



Women
With
Disabilities
Australia
(WWDA)

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Mr Greg Manning
Assistant Secretary
International Security & Human Rights Branch
Office of International Law
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

July 14, 2008

Dear Mr Manning

Re: Australian Government Draft Fourth Report under the Convention on the Rights of the Child

Women With Disabilities Australia (WWDA) Inc is the national peak organisation representing more than 2 million disabled women in Australia. For the past decade, WWDA has worked assiduously at a national and international level to raise awareness of the ongoing practice in Australia (and elsewhere), of the non-therapeutic sterilisation of minors with disabilities. WWDA's work in this area has been encouraged and endorsed by the UN High Commissioner for Human Rights; UNICEF; and the Child Rights Information Network (CRIN). WWDA's advocacy work has specifically urged all Australian Governments to work together to develop universal legislation which prohibits sterilisation of any child unless there is a serious threat to health or life.

In this context, I am writing to express WWDA's concern at the information provided in the *Australian Government Draft Fourth Report under the Convention on the Rights of the Child* in relation to Sterilisation of Children with Disabilities (pg. 26). Specifically, WWDA questions paragraph 133 (pg26) which states:

133. A blanket prohibition on the sterilisation of children could lead to negative consequences for some individuals, particularly children with disabilities. Applications for sterilisation are made in a variety of circumstances, not just to address the need for contraception. Sometimes sterilisation is necessary to prevent serious damage to a child's health, for example, in a case of severe menstrual bleeding where hormonal or other treatments are contraindicated. The child may not be sexually active and contraception may not be an issue, but the concern is the impact on the child's quality of life if they are prevented from participating to an ordinary extent in school and social life.

WWDA's concern is that sterilisation of minors be seen as a human rights issue not a disability issue. The statement above infers that sterilisation is acceptable for children with

disabilities, and that prohibiting sterilisation of minors (except in those circumstances where there is a serious threat to health or life), will somehow adversely impact on children with disabilities.

WWDA rejects these presumptions and is concerned with the integrity and scientific rigour of the statement. WWDA further questions how such a statement encompasses the Rudd Government's commitment to '*work to promote human rights and the fundamental equality of all people*' (McClelland 2008).

For a number of years now, WWDA has articulated to the Australian Government our position that:

- forced sterilisation is an act of unnecessary and dehumanising violence which denies a woman's basic human right to bodily integrity and to bear children and which results in adverse life-long physical and mental health effects;
- sterilisation of women and girls with disabilities is a form of social control in which a woman's right to bodily integrity is denied often at the behest of parents and medical or other professionals, who deem this bodily violation 'in her best interests';
- sterilisation, an irreversible medical procedure with lifelong physical, psychological and social consequences, if performed without consent, is a gross violation of human rights;
- sterilisation is a question for adulthood not childhood;
- all Australian Governments must work together to develop universal legislation which prohibits sterilisation of any child unless there is a serious threat to health or life.

This position has been endorsed by over 100 Australian non-government organisations through the recent *Australia NGO Submission to the UN Committee on Economic, Social and Cultural Rights* [1].

WWDA is also concerned at paragraph 134 (pg26) of the *Australian Government Draft Fourth Report under the Convention on the Rights of the Child* which states:

134. The Australian Government recognises that the obligations under the Convention and potentially under the Disabilities Convention require a consistent approach that ensures that children with disabilities enjoy their rights on an equal basis with other children. This needs to take into account the views of the child where these can be ascertained and the best interests of the child consistent with the Convention.

WWDA is concerned at the use of the term 'best interests of the child'. This statement is often used as a criterion to be satisfied when considering authorisation of a sterilisation. However, the term 'best interests' often has little to do with the disabled girls rights and more to do with social factors and the 'burden of caring'. As Dowse & Frohmader (2001) point out:

'In making judgments about best interests it is crucial that we are clear about whose best interests are really at stake. We need to be clear about whether 'best interest'

is judged according to human rights principles or whether the judgment is about the 'best compromise between the competing interests' of parents, carers, service providers and policy makers. To really determine 'best interest' for women and girls with disabilities it is crucial to focus on the fact that a person will be subjected to an irreversible medical procedure with life long consequences without informed consent.'

Sterilisation of children in the Australian context is related primarily to two characteristics - gender and disability [2]. Sterilisation is a procedure that is notorious for having been performed on young women with disabilities for various purposes ranging from eugenics, through menstrual management and personal care, to the prevention of pregnancy, including pregnancy as a result of sexual abuse [3]. Indeed, the overwhelming majority of sterilisations and certainly all the cases heard by relevant Australian courts and tribunals, involve girls with intellectual disabilities [4].

