

(Translation: Morgan Carpenter, Camilo Godoy.)

You can find the translation here: <https://oii.org.au/30250/chilean-ministry-stops-normalising/>

Ministry of Health

Ministry of Public Health

Division of Disease Prevention and Control

Santiago, December 22, 2015

Circular No. 18

Instructions on aspects of health care to intersex children

We have been confronted with several situations that have us very concerned, regarding operative processes related to children with indeterminate sex. Some associated with genetic, endocrine and other pathologies regarding sex determination. (See Annex)

Faced with these complex situations, actions have sometimes proceeded swiftly, not taking into account the rights of children and adolescents, the recommendations of WHO and those made to Chilean State by the Human Rights Committee (see Annex).

In an effort to proceed doing things in the best possible way for the good of the children and adolescents affected, we are committed to build a protocol to regulate health care for intersex children. This will be prepared by experts from multiple disciplines with experience in the field.

Considering the above background:

- We instruct the stopping of unnecessary “normalization” treatment of intersex children, including irreversible genital surgeries, until they are old enough to decide about their bodies. Without derogating from the above, we note that the assignment of sex registration should be performed according to the “best expectations.” It is proposed that the regular channels carried out today to decide on the registered sex (medical examinations such as karyotype, interdisciplinary analysis of cases, etc.) follow the same course, except for the practice of the surgeries described above.
- We seek to establish a working group in each Health Service, staffed by professionals from different specialties including endocrinology, gynecology, psychiatry, pediatrics, family doctor, together with the ethics committee of the Service, to determine what action to take. This proposal will come before a central committee for final review, during preparation of a protocol that will regulate treatment.

It is further requested that each health service will nominate a person to lead management of cases, and compile records of cases.

Without further particulars, asking for the widest dissemination to the contents of this Circular, as of the date stamped, this document enters into force,

Yours sincerely,

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Annex

BACKGROUND

The term “sex” refers “to the biological differences between men and women” to their physiological characteristics, “the sum of biological characteristics that define the spectrum of humans as women and men” or “biological construction which refers to genetic, hormonal, anatomical and physiological characteristics on the basis of which a person is classified as male or female at birth”.

However, the allocation of sex at birth is not always an exact algorithm and this we find with intersex, a term that refers to “all those situations where the sexual body of an individual varies from the female or male bodily standards culturally in force. Historically understanding of this specific biological identity has been mediated through the mythological figure of the hermaphrodite, a person is born “with ‘both’ sexes, that is, literally, with a penis and vagina.” These expressions are also used in legal language and medical language. Currently, both the LGBTI

movement, as in the medical and legal literature, it is considered that the term intersex is technically the most suitable (CIDH, 2013).

So then, intersex people are all those whose bodies vary regarding the cultural and medically accepted standards for masculine or feminine, and bodily differences present at birth are not a disease and do not, per se, pose a risk to life. However, due to those differences, they are often subjected to surgical interventions that are medically unnecessary, irreversible and without the informed consent of the recipients, beginning in the first months of life.

The different medical classifications of bodies grouped under the term “intersex” may include: the number and patterns of chromosomes (eg, XXY or XO), dissimilar tissue reactions to sex hormones (eg, having an ovary and testis, or gonads containing both ovarian and testicular tissue) as well as different hormone balances. So too the genitals of some intersex people may not be clearly identifiable as male or female, they may be identified as undefined or indeterminate at birth. However, for others, detection occurs later, during puberty or even later (INADI, 2015).

The Inter-American System of Human Rights has recognized these treatments as systematic violations of human rights (2013) noting that they may constitute torture (2015). The Universal Human Rights System has expressed concern about the specific situation of these people in Chile through three treaty bodies: the Human Rights Committee (2015), the Committee on Economic, Social and Cultural Rights (2015) and recently the Committee on the Rights of the Child (2015). Recently the main recommendation to the State of Chile is to develop a protocol to ensure the protection of human rights of intersex people – especially children and adolescents – and ensure they will not be subjected to such surgery until they are old enough to make decisions on their bodies themselves (Committee on the Rights of the Child, 2015). This implies the recognition of the progressive autonomy of children in cross-cutting principles of the Convention on the Rights of the Child, ratified by the Chilean government in 1990.

HEALTH CARE

The document “Sexual health, human rights and the law” by the World Health Organization (WHO), noted: “A major concern for intersex people is that so-called sex normalizing procedures are often undertaken during their infancy and childhood, to alter their bodies, particularly the sexual organs, to make them conform to gendered physical norms, including through repeated surgeries, hormonal interventions and other measures. As a result, such children may be subjected to medically unnecessary, often irreversible, interventions that may have lifelong consequences for their physical and mental health, including irreversible termination of all or some of their reproductive and sexual capacity. Medical procedures may sometimes be justified in cases of conditions that pose a health risk or are considered life-threatening. Such procedures, however, are sometimes proposed on the basis of weak evidence, without discussing and considering alternative solutions” (World Health Organization, 2015 : 27).

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