



Women
With
Disabilities
Australia
(WWDA)

Winner, National Human Rights Award 2001
Winner, National Violence Prevention Award 1999
Winner, Tasmanian Women's Safety Award 2008
Certificate of Merit, Australian Crime & Violence Prevention Awards 2008
Nominee, French Republic's Human Rights Prize 2003
Nominee, UN Millennium Peace Prize for Women 2000

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Mr Matt Hall
Assistant Secretary
Human Rights Policy Branch
Attorney-General's Department
Robert Garran Offices
3 – 5 National Circuit
Barton ACT 2600

1 November, 2011

Dear Mr Hall

Thank you for the opportunity to provide input to Australia's Fifth Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). For the purposes of this Submission, Women With Disabilities Australia (WWDA)¹ has elected to focus on forced sterilisation² of women and girls with disabilities in Australia – a continuing state sanctioned practice which clearly gives rise to torture and cruel, inhuman or degrading treatment or punishment.

In the context of this Submission, we respectfully request that you give due consideration to the attached international briefing paper '*Sterilization of Women and Girls with Disabilities*' (October 2011). This paper has been jointly prepared by WWDA, Human Rights Watch (HRW), the Open Society Foundations, and the International Disability Alliance (IDA) as part of the Global Campaign to Stop Torture in Health Care.³ The paper gives a background to the issue of forced sterilisation, examines the issue in the context of international human rights instruments to which Australia is a party, and provides several recommendations for improving laws, policies, and professional guidelines governing sterilisation practices.

¹ Women With Disabilities Australia (WWDA) is the peak organisation for women and girls with disabilities in Australia. Our work is grounded in a rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights.

² Forced sterilisation occurs when a person is sterilised without her knowledge; is sterilised after expressly refusing the procedure, or is sterilised without her free and informed consent.

³ See: <http://www.stoptortureinhealthcare.org>

Human rights bodies and experts now recognise that forced sterilisation is a violation of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment.⁴ Women and girls with disabilities are particularly vulnerable to forced sterilisation, as they are often subjected to discrimination by virtue of their gender as well as their disability. They are particularly vulnerable to forced sterilisations performed under the auspices of legitimate medical care or the consent of others in their name.

The Special Rapporteur on Torture has made it clear that:

‘Torture, as the most serious violation of the human right to personal integrity and dignity, presupposes a situation of powerlessness, whereby the victim is under the total control of another person. Persons with disabilities often find themselves in such situations, for instance when they are deprived of their liberty in prisons or other places, or when they are under the control of their caregivers or legal guardians. In a given context, the particular disability of an individual may render him or her more likely to be in a dependant situation and make him or her an easier target of abuse. However, it is often circumstances external to the individual that render them “powerless”, such as when one’s exercise of decision-making and legal capacity is taken away by discriminatory laws or practices and given to others.’⁵

The Special Rapporteur on Torture has incorporated this concept of vulnerability and powerlessness into his analysis of what constitutes torture and cruel, inhuman and degrading treatment, noting that:

‘the overriding factor at the core of the prohibition of cruel, inhuman and degrading treatment is the concept of powerlessness of the victim.’⁶

The Special Rapporteur has stressed 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.’⁷

⁴ UN Human Rights Council, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development : report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Manfred Nowak, 15 January 2008, A/HRC/7/3, [paras.38, 39]. See also UN Committee Against Torture (CAT Committee), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2 [para.22]; UN General Assembly, *Rome Statute of the International Criminal Court* (last amended January 2002), 17 July 1998, A/CONF. 183/9 [Article 7(1)(g)].

⁵ United Nations General Assembly (2008) *Torture and other cruel, inhuman or degrading treatment or punishment; Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*. Sixty third session; 28 July 2008; U.N. Doc. A/63/175 [at para.50].

⁶ United Nations Economic and Social Council, Commission on Human Rights (2005) *Civil and Political Rights, including the Questions of Torture and Detention; Report of the Special Rapporteur on the question of torture*; 23 December 2005; U.N. Doc. E/CN.4/2006/6 [at para.40].

⁷ United Nations General Assembly, Human Rights Council (2008) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*; 15 January 2008; U.N. Doc. A/HRC/7/3 [at para.38].

The Committee against Torture (CAT Committee), has confirmed that States have a heightened obligation to protect vulnerable and/or marginalised individuals from torture and cruel inhuman and degrading treatment⁸ 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....'*⁹

Forced sterilisation of women with disabilities, and the inadequacy of State responses to it, represent grave violations of multiple human rights, including the right to health, the right to freedom from violence, the right to reproductive freedom and to found a family, and the right to freedom from torture or cruel, inhuman or degrading treatment or punishment. States are obliged through the provision of an adequate legal framework, and its rigorous implementation, to exercise due diligence to protect individuals, and prevent the practice of forced sterilisation from taking place.¹⁰

Developments in international law and practice reflect that meeting these obligations in the context of forced sterilisation of women and girls with disabilities requires States to take into account the vulnerability of such persons and to provide specific legislative, administrative and other measures to prevent the severe physical, psychological and emotional harm which can result from such procedures.¹¹

Australia's current Attorney-General, the Hon Robert McClelland, has made it clear that:

*"Nothing justifies torture - and nothing justifies a state's use of it.....we will take all necessary steps to eliminate the use of torture.....Torture is an extreme expression of violence and cannot be condoned. It destroys exactly what countries are claiming to defend - the dignity and freedom of human beings."*¹²

WWDA urges the Australian Government to extend this conviction to women and girls with disabilities, by acting immediately to prohibit the practice of forced sterilisation – a practice which clearly constitutes torture and cruel, inhuman or degrading treatment.

Yours Sincerely



Carolyn Frohmader
Executive Director



Sue Salthouse
President

⁸ UN Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2.

⁹ *Ibid* [at para.17].

¹⁰ Center For Reproductive Rights, European Disability Forum, Interights, International Disability Alliance & Mental Disability Advocacy Center (2011) *Joelle Gauer and Others Against France* (Application. No.61521/08) In the European Court of Human Rights; 16 August 2011.

¹¹ *Ibid*.

¹² Hon Robert McClelland, *'Human Rights: A Moral Compass.'* Speech to the Lowy Institute for International Policy, Sydney, Friday, 22 May 2009. Accessed online at: <http://www.lowyinstitute.org/Publication.asp?pid=1053>