Women With Disabilities Australia (WWDA)

DEHUMANISED

THE FORCED STERILISATION OF WOMEN AND GIRLS WITH DISABILITIES IN AUSTRALIA

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'DEHUMANISED: THE FORCED STERILISATION OF WOMEN AND GIRLS WITH DISABILITIES IN AUSTRALIA'
WWDA Submission to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia
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ISBN 978-0-9876035-0-0

This publication has been prepared by Women with Disabilities Australia Inc. for the Australian Government, represented by the Department of Families, Housing, Community Services and Indigenous Affairs. The views expressed in this publication are those of Women with Disabilities Australia Inc. and do not necessarily represent the views of the Australian Government.

ABOUT WOMEN WITH DISABILITIES AUSTRALIA (WWDA)
Women With Disabilities Australia (WWDA)[1] is the peak non-government organisation (NGO) for women with all types of disabilities in Australia. WWDA is run by women with disabilities, for women with disabilities, and represents more than 2 million disabled women in Australia. WWDA's 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. Promoting the reproductive rights of women and girls with disabilities, along with promoting their rights to freedom from violence and exploitation, and to freedom from torture or cruel, inhuman or degrading treatment are key policy priorities of WWDA.[2]

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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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ACKNOWLEDGEMENT

In presenting this Submission to the Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia, WWDA wishes to acknowledge and thank all the women who have been involved with Women with Disabilities Australia (WWDA).

We dedicate this work to all those who have suffered discrimination and the devastating life-long impact of forced or coerced sterilisation and other violations of their reproductive health rights. Although we can never take away the pain and trauma of those women and girls affected, we trust that our work will ensure that this gross violation of the human rights of women and girls with disabilities will never be allowed to occur again.

To our sisters in other countries who are also continuing the fight to stop the practice of forced and coerced sterilisation of women and girls, we hope our work can contribute in some small way to your efforts.

"I think there should be an Act that should go through Parliament, it must be a Sterilisation Act that stops girls and women with intellectual disabilities being sterilised."

PARTICIPANT, STAR CONFERENCE ON STERILISATION, 1990[3]

OVERVIEW

OVERVIEW

1. 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.[4] However, these entitlements remain a distant goal for many women and girls with disabilities. In contemporary Australia, many are denied the most fundamental rights and freedoms, they are not treated with dignity and respect, they remain profoundly more disadvantaged than their male counterparts; are systematically denied opportunities to develop, gain an education and live a full and meaningful life. They experience multiple forms of discrimination, and widespread, serious violation of their human rights.

2. Denial of these rights and freedoms is predicated on the assumption - usually implicit - that there are degrees of being human, and that only the "fully human" are entitled to enjoy the advantages of our society and the full protection of its laws. Since ability and intelligence are highly valued in our society, they are closely associated with being human. 'Diminished ability and intelligence', on the other hand, is equated with lower forms of life. Women with disabilities have typically been perceived as sub-human - lacking such basic human needs as the need for love, intimacy, identity and freedom. Dehumanising conditions - such as those which still pervade many of our state institutions - have been rationalised on the basis that women with disabilities do not have the same needs and feelings as the "fully human", and hence that they do not need privacy, personal property, recognition, intimacy or freedom of choice. 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.[5]

3. The right to bodily integrity and bodily autonomy, including the right of a woman to make her own reproductive choices, are enshrined in a number of international human rights treaties and instruments to which Australia is a party. However, women and girls with disabilities in Australia have failed to be afforded, or benefit from, these provisions in international human rights law. Instead, systemic prejudice and discrimination against them continues to result in widespread denial of their right to make decisions about their own bodies, experience their sexuality, have sexual relationships, and found and maintain families. 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.[6]

4. Forced sterilisation – that is, sterilisation in the absence of the free and informed consent of the individual concerned - including instances in which sterilisation has been authorised by a third party, without that individual's consent[7] - is an act of violence,[8] a form of social control, and a clear and documented violation of the right to be free from torture.[9] Forced sterilisation of girls and women with disabilities is internationally recognised as a harmful practice based on tradition, culture, religion or superstition.[10] Perpetrators[11] are seldom held accountable and women and girls with disabilities who have experienced this violent abuse of their rights are rarely, if ever, able to obtain justice. Successive Australian Governments have not acknowledged this pervasive practice, nor expressed regret, nor offered redress to the women and girls affected.

OVERVIEW

5. Forced sterilisation constitutes torture.[12] The right to be free from torture is one of the few absolute and non-derogable human rights, a matter of *jus cogens*,[13] a peremptory norm of customary international law, and as such is binding on all States, irrespective of whether they have ratified specific treaties.[14] A State cannot justify its non-compliance with the absolute prohibition of torture, under any circumstances. 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."[15]

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OVERVIEW

6. Forced sterilisation breaches every international human rights treaty to which Australia is a party. Legal authorisation of forced sterilisation procedures directly implicate the Australian Government in the perpetration of torture against disabled women and girls. Any law which authorises forced sterilisation is a law which authorises violence against women, the consequence of which is severe pain and suffering,[16] including *'drastic and emotionally painful consequences that are un-ending'*. [17]

7. 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.[18] 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.'* [19]

8. For more than twenty years, women with disabilities and their allies have been demanding successive Australian Governments show national leadership and undertake wide ranging reforms to stop the forced and coerced sterilisation of women and girls with disabilities, and develop policies and programs that enable disabled women and girls to realise their human rights on an equal basis as others. These recommendations to the Australian Government for action have been strongly echoed, supported and re-iterated by several international human rights treaty monitoring bodies and mechanisms since 2005.[20] That Australian Governments have chosen to ignore the voices of disabled women, as well as clear recommendations from the United Nations and international medical bodies, clearly demonstrates that disabled women and girls are not considered by our Governments as worthy of all that it means to be fully human.

9. No group has ever been as severely restricted, or negatively treated, in respect of their reproductive rights, as women with disabilities.[21] The practice of forced sterilisation is itself part of a broader pattern of denial of human and reproductive rights of Australian disabled women and girls which also includes 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.[22] These practices are framed within traditional social attitudes that continue to characterise disability as a personal tragedy, a burden and/or a matter for medical management and rehabilitation.[23]

OVERVIEW

10. This Submission from Women With Disabilities Australia (WWDA) to the *Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia* supplements many of the submissions, reports, articles, and letters previously provided by WWDA to successive Australian Governments on this issue over the last twelve years. This Submission does not intend to replicate all that work,[24] but instead seeks to highlight key issues for consideration, in recognition that women and girls with disabilities have the right to experience full and effective enjoyment of their human rights on an equal basis as others. Indeed, the right to be fully human.[25]

11. This Submission examines the background to the issue of forced and coerced sterilisation of women and girls with disabilities in Australia and highlights the status of the issue in Australia today. It examines the rationale used to justify the forced sterilisation of disabled women and girls, including themes such as eugenics/genetics; for the good of the State, community or family; incapacity for parenthood; incapacity to develop and evolve; prevention of sexual abuse; and discourses around "best interest". In doing so, this Submission analyses Australian Court and Tribunal applications and authorisations for sterilisation of disabled women and girls, and demonstrates that in reality, applications and authorisations for sterilisation have very little to do with the 'best interests' of the individual concerned, and more to do with the interests of others. This Submission demonstrates that the Australian Government's current justification of the "best interest approach" in the sterilisation of disabled women and girls, has in effect, been used to perpetuate discriminatory attitudes against women and girls with disabilities, and has only served to facilitate the practice of forced sterilisation.

12. The impact of forced sterilisation on women and girls with disabilities is also highlighted in this Submission, and reaffirms that forced and coerced sterilisation has long-lasting physical, psychological and social effects and causes severe mental pain and suffering, extreme psychological trauma, including depression and grief. It also demonstrates that for women with disabilities, the issue of forced sterilisation encompasses much broader issues of reproductive health, including for example: support for choices and services in menstrual management, contraception, abortion, sexual health management and screening, pregnancy, birth, parenting, menopause, sexuality, violence and sexual assault prevention and more.

13. This Submission looks in detail at forced sterilisation as a violation of human rights and provides an analysis of how the practice contravenes every international human rights treaty to which Australia is a party. It examines the human rights treaty monitoring bodies responses to the practice of forced sterilisation around the world and clearly demonstrates that Australia's apathy and indifference to the issue sees it lagging behind the rest of the developed world, at the expense of the human rights of disabled women and girls.

OVERVIEW

14. The Submission provides examples of several recent legal cases to highlight that the issue of forced and coerced sterilisation of women and girls is increasingly being recognised in Courts around the world, as a violation of women's fundamental human rights. Importantly, WWDA's Submission also examines redress and transitional justice for women and girls with disabilities who have been sterilised in the absence of their fully informed and free consent. In doing so, the Submission looks at the necessary components of redress and transitional justice, including for example: measures of reparation, satisfaction and guarantees of non-repetition as well as compensation, rehabilitation and recovery.

15. Given the magnitude of the issue of forced sterilisation of women and girls with disabilities, in that it represents just one element of a much broader pattern of denial of human and reproductive rights of Australian disabled women and girls, it is outside the scope of this Submission to address in detail the wide-ranging and extensive raft of actions required to address the breadth and scope of issues involved. This Submission has, however, endeavoured to identify key recommendations for consideration, whilst acknowledging that much more intensive work is required. Critically, any work in this area, must be based on the understanding that women and girls with disabilities must be at the forefront of any and all consultative and decision-making processes.

16. Forced sterilisation of women and girls with disabilities, and the inadequacy of Australian Governments' responses to it, represent grave violations of multiple human rights. 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. Meeting these obligations requires the Australian Government to take into account the marginalisation of disabled women and girls, whose rights are compromised due to deeply rooted power imbalances and structural inequalities, and to take all appropriate measures, including focused, gender-specific measures to ensure that disabled women and girls experience full and effective enjoyment of their human rights on an equal basis as others. Nothing less is acceptable.

17. Whilst WWDA welcomes the *Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia* as a long-overdue initiative and commends the Senate for recognising the imperative to address this long neglected yet urgent human rights issue, we re-iterate that there are absolutely no grounds or excuses which can be used to justify the torture of women and girls with disabilities by forced sterilisation.

KEY RECOMMENDATIONS

KEY RECOMMENDATIONS

Based on the information provided in this Submission, coupled with WWDA's extensive and dedicated work on this issue for more than twelve years, WWDA makes the following 18 Key Recommendations to the Australian Government through the *Senate Inquiry into the Involuntary or Coerced Sterilisation of People with Disabilities in Australia*:

RECOMMENDATION 1

As an immediate action, in keeping with the human rights treaties to which Australia is a party, and consistent with the recommendations to the Australian Government from the United Nations *Committee on the Elimination of Discrimination Against Women* (CEDAW/C/AUS/CO/7), the *Committee on the Rights of the Child* (CRC/C/15/Add.268; CRC/C/AUS/CO/4), the *Human Rights Council* (A/HRC/17/10), along with the *International Federation of Gynecology and Obstetrics (FIGO) Guidelines on Female Contraceptive Sterilization* (2011); recommendations of the *World Medical Association (WMA)* (2011) and the *International Federation of Health and Human Rights Organisations (IFHHRO)* (2011), and the February 2013 Recommendations of the *UN Special Rapporteur on Torture* (A/HRC/22/53) **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.** Such legislation must prohibit the removal of a child or adult with a disability from Australia with the intention of having a forced sterilisation procedure performed.

RECOMMENDATION 2

In consultation with women with disabilities, and as a matter of urgency, establish and adequately resource a National Task Force[26] 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. Such a policy and framework must be consistent with the *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (A/RES/60/147), the *Convention on the Rights of Persons With Disabilities* (A/RES/61/106) and other relevant international standards and frameworks.[27] The following elements as articulated under the *Convention Against Torture [and Other Cruel, Inhuman or Degrading Treatment or Punishment]*, must be included: measures of reparation, satisfaction and guarantees of non-repetition as well as compensation, rehabilitation and recovery.

KEY RECOMMENDATIONS

RECOMMENDATION 3

In developing measures of **rehabilitation and recovery** for those affected by forced sterilisation practices and other violations of their reproductive rights and freedoms, women and girls with disabilities must be actively consulted to identify the full range of rehabilitation and recovery measures required, which may include for example:

- specialised counselling, psychological, and social programs, services and supports;
- provision of legal services, supports and assistance for survivors;
- specialised women's health, allied health and medical programs, services and supports;
- specialised and targeted violence and sexual assault prevention services, programs and support;
- specialised reproductive and sexual health education and training services and programs;
- processes for memorialising and documenting the experiences, stories and histories of those affected.

RECOMMENDATION 4

Issue a **formal apology** that identifies the discriminatory actions, policies, culture and attitudes that result in forced and coerced sterilisation of people with disabilities and that acknowledges, on behalf of the nation, the harm done to those who have been forcibly sterilised and experienced other violations of their reproductive rights. The formal apology must be developed in consultation with those affected and their allies, and satisfy the five criteria for formal apologies as articulated by the Canadian Law Commission, which include:

- acknowledgment of the wrong done or naming the offence.
- accepting responsibility for the wrong that was done.
- the expression of sincere regret and profound remorse.
- the assurance or promise that the wrong done will not recur.
- reparation through concrete measures.

KEY RECOMMENDATIONS

RECOMMENDATION 5

Provide **financial reparation** to women and girls with disabilities who have been forcibly sterilised. In establishing a scheme for financial reparation, the Australian Government should examine similar models used in Canada, Sweden and the US, including the *North Carolina Justice for Sterilization Victims Foundation*, established in 2010.

RECOMMENDATION 6

In consultation with people with disabilities and their allies, and consistent with the *Convention on the Rights of Persons With Disabilities*, act to undertake the following **legislative reforms**:

- enact national legislation that replaces regimes of substitute decision making for people with disabilities with supported decision-making;
- repeal any laws, policies and practices which permit guardianship and trusteeship for adults (and replace regimes of substitute decision-making with supported decision making);
- ensure that the requirement for prior, full and informed consent in all interventions and treatments concerning people with disabilities is enshrined in relevant legal frameworks at national and state/territory levels;
- ensure that criteria that determine the grounds upon which treatment can be administered in the absence of free and informed consent is clarified in the law, and that no distinction between persons with or without disabilities is made; and,
- ensure that any law or policy which restricts in any way, a disabled woman's [and girls] right to full enjoyment of her sexual and reproductive health rights and freedoms, is amended as a matter of urgency.[28]

KEY RECOMMENDATIONS

RECOMMENDATION 7

In keeping with recommendations from the Committee on the Elimination of Discrimination Against Women (CEDAW/C/AUS/CO/7), act to **adopt urgent measures** to ensure that women with disabilities are better represented in decision-making and leadership positions, and that structures, mechanisms and initiatives are established to enable and foster their participation and engagement. Inherent in this is the need for the Australian Government to undertake an immediate and urgent review of the level and adequacy of the annual funding provided by the Australian Government to Women With Disabilities Australia (WWDA) ($163,000) including its staffing levels (1 EFT).

RECOMMENDATION 8

Act immediately to commission and adequately resource a **National Public Inquiry** into the removal and/or threat of removal of babies and children from parents with disabilities. Such an Inquiry must investigate reasons why in Australia today, a parent with a disability is up to ten times more likely than other parents to have a child removed from their care.[29] The Inquiry must also address the over-representation of parents with intellectual disabilities in care and protection proceedings.

RECOMMENDATION 9

Act immediately on the urgent recommendation of the *Committee on the Elimination of Discrimination Against Women* (CEDAW/C/AUS/CO/7), to **address the violence, abuse, neglect and exploitation** experienced by women and girls with disabilities living in institutions or supported accommodation. Inherent in this is the need to develop and resource targeted, gendered initiatives to build capacity of individuals and organisations to prevent violence against people with disabilities and to ensure appropriate responses when it does occur.

KEY RECOMMENDATIONS

RECOMMENDATION 10

As a matter of urgency, and consistent with recommendations from other key Australian disabled people's organisations, establish and adequately resource an independent, statutory, **national protection mechanism** for 'vulnerable' and/or 'targeted' adults, where the requirement for mandatory reporting is legislated.

RECOMMENDATION 11

Commission and fund a three year **national research study** on women and girls with disabilities' right to reproductive freedom which:

- investigates models of best practice in the delivery of sexual and reproductive health programs and services for women and girls with disabilities, including on all matters relating to parenthood and relationships;
- addresses the effects, including long-term effects, of forced and coerced sterilisation for all women and girls with disabilities, including those with psychiatric, cognitive, sensory and physical disabilities;
- investigates the practice of menstrual suppression of girls and women with disabilities, including those in group homes and other forms of institutional care. Research into menstrual suppression practices must include:
- investigation into the non-consensual and coerced administration of Depo-Provera and other injectable contraceptives, the contraceptive pill, and other forms of contraception to women and girls with disabilities;
- investigation into the use of contraception as a form of social control of girls and women with disabilities;
- investigation into the long term physical, psychological, and social effects of menstrual suppression practices.

KEY RECOMMENDATIONS

RECOMMENDATION 12

In consultation with women with disabilities and their allies, **commission specific work** to assist women and girls with disabilities and their families and support persons to access appropriate reproductive health care. Work in this area would need to include:

- Researching and implementing the specific supports required by carers/support persons to better assist them in managing the menstruation and reproductive health needs of women and girls with intellectual and/or cognitive disabilities;
- Investigating the feasibility of establishing a national scheme (similar to schemes such as the Continence Aids Payment Scheme), which provides funding for all women and girls with disabilities and their families and support persons/carers to access appropriate reproductive health care;
- Developing national sexual health protocols for women and girls with disabilities that incorporate options for menstrual management and contraception.

RECOMMENDATION 13

Establish, and recurrently fund a **National Resource Centre for Parents with Disabilities**, focusing on pregnancy and birthing, adoption, custody, assisted reproduction, adaptive baby-care equipment, as well as general parenting issues. In establishing such a Resource Centre, the Australian Government should examine similar Centres available in other countries, such as the US organisation 'Through the Looking Glass'.[30]

RECOMMENDATION 14

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. This includes the need to create an environment conducive to the effective functioning of such organisations, groups and networks, including adequate and sustained resourcing. Inherent in this, is the need for financial and political support to enable the establishment and recurrent funding of a peak NGO for women with disabilities in each State and Territory.

KEY RECOMMENDATIONS

RECOMMENDATION 15

Ensure that information on women and girls with disabilities is provided in all human rights treaties **Periodic Reports** as a matter of course. This would include information on the situation of women with disabilities under each right, including their current de-facto and de jure situation, measures taken to enhance their status, progress made and difficulties and obstacles encountered. Inherent in this is the need to ensure disaggregated data is included in information provided under each right.

