

Forced sterilisation of people with disability and people with intersex variations

Forced sterilisation¹ of people with disability, particularly women and girls with disability, is an ongoing practice that remains legal and sanctioned by Australian Governments.² Forced sterilisation is recognised as a particularly egregious form of gender-based violence that has no place in a civilized world.³ Since 2005, UN treaty bodies, the Human Rights Council, UN special procedures and international medical bodies have recommended Australia enact national legislation prohibiting forced sterilisation.⁴ The Human Rights Council made clear recommendations in this regard as an outcome of the Universal Periodic Review (UPR) of Australia in 2015.⁵ Forced sterilisation has been identified as an act of violence, a form of social control and a form of torture by the UN Special Rapporteur on Torture,⁶ and as a form of violence by the UN Committee on the Rights of the Child (CRC).⁷

Australian State and Territory guardianship legislation and some other child protection acts⁸ regulate and provide a degree of protection from forced sterilisation for all children and young people and adults with disability or intersex variations. However there is no law in Australia that explicitly prohibits forced sterilisation of children; or that prohibits forced sterilisation of adults without their full, prior and informed consent.⁹ Treatment decisions about intersex people encapsulate other issues, such as a desire to conduct 'normalising' surgery, and the neutrality of decision-making may be undermined.¹⁰

In September 2012, the Senate Community Affairs References Committee (the Committee) commenced a national Inquiry into the involuntary or coerced sterilisation of people with disability and intersex people in Australia, and released two Inquiry Reports in 2013.¹¹ In relation to people with disability, the Committee only recommended the prohibition of forced sterilisation if an adult with disability has the 'capacity' to provide consent. Despite UN recommendations and CRPD obligations, and based on Australia's Interpretative Declaration in respect of Article 12 of the CRPD,¹² the report also recommends that where a person with disability does not have 'capacity' for consent, substitute decision-making laws and procedures may permit the sterilisation of persons with disability.¹³ The Interpretative Declaration to CRPD article 12 means that it is legal to forcibly sterilise children and adults with disability, provided that they 'lack capacity' and that the procedure is in their 'best interest' as determined by a third party.

In relation to intersex people, the Senate Committee acknowledged that 'sex normalising' practices impacted upon the prohibition against torture and other cruel, inhuman and degrading treatment (including the prohibition against non-consensual scientific or medical experimentation), and the right to privacy. It made numerous recommendations to defer non-necessary medical treatment, change clinical practices,¹⁴ and provide effective oversight of medical interventions.

Australia's response to the Senate Inquiry Reports¹⁵ passes responsibility for action on forced sterilisation and 'sex normalising' practices to State and Territory jurisdictions; and retains the focus on regulation and non-binding guidelines rather than prohibition of such practices. It effectively accepts current legislative and practice frameworks for the authorisation of forced sterilisation and 'sex normalising' medical interventions within Australia.

The UN treaty monitoring bodies have expressed concern that the Australian Government continues to consider forced sterilisation of women and girls with disability as a matter for state governments to regulate. They have clarified that decentralising government power through devolution or delegation does not negate the obligation on a State party to enact national legislation that is applicable throughout its jurisdiction.¹⁶

UN Treaty body Committees are increasingly recognising that intersex people who have had unnecessary surgery or treatment are 'victims of abuses and mistreatment'.¹⁷ Further, unnecessary surgery or treatment on intersex people has been described by a number of UN Treaty Bodies as a 'harmful practice'¹⁸ and causing 'physical and psychological suffering'.¹⁹ Australia has not legislated against enforced medical correction of

intersex variations. Evidence, including from a 2016 Family Court case,²⁰ shows that such medical practices persist in Australia, on the basis of inadequate medical evidence and without independent oversight.

Australia has not implemented the 2018 recommendations from the CEDAW Committee that Australia:

“Adopt clear legislative provisions that explicitly prohibit the performance of unnecessary surgical or other medical procedures on intersex children before they reach the legal age of consent, implement the recommendations made by the Senate in 2013 on the basis of its inquiry into the involuntary or coerced sterilisation of intersex persons, provide adequate counselling and support for the families of intersex children and provide redress to intersex persons having undergone such medical procedures.”²¹

Forced contraception of women and girls with disability through the use of menstrual suppressant drugs is a widespread, current practice in Australia and is rarely, if ever, subject to independent monitoring or review.²² Forced contraception is commonly used on women and girls with disability to suppress menstruation or sexual expression for various purposes, including eugenics-based practices of population control, menstrual management and personal care, and pregnancy prevention, including pregnancy that results from sexual abuse. It is a practice widely used in group homes and other forms of institutional settings and is often justified as a way of reducing the ‘burden’ on staff/carers who have to ‘deal with’ managing menstruation of disabled women and girls. In the case of persons with intellectual disability, the decision about type of contraception is almost exclusively made by someone else, such as a doctor and/or guardian, parent, or carer.

