

**NATIONS UNIES
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**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL Health (2002-7) G/SO 214 (89-15)
AUS 2/2011

18 July 2011

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and Special Rapporteur on violence against women, its causes and consequences pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/22 and 16/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged ongoing practice of non-therapeutic, forced sterilization of girls and women with disabilities in Australia.**

According to the information received:

It is alleged that non-therapeutic, forced sterilization is performed on young girls and women with disabilities for various purposes, including pregnancy prevention, population control, menstrual management and personal care. Reportedly, non-therapeutic sterilization is sterilization for a purpose other than to treat some malfunction or disease, and it refers to procedures carried out in circumstances that do not involve a serious threat to the health or life of the individuals. Forced sterilization refers to sterilization that has occurred in the absence of the individual's consent.

It is also alleged that cases of non-therapeutic, forced sterilization of girls have occurred in greater numbers than those formally authorized by courts and tribunals. It is further alleged that the existing State and Territory legislation and federal court mechanisms have not adequately addressed non-therapeutic, forced sterilizations of young girls with disabilities, in particular with regard to

preventing such children from being taken out of Australia for sterilization procedures elsewhere.

While we do not wish to prejudge the accuracy of these allegations, we would appreciate information from your Government on the steps taken by the competent authorities with a view to ensuring the right to the highest attainable standard of health of girls and women with disabilities. This right is enshrined, *inter alia*, in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ratified on 10 December 1975), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all States parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. In that connection, General Comment No. 14 of the Committee on Economic, Social and Cultural Rights elucidates that the right to health contains both freedoms and entitlements and holds that “the freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation” (para. 8). I would also like to refer your Excellency’s Government to General Comment No. 5 of the Committee, which holds that “Women with disabilities also have the right to protection and support in relation to motherhood and pregnancy...Both the sterilization of, and the performance of an abortion on, a woman with disabilities without her prior informed consent are serious violations of article 10 (2) [of the International Covenant on Economic, Social and Cultural Rights]” (para.30).

We would like to draw the attention of your Excellency’s Government to Article 17 of the Convention on the Rights of Persons with Disabilities (ratified on 17 July 2008), which states: “Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others”. We would also like to refer your Excellency’s Government to Article 23 of the Convention, which holds that “States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that: (...) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized.”

Furthermore, we would like to draw the attention of your Excellency’s Government to Article 24 of the Convention on the Rights of the Child (ratified on 17 Dec 1990), which holds that “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health”. I would also like to refer your Excellency’s Government to General Comment No.9 of the Committee of the Rights of the Child which states: “The Committee is deeply concerned about the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities. This practice, which still exists, seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects. Therefore, the

Committee urges States parties to prohibit by law the forced sterilisation of children on grounds of disability.”

We would also like to refer your Excellency’s Government to General Recommendation No. 18 of the Committee on the Elimination of Discrimination against Women, which recommends that “States parties [to the Convention in the Elimination of all Forms of Discrimination against Women (ratified on 28 July 1983)] provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life”. In that context, I would like to note paragraph 43 of the Concluding observations of the Committee on the Elimination of Discriminations against Women (CEDAW/C/AUL/CO/7, 30.07.2010) which recommended that Australia “enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilization 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”.

Finally, we deem it appropriate to make reference to Commission on Human Rights Resolution 2005/41 on the Elimination on Violence against women, which provides that women should be empowered to protect themselves against violence and, in this regard, stresses that women have the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. In this context, we would also like to draw your attention to the Platform for Action of the Beijing World Conference on Women and the Programme of Action of the Cairo International Conference on Population and Development, which reaffirm the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so.

We urge your Excellency’s Government to take all necessary measures to ensure the protection and full enjoyment of the right to the highest attainable standard of health for girls and women with disabilities in accordance with international standards.

It is our responsibility under the mandate provided by the Human Rights Council to seek to clarify all cases brought to my attention regarding the right to health. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation in addressing the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide details of any actions to prevent further non-therapeutic, forced sterilization of girls and women with disabilities?
3. Please provide details of any actions to sanction medical staff carrying out illegal non-therapeutic, forced sterilizations of girls and women with disabilities. Please provide details, and where available the results, of any investigation and judicial

or other inquiries carried out in relation to such cases. If no inquiries have been made, or if they have been inconclusive, please explain why.

4. Please provide details of any actions to ensure that reparation, including compensation and rehabilitation, is provided to those girls and women with disabilities who may have been forcibly sterilized?
5. Please provide details of any actions to ensure that informed consent requirements are adequately implemented for all medical interventions with regard to children and persons with disabilities?
6. What measures are being taken to ensure the enjoyment of the right to health of girls and women with disabilities?

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports that will be submitted to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health

Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences