

Mandates of the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on violence against women and girls, its causes and consequences and the Working Group on discrimination against women and girls

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on violence against women and girls, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 44/10, 51/21, 50/7 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a draft Decree presented by the Republic of Armenia's Ministry of Health to update the procedure and conditions of 'voluntary' medical sterilization, and which may replace the current Decree N. 425 of the Government of 6 July 1998.**

According to the information received:

On 15 July 2022, the Ministry of Health published a draft Decree to update procedures and conditions for performing 'voluntary' medical sterilization in accordance with article 9(3) of the Law on Human Reproductive Health and Reproductive Rights.

Informed consent and legal capacity

Currently, if an Armenian citizen wishes to undergo a medical sterilization, it must be carried out with their written consent. As the medical procedure is an irreversible intervention, the applicant must be informed and given enough time to make a final decision. However, the draft Decree would change the voluntary nature of such a decision by enabling courts to approve medically indicated sterilization of persons deprived of their legal capacity, that is without written informed consent of the person concerned. This is a departure from the currently applicable Decree N. 425 which prohibits the medical sterilization of persons deprived of their legal capacity.

The issue of legal capacity is regulated by the Civil Code of the Republic of Armenia, namely article 31, which foresees that a person who, as a result of a mental health disorder cannot understand the significance of his or her actions or control them may be declared incapacitated by a court. Guardianship is established over such person.

Specific focus on women

The draft Decree appears to be particularly directed towards women and girls as the only cases in which voluntary medical sterilization is allowed, in

provision 8, refer to women who have children and have either attained certain age or have undergone a triple caesarean section. Similarly, provision 9, exclusively refers to women in relation to medically indicated sterilization with informed consent. In contrast, there are no proposed provisions in the draft Decree concerning the age or minimum number of children to permit a man's request for medical sterilization.

Participation and Consultation of Persons with Disabilities

The draft was made available on the Government's website for proposed drafts of legal acts.¹ It was opened for an online public discussion from 15 July to 30 July 2022 whereby the public, including civil society, could submit comments and suggestions. We understand comments by participants have been acknowledged. However, no information is available about how these proposals are being considered and on the status of the draft decree.

We are seriously concerned over the negative impact that the draft Decree could have on the enjoyment of human rights by persons with disabilities should it be adopted. In particular, we are deeply concerned that this could lead to the ordering of forced medical sterilizations of persons with disabilities, who are deprived of their legal capacity, including, but not limited to, women and girls with disabilities.

We stress that medical sterilization cannot be considered 'voluntary' in any manner without the informed consent of the person on whom it is to be administered and irrespective of their disability status. Involuntary sterilization of persons with disabilities is contrary to international human rights standards. If adopted, the draft Decree would put persons with disabilities deprived of their legal capacity at particular risk of coerced or forced medical sterilization and therefore seriously restrict their autonomy and reproductive rights, as well as the enjoyment of rights in relation to family planning, marriage, parenthood and relationships.

Legal capacity is an inherent right that is fundamental to the dignity of persons with disabilities and the exercise and enjoyment of all other rights. Legal measures such as interdiction and guardianship that prevent persons with disabilities from acting on their own behalf must be replaced by provision of support that does not have the intent or effect to override a person's wishes and preferences but facilitates the exercise of autonomy, as provided by article 12 of the Convention on the Rights of Persons with Disabilities (CRPD), ratified by the Republic of Armenia on 22 September 2010. This has been further reaffirmed by the CRPD Committee in its General Comment No. 1 which elaborates that States must abolish and prohibit all regimes of substituted decision-making, including guardianship, conservatorship and mental health laws that permit forced treatment. Instead, individuals should be supported in making decisions and provided with reasonable accommodations as provided for in article 2 of the CRPD.

In its 2017 Concluding Observations to the Government of Armenia, the Committee "notes with concern the discriminatory legal provisions in the Constitution and the Civil Procedure Code that allow for the deprivation of legal capacity and the appointment of a guardian on the basis of psychosocial or intellectual disability." The Committee also noted its concern regarding the lack of mechanisms to replace the

¹ www.e-draft.am/en/projects/4560/about

system of substituted decision-making with a supported decision-making regime and recommended that Armenia repeal the discriminatory legal provisions in the Constitution and the Civil Procedure Code, restore the full legal capacity of all persons with disabilities and introduce supported decision-making regimes” (CRPD/C/ARM/CO/1).