Forced anti-androgenic treatment to control sex drive and functioning of men and boys with disability is unregulated and commonly practiced by the medical profession.

Recommendations

That Australia:

- Develop and enact national, uniform and legally enforceable legislation prohibiting the sterilisation of children, and the sterilisation of adults in the absence of their prior, fully informed and free consent.
- Develop and enact national, uniform and legally enforceable legislation prohibiting unnecessary medical interventions, including surgical and hormonal interventions on intersex children and adults without their prior, fully informed and free personal consent.
- Abolish the practice of non-consensual administration of menstrual suppressant drugs and anti-androgenic treatments.

Endnotes

¹ ‘Forced sterilization’ refers to the performance of a procedure which results in sterilization in the absence of the prior, free and informed consent of the individual who undergoes the procedure, including instances in which sterilization has been authorized by a third party, without that individual’s consent. This is considered to have occurred if the procedure is carried out in circumstances other than where there is a serious threat to life. Coerced sterilization occurs when financial or other incentives, misinformation, misrepresentation, undue influences, pressure, and/or intimidation tactics are used to compel an individual to undergo the procedure. Coercion includes conditions of duress such as fatigue or stress. Undue influences include situations in which the person concerned perceives there may be an unpleasant consequence associated with refusal of consent. Any sterilization of a child, unless performed as a life-saving measure, is considered a forced sterilization. See for example: Center for Reproductive Rights (2010). *Reproductive Rights Violations as Torture and Cruel, Inhuman, or Degrading Treatment or Punishment: A Critical Human Rights Analysis*; Center for Reproductive Rights, New York. See also: Juan E. Mendez, Special Rapporteur, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 22nd session, UN Doc A/HRC/22/53; See also: Manjoo, R. (2012) Report of the Special Rapporteur on violence against women, its causes and consequences. United Nations General Assembly, UN Doc No. A/67/227; See also: Nair, P. (2011) *Litigating Against Forced Sterilization of HIV-Positive Women: Recent Developments in Chile and Namibia*. Harvard Human Rights Journal, Vol.23, pp.223-231. See also: Frohmader, C. (2013) ‘Dehumanised: The Forced Sterilisation of Women and Girls with Disabilities in Australia’. WWDA Submission to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia. Prepared for Women with Disabilities Australia (WWDA), Tasmania. ISBN: 978-0-9876035-0-0.

² People With Disability Australia, Submission No 50 to Senate Standing Committee on Community Affairs, *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, March 2013; Women With Disabilities Australia, Submission No 49 to Senate Standing

Committee on Community Affairs, The Involuntary or Coerced Sterilisation of People with Disabilities in Australia, March 2013. Submissions available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Submissions

³ Women With Disabilities Australia (WWDA) '[WWDA Position Statement 4: Sexual and Reproductive Rights](#)', WWDA, September 2016, Hobart, Tasmania. ISBN: 978-0-9585269-6-8.

⁴ See: CRC/C/15/Add.268; CRC/C/AUS/CO/4; A/HRC/17/10; CEDAW/C/AUL/CO/7; CAT/C/AUS/CO/4-5; A/HRC/WG.6/10/L.8; CRPD/C/AUS/CO/1; A/HRC/31/14; A/HRC/22/53; CCPR/C/AUS/Q/6; FIGO (International Federation of Gynecology and Obstetrics), [Female Contraceptive Sterilization](#). See also: World Medical Association (WMA) in conjunction with the International Federation of Health and Human Rights Organizations (IFHHRO) (2011) [Global Bodies call for end to Forced Sterilization: Press Release](#), 5 September 2011.

⁵ Human Rights Council, 31st sess, UN Doc A/HRC/31/14 (13 January 2016) rec 136.180-184, p.22.

⁶ Juan E. Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 22nd sess, Agenda Item 3, UN Doc A/HRC/22/53 (1 February 2013) para 48. The UN Special Rapporteur on Torture also clarified that: "*Forced interventions often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimised under national laws, and may enjoy wide public support as being in the alleged "best interest" of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment.*" See: Juan E. Mendez, *Op. cit.*, para 64. In addition, the UN Special Rapporteur on Torture also stated that "*hormone therapy and genital-normalizing surgeries under the guise of so called 'reparative therapies'... are rarely medically necessary, can cause scarring, loss of sexual sensation, pain, incontinence and lifelong depression and have also been criticized as being unscientific, potentially harmful and contributing to stigma.*" See: Juan E. Mendez, *Op. Cit.*, para 76.

⁷ Human Rights Committee, General Comment No 13: The Right of the Child to Freedom from All Forms of Violence, UN Doc CRC/C/GC/13 (18 April 2011) [16], [21].

⁸ For example, the Children and Young Persons (Care and Protection) Act 1998 (NSW).

⁹ People with Disability Australia, 'Consideration of the 4th and 5th Reports of Australia by the committee to the Convention Against Torture', (Submission, People with Disability Australia, October 2014), p. 32.

