http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NZL/INT_CRC_IFN_NZL_24880_E.pdf

10 personal communication Mani Bruce Mitchell (ITANZ)

11 *"Presently, there is controversy surrounding early intervention in DSD, although 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

12 *"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

13 *"In addition to the provision of paediatric urological services for the greater Melbourne metropolitan area and regional Victoria we [RCH] provide* ***tertiary and quaternary level paediatric urology services for patients from*** *Tasmania, Western Australia, southern New South Wales and* ***New Zealand."*** http://www.rch.org.au/urology/

b) Most Common IGM Forms[14] advocated by NZ Medical Associations, Doctors, Clinics

- **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 a), justified by an alleged[15] high cancer risk:[16]

> ***"Removal of the testes***
>
> *Testes that remain in the abdominal cavity, particularly those that are being overstimulated by the pituitary gland, are prone to develop cancer. This develops in approximately 9% of women with AIS, but hardly ever before puberty. 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:*** *some families decide that it should take place when the girl is small, while others (particularly in the US) are advised that the testes can be left in place until after the girl has gone through puberty. It is likely that removal after puberty is the better option in terms of the girl's self-esteem because, due to the conversion of androgen to oestrogen in the body, she will develop breasts and a female body shape without the need for hormonal treatment. The surgery would take place after the girl had been fully informed about her medical condition, and after she had been given the opportunity to discuss the feelings that arise under these circumstances.* ***The alternative approach – 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:[17]

> *"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.]"*

- **IGM 2: "Feminising" Genital Surgeries**, again as advocated by RCH in front of the Australian Senate Community Affairs References Committee:[18]

> *"3.51 The Melbourne multidisciplinary team did not support general postponement of gender assignment surgeries. It argued that there may be a place for surgery during childhood, as delay may not be appropriate. The 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:*

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14 For more information, see 2016 CRC UK NGO Report (p. 42–47), http://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

15 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

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

17 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

18 ibid,, p. 66

"Although there is no direct evidence regarding the timing of genital surgery in girls, there is evidence from studies on boys. These report ***better self-esteem and body image,*** *and more positive attitudes towards intimate relationships in adolescents and young men* ***if their genital surgery is completed before the age of 3 years,*** *compared to surgery in mid-childhood. Although some people advocate leaving all genital surgery till later when the person can consent themselves to the procedure, there are no studies to demonstrate a comparison of outcomes with this greater delay. [64] [Disorder of Sex Development multidisciplinary team at Royal Children's Hospital, Melbourne, Submission 92, p. 6.]"*

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

The Auckland District Health Board (Auckland DHB):[19]

"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.*
- *It is critical that parents are told that circumcision should not be performed as the foreskin remnant is required for surgical repair.*
- *The surgical principles are:*
  - *To reposition the meatus on to the head of the penis (meatoplasty and glanduloplasty)*
  - *To straighten the chordee (othoplasty)*
  - *To correct the hooded foreskin (by circumcision)*
  - *To achieve all of this with an aesthetically acceptable result"*

The Starship Hospital, Auckland, Department of Paediatric Surgery:[20]

"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"*

19 http://www.adhb.govt.nz/newborn/Guidelines/Anomalies/Hypospadias.htm
20 http://www.healthpoint.co.nz/download,259608.do

The Wellington Children's Hospital:[21]

> ***"Hypospadias***
>
> *"Hypospadias is a condition where the penis is not correctly formed. There is a lack of tissue on the under-surface of the penis. This can range from very mild, where the foreskin is not completely covering the tip of the penis (a hooded foreskin), to severe where the penis is bent (has a chordee) and the hole that you pee out (the urethral meatus) is recessed from the tip of the penis up to the scrotum. Hypospadias is becoming more common and most patients with hypospadias have a mild form. To function normally the penis needs to be straight and the meatus needs to be on the tip of the penis.* ***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. Depending on the surgery required, some may be done as daystay procedures but often children will need to stay in hospital overnight afterwards or for a longer period of time if the surgery is more extensive."*

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 in the past the NHRI, the NZ Human Rights Commission, has repeatedly documented the grievances of intersex people in New Zealand, for example:[22]

> *"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:[23]

> ***"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*

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

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

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

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 as by a recent Manual issued by the Asia Pacific Forum of National Human Rights Institutions (APF) and the United Nations Development Programme (UNDP):[24]

> *"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. [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.]"*

And last but not least the renewed criticism by the NZ HRC submission for this 73rd CRC session:[25]

> *"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."*

To this day also in New Zealand there are **no legal or other protections** in place to ensure the rights of intersex children to physical integrity, autonomy and self-determination, nor to prevent non-consensual, medically unnecessary, irreversible surgery and other harmful treatments a.k.a. IGM practices, but **public University clinics continue to perpetrate IGM with impunity, directly funded by the State party.**