The failure to recognize the legal capacity of persons with disabilities on an equal basis with others constitutes discrimination on the basis of disability under article 5 and article 2 of the CRPD. This provision applies in respect of the exercise of all rights under the CRPD, including the rights to retain one’s fertility, the right to make sexual and reproductive decisions and the right to free, prior and informed consent in relation to all medical procedures.

We would also like to refer your Excellency’s Government to article 23 of the CRPD, 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 (...) to decide freely and responsibly on the number and spacing of their children.” Article 22 of the CRPD places an obligation on States parties to ensure that persons with disabilities are not subjected to arbitrary or unlawful interference with their privacy and family.

Additionally, article 17 of the CRPD states that “every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.” This right is enshrined, *inter alia*, in articles 12 and 2.2 of the International Covenant on Economic, Social and Cultural Rights (ratified by Armenia on 10 December 1975), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health, without discrimination. This includes an obligation on the part of all States parties to refrain from interfering directly or indirectly with the enjoyment of the right to health. The Committee on Economic, Social and Cultural Rights (CESCR Committee) stresses that reproductive health is an integral part of the right to health and that States have the obligation to respect this right. It stresses that “violations of the obligation to respect occur when the State, through laws, policies or actions, undermines the right to sexual and reproductive health”, which includes “State interference with an individual’s freedom to control his or her own body and ability to make free, informed and responsible decisions in this regard”. It includes that “laws and policies that prescribe involuntary, coercive or forced medical interventions, including forced sterilization among the examples of violations of the obligation to respect (CESCR Committee, General Comment No. 22, paras. 1, 45 and 56-57). The Committee further elaborates on the obligation to protect and which “occur when a State fails to take effective steps to prevent third parties from undermining the enjoyment of the right to sexual and reproductive health”, which includes “the failure to prohibit and take measures to prevent all forms of violence and coercion committed by private individuals and entities, including [...] forced sterilization” (CESCR Committee, General Comment No. 22, para. 59). The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health reminded in her report that “[the obligation to respect requires that States refrain from directly or indirectly interfering with the right to health, such as refraining from applying coercive medical treatments [,] such as forced sterilization [...]”, among others (A/HRC/50/28).

The way the draft decree specifically focuses on women and girls raises concerns that sterilization is viewed as more applicable to women and girls, thus perpetuating gender-based stereotypes around fertility and reproductive rights. Women and girls with intellectual and psychosocial disabilities are particularly vulnerable to forced sterilization. The intersection between gender and disability creates particular challenges for women and girls with disabilities in terms of sexual and reproductive rights as analysed in a report by the Special Rapporteur on the rights of persons with disabilities on this topic (A/72/133). Women and girls with disabilities are more likely to undergo sterilization than the general population, for example because they are often treated paternalistically as if they do not have or should not have control over their sexual and reproductive choices.

In this connection, we wish to highlight that the CRPD Committee reaffirmed the right of women with disabilities to retain their fertility and exercise choice and full decision making in sexual and reproductive matters. In its General Comment No. 5, the CRPD Committee emphasized 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).

Further, in its General Comment No. 3 on article 6 – women and girls with disabilities, the CRPD Committee noted that wrongful stereotyping related to disability and gender was a form of discrimination that had a particularly serious impact on the enjoyment of sexual and reproductive health and rights, and the right to found a family. The Committee affirmed that like all women, women with disabilities had the right to choose the number and spacing of their children, as well as 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. CRPD also raised concern that women with disabilities faced multiple barriers to the enjoyment of sexual and reproductive health and rights, equal recognition before the law and access to justice. (CRPD/C/GC/3)

In its General Recommendation 19, the Committee on the Convention on the Elimination of All Forms of Discrimination against Women, which the Republic of Armenia ratified on 13 September 1993, indicated that “compulsory sterilization ... adversely affects women’s physical and mental health, and infringes the right of women to decide on the number and spacing of their children.” The Committee recommended that States Parties “ensure that measures are taken to prevent coercion in regard to fertility and reproduction.”