¹⁰ Senate Standing Committees on Community Affairs, [Involuntary or coerced sterilisation of intersex people in Australia](#) (2013) Commonwealth of Australia.

¹¹ Senate Standing Committees on Community Affairs, [Involuntary or coerced sterilisation of intersex people in Australia](#) (2013) Commonwealth of Australia. See also: Standing Committees on Community Affairs, [Involuntary or coerced sterilisation of people with disabilities in Australia](#) (2013) Commonwealth of Australia.

¹² See NGO Coalition Factsheet, Equality before the law and supported decision-making, prepared for Australia's UPR 2015 and recommending Australia withdraw its Interpretative Declaration to Article 12 of the CRPD.

¹³ Disability Rights Now (2012) [CRPD Civil Society Report on Australia](#).

¹⁴ People with Disability Australia, 'Consideration of the 4th and 5th Reports of Australia by the committee to the Convention Against Torture', (Submission, People with Disability Australia, October 2014) p. 34. See also: Organisation Intersex International Australia, [Statement on the Senate Report "Involuntary or Coerced Sterilisation of Intersex People in Australia"](#) (29 October 2013).

¹⁵ Australian Government, [Australian Government response to the Senate Community Affairs References Committee reports](#) (May 2015).

¹⁶ See for eg: Committee on the Elimination of Discrimination against Women (1991) General recommendation No. 18: Disabled women. UN Doc. No. A/46/38.

¹⁷ Committee on the Elimination of Discrimination against Women, Concluding observations on Costa Rica (CEDAW/C/CRI/CO/5-6), 29 July 2011, at [40].

¹⁸ Committee on the Elimination of Discrimination against Women, Concluding observations on Germany (CEDAW/C/DEU/CO/7-8), 3 March 2017, at [23] and [24]; Committee on the Elimination of Discrimination against Women, Concluding observations on Germany (CEDAW/DEU/CO/6), 10 February 2009, at [61] and [62]; Committee on the Elimination of Discrimination against Women, Concluding observations on Ireland (CEDAW/C/IRL/CO/6-7), 3 March 2017, at [24] and [25]; Committee on the Elimination of Discrimination against Women, Concluding observations on France (CEDAW/C/FRA/CO/7-8), 22 July 2016, at [17], [18]; Committee on the Elimination of Discrimination against Women, Concluding observations on Switzerland (CEDAW/C/CHE/CO/4-5), 18 November 2016, at [24] and [25]; Committee on the Elimination of Discrimination against Women, Concluding observations on the Netherlands (CEDAW/C/NLD/CO/6), 18 November 2016, at [21] and [22]; Committee on the Elimination of Discrimination against Women, Concluding observations on Costa Rica (CEDAW/C/CRI/CO/5-6), 29 July 2011, at [40]; Committee on the Rights of the Child, Concluding observations on Switzerland (CRC/C/CHE/CO/2-4), 26 February 2015, at [42]; Committee on the Rights of the Child, Concluding observations on Chile (CRC/C/CHL/CO/4-5), 30 October 2015, at [48]; Committee on the Rights of the Child, Concluding observations on Ireland (CRC/C/IRL/CO/3-4), 1 March 2016, at [39], [40]; Committee on the Rights of the Child, Concluding observations on France (CRC/C/FRA/CO/5), 29 January 2016, at [47] and [48]; Committee on the Rights of the Child, Concluding observations on Great Britain and Northern Ireland (CRC/C/GBR/CO/5), 3 June 2016, at [45], [46]; Committee on the Rights of the Child, Concluding observations on New Zealand (CRC/C/NZL/CO/5), 30 September 2016, at [24], [25]; Committee on the Rights of the Child, Concluding observations on South Africa (CRC/C/ZAF/CO/2), 30 September 2016, at [37], [38].

¹⁹ Committee against Torture, Concluding observations on France (CAT/C/FRA/CO/7), 10 June 2016, at [34], [35]; Committee against Torture, Concluding observations on Denmark (CAT/C/DNK/CO/6-7), 4 February 2016, at [42]; Committee on the Elimination of Discrimination against Women, Concluding observations on Switzerland (CEDAW/C/CHE/CO/4-5), 18 November 2016, at [24] and [25]; Committee on the Rights of the Child, Concluding observations on Switzerland (CRC/C/CHE/CO/2-4), 26 February 2015, at [42].

²⁰ Re Carla (Medical procedure) [2016] FamCA 7. See also: Morgan Carpenter, [The Family Court case Re: Carla \(Medical procedure\) \[2016\] FamCA 7](#), OII Australia, 2016.

²¹ Committee on the Elimination of Discrimination against Women (2018) Concluding Observations on the Eighth Periodic Report of Australia, UN Doc, CEDAW/C/AUS/CO/8, para 26.

²² Joint statement by the Committee on the Rights of Persons with Disabilities (CRPD) and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW): [Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities](#), 29 August 2018.