RECOMMENDATION 16

Act to separate disability policy and disability support from family carer policy and support in order to **increase the autonomy** of women and girls with disabilities and challenge the stereotype of women and girls with disabilities as burdens of care.

RECOMMENDATION 17

Through the National Registration and Accreditation Scheme for the Health Professions (NRAS),[31] act to ensure that **accreditation of the training of health professionals** covered under the *Health Practitioner Regulation National Law Act 2009*, is contingent on disability, gender and human rights specific curriculum components.

RECOMMENDATION 18

Develop specific measures to ensure a **gender perspective** is incorporated into any national, state/territory initiatives undertaken as part of the domestic implementation of Article 8 [Awareness Raising] of the CRPD.


TERMINOLOGY

TERMINOLOGY

18. '*Sterilisation*' refers to the performance of a medical procedure which permanently removes an individual's ability to reproduce, and/or the administration of medication to suppress menstruation. *'Forced/involuntary sterilisation'* refers to the performance of a procedure which results in sterilisation in the absence of the free and informed consent of the individual who undergoes the procedure. This is considered to have occurred if the procedure is carried out in circumstances other than where there is a serious threat to life. *Coerced sterilisation* occurs when financial or other incentives, misinformation, misrepresentation, undue influences, pressure, and/or intimidation tactics are used to compel an individual to undergo the procedure. Coercion includes conditions of duress such as fatigue or stress. Undue influences include situations in which the person concerned perceives there may be an unpleasant consequence associated with refusal of consent.[32]

19. In considering issues of sterilisation (whether referred to as non-therapeutic, involuntary, coerced) - it is important to be clear that any sterilisation carried out without the free and informed consent of the individual concerned, is a forced sterilisation.[33] This includes instances in which sterilisation has been authorised by a third party, such as a parent, legal guardian, court, tribunal, or judge, without the individual's consent.[34]

20. The practices that law makers and health care providers call 'unlawful,' 'unauthorised,' 'non-consensual,' 'involuntary', or 'non-therapeutic' sanitises the picture of what really happens to disabled women and girls in their reproductive choices. For many, the experience is about being denied access to suitable services, forced against their will, coerced, intimidated, pressurised, deceived, compelled, raped and even unknowingly deprived of their human rights to bodily integrity and control over their reproductive health. In the case of sterilisation, the fact that a procedure may be deemed 'authorised' or 'lawful' does not in any way obviate the reality that a woman with a disability, often a very young woman or girl, undergoes a medical procedure to remove non-diseased parts of her body which are essential to her ongoing health and well-being.[35]

TERMINOLOGY

21. Whilst there may be instances where disabled men and boys are subject to sterilisation procedures, sterilisation disproportionately affects women and girls and is clearly a gendered issue. Women and girls with disabilities are at particular risk of forced sterilisations performed under the auspices of legitimate medical care or the consent of others in their name.[36] The majority of cases that have come to the attention of relevant authorities in Australia (including Courts and Guardianship Tribunals) have involved the sterilisation of girls with intellectual disabilities.[37] Similarly, there have been no instances in Australia where authorisations to sterilise have been sought for children without disabilities in the absence of a threat to life or health.[38] In this context, this Submission focuses on women and girls with disabilities, whilst acknowledging that disabled men and boys who may be subject to forced or coerced sterilisation are entitled to the same protection against violations of their human rights as disabled women and girls. As recently highlighted by the Special Rapporteur on the Right of everyone to the enjoyment of the highest attainable standard of physical and mental health:

> *Women are generally more likely to experience infringements of their right to sexual and reproductive health given the physiology of human reproduction and the gendered social, legal and economic context in which sexuality, fertility, pregnancy and parenthood occur. Persistent stereotyping of women's roles within society and the family establish and fuel societal norms.*[39]

22. In discussing sterilisation of people with disabilities, it must also be understood that adult women with disabilities and men with disabilities have the same rights as their non-disabled counterparts to choose sterilisation as a means of contraception. In this context, safeguards to prevent forced sterilisation should not infringe the rights of disabled women and men to choose sterilisation voluntarily and be provided with all necessary supports to ensure that they can make and communicate such a choice based on their free and informed consent.

"Women are generally more likely to experience infringements of their right to sexual and reproductive health given the physiology of human reproduction and the gendered social, legal and economic context in which sexuality, fertility, pregnancy and parenthood occur. Persistent stereotyping of women's roles within society and the family establish and fuel societal norms.[39]

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BACKGROUND AND STATUS

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23. There is a historical precedent in several countries including for example the USA (until the 1950s), in Canada and Sweden (until the 1970s), and Japan (until 1996) indicating that torture of women and girls with disabilities by sterilisation occurred on a collective scale – that is, mass forced sterilisation. This policy was rationalised by a pseudo-scientific theory called eugenics – the aim being the eradication of a wide range of social problems by preventing those with 'physical, mental or social problems' from reproducing.[40]

24. Although eugenic policies have now been erased from legal statutes in most countries, vestiges still remain within some areas of the legal and medical establishments and within the attitudes of some sectors of the community:

> *"Disabled people should not have babies."*[41]

> *"We neuter our dogs and cats for the perfectly ethical reasons such as their health, to lessen the natural biological impact it causes to their bodies and to ensure that they don't breed unnecessarily..... If she* [re Angela] *were a cat, dog, horse, hamster we would do what we could to alleviate her burdens and to make sure she enjoyed the best quality of life she can have."*[42]

> *"She* [re Angela] *doesnt have the skills necessary to raise a child herself (who will most likely be disabled too), so what use is a reproductive system anyway. Our health system is under enough pressure with the aging population without the addition to any more disabled people."*[43]

> *"Disabled children cost the council too much money and should be put down."*[44]

"We neuter our dogs and cats for the perfectly ethical reasons such as their health, to lessen the natural biological impact it causes to their bodies and to ensure that they don't breed unnecessarily..... If she [re Angela] *were a cat, dog, horse, hamster we would do what we could to alleviate her burdens and to make sure she enjoyed the best quality of life she can have."*[42]

BACKGROUND AND STATUS

25. In Australia the issue of sterilisation of disabled women and girls has been the subject of debate since the early 1980s when it became clear that many women with disabilities had been and were being sterilised without their consent and in many cases without their knowledge. It was clear this was happening with the informal consent of family, carers or doctors and without public scrutiny or accountability.[45] This was in keeping with the legacy of the coercive and government sanctioned mass sterilisation of women with disabilities in pre-war Australia.[46]

26. In 1992, in a case now known as *Marion's Case,*[47] an application was made to the High Court of Australia on appeal from the Family Court in relation to a teenage girl with an intellectual disability. The application was for a 'non-therapeutic'[48] surgical sterilisation in order to manage the young girl's menstruation and prevent pregnancy. The High Court found that fundamental questions of human rights such as the right to reproduce should be decided by the courts rather than by parents, carers or medical practitioners.[49] While this decision leant support to the rights of people with disabilities and has since assumed symbolic importance, subsequent judicial decisions and social practices have failed to give full effect to the promise of *Marion's Case*.[50] In reality considerations about forced sterilisation in Australia have remained effectively bogged down in an ongoing legalistic debate about who can authorise sterilisation, for whom, under what circumstances and within which jurisdiction.[51] The main concern of public policy in the area has focused on piecemeal development of mechanisms, protocols and guidelines in an attempt to *'minimise the risk of unauthorised sterilisations occurring'*.[52] Additionally, the legal question essentially addressed in the debates around forced sterilisation of women and girls with disabilities has been constructed as a decision about whether to sanction a 'medical procedure.'[53] This has resulted in the narrow conception of forced sterilisation as a legal and medical matter when it is clearly an issue of fundamental human rights.

27. In 2003, Chief Justice Alastair Nicholson (Chief Justice of the Family Court of Australia from 1988-2004) reflected on the apathy of successive Australian Governments in addressing the issue of sterilisation of disabled women and girls:

> *"I have no real knowledge of why successive governments of both federal and state haven't taken a greater degree of interest in this area. It does concern me that the issue hasn't been taken up in any real sense. I know the Federal Government has made some attempts to draw attention to it through the Attorney General's department from time to time but that seems to be about as far as it's gone."*[54]

BACKGROUND AND STATUS

28. In August 2003, Australian Governments, through the [then] *Standing Committee of Attorneys-General* (SCAG)[55] agreed that a nationally consistent approach to the authorisation procedures required for the lawful sterilisation of minors was appropriate. From 2003-2007, despite strong opposition from disability and human rights advocates, the SCAG pushed ahead with a proposal to develop legislation aimed to regulate authorisation of sterilisation of minors with a 'decision-making disability' rather than prohibit this form of violence.[56] In November 2006, the SCAG released for consultation with selected stakeholders, a draft Bill (*Children with Intellectual Disabilities (Regulation of Sterilisation*) Bill 2006).[57] The Bill set out the procedures that jurisdictions could adopt in authorising the sterilisation of children who have an intellectual disability.[58]

29. The SCAG disbanded its work on the Draft Bill in 2008, declaring that *'there would be limited benefit in developing model legislation'*[59] and instead, its Ministers agreed to *'review current arrangements to ensure that all tribunals or bodies with the power to make orders concerning the sterilisation of minors with an intellectual disability are required to be satisfied that all appropriate alternatives to sterilisation have been fully explored and/or tried before such an order is made'*.[60] There is no evidence to date that these reviews were conducted, and in fact, in 2009, one State Government Attorney-General advised WWDA in writing that no such review had been undertaken in that particular State and nor was there any intention to undertake such a review.[61]

30. In 2009, WWDA formally recommended to the Australian Government/s that the issue of sterilisation of girls and women with disabilities remain as a standing item on the SCAG agenda until such time that national legislation had been developed which prohibited forced sterilisation. Despite the fact that the Australian Government had conceded that: a) girls with disabilities continue to be sterilised in Australia,[62] and b) *'unrecorded and unauthorised non-therapeutic sterilisations of young women with intellectual disabilities [are] being undertaken in Australia'*,[63] WWDA's recommendation was rejected, with the [then] Federal Attorney-General, Hon Robert McClelland advising WWDA that:

> *'While appreciating your organisation's long advocacy on this issue.....I do not propose at this time to develop Commonwealth legislation or to pursue the issue further through SCAG.'*[64]

31. In 2009 the Australian Government formally asserted to the United Nations that:

> *'a comprehensive review ... indicated that sterilisations of children with an intellectual disability had declined since the 1997 report* [65] *- to very low numbers. Evidence also indicated that alternatives to surgical procedures to manage the menstruation and contraceptive needs of women are increasingly available and seem to be successful in the most part. Further, while it was not possible to be definitive due to limitations in the available information, the review concluded that existing processes to authorise sterilisation procedures appeared to be working adequately due to improvements in treatment options and wider community awareness.'*[66]

BACKGROUND AND STATUS

32. There was however, no evidence to support that a 'comprehensive review' (including *'evidence and information gathered relating to the issue')*[67] had been undertaken. No report was ever made available to stakeholders who participated in the consultations on the SCAG 2006 draft legislation, and repeated requests by WWDA to the Australian Government for the report of the 'comprehensive review' were ignored. [68]

33. Forced sterilisations continue to occur in Australia,[69] despite the Australian Government's assertion that only 'very low numbers' of children with an intellectual disability are sterilised. A documentary by ABC TV program *'Four Corners'* in 2003 into sterilisation of people with disabilities, reported on a number of girls and women with disabilities who had been illegally sterilised. Four Corners also *'made contact with families who have had their daughters sterilised illegally.....they would not come on camera for fear of prosecution'.*[70] The Program identified that *'some parents, frustrated by the system, are now seeking out illegal sterilisations or finding ways to get around the system'*. The program interviewed a couple who had their 15 year old disabled daughter *'secretly sterilised in hospital'*. The doctor booked the young girl into the hospital in the mother's name. The mother explained:

> *'no one questioned me. No one, none of the nurses, no one. We were in a private room, we were on our own, and I stayed with her and then I brought her home and nursed her and she was fine..... It's something we have to do behind closed doors because people don't understand.'*[71]

34. In another case, a couple had their 15 year old disabled daughter sterilised in the United States. The parents wanted their daughter sterilised for menstrual management purposes and also to prevent a possible pregnancy in the future. The mother was of the view that, for her daughter to be sterilised in Australia would have been 'virtually impossible' and 'we'd have to break the law'. She explained:

> *'I've got many friends that have been down the line and been knocked back, some friends going through the process at the moment, some friends that it will come up in the next couple of years. The motivation for a parent to get an illegal sterilisation would be they're doing the best for their child. Health and hygiene would be the utmost. And they would be desperate. And, yeah, I'd go down that track if we were not able to get a hysterectomy for Laura in the States.'*[72]

BACKGROUND AND STATUS

35. Although forced sterilisation breaches every international human rights treaty to which Australia is a party, and is a practice that constitutes torture, successive Australian Governments have consistently taken the view that there are instances in which forced sterilisation can and should be authorised, as evidenced for example, in the current Australian Government's 2009 Report to the United Nations under the *Convention on the Rights of the Child* (CRC):

> *A blanket prohibition on the sterilisation of children could lead to negative consequences for some individuals. Applications for sterilisation are made in a variety of circumstances. Sometimes sterilisation is necessary to prevent serious damage to a child's health, for example, in a case of severe menstrual bleeding where hormonal or other treatments are contraindicated. The child may not be sexually active and contraception may not be an issue, but the concern is the impact on the child's quality of life if they are prevented from participating to an ordinary extent in school and social life.*[73]

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BACKGROUND AND STATUS

36. In June 2011, WWDA lodged a formal complaint with four of the United Nations Special Rapporteurs, requesting urgent intervention from each of their offices simultaneously.[74] The Special Rapporteurs[75] wrote to the Australian Government on 18 July 2011 seeking a formal response in relation to the alleged ongoing practice of forced sterilisation of girls and women with disabilities in Australia (see Appendix 2). The Government's response, provided to the UN on 16 December 2011 (see Appendix 3), outlined the different laws governing sterilisation in Australia; and stated that *'sterilisations are authorised only where they are the last resort, as less invasive options have failed or are inappropriate, and where they are in a person's best interests'*. The response demonstrates that the Australian Government does not currently have a coherent national approach to sterilisation of women and girls with disabilities and indicates that the Australian Government remains of the view that there are instances in which forced sterilisation of disabled girls and women, can and should be authorised.

37. Since 2005, United Nations treaty monitoring bodies have consistently and formally recommended that the Australian Government enact national legislation prohibiting, except where there is a serious threat to life or health, 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.[76]

38. In June 2012, the Committee on the Rights of the Child (CRC), in its *Concluding Observations*[77] to the Fourth periodic report of Australia,[78] expressed its serious concern that the absence of legislation prohibiting non-therapeutic sterilisation of girls and women with disabilities *"is discriminatory and in contravention of article 23(c) of the Convention on the Rights of Persons with Disabilities....."*. The Committee urged the State party to: *'Enact non-discriminatory legislation that prohibits non-therapeutic sterilization of all children, regardless of disability; and ensure that when sterilisation that is strictly on therapeutic grounds does occur, that this be subject to the free and informed consent of children, including those with disabilities.'* Furthermore, the Committee clearly identified non-therapeutic sterilisation as a form of violence against girls and women, and recommended that the Australian Government *'develop and enforce strict guidelines to prevent the sterilisation of women and girls who are affected by disabilities and are unable to consent.'*

39. In January 2011, in follow-up to Australia's *Universal Periodic Review*,[79] the UN Human Rights Council endorsed a recommendation specifically addressing the issue of sterilisation of girls and women with disabilities. It specified that the Australian Government should enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disabilities without their informed and free consent.[80] The Australian Government's formal response to this recommendation illustrates its blatant disregard of the human rights of women and girls with disabilities:

> *'The Australian Government will work with states and territories to clarify and improve laws and practices governing the sterilisation of women and girls with disability.'* [81]

BACKGROUND AND STATUS

40. In July 2010, at its 46th session, the UN Committee on the Elimination of Discrimination against Women (CEDAW) expressed concern in its *Concluding Observations on Australia* at the ongoing practice of non-therapeutic sterilisations of women and girls with disabilities and recommended that the Australian Government *'enact national legislation prohibiting, except where there is a serious threat to life or health, 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.'* [82] In September 2012, the Australian Government submitted its Interim Report to the CEDAW Committee,[83] to address how it was responding to the recommendations from the 2010 *CEDAW Concluding Observations on Australia*,[84] specifically on violence against women, and Aboriginal and Torres Strait Islander women. Despite the fact that forced sterilisation of women and girls with disabilities constitutes violence against women,[85] the Australian Government's 42 page response completely ignores the CEDAW recommendation on sterilisation of women and girls with disabilities.

41. In 2005, the Committee on the Rights of the Child in considering Australia's combined second and third periodic reports[86] under Article 44 of the *Convention on the Rights of the Child* (CRC), recommended that *'the State party.....prohibit the sterilization of children, with or without disabilities....'*[87] and in 2007 clearly articulated its position on sterilisation of girls with disabilities, clarifying that States parties to the CRC are expected to prohibit by law the forced sterilisation of children with disabilities.[88]

42. To date, the Australian Government has failed to comply with any of these recommendations.

43. Australia is due to report to the United Nations Human Rights Committee on Australia's compliance with the *International Covenant on Civil and Political Rights* (ICCPR). It is required to submit its response to the List of Issues Prior to Reporting (LOIPR),[89] (adopted by the Human Rights Committee at its 106th session in late 2012) by 1 April 2013 and is scheduled to appear for review by the Human Rights Committee in 2014. Under the heading of *'Violence Against Women'*, the LOIPR for Australia contains a question on sterilisation, to which the Australian Government is expected to respond.[90] Specifically, it states:

> *Please provide information on whether sterilization of women and girls, including those with disabilities, without their informed and free consent, continues to be practiced, and on steps taken to adopt legislation prohibiting such sterilisations.*

BACKGROUND AND STATUS

44. Australia is also due to report to the United Nations Committee on the Rights of Persons with Disabilities (CRPD). In April 2013, the CRPD Committee will meet at its 9th session[91] to develop the List of Issues Prior to Reporting (LOIPR) for Australia in relation to its compliance with and implementation of the *Convention on the Rights of Persons with Disabilities*. Australia's NGO Shadow Report to the CRPD[92] Committee will be considered in the development of the LOIPR for Australia along with information provided by WWDA. It is anticipated that the CRPD LOIPR for Australia will include a specific question on the sterilisation of girls and women with disabilities.

45. International and national *NGO/Civil Society Shadow Reports*[93] submitted to the CRPD Committee for Australia's upcoming review under the CRPD, explicitly deal with the issue of forced and coerced sterilisation of women and girls with disabilities, and call on the Australian Government to prohibit the practice as well as develop specific legislation prohibiting medical treatment and interventions of people with disabilities without their free and informed consent.

46. In addition to the important analysis and condemnation of forced and coerced sterilisation of disabled women and girls by UN mechanisms, international medical bodies have now developed new protocols and calls for action to put an end to the practice of forced/involuntary sterilisation. In June 2011, the International Federation of Gynecology and Obstetrics (FIGO) released new *Guidelines on Female Contraceptive Sterilization*[94] shoring up informed consent protocols and clearly delineating the ethical obligations of health practitioners to ensure that women, and they alone, are giving their voluntary and informed consent to undergo a surgical sterilisation. The FIGO Guidelines (see Appendix 1) clearly state that: *'It is ethically inappropriate for healthcare providers to initiate judicial proceedings for sterilization of their patients, or to be witnesses in such proceedings inconsistently with Article 23(1) of the Convention on the Rights of Persons with Disabilities.'* Yet the Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG), a member of FIGO, has recently asserted that:

> *no method of menstrual regulation or sterilisation is perfect, and a small number of disabled girls or women may still have their best interests served by hysterectomy or sterilisation.*[95]

BACKGROUND AND STATUS

47. In September 2011, the *World Medical Association* (WMA) released a statement condemning the practice of forced and coerced sterilisation as a serious breach of medical ethics. WMA President, Dr. Wonchat Subhachaturas, called involuntary sterilisation *"a misuse of medical expertise, a breach of medical ethics, and a clear violation of human rights."* On behalf of the WMA, he issued a call to *"all physicians and health workers to urge their governments to prohibit this unacceptable practice."*[96]

48. In October 2012, the *International NGO Council on Violence against Children*,[97] classified 'sterilisation of children with disabilities' as a harmful practice based on tradition, culture, religion or superstition.[98] It has urged States to prohibit the practice by law as a matter of urgency.

49. In 2012, the World Health Organisation (WHO) commenced work on the development of a *WHO Statement on Involuntary Sterilization*,[99] which addresses involuntary sterilisation of people with disabilities. The Statement will highlight the problem of involuntary sterilisation and will reaffirm the commitment of WHO to uphold human rights in the area of sexual and reproductive health. It will enable WHO to support Member States to ensure that law, policy and practice are in line with human rights standards and ethical principles and contribute to implementing best practices among policy-makers, professionals, and civil society. The Statement will be launched in the second quarter of 2013.

'no method of menstrual regulation or sterilisation is perfect, and a small number of disabled girls or women may still have their best interests served by hysterectomy or sterilisation.'[95]

BACKGROUND AND STATUS

50. The *Global Stop Torture in Health Care Campaign*[100] has identified forced sterilisation as one of its three priority issues for international action.[101] In doing so, it states:

> *'Although sterilization may be carried out by individual health providers, it is ultimately the responsibility of governments to prevent such abuses from taking place. Governments must protect individuals from forced sterilization and guarantee all people's right to the information and services they need to exercise full reproductive choice and autonomy.'*

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RATIONALE

RATIONALE

RATIONALE USED TO JUSTIFY FORCED STERILISATION IN AUSTRALIA

51. Forced sterilisation is performed on young girls and women with disabilities for various purposes, including eugenics-based practices of population control, menstrual management and personal care, and pregnancy prevention (including pregnancy that results from sexual abuse).[102] In Australia, the reasons used to justify forced sterilisations generally fall into four broad categories, all couched as being in the "best interests" of women and girls with disabilities: a) the genetic/eugenic argument; b) for the good of the state, community or family; c) incapacity for parenthood; and d) prevention of sexual abuse.

THE GENETIC/EUGENIC ARGUMENT

52. This line of argument is based on the fear that disabled women will re/produce children with genetic 'defects'. For example, in 2004, the Family Court of Australia authorised the sterilisation of a 12 year old intellectually disabled girl with Tuberous sclerosis, a genetic disorder with a 50% inheritance risk factor. Although one out of two people born with tuberous sclerosis will lead 'normal' lives with no apparent intellectual dysfunction, the Court accepted evidence from a medical specialist that sterilisation was in the best interests of the young girl because:

> *"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."* [103]

"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." [103]

RATIONALE

53. This reasoning is clearly grounded in eugenic ideology and in the broad views that society holds of disability as a burden, a personal tragedy or a medical problem, as evidenced by these recent examples of public responses to newspaper articles regarding sterilisation of disabled women and girls in Australia:

> *".....Personally I think people with any medium level to high level disability should be completely sterilised to keep the gene pool clean."* [104]
>
> *"The severity of disability needs to be considered, as well as the genetic likelihood of the disability being passed on."* [105]
>
> *"The government shouldn't have to support unwanted babies let alone disabled children having disabled children."* [106]
>
> *"Considering that evolution is merely random mutations of DNA between generations with the result being that some will be stronger and more prone to survival while others will, unfortunately, be weaker and thus suffer a higher mortality rate it would appear irresponsible to allow a 'profoundly disabled' person to have offspring anyway."* [107]
>
> *Someone I know worked in a mental institution and she told me that the disabled often have very high sexual urges and they often do the deed with each other and then fall pregnant. It apparently results in lots of abortions so sterilisation is certainly a good option.*[108]
>
> *"If you have ever looked after those with a mental disability you would never let them have children - they will end up in care adding to the problem."* [109]
>
> *"Sterilisation is a common sense approach to anyone not capable of independently looking after a child. Lets forget about the rights of mentally incapacitated adults and lets think about the rights of children. The rights to be born with as close to 100% genetic ability to be "normal". The rights to have a "normal" parent(s). The right to be raised in a "normal" manner and to lead an independent and meaningful life that advantages society. There are way, way too many people on this earth already, to allow those that cannot independently raise children, to breed, is ludicrous."*[110]
>
> *"The sterilization is a very human solution for all mentally and physically disabled people in their early age. This would be an answer to prevent many disabled person from ongoing problems in their whole life. If I would asking* [sic] *to vote what to do with them, I wouldn't hesitate to recommend the sterilization."* [111]

RATIONALE

54. The residue of this type of thinking continues to have the potential for profound and alarming consequences for girls and women with disabilities.[112] As recently highlighted by Ms Rashida Mijooo, the UN Special Rapporteur on Violence against Women, its Causes and Consequences:

> *Although society's fear that women with disabilities will produce so-called "defective" children is for the most part groundless, such erroneous concerns have resulted in discrimination against women with disabilities from having children.*[113]

55. There is clear evidence to indicate that the causes of impairment are overwhelmingly social and environmental (including for example: war, poverty, environmental degradation, neglect in healthcare, poor workforce conditions, gender-based violence and harmful traditional practices)[114] and only a small number are related to genetic causes.

56. Sterilisation is not 'a treatment of choice' for non-disabled women and girls with genetic disorders.

FOR THE GOOD OF THE STATE, COMMUNITY OR FAMILY

57. Arguments here centre on the 'burden' that disabled women and girls and their potentially disabled children place on the resources and services funded by the state and provided through the community. A related and very commonly used argument, is the added 'burden of care' that menstrual and contraceptive management places on families and carers.

58. In a recent case, the Family Court of Australia authorised the sterilisation of an 11 year old girl with Rett Syndrome. The application was made by the young girl's mother to prevent menstruation. No independent children's lawyer was appointed to advocate for the girl, as the judge determined it would be of 'no benefit'. In accepting *"without hesitation"* the evidence of Dr T, an Obstetrician and Gynaecologist, the judge said:

> *"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."* [115]

RATIONALE

59. The 'burden' of parents having to deal with menstrual management of their disabled daughters is often used as a valid justification when Australian Courts authorise the sterilisation of disabled females - even before the onset of puberty.[116] For example, in authorising the sterilisation of a 12 year old girl in 2004, the Court accepted medical 'evidence' that caring for her was an *"onerous responsibility"* on her parents and that sterilisation would make the task of caring for her *"somewhat less onerous"*, including that it would *"make it easier for her carers if they had one less medication to administer."* [117]

60. In the case of *Re Katie*,[118] the Court authorised the 15 year olds sterilisation at the onset of her menstruation, on the grounds that there would be 'appreciable easing of the burden' on the parents as primary carers:

> *"It will lessen the physical burdens for the mother, in particular by decreasing the number of changes necessary in toileting, and quite possibly lessening the physical reactions, such as stiffening in body tone, which make Katie more difficult to handle during menstruation. It would lessen, for the parents, the risks of infection.....Katie's emotional welfare is best served by her continuing to reside in the family and by the demands of her presence being lessened as much as possible, to maximise the ability of the family, in particular the mother, to cope with Katie's needs. Thus the interests of Katie are inextricably linked with the ability of her parents to cope with the burdens of Katie's care."*

61. In late 2011, the Queensland Civil and Administrative Tribunal (QCAT) authorised the sterilisation of 'HGL', a 'severely intellectually disabled' 18 year old girl whose menstrual periods had commenced at the age of 17, which according to her parents, caused her 'distress'. Although it was agreed that *'the current hormone treatment is managing HGL'S menstruation'*, a hysterectomy was authorised because:

> *'there are risks that the medication will over time fail to achieve this effect and....HGL's current impairments mean that she will not be a candidate for surgery indefinitely.'* [119]

RATIONALE

62. In the case of *Re S*[120], a 12 year old 'severely intellectually disabled girl' who lived in an institution and who had not yet begun to menstruate, the Family Court granted authorisation for her to be sterilised because, according to the specialist paediatric surgeon arranged to carry out the operation:

> *'it would be wiser to avoid problems rather than to wait and see if S copes with menstruation.....surely there is no need for her to suffer the problems that may arise with periodic menstruation'*, which included *'the possibility that she would develop a phobia of blood'*. The judge agreed this was a *'realistic and appropriate view'* and that *'there is no point in the child going through the problems associated with menstruation if she is not ever to bear children'*.

63. In *Re M*, [121] the Family Court authorised the sterilisation of a 15 year old girl prior to the onset of menstruation upon the basis that such treatment was *"necessary to prevent serious damage to the child's health."* The rationale for this decision included that: the young girl's mother and sister experienced 'painful periods' and *"there is a very real risk that the same will happen to M"*; that the young girl *"played with her motions and played with herself"* and this 'behaviour', coupled with menstruation, *"could cause infections"*. Additional reasons for the decision to sterilise M included that she was: *"aggressive"; "strong-willed"; "stubborn";* had a *"poor frustration tolerance"*, was *"unco-operative;"* was *"a loner"* and had *"few friends''*.

'it would be wiser to avoid problems rather than to wait and see if S copes with menstruation.....surely there is no need for her to suffer the problems that may arise with periodic menstruation', which included *'the possibility that she would develop a phobia of blood'*. The judge agreed this was a *'realistic and appropriate view'* and that *'there is no point in the child going through the problems associated with menstruation if she is not ever to bear children'*.

RATIONALE

64. In yet another case of a young disabled girl aged 15 years who had yet to commence menstruation, sterilisation was authorised by the Family Court in support of her mother's submission that menstruation *'might induce a higher incidence of fits; and the sight of unexplained blood will lead to confusion and fear, which could lead to an increased incidence of fitting'*. The Court also accepted the mother's concern, which was supported by 'medical experts', that:

> *'menstruation will be yet another hazard and perhaps mitigate against (her) chances of being adopted should the mother die.'* [122]

65. 'Bad and unruly behaviour' associated with menstruation is another dimension in applications for, and authorisations of sterilisation of young disabled girls and women:

> *"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."* [123]

> *"Mrs M [residential care officer] said that S was the most difficult of the six children in the Villa for which she is responsible and that masturbation is a virtual constant activity of the child. It appears that if S is restrained from engaging in masturbation she reacts badly. Mrs M has difficulty in encouraging S to do basic tasks and described the child as being "among the worst" in that regard."* [124]

> *"During the menstrual time, Katie grinds her teeth, throws tantrums, collapses her legs, she seems tired and this has caused her to miss part or whole school days..... She is extremely impatient at meal times.....During the menstrual and pre-menstrual period, because of the changes to her temperament, Katie is not taken horse-riding."* [125]

"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." [123]

RATIONALE

66. In a 2011 application to the NSW Guardianship Tribunal, a specialist gynaecologist (Dr HJK) lodged an application to perform a sterilisation procedure on a 22 year old woman with Down Syndrome.[126] In the application form Dr HJK recorded the proposed treatment, but he did not provide any details of the treatment, its consequences or provide details of complications likely to be associated with the procedure. He did record that Miss XTV has Down's Syndrome and that *"Patient becomes distressed and difficult to manage during menstruation"*. The 'behaviour management problems during menstruation' identified by Miss XTV's mother in the application, and supported by the gynaecologist, included that Miss XTV became *'obsessive with possessions; exhibited anxiety at any change in circumstance and routine; regressed with self-help skills; and developed a phobia about barricades on upper floors of shopping centres'*. Although the application was dismissed in 2012, the Tribunal stated:

> *We take this opportunity to note that should the alternate procedure of the insertion of a Mirena IUCD not be carried out, or carried out but not prove effective, and/or other causes of Miss XTV's behaviours be eliminated, the evidentiary onus required to be satisfied to give consent to endometrial ablation may be met. In those circumstances there is nothing to prevent a further application to the Tribunal for consent.*

67. In terms of the 'burden' on families of the care of girls and women with disabilities, lack of resources and appropriate education and support services, respite care, school and post-school options, see many families already struggling to manage the care of their girl or young woman with disabilities. Faced with the prospect of added personal care tasks in dealing with menstruation and in the limited availability or accessibility of specific reproductive health and training services (including those for menstrual management), families may well see sterilisation as the only option open to them.[127] The denial of a young woman's human rights through the performance of an irreversible medical intervention with long term physical and psychological health risks is wrongly seen as the most appropriate solution to the social problem of lack of services and support.[128]

68. Evidence suggests however that menstrual and contraceptive concerns, even for women and girls with high support needs can be successfully met with approaches usually taken with non-disabled women and girls.[129] Research has found that when parents and carers are given appropriate support and resources the issue of sterilisation loses potency.[130]

RATIONALE

69. A diagnosis of intellectual disability does not by itself constitute a clinical reason for sterilisation. The onset of menstruation is the same in girls with and without intellectual disabilities, and girls with intellectual disabilities present with the same types of common menstrual problems as the rest of the young female population.[131] Arguments for elimination of menstruation in girls and young women with disabilities are primarily about social taboos.[132]

70. Sterilisation is not 'a treatment of choice' for non-disabled females who are approaching menstruation, who menstruate, or who experience menstrual problems. Like their non-disabled counterparts, women and girls with disabilities have the right to bodily integrity, the right to procreate, the right to sexual pleasure and expression, the right for their bodies to develop in a natural way, and the right to be parents.[133]

INCAPACITY FOR PARENTHOOD

71. Australia has a history of removing children from their natural parents based on the personal characteristic of the parents, such as indigenous background or marital status. In Australia today, a parent with a disability is up to ten times more likely than other parents to have a child removed from their care.[134] Courts and child protection authorities are removing children from their parents on the basis of the parent's disability rather than actual neglect or abuse. A parent's capacity to parent his or her child, even with full community support is not properly assessed:[135]

> *"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."* [136]

72. Widely held societal attitudes that disabled women cannot be effective parents mean there is pressure to prevent pregnancy in disabled women, particularly women with intellectual disabilities. Women with disabilities are typically seen as child-like, asexual or over-sexed, dependent, incompetent, passive, and genderless[137] and therefore considered inadequate for the *'nurturing, reproductive roles considered appropriate for women'*.[138] For women with intellectual disabilities, the label of intellectual disability per se is mistakenly taken for prima facie evidence of likely parental incapacity or risk of harm to the child.[139] This is also the case for women with psychosocial impairments.[140] Such incapacity is automatically deemed to be an irremediable deficiency in the parent such that it cannot be overcome.

RATIONALE

73. Incapacity for parenthood is a common theme in applications for and Court authorisations of sterilisation of disabled females in Australia:

> *'It is clearly established that S is unfit to, and ought not, bear a child.'*[141]

> *'Katie could not possibly care for a child.'* [142]

> *'A pregnancy would be disastrous.'* [143]

> *'It is clear that H has at least moderate intellectual disability.....she would be unable to care for a child if she were to become pregnant.'* [144]

> *'It is understood and accepted that the child would never marry or enter into any relationship in which she would bear children. She is quite unable to understand the processes of conception and birth and would be quite unable to bear a child. Pregnancy would be most likely to have a highly detrimental effect upon her and should she become pregnant, for her own sake, her pregnancy would be terminated.'* [145]

> *'If she were to be the victim of sexual assault, and to become pregnant, this would be a very complicated situation, both ethically and medically. The hysterectomy would remove the chance of an unwanted pregnancy and further medical complications associated with a pregnancy.'*[146]

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RATIONALE

74. There is ample evidence that many women with disabilities successfully parent happy children within our communities.[147] There is no clear relationship between competence or intelligence and good parenting – in fact, more than six decades of research has demonstrated that intellectual disability per se is an unreliable predictor of parenting performance.[148]

INCAPACITY TO DEVELOP AND EVOLVE

75. The determination of capacity is inextricably linked to the exercise of the right to autonomy and self-determination. To make a finding of incapacity results in the restriction of one of the most fundamental rights enshrined in law, the right to autonomy.[149] Millions of people with disabilities are stripped of their legal capacity worldwide, due to stigma and discrimination, through judicial declaration of incompetency or merely by a doctor's decision that the person "lacks capacity" to make a decision. Deprived of legal capacity, people are assigned a guardian or other substitute decision maker, whose consent is deemed sufficient to justify forced treatment.[150]

76. Incapacity is often used as a valid justification for Court authorisation of sterilisation of disabled women and girls. Incapacity in this context, is considered to be a fixed state, with no consideration given to the possibility of capacity evolving over time:

> *"Those who are severely intellectually disabled remain so for the rest of their lives".*[151]
>
> *"There is no prospect that she will ever show any improvement in her already severely retarded mental state."* [152]
>
> *Katie would never be able to contribute to self-care during menstruation..... Katie is unable to understand re-production, contraception, pregnancy and birth and that inability is unlikely to change in the foreseeable future.*[153]
>
> *Sarah is unable to understand reproduction, contraception and birth and that inability is permanent.....her condition will not improve.*[154]
>
> *'HGL is unlikely, in the foreseeable future, to have capacity for decisions about sterilisation.'* [155]
>
> *'There has been no alteration in H's capacity for eighteen months and it has been assessed that there will be no improvement in H in the future.'*[156]

77. Views such as these fail to acknowledge the fact that 'incapacity' can very often be a function of the environment and more often than not, a lack of support for the individual concerned.

