28 February 2016

To the Secretariat of the Human Rights Committee

Thank you very much for accepting this late submission from the Aotearoa /New Zealand Sexual Orientation, Gender Identity and Intersex (SOGII) UPR Coalition. This coalition came together to prepare an extensive submission, including video presentation, for New Zealand’ second Universal Periodic Review in January 2014.[[1]](#footnote-1) We were extremely disappointed that New Zealand received no recommendations from States parties about the significant human rights issues raised in that submission. In its response to the Human Rights Council, the New Zealand Government noted:

3. The New Zealand Government is aware that some issues raised by the Human Rights Commission and NGOs in their UPR submissions were not reflected in the interactive dialogue and Working Group recommendations, for example issues around legal abortion and the rights relating to sexual orientation, gender identity and intersex people. We intend to follow up on these issues separately as part of our commitment to ongoing engagement with civil society on the UPR.

The video statement delivered on behalf of the Aotearoa / NZ SOGII UPR Coalition in June 2014 (Appendix 2) called on the New Zealand delegation to provide a timeframe for such consultation, an indication of the government agencies that would be leading this work, and a commitment to addressing these issues through New Zealand’s National Plan of Action on Human Rights. It also identified priority issues, the majority of which focused on either fundamental civil and political rights or on pressing concerns about barriers to the realisation of transgender people’s the right to the highest attainable standard of health.

Despite the New Zealand government’s statement to the Human Rights Council, there has been no follow-up or ongoing engagement with civil society organisations or individuals that made UPR submissions on SOGII issues. There remain significant breaches of civil and political rights that are relevant to the Human Rights Committee’s current review. This submission summarises the outstanding civil and political rights from our UPR submission.

We would also like to note and welcome the efforts of the New Zealand Human Rights Commission to address some of these issues in its submission to the Human Rights Committee. Specifically, it has focused on intersex human rights issues on page 42 (paragraphs 154-156) and on transgender people in detention on page 60 (paragraphs 225-229). The Commission’s submission reinforces the following two recommendations from the SOGII UPR Coalition’s submission, urging the New Zealand Government to:

* statutorily prohibit surgical procedures, aimed solely at correcting genital ambiguity, on children who are not competent to consent for themselves
* update the Department of Correction’s Transgender Prisoner policy to ensure transgender prisoners’ right to safety, and their access to health services and rehabilitation on an equal basis as others

The other significant human rights issue the Coalition would like to draw to the Committee’s attention is the New Zealand Government’s failure to ensure transgender people’s right to recognition before the law. Specifically, New Zealand’s Family Court process for amending sex details on a birth certificate requires evidence of medical interventions such as long term hormone treatment or surgeries. Typically, these procedures result in sterilisation. Therefore, their requirement as prerequisites for amending a birth certificate amount to coerced sterilisation. It is timely that the latest report from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recommended that States parties “adopt transparent and accessible legal gender recognition procedures and abolish requirements for sterilization and other harmful procedures as preconditions”.[[2]](#footnote-2)

In our UPR submission, the Coalition recommended that the process for amending sex details on a New Zealand birth certificate should be based on the principle of self-determination, reflecting international human rights standards and a growing number of best practice laws and polices around the world.[[3]](#footnote-3) Such an approach would also create consistency with New Zealand’s world-leading passports policy. The inconsistency between the two provisions means many transgender people have passports that do not match their birth certificate details. While a passport can be used as evidence of identity in some circumstances, in some pivotal areas of life a birth certificate is given precedence. For example, transgender people who cannot amend their birth certificate will be recorded as their birth sex on their child’s birth certificate (exposing themselves and their child to potential discrimination). Furthermore, in most overseas jurisdictions, if a transgender woman is held in custody she will be detained in a male detention facility if she does not have a female birth certificate.