Moreover, we wish to highlight that during the recent universal periodic review of Armenia held in the 3rd UPR cycle in 2020, Armenia supported 28 recommendations focusing on rights of persons with disabilities, including a recommendation number 153.225 Adopt comprehensive legal and administrative measures aimed at combating discrimination against persons with disabilities and guarantee full access to health, education and employment. (More referenced at: <https://www.ohchr.org/en/hr-bodies/upr/am-index>)

Furthermore, we wish to stress that forced sterilization of persons with disabilities constitutes a form of violence, torture and other cruel, inhuman or

degrading treatment. The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is an international norm of *jus cogens*, and is codified, inter alia, under article 7 of the International Covenant on Civil and Political Rights and under article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the Republic of Armenia respectively on 23 June and on 13 September 1993. In this connection, we wish to recall that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment found that “given the particular vulnerability of women with disabilities, forced abortions and sterilizations of these women if they are the result of a lawful process by which decisions are made by their ‘legal guardians’ against their will, may constitute torture or ill-treatment” (A/HRC/7/3, para. 38).

We would like to draw the attention of your Excellency’s Government to the 2013 report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment ([A/HRC/22/53](#)) to the Human Rights Council, which states in paragraph 64 that both, the mandate and United Nations treaty bodies have established that involuntary treatment and other psychiatric interventions in health-care facilities can constitute forms of torture and ill-treatment, and to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment ([A/63/175](#), paras. 38, 40, 41).

The Working Group on discrimination against women and girls also noted with concern that women with disabilities faced particular barriers in accessing health care for reasons of cost, distance, discriminatory attitudes, and lack of physical access or information. This seriously limits their access to immunization, reproductive health care and cancer screening. In some settings women with disabilities, particularly intellectual disabilities, are subjected to forced sterilization or termination of pregnancy or to long-term contraception, with relatives or doctors taking decisions on their behalf without their informed consent, in violation of their right to exercise legal capacity guaranteed under the Convention on the Rights of Persons with Disabilities. (A/HRC/32/44).

In this regard, the Working Group recommended to provide special protection and support services to women facing multiple forms of discrimination, and ensure that health services, including reproductive and sexual health, for women with disabilities are available and accessible on an equal basis with others and that their autonomy and decision-making, including in relation to their sexuality and reproduction, are guaranteed in accordance with the principles of the Convention on the Rights of Persons with Disabilities. (A/HRC/32/44).

Additionally, the Working Group on discrimination against women and girls observed that women and girl have been systematically subjected to reproductive violence, including forced sterilization (A/HRC/47/38).

Finally, persons with disabilities, organizations of persons with disabilities, civil society organizations, the medical community, and other stakeholders were apparently not consulted in the initial drafting, nor informed about how comments received through the online consultation will be considered and the timeline for adopting the draft Decree. Here we wish to refer to the obligation of States to closely consult with and actively involve persons with disabilities in decision-making processes concerning matters relating or affective their lives as per article 4(3) of the CRPD. Notably, in its General Comment No. 7, the CRPD Committee clarified that

States must ensure the transparency of consultation processes, provide appropriate and accessible information, and involve persons with disabilities early and continuously. The publication of the draft Decree for consultation on a public website without any accessibility measures and opportunities for involvement throughout the drafting process therefore would fall short of the State's obligations under the CRPD.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all issues brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned issues, including the current status of the draft Decree.
2. Please provide information on measures taken by your Excellency's Government to ensure that medical sterilization procedures are conducted in accordance with international human rights standards, consistent with prior and informed consent of the individual on whom voluntary medical sterilization is performed, including the specific obligations set out in the Convention on the Rights of Persons with Disabilities, including, but not limited to, articles 12, 23 and 25.
3. Please provide information on consultations that have taken or will take place with civil society organizations, especially organizations of persons with disabilities and women organizations, and how their comments and recommendations have been integrated into the draft decree.

While awaiting your Excellency's response, we would like to urge your Excellency's Government to withdraw the draft Decree with a view to align it with the CRPD and other international human rights standards and obligations and to do so in close consultation with organizations of persons with disabilities.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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