RATIONALE

78. In the case of *Re Katie*,[157] her lack of capacity was a key consideration in the Family Court's decision to approve her sterilisation at the age of 16. Katie was described as *'being able to finger feed, drink out of a cup and use a spoon with assistance'* yet determined as not having *'the cognitive capacity to understand what is required, nor does she have the motor skills necessary to take care of her needs, i.e. to change pads'*. However, it was also stated that it was *'likely that Katie will continue to make some slow progress in her development if able to participate fully in educational therapy programs. Failure to carry out the proposed surgery could significantly reduce her ability to participate in these programs.'* Paradoxically, Katie was sterilised because she had 'lack of capacity to develop' but also so that she might 'develop capacity'.

79. One of the key principles guiding the *Convention on the Rights of Persons with Disabilities* is 'respect for the evolving capacities of children with disabilities', a concept which should be seen as a positive and enabling process that supports the maturation, autonomy and self-expression of the child. Through this process, children progressively acquire knowledge, competencies and understanding. Research has shown that information, experience, environment, social and cultural expectations, and levels of support can dramatically impact the development of a child's capacities to form a view.[158]

80. It is evident however, that sterilisation is easier, quicker, and cheaper than providing the programs, services and supports to enable young disabled women and girls to 'progressively acquire knowledge, competencies and understanding' about their bodies, their sexuality, relationships, safety and their human rights:

> *"the proposed operation would avoid the necessity of time-consuming and constantly repeated programmes to enable the child to acquire skills to manage her menstruation, thereby freeing her to learn important social skills which could only improve her quality of life and opportunities to lead a "normal" life."*[159]

"the proposed operation would avoid the necessity of time-consuming and constantly repeated programmes to enable the child to acquire skills to manage her menstruation, thereby freeing her to learn important social skills which could only improve her quality of life and opportunities to lead a "normal" life."[159]

RATIONALE

81. The UN Special Rapporteur on Torture has recently re-iterated that the law should never distinguish between individuals on the basis of capacity or disability in order to permit sterilisation specifically of people [girls and women] with disabilities.[160] Yet in the 2009 case of *Re BAH*,[161] a 14 year old disabled girl whose mother sought to have her sterilised prior to the onset of menstruation, the NSW Guardianship Tribunal stated:

> *Ms BAH's disability is clearly central to the Tribunal's deliberations in this matter. But for Ms BAH's intellectual disability, the Tribunal would not have given consideration to the proposed treatment.*

PREVENTION OF SEXUAL ABUSE

82. Sterilisation has been said to protect disabled women and girls from sexual abuse and the consequences of abuse.[162] Indeed, 'vulnerability to sexual abuse' is a dominant theme in many of the applications seeking authorisation for sterilisation of disabled women and girls in Australia.[163] In this context, 'inappropriate behaviour', and 'good looks' are considered major determinants of sexual activity or abuse.[164]

83. For example, in the case of *Re Katie*,[165] her 'attractive looks' were considered to make her more 'vulnerable' to sexual abuse, and formed part of the Court's rationale for her to be sterilised at the aged of 16:

> *"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."*

"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."

RATIONALE

84. Similarly, in a case[166] where the Court authorised the sterilisation of a 14 year old girl prior to the onset of menstruation, the judge stated:

> *"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.*

85. In *JLS v JES*,[167] where authorisation for sterilisation was sought for a 14 year old girl who was described as *'extremely severely handicapped'*, prevention of sexual abuse was a key factor in seeking the application. According to the Judge, the young girl's mother *'expressed concern at the possibility of the child becoming pregnant through sexual abuse while out of the plaintiff's direct supervision, as would increasingly occur as she approaches adulthood. The mother expresses a moral opposition to the concept of abortion.....'* A number of 'experts' supporting the application identified risk of sexual abuse as 'evidence' of why the sterilisation should be authorised:

> *"I do agree, especially as she is an attractive girl, that she is at great risk of pregnancy and also of pelvic infection as she develops sexual maturity."* [Consultant Neurologist]

> *"It would prevent a pregnancy, to the risk of which the child might become exposed in more social environments such as Respite Care, out of continual supervision by her mother. Having regard to her mental retardation she was incapable of communicating any symptoms relating to pregnancy. An epileptic episode during pregnancy would increase three or four times the risk of foetal abnormality."* [Consultant Obstetrician and Gynaecologist]

> *'...it was unacceptable to have her exposed to the risk of becoming pregnant having regard to her mental retardation, epilepsy and condition generally.'* [Consultant Obstetrician and Gynaecologist]

RATIONALE

86. In other cases, the young girls' 'behaviour' with men was a consideration in authorising their sterilisation prior to the onset of their menstruation:

> *"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."* [168]

> *"S is likely to wander....[she] has a preference when singling out an adult for attention for men over women and particularly for men with beards.....S is generally solitary by choice.....[she] likes soft sticky textures and regularly engages in faecal smearing.....I have included the foregoing statements because they give something of an overall picture of the child. I would add that, if not common ground, it is clearly established that S is unfit to, and ought not, bear a child."* [169]

> *"...since the onset of sexual maturity she displays an affectionate promiscuity which is the characteristic of women with intellectual disability."* [170]

87. In the case of *Re S*,[171] sterilised at the age of 12 and described as having a *'mental age of no greater than 1 year old'* with *'no prospect of any improvement in her already severely retarded mental state'*, the judge stated:

> *'Although I agree that the risk of pregnancy, on its own, is not of sufficient likelihood as to indicate a need to submit her to a sterilisation procedure I would not dismiss the probability of sexual intercourse occurring'.*

"...since the onset of sexual maturity she displays an affectionate promiscuity which is the characteristic of women with intellectual disability." [170]

RATIONALE

88. Sterilisation as a 'valid' reason for prevention of sexual abuse also emerges as a strong theme in analysis of public commentary on the issue of sterilisation of disabled women and girls in Australia, as evidenced by these recent examples of public responses to newspaper articles on the issue:

> *"My mother worked with profoundly retarded young adults some years ago and saw how easily several were 'taken advantage of' - she knew of three girls who were made pregnant by one repugnant ward assistant and they had to have abortions. I believe that all severely mentally retarded young females should be sterilised if nothing other than to protect them from assault - it does happen."* [172]

> *"This happened to my sister who is profoundly disabled 15 years ago and was not the big deal that this seems to be now. have we gone backwards in 15 years. our decision to do this was less about menstral* [sic] *cycles and more about some sicko taking advantage of her and her having a child she was unable to look after."* [173]

> *"It is also important to consider the possibility that this girl could be sexually assaulted and fall pregnant. If she cannot talk and is not able to communicate to anyone what has happened, her pregnancy may not be discovered until it is too late to consider options such as abortion. Surely this situation would be far more traumatic for Angela, as well as for her parents, than undergoing a hysterectomy."* [174]

> *"Considering the possibility of some sicko taking advantage of this girl who could not give consent, and the possibility of pregnancy from such assault, as well as the easing of this child's other suffering, this was a brave and very wise decision."* [175]

> *"Certainly if it helps discomfort go for it and in any case surely a good idea to prevent an unwanted pregnancy at the hands of some other party. That would be an abomination for all."* [176]

RATIONALE

89. Research has demonstrated that rather than protecting against sexual abuse, forced sterilisation can increase vulnerability to sexual abuse.[177] It is widely acknowledged that sexual abuse of women and girls with disabilities occurs at very high rates in our communities.[178] A young woman who has been sterilised is less likely to be taught about sexuality or sexual abuse because she cannot become pregnant. Sterilisation can also inadvertently serve to cover up the sexual abuse of women with disabilities, since pregnancy is often the only clear evidence that sexual abuse has occurred. Others may know she has been sterilised and she may be seen as a safe target. On the other hand women who have been sterilised may also be assumed to be non-sexual and therefore not considered for sexual and reproductive health screening. [179]

90. In 1993, [then] Family Court Judge, Justice Warnick rejected an application[180] for sterilisation of Sarah, a 17 year old disabled girl whose parents had sought authorisation for her to be sterilised to prevent her being sexually abused (and potentially becoming pregnant) at a new residential facility she was due to move into. He acknowledged that the parents had *"brought their application, at least in part, in reliance upon the views of 'responsible professionals'"*. In rejecting the application, Justice Warnick stated:

> *'To make a decision in this case, in favour of sterilisation, would be virtually equivalent to establishing a policy that all females, with profound disabilities resembling those afflicting Sarah, should be sterilised. There is nothing substantial about the risk, nor clearly detrimental to Sarah about pregnancy, which justifies the interference with personal inviolability, unless it be that where there is any risk (as there must always be) sterilisation should occur. I cannot think that such an approach is consistent with human dignity, the fundamental nature of the right to personal inviolability, and the responsibility of the capable for the incapable.'*

RATIONALE

91. In relation to sterilisation as a justification to avoid the risk of pregnancy as a result of sexual abuse, Justice Brennan, in *In re JWB ["Marion's Case"]*,[181] said, in part:

> *"Depending on the circumstances, the use - or, a fortiori, the exploitation - of the sexual attributes of a female child may entail tragic consequences, yet the risk or even the likelihood of tragic consequences affords no justification for her sterilization. What difference does it make that the risk is occasioned by an intellectual disability?..... To accord in full measure the human dignity that is the due of every intellectually disabled girl, her right to retain her capacity to bear a child cannot be made contingent on her imposing no further burdens, causing no more anxiety or creating no further demands. If the law were to adopt a policy of permitting sterilization in order to avoid the imposition of burdens, the causing of anxiety and the creating of demands, the human rights which foster and protect human dignity in the powerless would lie in the gift of those who are empowered and the law would fail in its function of protecting the weak."*
>
> *"Where it is desirable to avoid the risk of pregnancy, the risk may be avoidable by means which involve no invasion of the girl's personal integrity. Those who are charged with responsibility for the care and control of an intellectually disabled girl (by which I mean a female child who is sexually mature) - whether parents, guardians or the staff of institutions - have a duty to ensure that the girl is not sexually exploited or abused. If her disability inclines her to sexual promiscuity, they have a duty to restrain her from exposing herself to exploitation. It is unacceptable that an authority be given for the girl's sterilisation in order to lighten the burden of that duty, much less to allow for its neglect. In any event, though pregnancy be a possibility, sterilisation, once performed, is a certainty.....Such a situation bespeaks a failure of care, and sterilisation is not the remedy for the failure. Nor should it be forgotten that pregnancy and motherhood may have a significance for some intellectually disabled girls quite different from the significance attributed by other people. Though others may see her pregnancy and motherhood as a tragedy, she, in her world, may find in those events an enrichment of her life."*

92. Sterilisation will never overcome vulnerability to sexual abuse. Sexual assault is a problem for all women, including young women with intellectual disabilities and it demonstrates the need for the development of targeted and gendered educational, protective behaviour, and violence prevention programs for disabled women and girls. Women and girls with disabilities, like all women and girls, have a human right to live free from violence, abuse, exploitation and neglect.

RATIONALE

THE 'BEST INTEREST' ARGUMENT

93. Successive Australian Governments have continued to use the 'best interest' argument to justify the torture of women and girls with disabilities by forced sterilisation, asserting that sterilisation is only ever carried out as a 'last resort' and when it is in the girl or woman's 'best interests'. [182]

94. The best interest approach has, in effect, been used to perpetuate discriminatory attitudes against women and girls with disabilities, and has only served to facilitate the practice of forced sterilisation.[183] When analysing the applications to Courts and Tribunals for sterilisation of disabled women and girls in Australia to date, it is clear that the best interest approach has in reality, very little to do with the young girl or woman, and more to do with the 'best interests' of others, particularly families and caregivers.

> *"The interests of Katie are inextricably linked with the ability of her parents to cope with the burdens of Katie's care."* [184]

> *"This Court does not find itself in any doubt that the practical lessening of such burdens on the parents, the emotional and psychological relief coming to them from the expected removal, in a final sense, of problems in their daughter's life, and the betterment of the whole of their family circumstances, can only result in a material and significant improvement in the present and long term welfare of the child."* [185]

> *"The operation would certainly be a social improvement for Angela's mother which in itself must improve the quality of Angela's life."* [186]

> *"There is evidence in the case which suggests that* [the child's older brother] *interests have been seriously affected by the long time and intense concentration by his parents on the need to provide special care for his sister.....This is but another example of the requirement of assessing the child's position, not in isolation but in the family context. It is most likely that relieved of the need, to implement, maintain and monitor the sort of programmes envisaged for the child if she does not undergo hysterectomy, his parents can increase and intensify their efforts to increase his quality of life and his psychological development."* [187]

RATIONALE

"It is probable that H's parents, who clearly are charged with and undertake the day to day onerous responsibility of caring for H may find that task somewhat less onerous if H undergoes a hysterectomy.....The Court accepts that the sole motivation of the parents is the welfare of H. Even so, it is somewhat simplistic to ignore the reality that the parents undertaking the care of a child such as H ought not be obliged to shoulder difficulties and burdens beyond those which are needlessly onerous. The test is not the best interests of the parents but of H, but, assisting her parents to care for H must be seen as realistically enhancing the care H receives and corresponding enjoyment of life which she may expect." [188]

"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." [189]

"It is probable that H's parents, who clearly are charged with and undertake the day to day onerous responsibility of caring for H may find that task somewhat less onerous if H undergoes a hysterectomy.....The Court accepts that the sole motivation of the parents is the welfare of H. Even so, it is somewhat simplistic to ignore the reality that the parents undertaking the care of a child such as H ought not be obliged to shoulder difficulties and burdens beyond those which are needlessly onerous. The test is not the best interests of the parents but of H, but, assisting her parents to care for H must be seen as realistically enhancing the care H receives and corresponding enjoyment of life which she may expect." [188]

RATIONALE

> *"While we're not concerned so much about the abuse side of things now, if she ever went to a group home or any institution we just we want her safe. I don't think there's any guarantees, even though the hysterectomy wouldn't necessarily stop abuse, it might stop the consequences of it, or possible consequences of it and we just feel as well that we're getting that little bit older, Laura's getting quite big, she's hard to handle. She's got a brother and sister and I don't want to leave them the problems. I don't want them to feel that they've got that problem later on, of having to be worried about that sort of thing, they've got their own lives to live".*[190]

> *"It is clear upon the evidence that, because of this strong and determined will in this child, all the more difficult because it is unreasoning and because of the child's increasing strength and the fact that the mother is getting older, M will be harder and harder to deal with."* [191]

95. The UN *Committee on the Rights of the Child* (CRC) has made it clear that the principle of the 'best interests of the child' cannot be used to justify practices which conflict with the child's human dignity and right to physical integrity:

> *"The Committee emphasizes that the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention."* [192]

RATIONALE

96. The UN Special Rapporteur on Torture has also made it clear that 'best interest' and 'medical necessity' are no justification for forced/involuntary sterilisation of disabled women and girls: [193]

> *The doctrine of medical necessity continues to be an obstacle to protection from arbitrary abuses in health-care settings. It is therefore important to clarify that treatment provided in violation of the terms of the Convention on the Rights of Persons with Disabilities – either through coercion or discrimination – cannot be legitimate or justified under the medical necessity doctrine.*
>
> *The Special Rapporteur recognizes that there are unique challenges to stopping torture and ill-treatment in health-care settings due, among other things, to a perception that, while never justified, certain practices in health-care may be defended by the authorities on the grounds of administrative efficiency, behaviour modification or medical necessity.....*
>
> *The mandate has recognized that medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned. This is particularly the case when intrusive and irreversible, non-consensual treatments are performed on patients from marginalized groups, such as persons with disabilities, notwithstanding claims of good intentions or medical necessity. For example, the mandate has held that..... the administration of non-consensual medication or involuntary sterilization, often claimed as being a necessary treatment for the so-called best interest of the person concerned, when committed against persons with psychosocial disabilities, satisfies both intent and purpose required under the article 1 of the Convention against Torture, notwithstanding claims of "good intentions" by medical professionals.*

The doctrine of medical necessity continues to be an obstacle to protection from arbitrary abuses in health-care settings. It is therefore important to clarify that treatment provided in violation of the terms of the Convention on the Rights of Persons with Disabilities – either through coercion or discrimination – cannot be legitimate or justified under the medical necessity doctrine.

RATIONALE

97. In 1986 the Canadian Supreme Court ruled in *Re Eve*[194] that a sterilisation could not be performed on someone who cannot give consent – that no one (not even the Court) can consent on their behalf. This resulted in a blanket prohibition of non-voluntary sterilisation. The court reasoned that it can never *"safely be determined that a procedure such as sterilisation is for the benefit of the person considering the grave intrusion on their rights and the physical damage that ensues from the non-voluntary sterilisation without consent, when compared to the highly questionable advantages that can result."*

98. In making judgements about best interests it is crucial then, that we are clear about whose best interests are really at stake.[195] We need to be clear about whether 'best interests' is judged according to human rights principles or whether the judgement is about the 'best compromise between the competing interests' of parents, carers, service providers and policy makers. To really determine 'best interest' for women and girls with disabilities it is crucial to focus on the fact that a person will be subjected to an irreversible medical procedure with life-long consequences without free and informed consent.[196]

99. Medical professionals are often very influential in the decision to sterilise disabled women and girls. The propensity of Courts and parents to value medical opinion above all else – and in many cases elevating opinions and assertions to the status of fact - has the effect of reducing the 'best interests' of disabled women and girls to the 'best [and easiest, quickest and cheapest] ways' of controlling and managing their unruly bodies and 'behaviour'.[197] Yet these judgements are made from a particular perspective which must be vigorously challenged – that the woman or girl with a disability is essentially the sum of her biology or her psychology and her human right to bodily integrity is less important than controlling her body and her behaviour.[198] As former Justice Michael Kirby pointed out at a recent International Conference on Adult Guardianship:

> *'the fact is that most of the judges charged with this task [determining authorisations for sterilisation of disabled girls and women] were atypical, privileged and elderly males. The rules therefore tended to reflect their gender, class, education, means and life experience.'* [199]

THE IMPACT

THE IMPACT

100. In *Marion's Case*,[200] Justice Brennan, said:

> *Human dignity requires that the whole personality be respected: the right to physical integrity is a condition of human dignity but the gravity of any invasion of physical integrity depends on its effect not only on the body but also upon the mind and on self-perception. In assessing the significance of sterilization of a female child, it is erroneous to have regard only to the physical acts of the anaesthetist and surgeon.....and to the physiological consequences. Regard must also be had to the disturbance of the child's mind and the emotional aftermath of the sterilization and a comparison must be made between her self-perception when sterilized and the perception she would have had of herself if she had been permitted to live with her natural functions intact.*

101. However, the blatant disregard for the long-term negative impact and effects of forced sterilisation on women and girls with disabilities is clearly evident in the cases that have proceeded to legal judgment in Australia, where, the opinion of the medical specialist is 'authoritative' and sterilisation is characterised as a 'simple' and 'common' procedure. In a technical sense it is portrayed as inconsequential and of minimum risk. In a social sense (from a medical perspective) it offers a final solution to a myriad of problems potentially encountered because of disability.[201] The social and psychological effects on the disabled female are deemed irrelevant:

> *"There is unlikely to be any psychological impact of the procedure on H as she has no understanding of the nature of the procedure."* [202]

> *"The longer term consequences are less relevant despite the irreversibility of the procedure because as I have earlier mentioned, Angela is never going to have the benefits of a normal teenage and adult life."* [203]

> *"There would be no long-term social or psychological effects of hysterectomy."* [204]

102. Crucially, the voices of the women and girls with disabilities who have been the subject of these applications, judgements, laws and debates, have not been heard.