2. The Treatment of Intersex Children in New Zealand as a Harmful Practice and Violence

a) Harmful Practice [26]

Article 24 para 3 CRC calls on states to abolish harmful "traditional practices prejudicial to the health of children". While the initial point of reference for the term was the example of Female Genital Mutilation/Cutting (FGM/C), the term consciously wasn't limited to FGM/C, but meant to include all forms of harmful, violent, and/or invasive traditional or customary practices.[27]

The Committee has repeatedly considered IGM as a harmful practice, and the CRC/CEDAW Joint General Comment No. 18/31 on harmful practices as applicable.[28]

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

25 http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NZL/INT_CRC_IFN_NZL_24880_E.pdf

26 For a more extensive version, see *2016 CRC UK Thematic NGO Report*, p. 55–56, http://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

27 UNICEF (2007), Implementation Handbook for the Convention on the Rights of the Child, at 371

28 CRC/C/CHE/CO/2-4, 4 February 2015, paras 42–43: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/CHE/CO/2-4&Lang=En

Harmful practices (and inhuman treatment) have been identified by intersex advocates as the **most effective, well established and applicable human rights frameworks** to eliminate IGM practices and to end the impunity of the perpetrators.[29]

The **Joint General Comment No. 18 "on harmful practices"** *"call[s] upon States parties to* ***explicitly prohibit by law and adequately sanction or criminalize*** *harmful practices, in accordance with the gravity of the offence and harm caused, provide for means of prevention, protection, recovery,* ***reintegration and redress for victims*** *and* ***combat impunity*** *for harmful practices"* (para 13).

Particularly, the Joint General Comment further underlines the need for a ***"Holistic framework*** *for addressing harmful practices"* (paras 31–36), including ***"legislative, policy and other appropriate measures*** *that must be taken to ensure full compliance with [state parties'] obligations under the Conventions to eliminate harmful practices"* (para 2), as well as

- *"Data collection and monitoring"* (paras 37–39)
- *"Legislation and its enforcement"* (paras 40–55), particularly:
- ***"adequate civil and/or administrative legislative provisions"*** (para 55 (d))
- *"provisions on* ***regular evaluation and monitoring****, including in relation to implementation, enforcement and follow-up"* (para 55 (n))
- ***"equal access to justice,*** *including by* ***addressing legal and practical barriers to initiating legal proceedings, such as the limitation period,*** *and that the* ***perpetrators and those who aid or condone such practices are held accountable"*** (para 55 (o))
- *"equal access to* ***legal remedies and appropriate reparations*** *in practice"* (para 55 (q)).

Last but not least, the Joint General Comment explicitly stipulates: *"Where* ***medical professionals*** *or government employees or civil servants* ***are involved or complicit in carrying out harmful practices,*** *their status and responsibility, including to report, should be seen as an* ***aggravating circumstance in the determination of criminal sanctions or administrative sanctions such as loss of a professional licence or termination of contract,*** *which should be preceded by the issuance of warnings.* ***Systematic training*** *for relevant professionals is considered to be an effective preventive measure in this regard."* (para 50)

Thus, **IGM practices in New Zealand** – as well as the **complete failure of the state party to enact appropriate legislative, administrative, social and educational measures** to eliminate them and to ensure effective access to remedies and redress – clearly violate Article 24 CRC, as well as the CRC/CEDAW Joint General Comment No. 18/31 on harmful practices.

CRC/C/CHL/CO/4-5, 2 October 2015, paras 48–49, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fCHL%2fCO%2f4-5&Lang=en

29 Daniela Truffer, Markus Bauer / Zwischengeschlecht.org: "Ending the Impunity of the Perpetrators!" Input for Session 3: "Human Rights Standards and Intersex People – Progress and Challenges - Part 2" at "Ending Human Rights Violations Against Intersex Persons." OHCHR Expert Meeting, Geneva 16–17.09.2015, online: http://StopIGM.org/public/S3_Zwischengeschlecht_UN-Expert-Meeting-2015_web.pdf

b) Violence against Children [30]

Similarly, the Committee has also considered IGM practices as violence against children, and Art. 19 and the General Comment No. 13 also offers strong provisions to combat IGM practices.

3. Lack of Legislative Provisions to Ensure Protection from IGM Practices, Impunity of the Perpetrators

Article 24 para. 3 of the Convention in conjunction with the CRC/CEDAW Joint General Comment No. 18/31 "on harmful practices" (2014) underline state parties' obligations to ***"explicitly prohibit by law and adequately sanction or criminalize*** *harmful practices"* (JGC 18/31, para 13), as well as to ***"adopt or amend legislation*** *with a view to effectively addressing and eliminating harmful practices"* (JGC 18/31, para 55), and specifically to ensure *"that the* ***perpetrators and those who aid or condone such practices are held accountable"*** (JGC 18/31, para 55 (o)).

