



TRANSFORMING POWER

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FACTSHEET | FORCED STERILISATION OF HIV POSITIVE WOMEN

4TH UNIVERSAL PERIODIC REVIEW OF SOUTH AFRICA

Her Rights Initiative (HRI) is a feminist's social impact organisation formed in 2009 to advocate and advance human rights of HIV positive women in South Africa. Our vision is to create a world where all women including HIV positive women realise and enjoy all their Constitutional rights.

FORCED STERILISATION OF HIV POSITIVE WOMEN IN SOUTH AFRICA

Our interventions are focused on the forced sterilisation of women living with HIV. Her Rights Initiative is an experienced actor in this area, and we have engaged with a number of national, regional, and international mechanisms to address the problem of forced sterilisation in South Africa. Women living with HIV in South Africa experience a myriad of violations as a direct result of their status. These include violations of their rights to health, to bodily autonomy and integrity, and to the right to be free from violence and of torture, through the practice of forced sterilisation.

“Coerced [or forced] sterilisation occurs when financial or other incentives, misinformation, or intimidation tactics are used to compel an individual to undergo the procedure. Additionally, sterilisation may be required as a condition of health services or employment. Forced sterilisation occurs when a person is sterilised without her knowledge or is not given an opportunity to provide consent” (*Open Society Foundations, 2011, p. 2*)¹.

¹ Open Society Foundations 'Against Her Will: forced and coerced sterilization of women worldwide', 2011.

Forced sterilisation is one of the worst forms of violence against women and the United Nations Rapporteur on Torture included HIV positive women as one of the population groups disproportionately vulnerable to forced sterilisations in a report in 2013².

The issue of forced and coerced sterilisation of women living with HIV in South Africa initially came to the fore in the late 1990s, early 2000s but the problem persists. HRI estimates that thousands of women living with HIV have been subjected to forced sterilisation in South Africa in the past three decades. In 2015 the South Africa HIV Stigma Index study by the Human Sciences Research Council and other collaborating partners, found that 498 (7.6 per cent) of women living with HIV reported that they were forced into sterilisation in the past twelve months³. The same study found that 37% of HIV positive women reported being forced into taking injectable contraceptive Depo Provera in the past twelve months. This confirms HRI's hypothesis that forced sterilisation is part of state sanctioned efforts to end fertility of HIV positive women in South Africa, which has more than four (4) million women living with HIV.

The Commission for Gender Equality (CGE) investigated on this issue for five years (2015-2020). The CGE investigation confirmed that HIV positive women were forced into sterilisation. The CGE found that the South African State violated twenty-six (26) human rights of the women. The violations include that HIV positive women were subjected to cruel, torturous, or inhuman and degrading treatment. Women's rights to dignity, bodily integrity, freedom, and security over their bodies were violated. Their right to equality and freedom from discrimination was violated⁴

One of the recommendations of the CGE report mandated the National Department of Health (NDOH) to negotiate appropriate redress (compensation) with the HIV positive women affected. Whilst this recommendation, and others, are progressive, it is limited in the sense that it does not specifically articulate the nature of this redress as such, opening it to different interpretations.

² See United Nations General Assembly (2013) 'Report of the Special Rapporteur on torture and other cruel, inhumane, or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, United Nations.

³ See Cloete A., Simbayi L., K Zuma K., et al. (2014). 'The People Living with HIV Stigma Index: South Africa, Human Sciences Research Council, South Africa, and the South African AIDS Council.

⁴ See Commission for Gender Equality (2020) 'Investigation Report on the Forced Sterilisation of Women Living with HIV/AIDS in South Africa, Complaint Ref No: 414/03/2015/KZN, Johannesburg,

Furthermore, this approach gave power to the Department of Health, the abuser, rather than the State to define appropriate redress to the victims. The victims and our legal representatives have been engaging with the Department of Health on this matter to no avail.

SUMMARY OF KEY ISSUES FROM PREVIUOS CYCLES

During the last cycle South Africa received 267 UPR recommendations. Whilst there were no particular recommendations on forced sterilisation made to South Africa, a pertinent recommendation on torture which the government of South Africa accepted:

- Ratify the Optional Protocol to the Convention against Torture with a view to establishing a national preventive mechanism against torture (Chile)

There have been specific recommendations and general comments by other United Nations Human Rights mechanisms on this issue. The United Nations Special Rapporteur on Torture included HIV positive women as one of the population groups disproportionately vulnerable to forced sterilisations in 2013⁵. In its concluding observations on South Africa's Fifth Periodic Report, the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) noted with concern reports of forced sterilisation of women living with HIV/AIDS in public health facilities in South Africa⁶. The Committee recommended that South Africa immediately stop the practice of forced sterilisation of women living with HIV/AIDS and amend the Sterilisation Act 44 of 1998 to require the free, prior, and informed consent of the woman concerned to any sterilisation.