"The longer term consequences are less relevant despite the irreversibility of the procedure because as I have earlier mentioned, Angela is never going to have the benefits of a normal teenage and adult life." [203]

THE IMPACT

103. It is widely recognised that whatever the context, forced sterilisation has long lasting physical and psychological effects, permanently robbing women of their reproductive capabilities and causing severe mental pain and suffering, extreme psychological trauma, including depression and grief.[205] The removal of such a basic bodily function as the ability to reproduce seriously disrupts women's physical well-being and violates their physical integrity and bodily autonomy. As highlighted by Sifris:[206]

> *In the context of sterilising people with intellectual disabilities, studies suggest that many people with an intellectual disability understand the effects of sterilisation, maintain negative feelings towards the procedure, and (as occurs in people without an intellectual disability) exhibit signs of 'depression, sexual insecurity, symbolic castration and regret over loss of child-bearing ability.' Further, the view has been expressed that most people with an intellectual disability 'can understand the implications of sterilization' and that 'sterilizing mentally handicapped people [sic] against their will can produce serious and significant psychological damage.' In addition, sterilisation of women with intellectual disabilities has also been associated with loss of self-esteem, increased anxiety, degraded status and perception of the self as deviant.*

104. Women with disabilities have spoken[207] about forced sterilisation as a life sentence, as loss and betrayal, and of the health effects they can anticipate:

> *"I was devastated when my doctor advised me that the previous surgeon had done more than tie my tubes. He had actually removed parts of my reproductive system that could never be replaced.....I was shocked and furious."*

> *"Because I have had important parts of my body taken away it is hard to find out what is really going on in my body."*

> *"We have the right to control what happens to our own bodies."*

"I was devastated when my doctor advised me that the previous surgeon had done more than tie my tubes. He had actually removed parts of my reproductive system that could never be replaced.....I was shocked and furious."

THE IMPACT

"Because I will not go through obvious menopause, in my culture that means I have no marker for becoming an 'elder'."

"Surgery of a healthy body is mutilation."

"I am…taking a big risk on behalf of myself and my family in speaking up. I would like to know what is being done for us who have had this done twenty or thirty years ago? I don't have an intellectual disability and it was done before I started having a period. What research is being done to help us who were young children that went through this, and when we go through menopause? It can affect our health in the future. I think of this as my real disability – the physical one that you see isn't real – the one I had happen to me when I was 12 is the main one and I don't have anyone to turn to."

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

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

"It stops us from having children if we want to."

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

"The fact that services are not there is no reason for sterilisation."

"Sterilisation takes my choice away."

"I'm angry."

"I want to experience a period."

"Because I will not go through obvious menopause, in my culture that means I have no marker for becoming an 'elder'."

THE IMPACT

"Sterilization is a terrible thing to do to a woman. They had no right to do that to me. They never ask you about it. They told me that it was just for my appendix and then they did that to me."

"If they'd told the truth and asked me, I would have shouted 'No!' My sterilisation makes me feel I'm less of a woman when I have sex because I'm not normal down there..... When I see other mums holding their babies, I look away and cry because I won't ever know that happiness."

"Sterilisation takes away your womanhood."

"I do want to have children but I can't now."

"I got sterilised at 18, my mum said I had to – she said that if I ever had a child, she'd probably have to help look after it. She said: "I went through hell bringing you up and I will not do it again". It's more than 30 years now since I was sterilised and the pain is still unspeakable. It is the biggest regret of my life."

"For me it has meant a denial of my womanhood."

"I was sterilised and I wasn't ever told when I was getting it done. The specialist told mum about it but I didn't know I'd had it done until I was 18."

"I have always had a fear of speaking out about it – it's been very isolating."

"I want to help others who don't have a voice, to stop it happening to them – I feel powerless to do that."

"I got sterilised at 18, my mum said I had to – she said that if I ever had a child, she'd probably have to help look after it. She said: "I went through hell bringing you up and I will not do it again". It's more than 30 years now since I was sterilised and the pain is still unspeakable. It is the biggest regret of my life."

THE IMPACT

"I will have no way of knowing about the onset of my menopause."

"I know it has resulted in hormone changes in my body that wouldn't have happened otherwise."

"It can lead to the break-up of relationships."

"I was what I call, 'socially sterilised' – I had the operation when I was a young woman because growing up I had been brainwashed to believe that disabled women like me can't be mothers. I would have loved to be a mother. There are of course, no proper words to describe the loss, the guilt, the regret and the pain I feel every day."

"Other people don't understand what it means in your life and it's very hard to explain that to people."

"Other women don't understand what its like for us – it sets us apart from them."

"For me it is about living with loss."

"It really affects my self esteem."

"It has stopped me having a normal life."

"Its about loss of control."

"For me it has meant a loss of trust – especially of doctors – those who women with disabilities often have to place their trust."

"I have a blockage of emotions."

"For me it has meant a loss of trust – especially of doctors – those who women with disabilities often have to place their trust."

THE IMPACT

"It's a great emotional upheaval."

"I feel alone and isolated."

"The pain is hard to bear."

"I have a fear of not being seen as a sexual identity – of sexual rejection."

"I have feelings of rejection."

"There is no information available for us."

"There are not enough services or people to listen."

105. Women with disabilities have also spoken[208] about what needs to happen to enable healing to take place for those already affected, and for safeguards to be put in place to prevent others from experiencing this form of torture and from being denied their fundamental human rights:

"There needs to be better explanations for women."

"We need to be given more information about our body."

"We need to have information about the whole process and what it means so that we can make an informed choice."

"We need to build a data base on health issues specifically for women who have been sterilised."

"It time people started to listen! And do what we want."

"We need to have information about the whole process and what it means so that we can make an informed choice."

THE IMPACT

"It's absolutely necessary to empower women with disabilities to make decisions."

"Let us be in charge of our own bodies."

"Women with disabilities need to have more involvement in the investigation stage so we can say what we want."

"We need to start support groups for women who this has happened to."

"We have to encourage self-advocacy – help women with intellectual disability to say what they want in their lives."

"We have to provide individuals with proper support to make the right decision for them."

"Educate professionals especially doctors and support workers so that they understand how it can affect our lives."

"We must change doctors' attitudes."

"It is important that we educate the appropriate people to listen to women with disabilities in the investigation process."

"We need to see a change in attitude."

"We have to publicise the issue through public seminars and debates."

"We must help services listen better to the issues for women with disabilities."

"We need to educate all the services that have a role to play in making this happen."

"It is important that we educate the appropriate people to listen to women with disabilities in the investigation process."

THE IMPACT

"We need to educate the community, to get them to see it is about the lives of women with disabilities."

"We need to be changing education at all levels."

"We have to break the silence about what has happened."

"We must make sure the voices of women with disabilities are heard at international and UN conventions."

"We have to change the law so that it stops happening."

"We need to send a message to politicians that sterilisation is about women with disabilities and how they live their lives."

106. For women with disabilities, the issue of forced sterilisation encompasses much broader issues of reproductive health, including for example: support for choices and services in menstrual management, contraception, abortion, sexual health management and screening, pregnancy, birth, parenting, menopause, sexuality, violence prevention and more. Research has clearly shown that, particularly for women with intellectual disabilities, attitudes toward sexual expression remain restrictive. Women with disabilities express desires for intimate relationships but report limited opportunities and difficulty negotiating relationships. Sexual knowledge in women with disabilities, particularly those with intellectual disabilities, has been shown to be poor and access to education limited. In addition, laws addressing sexual exploitation may be interpreted as prohibition of relationships.[209] Women with disabilities have spoken[210] about the impact of all these issues on their lives, for example:

"In (my institution) you were not allowed to be with a man. You got into trouble. It's not right."

"Persons who reside in institutions are being denied their basic human rights to freedom, privacy and sexuality."

"We need to send a message to politicians that sterilisation is about women with disabilities and how they live their lives."

THE IMPACT

"I'm not allowed to have a boyfriend."

"We want information about relationships and having babies."

"Is menstrual flow any more of a problem than incontinence?"

"I have known of cases where girls have been given the wrong information by cruel nursing staff and have spent years thinking they are incapable of having intercourse, much less bearing a child."

"A strange man once tried to kiss me in a lift. I said "please don't do that". I should have hit him, or told him to fuck off, but I have had my disability all my life, and I have been taught well not to be angry when my personal space, my body, my emotional integrity have been violated. So I said "please don't do that" and later I cried....."

"Disabled people are just not seen as sexual beings with sexual needs and feelings."

"Many women with disabilities who are raped are too scared to go to the police in case they will not be believed."

"People don't tell us about sex."

"Jean lived in the dormitory next door to mine. She was going with her boyfriend, Simon, who lived in a separate part of the same institution and was sometimes permitted to go across the courtyard to visit him. One day, they were caught petting in a seldom-used back room and they were forbidden to see each other thereafter. They were both over the legal age of consent and were doing nothing wrong by normal social standards."

"I have known of cases where girls have been given the wrong information by cruel nursing staff and have spent years thinking they are incapable of having intercourse, much less bearing a child."

THE IMPACT

"It seems that periods are sometimes suppressed for the convenience of care givers, support persons and services."

"If you go in a group home that's run by like, a religious organisation, you're not allowed to have a boy come over. You're not allowed to even kiss a boy let alone have sex. If you wanted to have sex you would have to go maybe to the park or somewhere."

"There is a glaring lack of in-home assistance and support for families supporting a woman learning about menstruation."

"Having your period gives a context for others to decide why you have to be on contraceptives."

"Sexuality is not just sexual intercourse. It is much, much more than just the physical act of having sex. Our sexuality is as much a part of us as our clothes-sense, our favourite foods and our personal style. Our need to love and be loved is as vital to our wellbeing as our need to eat, drink and breathe. To deny our sexuality is to deny that we are whole human beings."

"Sexuality within institutional accommodation should not even be an issue. Privacy and freedom are not privileges to be granted or taken away. They are our basic human rights. Just as people who run the institutions would not appreciate their own sex life to be regulated by a stranger, nor do we. What we do in our own rooms, and who we do it with, is not the business of staff, administration the milkman, or anyone else."

"Sexuality is not just sexual intercourse. It is much, much more than just the physical act of having sex. Our sexuality is as much a part of us as our clothes-sense, our favourite foods and our personal style. Our need to love and be loved is as vital to our wellbeing as our need to eat, drink and breathe. To deny our sexuality is to deny that we are whole human beings."


VIOLATION

VIOLATION OF HUMAN RIGHTS

FORCED STERILISATION AS A VIOLATION OF HUMAN RIGHTS

107. Since 2005, United Nations treaty monitoring bodies have consistently and formally recommended that the Australian Government enact national legislation prohibiting, except where there is a serious threat to life or health, 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.[211] Successive Australian Governments have to date, failed to do so, despite the current Government's assertion that:

> *Australia is proud of its historical role in the drafting and development of international human rights instruments. Government initiatives since 2007 demonstrate its commitment to engaging with the UN and affirm Australia's longstanding commitment to the international protection of human rights.... The Government expects public sector officials to act consistently with international treaties to which Australia is a party....*[212]

108. The Australian Government is in violation of international human rights law by allowing women and girls with disabilities to be sterilised in the absence of their free and informed consent. Among the fundamental rights governments are required to respect, protect, and fulfill are: the right to be free from torture, and cruel, inhuman, or degrading treatment or punishment; the right to the highest attainable standard of physical and mental health; the right to life, liberty, and security of person; the right to equality; the right to non-discrimination; the right to be free from arbitrary interference with one's privacy and family; and the right to marry and to found a family.[213]

109. Forced sterilisation clearly breaches every international human rights treaty and declaration to which Australia is a party.

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FORCED STERILISATION OF PERSONS WITH DISABILITIES VIOLATES THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

110. The *Convention on the Rights of Persons with Disabilities* (CRPD), ratified by Australia in 2008, offers the most comprehensive and authoritative set of standards on the rights of people with disabilities. Its fundamental purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.[214]

111. The CRPD mandates States Parties to recognise that persons with disabilities enjoy legal capacity on an equal basis with others. This means that an individual's right to decision-making cannot be substituted by decision-making of a third party, but that each individual without exception has the right to make their own choices and to direct their own lives, whether in relation to living arrangements, medical treatment, or family relationships.

112. Among other things, the CRPD also mandates States Parties to: protect persons with disabilities from violence, exploitation and abuse (including the gender-based aspects of such violations); ensure that persons with disabilities are not subjected to arbitrary or unlawful interference with their privacy and family, including in all matters relating to marriage, family, parenthood and relationships; guarantee persons with disabilities, including children, the right to retain their fertility; take measures to ensure women and girls enjoy the full and equal enjoyment of their human rights; prevent people with disabilities from being subject to torture, or cruel, inhuman or degrading treatment or punishment; prohibit involuntary treatment and involuntary confinement; and, ensure the right of people with disabilities to the highest attainable standard of health without discrimination.

113. The *Committee on the Rights of Persons with Disabilities*[215] has clearly identified that forced and coerced sterilisation of women and girls with disabilities (as well as discrimination in other areas of their reproductive rights) is in clear violation of multiple provisions of the CRPD.

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114. In its *Concluding Observations on Spain*,[216] the CRPD Committee expressed its concern that *'persons with disabilities whose legal capacity is not recognized may be subjected to sterilization without their free and informed consent'*. It urged the State party to abolish the administration of medical treatment, in particular sterilization, without the full and informed consent of the patient; and ensure that national law especially respects women's rights under articles 23 and 25 of the Convention. The Committee also urged the State party to ensure that the informed consent of all persons with disabilities is secured on all matters relating to medical treatment; and made several recommendations regarding the need to address violence against women with disabilities and children.

115. In its 2012 *Concluding Observations on Peru*,[217] the CRPD Committee expressed its deep concern at the forced sterilisation of people with 'mental disabilities' and urged the State party to abolish administrative directives on forced sterilization of persons with disabilities. It also made strong recommendations for the State party to take action to replace regimes of substitute decision-making by supported decision-making, 'which respects the person's autonomy, will, and preferences'. The need to accelerate efforts to eradicate and prevent discrimination against women and girls with disabilities, was also recommended.

116. In late September 2012, the CRPD Committee released its *Concluding Observations on China*, [218]expressing its deep concern at the practice of forced sterilization and forced abortion on women with disabilities without free and informed consent, and calling on the State party to revise its laws and policies in order to prohibit these practices. The Committee also made strong recommendations around the prevention of violence against disabled women and girls, in particular the incidents of women and girls with intellectual disabilities being subjected to sexual violence. In addition, the Committee urged the state party to adopt measures to repeal the laws, policies and practices which permit guardianship and trusteeship for adults and take legislative action to replace regimes of substituted decision-making by supported decision making.

117. In its *Concluding Observations on Hungary,*[219] in 2012, the CRPD Committee called upon the State party to take appropriate and urgent measures to protect persons with disabilities from forced sterilisation, to take appropriate measures to enable men and women with disabilities who are of marriageable age to marry and found a family, and to adopt measures to ensure that health care services are based on the free and informed consent of the person concerned. It also recommended that the State party take immediate steps to derogate guardianship in order to move from substitute decision-making to supported decision-making, including with respect to the individual's right, on their own, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work, and to choose their place of residence. The need to address and prevent multiple forms of discrimination of women and girls with disabilities, including violence and abuse, were also recommended.

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118. In its *Concluding Observations on Tunisia*,[220] the CRPD Committee expressed its concern the lack of clarity concerning the scope of legislation to protect persons with disabilities from being subjected to treatment without their free and informed consent, and specifically recommended the *'State party incorporate into the law the abolition of surgery and treatment without the full and informed consent of the patient, and ensure that national law especially respects women's rights under article 23 and 25 of the Convention.'* The Committee also recommended that the State party design and implement awareness-raising campaigns and education programmes throughout society....on women with disabilities in order to foster respect for their rights and dignity; combat stereotypes, prejudices and harmful practices; and promote awareness of their capabilities and contributions.

FORCED STERILISATION OF PERSONS WITH DISABILITIES VIOLATES THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

119. Australia ratified the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) in 1989. CAT emphasises that gender is a key factor in implementation of the Convention.[221] Discrimination plays a prominent role in an analysis of reproductive rights violations as forms of torture or ill-treatment because sex and gender bias commonly underlie such violations. The mandate has stated, with regard to a gender-sensitive definition of torture, that the purpose element is always fulfilled when it comes to gender-specific violence against women, in that such violence is inherently discriminatory and one of the possible purposes enumerated in the Convention is discrimination.[222] The right to be free from torture and cruel, inhuman or degrading treatment or punishment carries with it non-derogable state obligations to prevent, punish, and redress violations of this right.

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120. Forced sterilisation constitutes torture.[223] The UN Special Rapporteur on Torture has clarified that forced sterilisation satisfies the definition of torture contained in Article 1 of the CAT,[224] and has emphasised that forced sterilisation constitutes a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population.[225] In February 2013, (as outlined earlier in this paper), the UN Special Rapporteur on Torture clarified that:

> *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.*[226]

121. In reviewing States parties compliance with CAT, the Committee Against Torture is increasingly recognising forced sterilisation and medical interventions on people with disabilities in the absence of their free and informed consent, as violations of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

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.[226]

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122. In its 2013 *Concluding Observations on Peru*,[227] the Committee Against Torture recommended that the State party accelerate all current investigations related to forced sterilization, initiate prompt, impartial and effective investigations of all similar cases and provide adequate redress to all victims of forced sterilization. In addition, it recommended that State party urgently repeal the suspended administrative decree which allows the forced sterilization of persons with mental disabilities.

123. The Committee Against Torture's *Concluding Observations of the Czech Republic,*[228] in 2012, dealt in detail with the issue of forced sterilisation. It recommended that the State party investigate promptly, impartially and effectively all allegations of involuntary sterilization of women, extend the time limit for filing complaints, prosecute and punish the perpetrators and provide victims with fair and adequate redress, including adequate compensation and rehabilitation.