In the interest of brevity, the remainder of this submission summarises the relevant civil and political rights in the Aotearoa / New Zealand SOGII Coalition’s UPR submission. If further details are required, the full submission can be downloaded online at: <https://www.hrc.co.nz/files/7014/2406/3081/SOGII-Coalition_joint-UPR-submission_New-Zealand_Jan-Feb-2014-with-appendices.doc>

Yours sincerely

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**Summary of the Civil and Political Rights highlighted in the submission of**

**the Aotearoa New Zealand Sexual Orientation, Gender Identity and Intersex Coalition to New Zealand’s second Universal Periodic Review January 2014**

**Freedom from torture - Intersex human rights issues**

*Issue:* NZ infants born with an intersex condition are still operated on to make their bodies more typically ‘male’ or ‘female’. Genital-normalising treatment, including surgery poses severe risks for sexual and reproductive health, is not always consistent with the person’s gender identity, and is often performed without consent.

*Recommendations:* a) statutorily prohibit surgical procedures, aimed solely at correcting genital ambiguity, on children who are not competent to consent for themselves and b) facilitate dialogue between intersex people, relevant government agencies and health professionals in order to best inform policy and medical practice regarding intersex conditions and c) provide funding to enable optional reversal or alteration of previous surgical gender assignment procedures because of an intersex condition.

**Right to Human and Personal Security**

*Issue:* New Zealand lacks hate crime legislation. SOGII people and other minorities are more at risk of being attacked based on hostility against our communities. The Sentencing Act 2002 enables a court to consider if a crime was motivated by a victim’s sexual orientation or gender identity, but there are no procedures to ensure judges receive relevant information for sentencing, nor is use of Sentencing Act provisions monitored.

*Recommendations*: explore options for NZ Police and our communities to work together to a) increase reporting of offences based on hostility against someone’s sexual orientation, sex or gender identity and to b) improve the effectiveness of the current Sentencing Act provisions and identify whether further legislative or policy provisions are needed.

**Rights to security and health – Trans Prisoners**

*Issue:* There is no data on the number of trans prisoners. The Human Rights Commission, Ombudsman’s Office and lawyers have raised concerns about trans prisoners’ right to health (including access to hormone treatment) and the safety of trans women in male prisons.

*Recommendation:* review the Department of Corrections’ policy for transgender prisoners to ensure transgender and transsexual prisoners’ safety and dignity and their access to appropriate health and rehabilitation services within prison.

**Right to Recognition before the Law and Freedom from Torture, and other cruel, inhuman or degrading treatment or punishment**

*Issue:* The Marriage (Definition of Marriage) Amendment Act 2013 improved legal recognition of partner relationships for sexual minorities. Intersex and trans people continue to face significant barriers to obtaining consistent official documentation that reflects their gender identity. Amendments to birth certificates of trans people require a Family Court process and evidence of medical gender reassignment treatment.

*Recommendations:* a) ensure trans and intersex people are not required to undertake medical procedures, some of which involve sterilisation, in order to gain recognition before the law. b) enable sex details on official documentation to be recorded as male, female or a third non-binary option based on self-identification.

**Appendix 1: Full list of relevant recommendations:**

**The Aotearoa / New Zealand SOGII UPR Coalition recommends that the New Zealand Government be directed to:**

***Intersex Rights***

1. *statutorily prohibit surgical procedures, aimed solely at correcting genital ambiguity, on children who are not competent to consent for themselves*
2. *facilitate 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*
3. *require compulsory training in relevant undergraduate and postgraduate courses on appropriate medical responses to intersex conditions*
4. *provide funding to enable optional reversal or alteration of previous surgical gender assignment procedures because of an intersex condition*
5. *require longer retention of medical records belonging to those who have undergone gender assignment procedures because of an intersex condition*
6. *officially recognise and apologise for the detrimental effects of previous medical policy and practice in the treatment of intersex conditions*

***Security***

1. *explore options for Police and our communities to work together on practical solutions that will*
	* *increase reporting of offences committed partly or wholly because of hostility against based on someone’s sexual orientation, sex or gender identity*
	* *improve the effectiveness of the current Sentencing Act provisions and identify whether further legislative or policy provisions are needed to protect sexuality, sex and gender diverse people's right to safety*
2. *support and fund school-based initiatives that promote inclusive school communities and address bullying and marginalisation of SOGII students*
3. *update the Department of Correction’s Transgender Prisoner policy to reflect international best practice about placement, care and management of trans prisoners to ensure their right to safety, and access to health services and rehabilitation on an equal basis as others*