In her July 2022 report on Racism and the right to health, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, stated that: -

⁵ See United Nations General Assembly (2013)'Report of the Special Rapporteur on torture and other cruel, inhumane, or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, United Nations.

⁶ See United Nations Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW) '*Concluding observations on the Fifth Periodic Report of South Africa*' /C/ZAF/CO/52021', United Nations, Geneva, November 2021.

“Media coverage of forced sterilizations of women based on HIV status requires a nuanced understanding of the “intersection of their gender, race and class which renders them more vulnerable to forced and coerced sterilization” (United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, July 2022 pp.11) ⁷

NATIONAL LEGAL FRAMEWORK

The South African government is failing to adequately address forced sterilisation despite legislation and common law that sets out a human rights-based approach to forced sterilisation for example through reading the Bill of Rights in the Constitution of the Republic of South Africa, 1996, providing for rights to bodily autonomy, dignity, equality, and freedom to all South Africans,⁸. Section 12 of the Constitution of the Republic of South Africa adopted in 1996, includes provisions to be free from Torture⁹ the Sterilisation Act¹⁰, the National Health Act¹¹ the Prevention of Combating and Torture of Persons Act¹² together. As per the recommendation, South Africa signed and ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2019.

This robust legal framework outlines the need to ensure that the threshold of fully informed, voluntary consent that is free from pressure and coercion is met. Additionally, the courts have held that informed consent means that the patient has: (i) knowledge of the nature and extent of the harm or risk; (ii) an appreciation and understanding of the nature of harm or risk; (iii) consented to the harm or assumed the risk of harm and (iv) consented to the entire transaction, including all its consequences in totality. The duty to obtain informed consent rests with the treating or operating medical practitioner or treating health care practitioner.

⁷ See United Nations General Assembly (2022)’ report on Racism and the right to health, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Tlaleng Mofokeng, A/77/197 2/23 22-11365, United Nations, July 2022.

⁸ See Constitution of the Republic of South Africa, Bill of Rights and Section 12 on the security of the person, and right to bodily and psychological integrity.

⁹ *Ibid.*

¹⁰ See Sterilisations Act 44 of 1998.

¹¹ The National Health Act, 61 of 2003¹¹

¹² The Prevention of Combating and Torture of Persons Act No 13 of 2013

CHALLENGES

Despite this clear guidance, and despite the report by the Commission for Gender Equality as a result of a complaint lodged by HRI in partnership with Women's Legal Centre The South African government has not compensated HIV positive women who are victims of forced sterilisations, in line with the Article 14. 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Government of South Africa is not providing rehabilitation of the victims including mental health treatment, treatment of complications and side effects, of sterilisations procedure, and social protection.

HIV positive women continue to report this violation, which is rooted in pervasive intersecting and gendered violation of human rights in the context of HIV that frames HIV positive as socially undesirable women who should be excluded from the institution of motherhood. The government of South Africa has not halted the practice of forced sterilisation and has not fully implemented recommendations on the issue made to it on the topic by the Commission on Gender Equality in South Africa, or by the Committee on the Elimination of Discrimination Against Women (CEDAW).

Based on that we kindly suggest South Africa to receive the following recommendations

RECOMMENDATIONS

1. The Government of South Africa should provide fair and adequate compensation to HIV positive women who are victims of forced sterilisations, Pursuant with Article 14. 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
2. In this regard, we recommend that the State President establish a Judicial redress and compensation mechanisms in line with Article 14. 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
3. The Government of South Africa should provide full rehabilitation for the victims of forced sterilisation including providing accessible, available, and acceptable mental health treatment, and treatment of side effects and complications of sterilisations, of good quality, and social protection.

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4. Implement the recommendation made by CEDAW to immediately stop the practice of forced sterilisation of women living with HIV/AIDS and amend the Sterilisation Act 44 of 1998 to require the free, prior, and informed consent of the woman concerned to any sterilisation.
 5. The Government of South Africa should amend the Prevention of Combating and Torture of Persons Act No 13 of 2013 in order to provide protections and justice for acts of Torture, defined and experienced by women, such as forced sterilisations.
The Government of South Africa should consider redress for acts of Torture beyond the criminal law framework.
 6. The Government should codify women and victim centred policy and accountability frameworks for the implementation of these amendments.

ISSUED BY HER RIGHTS INITIATIVE

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