As Brady & Grover (1997) state:

'Sterilisation for other non-therapeutic reasons is a response to disability, not clinical medical need. It reflects persistent negative attitudes towards fertility, menstruation and menstrual management in girls with intellectual disability'.

WWDA believes that the sterilisation of children with disabilities is in contravention of both the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). The Convention on the Rights of the Child (CRC) explicitly recognises that children with disabilities should enjoy all the rights set forth in the CRC, on an equal basis with others. The Convention on the Rights of Persons with Disabilities (CRPD), (which Australia is soon to ratify), contains a number of articles which make explicit the need for States Parties to take all necessary measures to ensure the full enjoyment by women and children with disabilities of all human rights and fundamental freedoms on an equal basis with others.

WWDA knows of no instances in Australia where authorisations to sterilise have been sought for minors without disabilities in the absence of a threat to life or health. The sterilisation of a child in circumstances other than where there is a serious threat to the health or life of that child effectively denies the child present and future enjoyment of her or his human rights. Children with a disability have the same right as children without a disability not to be sterilised.

In its 2006 General Comment No. 9 on the Rights of Children with Disabilities the Committee on the Rights of the Child expressed its deep concern about *'the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities.'* The Committee emphasised that forced sterilisation *'seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects'* [5]. The Committee urged States parties to *'prohibit by law the sterilisation of children on grounds of disability.'* In considering Australia's report under Article 44 of the CRC (Fortieth Session), the Committee on the Rights of the Child encouraged Australia to: *'prohibit the sterilisation of children, with or without disabilities...'* [6].

Australia is a party to the International Covenant on Economic, Social and Cultural Rights (ICESC). The Committee on Economic, Social and Cultural Rights in its 1994 General Comment No.5 on Persons with Disabilities referred to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the General

Assembly on 20 December 1993, stating that '*persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood*'. The Committee emphasised that '*both the sterilisation of, and the performance of an abortion on, a woman with disabilities without her prior consent are serious violations of article 10 (2) [of the International Covenant on Economic, Social and Cultural Rights]*' [7].

People with disabilities have the same human rights as people without disabilities. They have the right to bodily integrity, the right to procreate, the right to sexual pleasure and expression, the right for their bodies to develop in a normal way, and the right to be parents. Women With Disabilities Australia (WWDA) Inc therefore re-iterates our recommendation that, through the Standing Committee of Attorney's General, all Australian Governments work together to develop universal legislation which prohibits sterilisation of any child unless there is a serious threat to health or life.

WWDA thanks the Attorney-General's Department for the opportunity to provide our position on this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'CF', followed by a long horizontal line extending to the right.

Carolyn P Frohmader
Executive Director

References

Brady, S. & Grover, S. (1997) *The Sterilisation of Girls and Young Women in Australia - A legal, medical and social context*. A report commissioned by the Federal Disability Discrimination Commissioner for the Human Rights and Equal Opportunity Commission. Available online at: www.wwda.org.au/brady.htm

Dowse, L. & Frohmader, C. (2001) *Moving Forward: Sterilisation and Reproductive Health of Women and Girls with Disabilities*, A Report on the National Project conducted by Women with Disabilities Australia (WWDA), Canberra.

McClelland, R. (2008) *Speech to the Attorney-General's Non-Government Organisation Forum on Domestic Human Rights*, Old Parliament House, Canberra, Tuesday, 10 June 2008.

Endnotes

- [1] Balgi, T., Pettitt, A., Schokman, B., & Lynch, P. (2008) *'Freedom, Respect, Equality, Dignity: Action'*. NGO Submission to the UN Committee on Economic, Social and Cultural Rights: Australia. Prepared on behalf of the Kingsford Legal Centre; the National Association of Community Legal Centres, and the Human Rights Law Resource Centre. (See page 89).
- [2, 3, 4] Brady, S., Briton, J., & Grover, S. (2001) *The Sterilisation of Girls and Young Women in Australia: Issues and Progress*. A Report commissioned jointly by the Sex Discrimination Commissioner and the Disability Discrimination Commissioner at the Human Rights and Equal Opportunity Commission. Available online at: www.wwda.org.au/brady2.htm
- [5] Committee on the Rights of the Child, *General Comment No 9 (2006): The Rights of Children with Disabilities*, UN Doc CRC/C/GC/9 (2007). See: <http://www.ohchr.org/english/bodies/crc/comments.htm>
- [6] Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268 (2005) [46(e)].
- [7] Committee on Economic, Social and Cultural Rights (1994) *Persons with Disabilities: CESCR General Comment 5 (31)*. Eleventh session, 1994. See: <http://www.unhchr.ch/tbs/doc.nsf/0/4b0c449a9ab4ff72c12563ed0054f17d>