***Recognition before the Law***

1. *remove any requirement to undergo or intend to undergo medical or surgical procedures, including those that may result in sterilisation, as a prerequisite for changing sex details on a birth certificate or other official document*
2. *enable adults with intersex conditions and trans and other gender diverse adults to change the sex details on any official documentation to male, female or indeterminate based solely on the individual’s self-identification, without any requirement for medical treatment and without the need to resort to a court process*
3. *enable children and young people under the age of 18 who have intersex conditions or who are trans or gender diverse to access this same procedure, with only the additional requirement that they have the support of their legal guardian / parent, taking into account the evolving capacities and best interests of the child*
4. *review the Adoption Act 1955 with the aim of reflecting the legitimate diversity of New Zealand family and parenting arrangements*

 **Appendix 2:**

**UPR – New Zealand**

**Transcript of Video Statement by LLH**

*- delivered by Joe Macdonald*

19 June, 2014

Thank you, Mr. President, distinguished members of the delegation,

This statement is supported by New Zealand’s Sexual Orientation, Gender Identity and Intersex Coalition, representing 11 key NGOs working in this area.

We were very disappointed that countries did not make recommendations about any of the human rights issues raised in the Coalition’s comprehensive UPR submission.

We welcome the New Zealand government’s statement in paragraph 3 of its response to the UN: “to follow up on these issues separately as part of [ its ] commitment to ongoing engagement with civil society on the UPR.”

These issues are not new. Some such as suicide prevention and violence are priority areas for action by the government, but our communities remain largely invisible. Therefore, the Coalition recommended that government agencies should start to collect sexual orientation and gender identity data.

This year, members of the Coalition have petitioned the Government to address the inadequate supply of publically funded health services for trans people wishing to medically transition.

Two Coalition recommendations have been reinforced by last month’s WHO statement against forced or coerced sterilisation:

* Firstly, the Coalition called for legal prohibition of surgeries aimed solely at correcting genital ambiguity, on intersex children who are not able to consent for themselves.
* Secondly, the Coalition recommended removing any medical requirements for legal gender recognition (including those resulting in sterilisation). This month, Denmark became the latest country to adopt such an approach.

Our questions to the New Zealand delegation are:

* What is the timeframe for consultation with the Coalition (and the wider sexual orientation, gender identity and intersex communities) on issues raised in its submission?
* Which government agencies will be leading this work? and
* Will the government address these issues in New Zealand’s National Plan of Action on Human Rights?

Thank you

1. These can be downloaded from the New Zealand Human Rights Commission’s website here: [Sexual Orientation, Gender Identity and Intersex (SOGII) Coalition joint UPR submission with appendices](https://www.hrc.co.nz/files/7014/2406/3081/SOGII-Coalition_joint-UPR-submission_New-Zealand_Jan-Feb-2014-with-appendices.doc) ([Submission summary](https://www.hrc.co.nz/files/1114/2406/3079/UPR-SOGII-coalition-submission-summary-_-Issues-and-Recommendations.doc) and [Video commentary](http://youtu.be/l3dOZkgRwQ0)) [↑](#footnote-ref-1)
2. JE Méndez *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* 2016 UN document number A/HRC/31/57 para 72(h) [↑](#footnote-ref-2)
3. Since 2013, other countries have followed Argentina’s lead and moved to a self-determination model for all forms of legal gender recognition, in line with recommendations from UN treaty bodies and special procedures, or from regional human rights mechanisms. These include Malta, Ireland, Denmark, and Colombia. Last month the Women and Equality's Committee recommended that the United Kingdom’s Gender Recognition Act should also be updated to be based on a self-declaration model (<http://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/news-parliament-2015/transgender-inquiry-report-published-15-16> / [↑](#footnote-ref-3)