124. In its 2009 *Concluding Observations on Slovakia*,[229] the Committee Against Torture recommended that the State party take urgent measures to investigate promptly, impartially, thoroughly, and effectively, allegations of involuntary sterilisation of women, prosecute and punish the perpetrators, and provide the victims with fair and adequate compensation.

FORCED STERILISATION OF PERSONS WITH DISABILITIES VIOLATES THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

125. Australia made a formal agreement to be legally bound by the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) in 1983, and in so doing, became legally obliged to respect, protect, promote and fulfil the right to non-discrimination for women and to ensure the achievement of equality between men and women. CEDAW requires States parties to take additional, special measures for women subjected to multiple forms of discrimination, including women and girls with disabilities. [230]

126. CEDAW specifically provides for a proper understanding of maternity as a social function, access to family planning information, and the elimination of discrimination against women in marriage and family relations. Furthermore, CEDAW mandates that women be provided the same rights to decide freely on the number and spacing of their children and to have access to the information, education and means to enable them to exercise those rights. [231]

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127. The CEDAW Committee has clearly articulated the link between forced sterilisation and violation of the right to reproductive self-determination noting 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'*.[232] In addition, the Committee characterises forced sterilisation as a form of violence against women, and directs States to ensure that forced sterilisations do not occur.[233]

128. In its 2012 *Concluding Observations on Chile*,[234] the CEDAW Committee expressed its concern about reported cases of involuntary sterilization of women, and recommended that the State party ensure that fully informed consent is systematically sought by medical personnel before sterilizations are performed, that practitioners performing sterilizations without such consent are sanctioned and that redress and financial compensation are available for women victims of non-consensual sterilization. The Committee also recommended that the State party provide adequate access to family planning services and contraceptives.

129. The CEDAW Committee's *Concluding Observations on Jordan*,[235] in 2012, clearly detailed the Committee's ongoing concern at the practice of forced sterilisation of women and girls with 'mental disabilities', as well as its concern at the absence of a comprehensive law protecting women with mental disabilities from forced sterilization. The Committee urged the State party to adopt a comprehensive law protecting women, in particular girls with mental disabilities, from forced sterilization, and to ensure that the State party intensify its efforts in providing social and health services support to families with girls and women with disabilities.

130. In its 2012 *Concluding Observations on Comoros,*[236] the CEDAW Committee recommended that the State party put in place a comprehensive strategy to eliminate harmful practices and stereotypes that discriminate against women, and that such a strategy should include concerted efforts to educate and raise public awareness about this subject.

131. As highlighted elsewhere in this paper, in 2010, the CEDAW Committee expressed concern in its *Concluding Observations on Australia*[237] at the ongoing practice of non-therapeutic sterilisations of women and girls with disabilities and recommended that the Australian Government enact national legislation prohibiting, except where there is a serious threat to life or health, 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.

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132. In its *Concluding Observations on the Czech Republic*[238] in 2010, the CEDAW Committee made detailed recommendations regarding forced sterilisation of women with disabilities. The Committee urged the State party to: adopt legislative changes clearly defining the requirements of free, prior and informed consent with regard to sterilizations, in accordance with relevant international standards, including a period of at least seven days between informing the patient about the nature of the sterilization, its permanent consequences, potential risks and available alternatives and the patient's expression of her free, prior and informed consent; review the three-year time limit in the statute of limitations for bringing compensation claims in cases of coercive or non-consensual sterilizations in order to extend it and, as a minimum, ensure that such time limit starts from the time of discovery of the real significance and all consequences of the sterilization by the victim rather than the time of injury; consider establishing an ex gratia compensation procedure for victims of coercive or non-consensual sterilizations whose claims have lapsed; provide all victims with assistance to access their medical records; and investigate and punish illegal past practices of coercive or non-consensual sterilizations. The Committee further recommended that the State party adopt a law on women's reproductive rights; that clarified that all interventions are performed only with the woman's free, prior and informed consent. Mandatory training for all health professionals on women's reproductive rights and related ethical standards was also recommended.

133. In 2006, the CEDAW Committee issued a view finding Hungary in violation of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), for its failure to protect the reproductive rights of Ms. Andrea Szijjarto, a Hungarian Romani woman was subjected to coerced sterilisation by medical staff at the public hospital in Fehérgyarmat.[239] The CEDAW Committee found that the *'failure of the State party, through the hospital personnel, to provide appropriate information and advice on family planning'* constituted a violation of Articles 10, 12, and 16 of CEDAW. Similarly, the State of Hungary was responsible for the hospital's failure to obtain informed consent and the deprivation of the woman's right to decide the number and spacing of her children in violation of CEDAW.[240] Therefore, the CEDAW Committee held the State of Hungary responsible for an involuntary sterilisation procedure performed in one of its public hospitals. The Committee subsequently recommended that Hungary provide Ms. Szijjarto with appropriate compensation. More generally, the Committee recommended that Hungary:

> *'take further measures to ensure that the relevant provisions of the Convention and the pertinent paragraphs of the Committee's general recommendations Nos. 19, 21 and 24…are known and adhered to by all relevant health professionals; review domestic law on informed consent in sterilization cases and ensure conformity with international standards; and monitor health centres performing sterilizations so as to ensure fully informed consent is being given, with sanctions in place for breaches.'*

The decision marks the first time that an international human rights body in an individual complaint has held a government accountable for failing to provide necessary information to a woman to enable her to give informed consent to a reproductive health procedure.[241]

VIOLATION OF HUMAN RIGHTS

FORCED STERILISATION OF PERSONS WITH DISABILITIES VIOLATES THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

134. The *International Covenant on Civil and Political Rights* (ICCPR) ratified by Australia in 1980, commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, family rights, electoral rights and rights to due process and a fair trial. Article 3 implies that all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality.

135. The *Human Rights Committee*, responsible for the monitoring of the ICCPR, has clarified to State parties that forced sterilisation is in contravention of Articles 7, 14, 17 and 24 of the ICCPR.[242] More than 14 years ago, the Human Rights Committee identified the forced sterilisation of disabled women as being in in contravention of the ICCPR. In its 1999 *Concluding Observations on Japan*,[243] the Committee expressed its regret that the law had not provided for a right of compensation to women with disabilities who were subjected to forced sterilization, and recommended that the necessary legal steps be taken in this regard.

136. In its 2012 *Concluding Observations on Lithuania,*[244] the Human Rights Committee expressed its concern at the potential negative consequences of the courts' authority to authorise procedures such as abortion and sterilisation to be performed on disabled women deprived of their legal capacity.

137. In 2011, in its review of *Slovakia's*[245] report under the ICCPR, the Human Rights Committee stated its regret at the lack of information on concrete measures to eliminate forced sterilisation, and recommended the State Party ensure that all procedures are followed in obtaining the full and informed consent of women who seek sterilisation services. It further recommended that special training for health personnel aimed at raising awareness about the harmful effects of forced sterilization, be introduced.

138. As outlined earlier in this paper, the Human Rights Council requires the Australian Government to address the issue of forced sterilisation in Australia's upcoming review under the ICCPR.[246] Specifically, the Human Rights Council has asked the Australian Government to:

> *Please provide information on whether sterilization of women and girls, including those with disabilities, without their informed and free consent, continues to be practiced, and on steps taken to adopt legislation prohibiting such sterilisations.*

VIOLATION OF HUMAN RIGHTS

FORCED STERILISATION OF PERSONS WITH DISABILITIES VIOLATES THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

139. Australia ratified the *Convention on the Rights of the Child* (CRC) in 1990. The CRC generally defines a child as any human being under the age of eighteen years, and requires States parties to ensure that all children within their jurisdiction enjoy all the rights enshrined in the Convention without discrimination of any kind. The CRC recognises that children with disabilities belong to one of the most marginalised groups of children, and that factors such as gender can increase this vulnerability.[247] The CRC specifically recognises that:

> *Girls with disabilities are often even more vulnerable to discrimination due to gender discrimination. In this context, States parties are requested to pay particular attention to girls with disabilities by taking the necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society.*[248]

140. The *Committee on the Rights of the Child* has expressly identified forced sterilisation of girls with disabilities as a form of violence and clearly articulates that all forms of violence against children are unacceptable without exception.249 It has advised that State parties to the CRC are expected to prohibit by law the forced sterilisation of children with disabilities,[250] and made it very clear that the principle of the "best interests of the child" cannot be used to justify practices which conflict with the child's human dignity and right to physical integrity.[251]

Girls with disabilities are often even more vulnerable to discrimination due to gender discrimination. In this context, States parties are requested to pay particular attention to girls with disabilities by taking the necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in society.[248]

VIOLATION OF HUMAN RIGHTS

141. In 2006, the Committee on the Rights of the Child expressed its deep concern about *'the prevailing practice of forced sterilisation of children with disabilities, particularly girls with disabilities',* and emphasised that forced sterilisation *'seriously violates the right of the child to her or his physical integrity and results in adverse life-long physical and mental health effects'.*[252]

142. In June 2012, the Committee on the Rights of the Child, in its *Concluding Observations on Australia*[253] expressed its serious concern that the absence of legislation prohibiting non-therapeutic sterilisation of girls and women with disabilities is discriminatory and in contravention of the CRC. The Committee urged the State party to: *'Enact non-discriminatory legislation that prohibits non-therapeutic sterilization of all children, regardless of disability; and ensure that when sterilisation that is strictly on therapeutic grounds does occur, that this be subject to the free and informed consent of children, including those with disabilities.'* Furthermore, the Committee clearly identified non-therapeutic sterilisation as a form of violence against girls and women, and recommended that the Australian Government develop and enforce strict guidelines to prevent the sterilisation of women and girls who are affected by disabilities and are unable to consent.

143. In its *Concluding Observations on Australia*[254] in 2005, the Committee on the Rights of the Child, recommended that Australia: *'prohibit the sterilisation of children, with or without disabilities...'* [255]

144. In 1999, the Committee on the Rights of the Child expressed its regret that 'forced sterilization of mentally disabled children is legal with parental consent' in *Austria*,[256] and recommended that existing legislation be reviewed in accordance with the provisions of the Convention, especially articles 3 and 12.

FORCED STERILISATION OF PERSONS WITH DISABILITIES VIOLATES THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

145. The *International Covenant on Economic, Social and Cultural Rights* (CESCR) was ratified by Australia in 1975. The CESCR commits States Parties to work toward the granting of economic, social, and cultural rights to individuals, including labour rights and rights to health, education, and an adequate standard of living. The CESCR protects human rights that are fundamental to the dignity of every person. In particular, Article 3 of this Covenant provides for the equal right of men and women to the enjoyment of rights it articulates, and this is a mandatory and immediate obligation of States parties.[257]

VIOLATION OF HUMAN RIGHTS

146. The Committee on Economic, Social and Cultural Rights (CESCR) has made it clear that forced sterilisation of girls and women with disabilities is in breach of Article 10 of the *Convention on Economic, Social, and Cultural Rights*: [258]

> *'persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood". The needs and desires in question should be recognized and addressed in both the recreational and the procreational contexts. These rights are commonly denied to both men and women with disabilities worldwide. 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).'*

147. The Committee on Economic, Social and Cultural Rights (CESCR) has also made it clear that:

> *Article 10 also implies, subject to the general principles of international human rights law, the right of persons with disabilities to marry and have their own family..... States parties should ensure that laws and social policies and practices do not impede the realization of these rights. Women with disabilities also have the right to protection and support in relation to motherhood and pregnancy.*[259]

'persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood". The needs and desires in question should be recognized and addressed in both the recreational and the procreational contexts. These rights are commonly denied to both men and women with disabilities worldwide. 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).'

VIOLATION OF HUMAN RIGHTS

148. The right to sexual and reproductive health is an integral component of the right to health. The CESCR emphasises aspects of the right to sexual and reproductive health in Article 12. The UN Special Rapporteurs on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, have made it very clear that States have an obligation to respect, protect and fulfil the right to health of all individuals, including those with disabilities, and have recognised that forced sterilisation of women and girls with disabilities is inherently inconsistent with their sexual and reproductive health rights and freedoms, violates their right to reproductive self-determination, physical integrity and security, and injures their physical and mental health.[260]

149. In 2009, the United Nations Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental health, re-iterated that the existence of a disability is not a lawful justification for any deprivation of liberty, including denial of informed consent. The Special Rapporteur made it clear that policies and legislation sanctioning non-consensual treatments lacking therapeutic purpose or aimed at correcting or alleviating a disability, including sterilisations, abortions, electro-convulsive therapy and unnecessarily invasive psychotropic therapy, violate the right to physical and mental integrity and may constitute torture and ill-treatment.[261] He clarified that:

> *'informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making, and assigning associated duties and obligations to health-care providers. Its ethical and legal normative justifications stem from its promotion of patient autonomy, self-determination, bodily integrity and well-being.' States must provide persons with disabilities equal recognition of legal capacity, care on the basis of informed consent, and protection against non-consensual experimentation; as well as prohibit exploitation and respect physical and mental integrity.'* [262]

VIOLATION OF HUMAN RIGHTS

150. In 2011, Mr Anand Grover, UN Special Rapporteur [on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health], in his report on the interaction between criminal laws and other legal restrictions relating to sexual and reproductive health and the right to health, stated:

> *'The use of.....coercion by the State or non-State actors, such as in cases of forced sterilization, forced abortion, forced contraception and forced pregnancy has long been recognized as an unjustifiable form of State-sanctioned coercion and a violation of the right to health. Similarly, where the..... law is used as a tool by the State to regulate the conduct and decision-making of individuals in the context of the right to sexual and reproductive health the State coercively substitutes its will for that of the individual..... the use by States of criminal and other legal restrictions to regulate sexual and reproductive health may represent serious violations of the right to health of affected persons and are ineffective as public health interventions. These laws must be immediately reconsidered. Their elimination is not subject to progressive realization since no corresponding resource burden, or a de minimis one, is associated with their elimination.'* [263]

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VIOLATION OF HUMAN RIGHTS

FORCED STERILISATION OF PERSONS WITH DISABILITIES VIOLATES THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (ICERD)

151. The *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) was one of the first human rights treaties to be adopted by the United Nations, and was ratified by Australia in 1975.[264] As its title suggests, the ICERD commits its members to the elimination of racial discrimination and the promotion of understanding among all races.

152. The Committee on the Elimination of All Forms of Racial Discrimination (CERD) pays special attention to cases where such multiple forms of discrimination are involved. Regarding the intersectionality of gender, CERD has emphasised that racial discrimination does not always affect women and men equally or in the same way, and certain forms of racial discrimination directly affect women - such as forced and coerced sterilisation of indigenous women,[265] or sexual violation against women of particular racial or ethnic groups. At the same time, racial discrimination may have consequences where women are primarily or exclusively affected (e.g. racial bias-motivated rape). Against this backdrop the Committee has been enhancing its efforts to integrate a gender perspective into its work and also recommending that States parties provide disaggregated data with regard to the gender dimensions of racial discrimination as well as to take necessary actions in this regard.[266]

153. In its *Concluding Observations on Mexico*[267] in 2006, the Committee on the Elimination of All Forms of Racial Discrimination (CERD), expressed its concern at the alleged practice of forced sterilization indigenous men and women in Chiapas, Guerrero and Oaxaca, and urged the State party to take all necessary steps to put an end to practices of forced sterilization, and to impartially investigate, try and punish the perpetrators of such practices. It also recommended that the State party ensure that fair and effective remedies are available to the victims, including those for obtaining compensation.

154. In its *Concluding Observations on Slovakia*[268] in 2004, the ICERD Committee expressed its concern about reports of cases of sterilisation of Roma women without their full and informed consent. The Committee "strongly recommended" that the State party take all necessary measures to put an end to *"this regrettable practice.....the State party should also ensure that just and effective remedies, including compensation and apology, are granted to the victims."*

VIOLATION OF HUMAN RIGHTS

OTHER KEY INTERNATIONAL AND NATIONAL STANDARDS AND FRAMEWORKS

155. The 1994 *International Conference on Population and Development (ICPD) Programme of Action*,[269] affirmed that woman's ability to access reproductive health and rights is cornerstone of her empowerment, and protects the right to decide freely and responsibly the number and spacing of one's children. A total of 179 governments (including Australia) signed up to the ICPD Programme of Action which set out to, amongst other things, provide universal access to family planning and sexual and reproductive health services and reproductive rights. The programme of action and benchmarks added at the ICPD+5 review went on to inform the eight *Millennium Development Goals* (MDG's),[270] of which gender equality is central.

156. The *Beijing Declaration and Platform for Action (BPA)* identifies forced sterilisation as an act of violence and reaffirms the rights of women, including women with disabilities, to found and maintain a family, to attain the highest standard of sexual and reproductive health, and to make decisions concerning reproduction free from discrimination, coercion, and violence.[271] The commitment to the BPA was further reaffirmed by member states in the outcome document of the *Twenty-third Special Session of the UN General Assembly*[272] in 2000. This meant that the Australian Government committed to *further* actions and initiatives to accelerate the implementation of the BPA, particularly in regard to addressing the needs of women and girls with disabilities.

157. *Biwako Plus Five*,[273] a supplement to the *United Nations Biwako Millennium Framework for Action towards an Inclusive, Barrier-free and Rights based Society in Asia and the Pacific (BMF),*[274] (adopted by the Australian Government in 2002), specifically required Governments to, amongst other things: *'take appropriate measures to address discrimination against women with disabilities in all matters, including those relating to marriage, family, parenthood and relationships, to ensure their full development, advancement and empowerment.'*

158. At the domestic level, forced sterilisation of women and girls with disabilities runs contrary to a number of national legislative and policy frameworks and strategies in areas (such as disability, child protection, family violence, human rights and women's health).[275] For example, forced sterilisation meets the definition of family violence as articulated in the *Commonwealth Family Law Legislation*.[276] The *Australian Law Reform Commission* has clarified that forced sterilisation and abortion is a type of family violence experienced by people with disabilities.[277]

VIOLATION OF HUMAN RIGHTS

OTHER LEGAL PRECEDENTS: FORCED AND COERCED STERILISATION AS A VIOLATION OF HUMAN RIGHTS

159. The issue of forced sterilisation of women and girls is increasingly being recognised in the Courts as a violation of women's fundamental human rights.

160. In November 2012, the European Court of Human Rights ruled against Slovakia in a case of forced sterilization (*I.G. and Others vs. Slovakia*).[278] The case was lodged with the European Court by three applicants, who were forcibly sterilised in Krompachy Hospital under different circumstances in 1999-2002. Two of the applicants were underage minors at the time of the interventions. The European Court confirmed that forced sterilization – sterilization without an informed consent - represents a serious interference into women's fundamental human rights, guaranteed by the European Convention and other treaties. The European Court ruled in favour of the applicants the ordered the Slovak Government to pay compensation to the applicants and the reimbursement of their legal costs.