Also Article 19 of the Convention calls upon states to ***"take all appropriate legislative, administrative, social and educational measures*** *to protect the child from all forms of physical or mental violence*", and the General Comment No. 13 "The right of the child to freedom from all forms of violence" (2011) stipulates that state parties ***"ensur[e] absolute prohibition*** *of all forms of violence against children in all settings and effective and appropriate* ***sanctions against perpetrators"*** (GC 13, para 41 (d)).

Accordingly, with regards to IGM practices, and referring to Article 24 para 3 and the CRC/CEDAW Joint General Comment No. 18/31, this Committee already explicitly recognised the obligation for State parties to ***"ensure that no-one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to children concerned"***, as well as to *"[u]ndertake investigation of incidents of surgical and other medical treatment of intersex children without informed consent and* ***adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation"***.[31]

However, to his day and **against better knowledge** the **New Zealand government refuses to even discuss, let alone enact appropriate legislative measures** to effectively eliminate IGM practices, nor to **address the factual impunity of IGM perpetrators.**

Worse, **New Zealand government bodies**, while repeatedly having been made aware of the harm done by the practice, are **actively shielding IGM perpetrators** by refusing to take action to outlaw and adequately sanction the practice**.**

This situation with the **New Zealand government** ignoring the ongoing practice while continuing to **protect and fund the perpetrators** is clearly not in line with **New Zealand's obligations** under the Convention and CRC/CEDAW Joint General Comment No. 18/31.

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30 For a more extensive version, see *2016 CRC UK Thematic NGO Report*, p. 57, http://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

31 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

4. Obstacles to Redress, Fair and Adequate Compensation

Article 24 para. 3 of the Convention in conjunction with the CRC/CEDAW Joint General Comment No. 18/31 "on harmful practices" clearly stipulate the right of victims of IGM practices to ***"equal access to legal remedies and appropriate reparations"*** (JGC 18/31, para 55 (q)), 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"*** (JGC 18/31, para 55 (o)).

Article 19 of the Convention and the General Comment No. 13 "The right of the child to freedom from all forms of violence" also stipulate the right of victims to ***"effective access to redress and reparation"*** (GC 13, para 41 (f)), ***"including compensation to victims"*** (GC 13, para 56).

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 even once they do.[32] So far there was no case of a victim of IGM practices succeeding in going to a New Zealand court.

The **New Zealand government** so far refuses to ensure that non-consensual unnecessary IGM surgeries on minors are recognised as a form of **genital mutilation**, 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.

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

32 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.

B. Conclusion: New Zealand is Failing its Obligations towards Intersex People under the Convention on the Rights of the Child

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 of the suffering this causes. The State party is responsible for these violations constituting a harmful practice, violence against children, and torture or at least ill-treatment, perpetrated by publicly funded doctors, clinics, and universities, as well as in private clinics, all relying on money from the mandatory health insurance, and public grants. Although in the meantime the pervasiveness of IGM practices is common knowledge, New Zealand nonetheless fails to prevent these grave violations, but allows the human rights violations of intersex children to continue unhindered.

Thus **New Zealand is in breach of its obligation to take effective legislative, administrative, judicial or other measures to prevent harmful practices** (Art. 24 para. 3 in conjunction with CRC/CEDAW Joint General Comment No. 18/31 "on harmful practices"), as well as of its obligations under Articles 2, 3, 6, 8, 12, 16, 19, 23, 24.1, 34, 36, and 37 of the Convention on the Rights of the Child. [33]

Also in New Zealand, victims of IGM practices encounter severe obstacles in the pursuit of their **right to redress, fair and adequate compensation, including the means for as full rehabilitation as possible**.

Further the state party's efforts on **education and information regarding the human rights aspects of IGM practices in the training of medical personnel** are grossly insufficient with respect to the treatment of intersex people.

33 See *2016 CRC UK Thematic NGO Report*, p. 53–58, http://intersex.shadowreport.org/public/2016-CRC-UK-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf

C. Recommendations

The Rapporteurs respectfully suggest that the Committee recommends the following measures to the New Zealand Government with respect to the treatment of intersex children (based on the Committee's previous recommendations to ***Switzerland*** *and* ***Ireland****):*

Intersex Children

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. 18 (2014) and No. 31 of the Committee on the Elimination of Discrimination against Women 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 children 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 children without informed consent and adopt legal provisions in order to provide redress to the victims of such treatment, including adequate compensation; and,**

(c) **Educate and train medical, psychological and education professionals on intersex as a natural bodily variation and on the consequences of unnecessary surgical and other medical interventions for intersex children.**

StopIGM.org / Zwischengeschlecht.org