

The Sterilisation of Women and Girls with Disabilities in Australia: Violating the Human Right to Health

Paper written by Carolyn Frohmader and presented by Karin Swift on behalf of Women with Disabilities Australia (WWDA) at the 7th Australian Women's Health Conference, Sofitel Sydney

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**Senate Inquiry into the Involuntary
or Coerced Sterilisation of People
with Disabilities in Australia**

Forced Sterilisation constitutes Torture:

The UN Special Rapporteur on Torture has recently clarified:

- *Forced interventions [including involuntary sterilization], often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimized 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*

The UN Special Rapporteur on Torture has made it clear that the failure of the State to exercise due diligence to intervene to prevent torture and provide remedies to victims of torture *‘facilitates and enables non-state actors to commit acts impermissible under [the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment] with impunity,’* and its indifference or inaction provides a form of encouragement and/or de facto permission

The UN Committee Against Torture has also confirmed that States have a heightened obligation to protect vulnerable and/or marginalised individuals from torture and cruel inhuman and degrading treatment and to:

‘adopt effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture.’

Commission on the Status of Women (CSW 57)

- **(gg) Take all appropriate legislative, administrative, social, educational and other measures to protect and promote the rights of women and girls with disabilities as they are more vulnerable to all forms of exploitation, violence and abuse, including in the workplace, educational institutions, the home, and other settings;**

CSW57 cont:

- **(aaa) Condemn and take action to prevent violence against women and girls in health care settings, including sexual harassment, humiliation and forced medical procedures, or those conducted without informed consent, and which may be irreversible, such as forced hysterectomy, forced caesarean section, forced sterilization, forced abortion, and forced use of contraceptives, especially for particularly vulnerable and disadvantaged women and girls, such as those living with HIV, women and girls with disabilities, indigenous and afro-descendent women and girls, pregnant adolescents and young mothers, older women, and women and girls from national or ethnic minorities.**

Australia is a country that prides itself on values and principles which provide the basis for a free and democratic society, including for example: the equal worth, dignity and freedom of the individual; equality under the law; equality of opportunity; equality of men and women; and the right of its citizens to participate fully in the economic, political and social life of the nation.

Viewed as "undesirable" and as potential threats to society, women with disabilities have often been isolated in institutions and otherwise prevented from fully participating in society.

- in Australia there are women and girls with disabilities who have been and continue to be, denied these and other fundamental human rights through the ongoing government sanctioned practice of “forced/involuntary” and “coerced” sterilisation.

Forced Sterilisation:
sterilisation in the absence
of the free and informed
consent of the individual
concerned

Sterilisation is part of a broader pattern of denial of human and reproductive rights including:

- systematic exclusion from appropriate reproductive health care and sexual health screening,
- forced contraception and/or limited contraceptive choices,
- a focus on menstrual suppression,
- poorly managed pregnancy and birth,
- selective or coerced abortion and
- the denial of rights to parenting

Why are women and girls with disabilities still being sterilised?

1. The genetic/eugenic argument
2. For the good of the state, community or family
3. Incapacity for parenthood
4. Incapacity to develop and evolve
4. Prevention of sexual abuse
5. Discourses around 'best interest'

1. The Genetic/Eugenic Argument

“The result will be complete absence of menstruation and this will undoubtedly be of benefit to H who already appears to have substantial difficulties with cleanliness..... As a by-product of an absence of her uterus H will never become pregnant. Given the genetic nature of her disorder and the 50% inheritance risk thereof, this would in my view be of great benefit to H.” [2]

- *“.....Personally I think people with any medium level to high level disability should be completely sterilised to keep the gene pool clean.”*
- *“The severity of disability needs to be considered, as well as the genetic likelihood of the disability being passed on.”*
- *“The government shouldn't have to support unwanted babies let alone disabled children having disabled children.”*

2. For the good of the state, community or family

“Undoubtedly and certainly of significant relevance is that there are hygiene issues which must fall to the responsibility of her mother because Angela cannot provide for herself..... the operation would certainly be a social improvement for Angela’s mother which in itself must improve the quality of Angela’s life.” [3]

- *“Dr Py. records that "staff" at the ward in which Sarah resides, have told him that she becomes a problem during her menstrual period as she has no concept of personal care, cleanliness or propriety*

Incapacity for parenthood:

- *“My son was removed from my care when he was born by the department of child safety. They hadn’t assessed my abilities as a parent nor did they tell me they were going to take away my son before I gave birth. They didn’t trust me and said that they wanted to prevent me from harming my baby, even when I had done nothing wrong. No support has ever been provided to help me be a parent of my son. We got an independent assessment done and it showed that even though I have a mild intellectual impairment, my behavioural functioning is normal. Even now, I only see him every Friday and he stays overnight once a fortnight.”*

Incapacity to evolve

“ Those who are severely intellectually disabled remain so for the rest of their lives.” [4]

Clinical Psychologist

“There is no prospect that will ever show any improvement in her already severely retarded mental state.” [5]

Specialist Paediatric Surgeon

Prevention of sexual abuse

“It is highly unlikely that Katie will ever have the capacity to understand and voluntarily enter into a sexual relationship..... It is however well documented that disabled children are particularly vulnerable to sexual abuse and Katie is quite an attractive girl.” [6]

Early Childhood Psychologist

“It is unlikely she will have any form of relationship involving sexual intercourse. She could, of course, be the victim of a sexual assault and with her normal physical development and attractive looks that cannot be discounted.” [7]

Judge, Family Court

“Ever since Elizabeth was a very young child, she was prone to run to men. If her mother takes her out she will go to any man, including strangers. On many occasions in public when the mother has not been holding Elizabeth tightly, she has run over to a man who is a complete stranger and taken his arm. She shows no fear and would happily go off with any man. She has to be physically restrained from chasing after men in public and throwing her arms around them.” [8]

Judge, Family Court

The “Best Interest” Argument

- *“The interests of Katie are inextricably linked with the ability of her parents to cope with the burdens of Katie's care.”*
- *“The operation would certainly be a social improvement for Angela's mother which in itself must improve the quality of Angela's life.”*
- *“Not only would S be unable to care appropriately for herself it would also be difficult for others to care for her as a result of menstruation.”* November 1989)

Women With Disabilities Speak Out About their Experiences:

“It has resulted in loss of my identity as a woman, as a sexual being.”

“I haven’t had the chance to grieve the loss of a part of me that should have been mine to choose whether I keep it or not.”

“I feel upset because I can’t have children. I feel I should have been able to make the decision.”

“I worry about the future health effects like osteoporosis and other problems.”

“I have been denied the same joys and aspirations as other women.”

“I was sterilised at the age of 18 without my consent. I still feel devastated by what happened because I will never be able to have children.”

“After trying to have a baby for a long time I finally found out I had been sterilised when I was 14 living in an institution.”

“For me it is about living with loss.”

“The psychological effects are huge – it takes away your feelings of womanhood.”

The Australian Government is obliged to exercise due diligence to:

- prevent the practice of forced and coerced sterilisation from taking place;
- investigate promptly, impartially and effectively all cases of forced sterilisation of women and girls with disabilities;
- remove any time limits for filing complaints;
- prosecute and punish the perpetrators, and,
- provide adequate redress to all victims of forced or coerced sterilisation.

Nothing less is acceptable.

WWDA's Recommendations:

- Enact national legislation prohibiting, except where there is a serious threat to life, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent.
- Establish and adequately resource a National Task Force to develop a Policy and Framework for Transitional Justice and Redress to address the forced and coerced sterilisation of women and girls with disabilities in Australia.
- Develop specific measures of rehabilitation and recovery in consultation with those affected;
- Issue a formal apology that identifies the discriminatory actions, policies, culture and attitudes that result in forced and coerced sterilisation of people with disabilities

Recommendations Cont:

- Provide financial reparation to women and girls with disabilities who have been forcibly sterilised.
- Undertake legislative reforms to replace regimes of substitute decision making for people with disabilities with supported decision-making
- Commission and fund a three year national research study on women and girls with disabilities' right to reproductive freedom
- Recognise, support and strengthen the role of women with disabilities organisations, groups and networks in efforts to fulfil, respect, protect and promote their human rights, and to support and empower women with disabilities, both individually and collectively, to claim their rights.

WWDA's campaign is yielding results, with the issue now receiving international attention, intervention and action from the machinery of the United Nations, other NGO's, advocates, the media, researchers and politicians.

Importantly, it is also empowering more women to come forward, to speak out about their experiences, to gain strength, to recognise their own needs for personal autonomy, and perhaps most importantly, develop a sense of personal worth.

This is consistent with the objectives of the women's health movement, which include, for example:

- promoting a social view of women's health
- providing support for women to participate in all decision making which affects health and wellbeing
- working towards securing women's control over and responsibility for their own sexual health and reproduction
- promoting equitable access to services for all women, including women with disabilities.



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