161. In November 2011, the European Court of Human Rights delivered its judgement in the case of *V.C. v. Slovakia*.[279] This case concerned a woman from Slovakia who was coercively sterilised in 2000 in the hospital in Prešov (eastern Slovakia). After unsuccessfully claiming her rights on national level, she recoursed to the European Court of Human Rights. The Court held that the sterilisation carried out without her informed consent violated her right not to be subject to torture or to inhuman or degrading treatment (Article 3 of the European Convention) and her right to respect for private and family life (Article 8). The Court noted that: *"sterilization constitutes a major interference with a person's reproductive health status"* and *"bears on manifold aspects of the individual's personal integrity, including his or her physical and mental well-being and emotional, spiritual and family life."* [280] The Court held that Slovakia was to pay the applicant 31,000 euros (EUR) in respect of non-pecuniary damage and EUR 12,000 for costs and expenses.

162. In July 2012, in a landmark judgment, the High Court in Windhoek found that the Namibian government had coercively sterilised three HIV-positive women in violation of their basic rights. The case, *H.N. and Others v Government of the Republic of Namibia*[281] involved three HIV-positive women who sought to access pre-natal services at public hospitals in Namibia. The three women ranged in age from mid-20s to mid-40s when they were sterilised. All three were sterilised without their informed consent while accessing such services. Ruling in the women's favour, the High Court held that obtaining consent from women when they were in severe pain or in labour did not constitute informed consent. The Court further found that failure to obtain the three women's informed consent violated the women's rights under common law. The women will be awarded damages, although the amount is still to be decided.

VIOLATION OF HUMAN RIGHTS

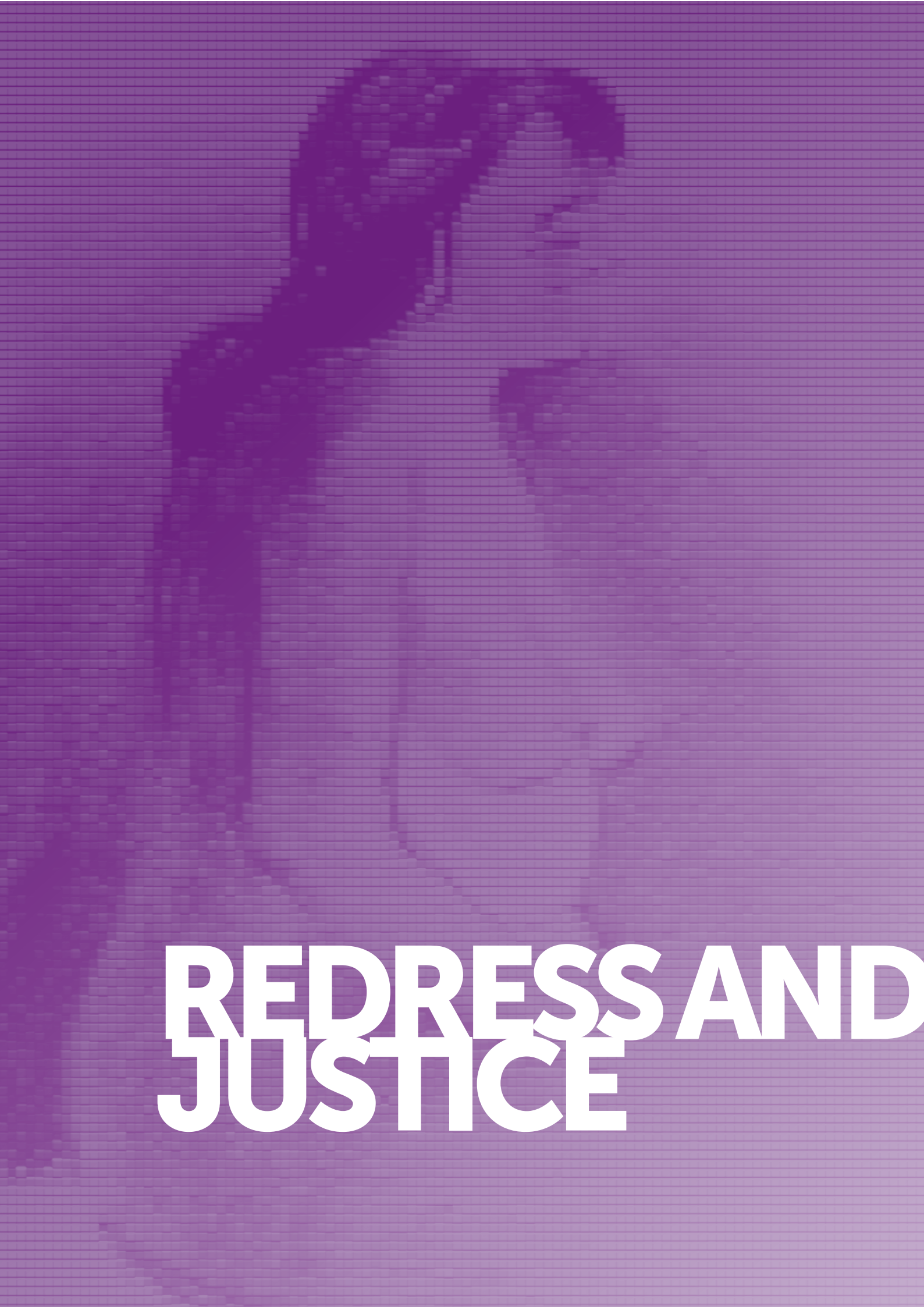
163. The issue of forced sterilisation is neither small nor new in Africa. Over 40 HIV-positive women who were allegedly sterilized against their will in Kenya are currently preparing to go to court to demand justice and possible compensation. National Gender and Equality Commission Chairperson, Winfred Lichuma who is championing the women's cause, described what happened to the women as *"atrocious an infringement of their human rights and contrary to medical ethics."* There are several similar cases pending before the courts in Zambia, South Africa, Malawi and Nambinia.[282]

164. In late 2011, Peru's chief prosecutor re-launched a criminal investigation into the forced sterilizations of thousands of poor and indigenous women, allegedly carried out by the government of disgraced former president Alberto Fujimori. The investigation centers on the case of *Mamérita Mestanza*, a 33-year-old mother of seven who died from complications from forced sterilization surgery. The case had been shelved in 2009 after it was decided that the statute of limitations had run out. But in November 2011 the office of Peru's attorney general, José Peláez, informed the *Inter-American Commission on Human Rights* that it was reopening the case and reclassifying the sterilizations as a crime against humanity, effectively removing the time limit for a prosecution. In one of the cases that has so far come to court, Victoria Vigo, a now 49 year old woman who was forcibly sterilised in Piura in 1996, was eventually awarded $3,500 in compensation. During the trial the doctor argued that he had simply been obeying orders, and that the sterilization was official policy.[283]

165. A current case before the Inter-American Commission on Human Rights (*F.S. v. Chile*) is seeking government accountability for violations of the sexual and reproductive rights of women living with HIV. The case centres on F.S., a young woman from a rural town in Chile, was forcibly sterilised without her knowledge or consent when she was just 20 years old because she is HIV-positive. The Centre for Reproductive Rights (litigating the case with its partner Vivo Positivo) asserts that: *"the Chilean State has a responsibility to address the human rights violation that F.S. suffered, to provide reparations, and to adopt and enforce policies that guarantee women living with HIV the freedom to make reproductive health decisions without coercion."* [284]

166. On 12 December 2012, the International Federation for Human Rights (FIDH) and REDRESS[285] filed a complaint against Uzbekistan before the UN Human Rights Committee, on behalf of *Mrs Mutabar Tadjibayeva*, who was nominated for the Nobel Peace Prize in 2008 for her work as a human rights defender. Mrs Tadjibayeva was forcibly sterilised after being imprisoned for her human rights activities in Uzbekistan. In bringing the case before the UN Human Rights Committee, the litigants are hoping to *"help her receive the remedies she deserves from Uzbekistan for the grave damage and suffering caused by years of torture and ill-treatment".*[286]

167. Until recently, Swedish law had required all transgender people to undergo sterilisation if they wanted to legally change their sex. In a decision on December 19 2012, the Stockholm Administrative Court of Appeal overturned the law, declaring it unconstitutional and in violation of the European Convention on Human Rights. Now, many of the estimated 500 people who have undergone forced sterilisation since the law was passed are demanding compensation.[287]



REDRESS AND JUSTICE

REDRESS AND TRANSITIONAL JUSTICE

168. Forced sterilisation of women and girls with disabilities, and the inadequacy of Australian Governments' responses to it, represent extremely grave violations of multiple human rights. 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.

Meeting these obligations requires the Australian Government to take into account the marginalisation of disabled women and girls, whose rights are compromised due to deeply rooted power imbalances and structural inequalities, and to take all appropriate measures, including focused, gender-specific measures to ensure that disabled women and girls experience full and effective enjoyment of their human rights on an equal basis as others.

169. In regard to 'victims of forced or coerced sterilisation', the United Nations has made it clear that in this context:

> *victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law.*[288]

170. The International Human Rights treaties to which Australia is a party, all clearly articulate the requirement for available, effective, independent and impartial remedies to be available to those whose rights have been violated under the various treaties. The Human Rights Committee has emphasised that such remedies are particularly urgent in respect of violations of the right to freedom from torture and cruel, inhuman and degrading treatment and punishment.[289]

REDRESS AND TRANSITIONAL JUSTICE

171. Forced sterilisation constitutes torture.[290] Article 14(1) of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* specifies that States parties have a duty to ensure that victims of torture obtain redress and that they have *'an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible'*. The Special Rapporteur on Torture [and Other Cruel, Inhuman or Degrading Treatment or Punishment] has recently made it very clear that victims of torture must be provided with effective remedy and redress, including measures of reparation, satisfaction and guarantees of non-repetition as well as restitution, compensation and rehabilitation.[291] The *Convention on the Rights of the Child* at Article 39 also clearly articulates the importance of rehabilitation for victims of torture:

> *'States Parties shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment.....Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.'*

172. Therefore, redressing the harm done to women and girls with disabilities who have been sterilised in the absence of their free and informed consent requires multi-faceted responses. The right to redress and transitional justice[292] is articulated as an integrated right that consists of measures of reparation, satisfaction and guarantees of non-repetition as well as compensation, rehabilitation and recovery.[293]

'States Parties shall take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment..... Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.'

REDRESS AND TRANSITIONAL JUSTICE

173. Critically, in the development and implementation of any measure of redress or transitional justice for women and girls with disabilities who have been forcibly sterilised (including for eg legislation, policies, services, programs, supports, and other measures) women and girls with disabilities (including through representative organisations where they exist), must be at the forefront of all consultative and decision-making processes.

SATISFACTION: AN OFFICIAL APOLOGY

174. Discriminatory laws, policies and practices that allowed (and continue to allow) disabled women and girls to be forcibly sterilised have left, and will leave, legacies of personal pain and distress that will continue to reverberate long into the future. First and foremost, redress demands that Governments acknowledge the pervasive practice of forced and coerced sterilisation of disabled women and girls (through a full and public disclosure of the truth) - and issue an official apology to those affected (including public acknowledgement of the facts and acceptance of responsibility).[294]

175. In 2000, the Canadian Government issued a national apology to the 703 people who were forcibly sterilised under that province's Sexual Sterilisation Act.[295] In 2002, the State of North Carolina issued a formal apology to the estimated 7,600 people forcibly sterilised in that State between 1929 and 1974.[296]

REDRESS AND TRANSITIONAL JUSTICE

GUARANTEES OF NON-REPETITION – LAW REFORM

176. The monitoring committees of the International Human Rights Treaties have made it clear that legislative reform is a critical component of redress for women and girls who have been sterilised in the absence of their free and informed consent. Legislative reform in this context includes, but is not restricted to:

- the enactment of 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. Such legislation must criminalise the removal of a child or adult with a disability from the Country with the intention of having a forced sterilisation procedure performed;[297]
- the enactment of national legislation that replaces regimes of substitute decision making for people with disabilities with supported decision-making which respects the persons autonomy, will and preferences;[298]
- repealing any laws, policies and practices which permit guardianship and trusteeship for adults (and replacing regimes of substituted decision-making by supported decision making).[299]
- ensuring that the requirement for full and informed consent in all interventions and treatments concerning people with disabilities is enshrined in relevant legal frameworks at national and state/territory levels;[300]
- ensuring that criteria that determine the grounds upon which treatment can be administered in the absence of free and informed consent is clarified in the law, and that no distinction between persons with or without disabilities is made; and,[301]
- ensuring that any law or policy which restricts in any way, a disabled woman's [and girls] right to full enjoyment of her sexual and reproductive health rights and freedoms, is amended as a matter of urgency. This includes laws, policies or programs that deny disabled women the right to found a family (including for eg: policies that deny access to assisted reproduction, adoption, surrogacy) and to maintain a family (eg: policies that enable removal of babies and children from parents with disabilities on the basis of parental disability).[302]

REDRESS AND TRANSITIONAL JUSTICE

COMPENSATION

177. Compensation is an important component of redress and transitional justice for women and girls who have been sterilised in the absence of their free and informed consent. Whilst it is recognised that financial compensation can never make up for the immense harm caused to the women and girls affected, it is a critical element in States accountability for those harms. Financial compensation has been awarded in a number of cases where girls and women with disabilities were sterilised in the absence of their free and informed consent.[303]

178. In October 1989, Leilani Muir filed a lawsuit against the Alberta government for wrongfully classifying her as "feeble-minded," which lead to her forced sterilisation. In 1995, the provincial Court of Queen's Bench ruled in Muir's favour, and awarded her $740,000 in damages, and another $230,000 in legal costs. Leilani Muir's lawsuit was the first one to ever successfully sue the government for forced sterilisation.[304]

179. In 2000, in a joint action suit that arose from the Leilani Muir case, the Alberta Government financially compensated 703 other defendants who were forcibly sterilised under that province's Sexual Sterilisation Act.[305]

180. In 1999, the Swedish Government finally compensated approximately 200 citizens - mostly female - who were forcibly sterilised between 1935 and 1975.[306]

181. In North Carolina, Governor Beverly Perdue established the *North Carolina Justice for Sterilization Victims Foundation*[307] in 2010 to provide justice and compensate victims who were forcibly sterilised by the State of North Carolina, under the former North Carolina Eugenics Board program. From 1929 until 1974, an estimated 7,600 North Carolinians, women and men, many of whom were disabled, were forcibly sterilised under the Program. In March 2011, Governor Perdue established a five-member Task Force[308] to recommend possible methods or forms of compensation to those affected. The Task Force's Final Report,[309] released in 2012, recommended a package of compensation that:

> *"provides a lump-sum financial payment* [$50,000] *and mental health services to living victims. The package also provides for the expansion of the N.C. Justice for Sterilization Victims Foundation and public education to serve as a deterrent against any future abuse of power by the government of North Carolina."*

REDRESS AND TRANSITIONAL JUSTICE

REHABILITATION & RECOVERY

182. Women and girls with disabilities who have been forcibly sterilised are entitled to a full range of rehabilitation and recovery measures. In this context, 'rehabilitation and recovery' must be understood holistically, recognising that measures would need to include for example: psychological, physical, health and medical care; legal and social services; economic empowerment; housing; education and employment; transport; access to justice; as well as the elements of political and moral rehabilitation.[310] Importantly, rehabilitation and recovery measures should be tailored to each individual's needs and particular situation and ensure active participation of the survivors and their allies. Moreover, as highlighted by Somasundaram:[311]

> *"it is necessary to consider the effects of torture and other violations on families, communities and society (collective trauma). Rehabilitation and recovery programmes should promote individual, family and social healing, recovery and reintegration."*

183. Rehabilitation and recovery measures for women and girls with disabilities who have been forcibly sterilised, must also be understood as not merely a form of reparation, but also as an explicit right under Article 26 of the *Convention on the Rights of Persons With Disabilities* (CRPD).[312]

"it is necessary to consider the effects of torture and other violations on families, communities and society (collective trauma). Rehabilitation and recovery programmes should promote individual, family and social healing, recovery and reintegration."

REDRESS AND TRANSITIONAL JUSTICE

PROMOTING THE SEXUAL AND REPRODUCTIVE HEALTH RIGHTS OF WOMEN AND GIRLS WITH DISABILITIES

184. Reproductive rights and freedoms rest on the recognition of the basic rights 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. It also includes the right to make decisions regarding reproduction free of discrimination, coercion and violence.[313] For women and girls with disabilities, reproductive rights and freedoms encompass for example: the right to bodily integrity and bodily autonomy, the right to procreate, the right to sexual pleasure and expression, the right for their bodies to develop in a normal way, the right to sex education, to informed consent regarding birth control, to terminate a pregnancy, to choose to be a parent, to access reproductive information, resources, medical care, services, and support; the right to experience and express their sexuality; the right to experience love, intimacy, sexual identity; the right to privacy, and the right to be free from interference.[314]

185. Yet, as highlighted earlier in this Submission, no group has ever been as severely restricted, or negatively treated, in respect of their reproductive rights and freedoms, as women and girls with disabilities.[315] The practice of forced sterilisation is itself part of a broader pattern of denial of human and reproductive rights of Australian disabled women and girls which also includes 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.[316] These practices are framed within traditional social attitudes that continue to characterise disability as a personal tragedy, a burden and/or a matter for medical management and rehabilitation.[317]

186. Whilst there are exceptions,[318] there appear to be very few specific, targeted initiatives for women and girls with disabilities in Australia regarding a rights based approach to sexual and reproductive health. Where they exist, the majority of initiatives focusing on disability, sexuality and reproductive rights – are not gendered, focus largely on people with intellectual disabilities, tend to overlook the sexual and reproductive health needs of other women and girls with disabilities, and appear to be primarily targeted at service providers and/or parents and carers.[319]

187. It is outside the scope of this Submission to address the wide-ranging and extensive raft of actions required to promoting the sexual and reproductive health rights of women and girls with disabilities. It is however, clearly an area that requires urgent and intensive attention, in consultation with women and girls with disabilities and their allies.

CONCLUSION

CONCLUSION

This Submission from WWDA to the Senate Inquiry into the involuntary or coerced sterilisation of people with disabilities in Australia, establishes beyond doubt, that forced and coerced sterilisation of women and girls with disabilities is a form of torture – a heinous, inhuman practice which violates multiple human rights, and clearly breaches every international human rights treaty to which Australia is a party.

For decades, uninterested and apathetic Australian Governments have been complicit in allowing this form of torture to be perpetrated against women and girls with disabilities, indifferent to the devastating and life-long effects it has on some of our countries most marginalised and excluded citizens.

