

Intersex Trust Aotearoa New Zealand (ITANZ)

ITANZ is a New Zealand registered charitable trust and provides information/education and training for organisations and professionals who provide services to intersex people and their families. Consistent with the Yogyakarta Principles (YP), we request that the New Zealand Government recognise the following rights of intersex people:

1. The right to be protected from medical abuses.

Therefore the New Zealand Government should “take all necessary legislative, administrative and other measures to ensure that no child’s body is irreversibly altered by medical procedures in an attempt to impose a gender identity without the full, free and informed consent of the child in accordance with the age and maturity of the child and guided by the principle that in all actions concerning children, the best interests of the child shall be a primary consideration” (YP 18B).

A surgical approach to deal with those presenting as “intersex” (a label to describe biological variety of anatomical conditions that do not fall within standard male and female categories) became standard practice in the 1970s. Genital-normalising treatment, involving both surgery and hormone therapy, is however often medically unnecessary, not always consistent with the person’s gender identity, poses severe risks for sexual and reproductive health and is often performed without free and fully informed consent. Intersex people in New Zealand report their condition was viewed “as a medical problem to be fixed” and that they are dissatisfied by their treatment and lack of current recourse to remedy their physical and emotional damage. (See *To Be Who I Am* (Human Rights Commission, Wellington, 2007); Chapter 19 of *Human Rights In New Zealand* 2010.)

If surgery is not medically necessary to perform while the person is an infant (for the child’s physical well-being), any irreversible treatment should not occur until the person can give free and fully informed consent. Such surgery has recently been categorised as a violation of children’s rights by the International NGO Council on Violence against Children (October 2012) and in February 2013 the Special Rapporteur on torture (including ill-treatment in health care settings) called on all States to repeal any law allowing genital-normalising surgery, when “enforced or administered without the free and informed consent of the person concerned.”

We therefore recommend that in New Zealand there should be:

- a) *Statutory prohibition of surgical procedures on children who are not competent to consent for themselves aimed solely at correcting genital ambiguity;*
- b) *Facilitation of dialogue between intersex people, relevant government agencies, District Health Boards and medical practitioners in order to best inform policy and medical practice regarding intersex conditions; and;*
- c) *Compulsory provision of training in relevant undergraduate and postgraduate courses on appropriate medical responses to intersex conditions.*

2. The right to effective remedies and redress.

Therefore the New Zealand Government should “establish the necessary legal procedures, including through the revision of legislation and policies, to ensure that victims of human rights violations on the basis of sexual orientation or gender identity have access to full redress through restitution, compensation, rehabilitation, satisfaction, guarantee of non-repetition, and/or any other means as appropriate” (YP 28A).

The New Zealand Government should ensure that the human rights and freedoms of those people who have already been subject to unnecessary or non-consensual medical interventions because of an intersex condition are respected and upheld. We therefore recommend:

- d) Provision of funding to enable optional reversal or alteration of previous surgical gender assignment procedures because of an intersex condition, as well as provision of any other relevant therapeutic intervention;*
- e) Longer retention of medical records belonging to those who have undergone gender assignment procedures because of an intersex condition; and*
- f) Official recognition of, and apology for, the detrimental effects of previous medical policy and practice in the treatment of intersex condition*

3. The right to recognition before the law.

Therefore the New Zealand Government should “take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person’s gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person’s profound self-defined gender identity” (YP 3C).

(g) We recommend that the New Zealand Government make provision for people with intersex conditions to change the sex details on any official documentation to male, female or indeterminate based solely on the individual’s self-identification – that is, without any requirement for medical treatment and without the need to resort to a court process, as is currently required. (See also Diversity in Health National LGBTI Health Alliance, Australia, November 2012.)

Signed:

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- *Intersex Trust (Members)*
- *Rogena Sterling, Law PhD Candidate on Intersex Recognition, University of Waikato*
- *Denise Steers, Psychologist and PhD student, Social Psychiatry & Population Mental Health Research Unit Paediatric Department, Otago University*
- *Liz Paton, Convenor of the ‘Right to Health’ stream. Asia Pacific Outgames Human Rights Conference, 2011.*