This Submission has provided an extensive amount of evidence which warrants the Australian Government stop procrastinating on this issue, and act immediately and decisively to put an end to the barbaric practice that is forced sterilisation. In so doing, it must acknowledge and take full responsibility for the wrongs that have been done to those affected, including formally apologising for the discriminatory actions, policies, culture and attitudes that result in forced and coerced sterilisation and that acknowledges, on behalf of the nation, the immense harm done to those who have been forcibly sterilised and experienced other violations of their reproductive rights.

In addition, the Australian Government must do everything in its power to not only enable redress and justice for all those affected by forced and coerced sterilisation, but also take all measures necessary, including focused, gender-specific measures, to ensure that disabled women and girls experience full and effective enjoyment of all their human rights on an equal basis as others.

FOOTNOTES

FOOTNOTES

1 For more detailed information on Women With Disabilities Australia (WWDA), go to: http://www.wwda.org.au

2 See WWDA's *Strategic Plan 2010 – 2015* at: http://wwda.org.au/stratplan.htm

3 See: *On The Record - A Report on the 1990 STAR Conference on Sterilisation: 'My Body, My Mind, My Choice'*. Edited by Fiona Strahan, Co-Editor Lois Brudenell. Available at: http://www.wwda.org.au/record.htm NB: The graphic used above is taken from the *On The Record* Report.

4 Commonwealth of Australia (2009) *A Stronger, Fairer Australia: National Statement on Social Inclusion.* Department of the Prime Minister and Cabinet, Canberra; McClelland, R. in Commonwealth of Australia (2010) *Australia's Human Rights Framework,* Attorney-General's Department, Canberra; Australian Government *Australian Values Statement*, Department of Immigration & Citizenship, available online at: http://www.immi.gov.au/living-in-australia/values/statement/long/ Commonwealth of Australia (2007) *Life in Australia*; Department of Immigration & Citizenship, available online at: http://www.immi.gov.au/living-in-australia/values/book/english/lia_english_full.pdf

5 Roos, P. (1975) Psychological Impact of Sterilization on the Individual; *Law and Psychology Review*, Issue 45, pp.45-54.

6 'Forced/involuntary sterilisation' refers to the performance of a procedure which results in sterilisation in the absence of the free and informed consent of the individual who undergoes the procedure - including instances in which sterilisation has been authorised by a third party, without that individual's consent. Coerced sterilisation occurs when financial or other incentives, misinformation, misrepresentation, undue influences, pressure, and/or intimidation tactics are used to compel an individual to undergo the procedure. Coercion includes conditions of duress such as fatigue or stress. Undue influences include situations in which the person concerned perceives there may be an unpleasant consequence associated with refusal of consent. 'Non-therapeutic sterilisation' has been defined as sterilisation for a purpose other than to 'treat some malfunction or disease': *Secretary, Department of Health and Community Services v JWB and SMB*, 1992, 175 CLR 218; 106 ALR 385. For further discussion, see for example: Méndez, Juan. E, (2013) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly; UN.Doc A/HRC/22/53; Dowse, L. & Frohmader, C. (2001) *Moving Forward: Sterilisation and Reproductive Health of Women and Girls with Disabilities*, A Report on the National Project conducted by Women with Disabilities Australia (WWDA), Canberra. See also: Brady, S., Briton, J., & Grover, S. (2001) *The Sterilisation of Girls and Young Women in Australia: Issues and Progress.* A report commissioned by the Federal Sex Discrimination Commissioner and the Disability Discrimination Commissioner; Human Rights and Equal Opportunity Commission, Sydney, Australia. Available at: www.wwda.org.au/brady2.htm; See also: WWDA, Human Rights Watch (HRW), Open Society Foundations, and the International Disability Alliance (IDA) (2011) *Sterilization of Women and Girls with Disabilities: A Briefing Paper.* Available at: http://www.wwda.org.au/Sterilization_Disability_Briefing_Paper_October2011.pdf

7 Centre for Reproductive Rights, European Disability Forum, InterRights, International Disability Alliance and the Mental Disability Advocacy Centre (2011) *Written Comments Submitted in the European Court of Human Rights: Joelle Gauer and Others [Applicant] Against France [Respondent]*, 16 August 2011. See also: Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.

8 The United Nations Special Rapporteurs on Violence Against Women have asserted that forced sterilisation is a method of medical control of a woman's fertility. It violates a woman's physical integrity and security and constitutes violence against women. See: Manjoo, Rashida (2012) *Report of the Special Rapporteur on violence against women, its causes and consequences*; UN General Assembly; UN Doc. A/67/227; and also Radhika Coomaraswamy (1999), *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, (55th Sess.), E/CN.4/1999/68/Add.4 (1999), [para. 51].

9 Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit., Nowak, M. (2008) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*; UN General Assembly, UN Doc. A/HRC/7/3; Committee on the Rights of the Child (2011) *General Comment No. 13: Article 19: The right of the child to freedom from all forms of violence*; UN Doc. CRC/C/GC/13.

10 International NGO Council on Violence against Children (October 2012) *Violating Children's Rights: Harmful practices based on tradition, culture, religion or superstition.* Accessed online October 2012 at: http://www.crin.org/docs/InCo_Report_15Oct.pdf

11 A State's obligation to prevent torture applies not only to public officials, such as law enforcement agents, but also to doctors, health-care professionals and social workers, including those working in private hospitals, other institutions and detention centres. As underlined by the Committee against Torture, the prohibition of torture must be enforced in all types of institutions and States must exercise due diligence to prevent, investigate, prosecute and punish violations by non-State officials or private actors. See: Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.

12 See: Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit., Nowak, M. (2008) UN Doc. A/HRC/7/3; Op Cit.,

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[13] "*Jus cogens*, the literal meaning of which is "compelling law," is the technical term given to those norms of general international law that are argued as hierarchically superior. These are a set of rules, which are peremptory in nature and from which no derogation is allowed under any circumstances. The doctrine of international jus cogens was developed under a strong influence of natural law concepts, which maintain that states cannot be absolutely free in establishing their contractual relations. States were obliged to respect certain fundamental principles deeply rooted in the international community. The power of a state to make treaties is subdued when it confronts a super-customary norm of jus cogens. In other words, jus cogens are rules, which correspond to the fundamental norm of international public policy and in which cannot be altered unless a subsequent norm of the same standard is established. This means that the position of the rules of jus cogens is hierarchically superior compared to other ordinary rules of international law." Taken from: Hossain, K. (2005) The Concept of Jus Cogens and the Obligation Under the U.N. Charter. *Santa Clara Journal of International Law*, Vol. 3, pp.72-98. As detailed in *Prosecutor v. Furundzija* "The jus cogens nature of the prohibition against torture articulates the notion that the prohibition has now become one of the most fundamental standards of the international community. States are obliged not only to prohibit and punish torture, but also prevent its occurrence and consequently, are bound to put in place all those measures that may pre-empt the perpetration of torture. See: International human rights law not only prohibits torture (as well as any inhuman and degrading treatment) but also prohibits (a) the failure to adopt the national measures necessary for implementing the prohibition and (b) the maintenance in force or passage of laws which are contrary to the prohibition. See International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Furundzija,* Case IT-95-17/1-T; Judgement, 10 December 1998.

[14] Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit., See also: Sifris, R. (2010) Conceptualising involuntary Sterilisation as 'Severe Pain or Suffering for the Purposes of Torture Discourse. *Netherlands Quarterly of Human Rights*, Vol.28/4, pp.523-547.

[15] Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.,

[16] Sifris, R. (2010) Op Cit.

[17] Ibid.

[18] Centre for Reproductive Rights et al, Op Cit., Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit., Nowak, M. (2008) UN Doc. A/HRC/7/3; Op Cit.,

[19] Ibid.

[20] Committee on the Rights of the Child; Consideration of reports submitted by States parties under article 44 of the Convention*; Concluding observations: Australia*; Sixtieth session, 29 May–15 June 2012; CRC/C/AUS/CO/4; UN General Assembly Human Rights Council (2011) *Draft report of the Working Group on the Universal Periodic Review: Australia*, 31 January 2011, A/HRC/WG.6/10/L. 8 [para. 86.39]. The final document will be issued under the symbol A/HRC/17/10; Committee on the Elimination of Discrimination against Women (2010) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*. CEDAW Forty-sixth session, 12 – 30 July 2010. CEDAW/C/AUS/CO/7; Committee on the Rights of the Child, Fortieth Session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, *Concluding Observations: Australia*, CRC/C/15/Add.268, 20 October 2005, paras 45, 46 (e).

[21] Manjoo, Rashida (2012) UN Doc. A/67/227, Op Cit.

[22] Dowse, L. and Frohmader, C. (2001) Op Cit.

[23] Dowse, L. (2004) *'Moving Forward or Losing Ground? The Sterilisation of Women and Girls with Disabilities in Australia'*. Paper presented to Disabled Peoples' International (DPI) World Summit, Winnipeg, September 8-10, 2004. Available online at: http://www.wwda.org.au/steril3.htm ; Steele, L. (2008) Making sense of the Family Court's decisions on the non-therapeutic sterilisation of girls with intellectual disability; *Australian Journal of Family Law*, Vol.22, No.1.; Prilleltensky, O. (2003) A Ramp to Motherhood: The Experiences of Mothers with Physical Disabilities. *Sexuality and Disability,* Vol. 21, No. 1, pp. 21-47.

[24] An extensive amount of this work is available on WWDA's website. See: http://www.wwda.org.au/sterilise.htm

[25] *Universal Declaration of Human Rights*; proclaimed by the United Nations General Assembly on 10 December 1948 General Assembly resolution 217 A (III).

[26] Such a Task Force must include women with disabilities in its membership, and be chaired by a woman with a disability.

[27] See for eg: The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation. Available at: http://www.redress.org/downloads/publications/Nairobi%20Principles%20on%20Women%20and%20Girls.pdf

[28] This includes laws, policies or programs that deny disabled women the right to found a family (including for eg: policies that deny access to assisted reproduction, adoption, surrogacy) and to maintain a family (eg: policies that enable removal of babies and children from parents with disabilities on the basis of parental disability).

[29] This happens in two main ways: a) the child is removed by child protection authorities and placed in foster or kinship care; and b) a Court, under the *Family Law Act*, may order that a child be raised by the other parent who does not have a disability or by members of the child's extended family. See: Victorian Office of the Public Advocate (OPA) (2012) *OPA Position Statement: The removal of children from their parent with a disability*. http://www.publicadvocate.vic.gov.au/research/302/

[30] Through the Looking Glass (TLG) is a national disability community based non-profit organization providing research, training, and services for families in which a child, parent or grandparent has a disability or medical issue. TLG includes the *National Center for Parents with Disabilities and their Families* which provides an extensive range of services and support for parents with disabilities. TLG is nationally recognised for designing and fabricating baby care equipment for parents and other caregivers with disabilities, as well as studying the impact of this equipment on parenting. An adaptive equipment hire service is just one of the many services available. See: http://www.lookingglass.org/

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[31] For more information see: http://www.ahpra.gov.au

[32] Grover, A., (2009) *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.* UN General Assembly, UN Doc. A/64/272.

[33] Sterilisation which is performed in an emergency situation for life-saving purposes, like any life-saving procedure, is not considered to be forced sterilisation. See: Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.

[34] Centre for Reproductive Rights et al (2011) Op Cit. See also: Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.

[35] Dowse, L. and Frohmader, C. (2001) Op Cit.

[36] Women With Disabilities Australia (WWDA), Human Rights Watch (HRW), Open Society Foundations, & International Disability Alliance (IDA)(2011) *Sterilization of Women and Girls with Disabilities: A Briefing Paper* (November). Available online at: http://www.wwda.org.au/Sterilization_Disability_Briefing_Paper_October2011.pdf See also: Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.

[37] Brady, S. (2001) *The sterilisation of girls and young women with intellectual disabilities in Australia: An audit of Family Court and Guardianship Tribunal cases between 1992-1998*. Available online at: www.wwda.org.au/brady2001.htm

[38] See: Commonwealth of Australia (1994) *Sterilisation and Other Medical Procedures on Children.* A report to the Attorney-General prepared by the Family Law Council. Available at: http://www.ag.gov.au/Documents/sterilisation-and-other-medical-procedures.htm See also: See also: Brady, S., Briton, J., & Grover, S. (2001) Op Cit.

[39] Grover, A. (2011) *Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*. United Nations General Assembly; UN Doc. A/66/254.

[40] Frohmader, C. & Meekosha, H. (2012) Recognition, respect and rights: Women with disabilities in a globalised world. In *Disability and Social Theory*, Edited by Dan Goodley, Bill Hughes and Lennard Davis, London: Palgrave Macmillan.

[41] Online response to The Australian Newspaper article: *Family Court lets couple sterilise disabled daughter*; By Caroline Overington, March 09, 2010. Response posted by Sterilise Please at 10:10 AM March 09, 2010. Accessed online March 2010 at: http://www.news.com.au/national-old/family-court-lets-couple-sterilise-disabled-daughter/story-e6frfkvr-1225838469430

[42] Online response to The Australian Newspaper article: *Family Court lets couple sterilise disabled daughter*; By Caroline Overington, March 09, 2010. Response posted by Kika at 9:47 AM March 09, 2010. Accessed online March 2010 at: http://www.news.com.au/national-old/family-court-lets-couple-sterilise-disabled-daughter/story-e6frfkvr-1225838469430

[43] Online response to The Australian Newspaper article: *Family Court lets couple sterilise disabled daughter*; By Caroline Overington, March 09, 2010. Response posted by soap box dude at 11:13 AM March 09, 2010. Accessed online March 2010 at: http://www.news.com.au/national-old/family-court-lets-couple-sterilise-disabled-daughter/story-e6frfkvr-1225838469430

[44] Morse, F. (2013) Colin Brewer Cornwall Councillor Says 'Disabled Children Should Be Put Down'. *The Huffington Post*, 27/02/2013. Accessed online February 2013 at: http://www.huffingtonpost.co.uk/2013/02/27/cornwall-councillor-colin-brewer-disabled-children-put-down_n_2771826.html?utm_hp_ref=uk

[45] Cooke, E., et al, cited in Dowse, L. & Frohmader, C. (2001) Op Cit.

[46] Goldhar, J. cited in Dowse, L. & Frohmader, C. (2001) Op Cit.

[47] Department of Health and Community Services v JWB and SMB (Marion's Case) [1992] HCA 15; (1992) 175 CLR 218 (6 May 1992). At: http://www.austlii.edu.au/au/cases/cth/high_ct/175clr218.html

[48] 'Non-therapeutic sterilisation' is sterilisation for a purpose other than to 'treat some malfunction or disease': Secretary, Department of Health and Community Services v JWB and SMB, 1992, 175 CLR 218; 106 ALR 385.

[49] Dowse, L. (2004) Op Cit.

[50] Jones, M. and Basser Marks, L. (2000) Valuing People through Law: Whatever Happened to Marion? In M. Jones and L. A. Basser Marks (eds) *Explorations on Law and Disability in Australia.* Sydney, Federation Press.

[51] Dowse, L. and Frohmader, C. (2001) Op Cit.

[52] Standing Committee of Attorneys-General (SCAG) (2004) *Issues Paper on the Non-Therapeutic Sterilisation of Minors with a Decision-Making Disability*. Available online at: www.wwda.org.au/scagpap1.htm

[53] Dowse, L. and Frohmader, C. (2001) Op Cit.

[54] Transcript from 2003 Four Corners (ABC TV) Documentary *'Walk in Our Shoes'*. Available online at: http://www.wwda.org.au/4corners.htm

[55] The Standing Committee of Attorneys-General (SCAG) was the national ministerial council made up of the Australian Attorney-General and the State and Territory Attorneys-General. SCAG provides a forum for Attorneys-General to discuss and progress matters of mutual interest. It seeks to achieve uniform or harmonised action within the portfolio responsibilities of its members. In 2011 the SCAG was re-named the Standing Council on Law and Justice (SCLJ).

[56] Standing Committee of Attorneys-General (SCAG) Working Group (2006) *Draft 17: Children with Intellectual Disabilities (Regulation of Sterilisation) Bill 2006*. Available at: www.wwda.org.au/sterbill06.pdf

[57] Standing Committee of Attorneys-General (SCAG) Working Group (2006) *Issues Paper on the Sterilisation of Intellectually Disabled Minors*. Available at: www.wwda.org.au/scagpap2.htm

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[58] Standing Committee of Attorneys-General (SCAG) Working Group (2006) *Draft 17: Children with Intellectual Disabilities (Regulation of Sterilisation) Bill 2006*. Available at: www.wwda.org.au/sterbill06.pdf A number of Submissions provided to the SCAG Working Party in response to the Draft *Children with Intellectual Disabilities (Regulation of Sterilisation*) Bill 2006, are available on WWDA's website at: http://www.wwda.org.au/steriladv07.htm

[59] Standing Committee of Attorneys-General (SCAG) C*ommunique* 28 March 2008.

[60] Ibid.

[61] Correspondence to WWDA from WA Attorney-General Christian Porter MLA, 18 June 2009.

[62] Australian Government (2009) *Response to the United Nations (UNESCAP) Questionnaire for Governments on Implementation of the Beijing Declaration and Platform for Action (BPFA) and the outcomes of the twenty-third special session of the General Assembly (2000)*. Accessed online February 2010 at: www.unescap.org/ESID/GAD/Issues/Beijing+15/Responds_to_Questionnaire/Australia.pdf [See page 14].

[63] Australian Government (2006) *Sterilisation of Women and Young Girls with an Intellectual Disability - Report to the Senate*. Tabled by the Minister for Family and Community Services and the Minister Assisting the Prime Minister on the Status of Women, December 6, 2000. Available online at: www.wwda.org.au/senate.htm

[64] Hon Robert McClelland (Attorney-General) Correspondence to Women With Disabilities Australia (WWDA), 27 August, 2009.

[65] Brady, S. and Grover, S. (1997) The Sterilisation of Girls and Young Women in Australia - A legal, medical and social context. Report commissioned by the Federal Disability Discrimination Commissioner for the Human Rights and Equal Opportunity Commission, December 1997. Available online at: http://www.wwda.org.au/brady.htm

[66] Australian Government (2009) *Response to the United Nations (UNESCAP)* Op Cit.

[67] Ibid.

[68] Correspondence from WWDA to Hon Robert McClelland, Attorney General, February 24, 2010.

[69] See for example: Re: Angela [2010] FamCA 98 (16 February 2010); HGL (No 2) [2011] QCATA 259 (19 September 2011); Gardner, J. (2003) cited in Transcript from 2003 Four Corners (ABC TV) Op Cit; Nicholson, Justice Alastair (2003) cited in Transcript from 2003 Four Corners (ABC TV) Op Cit; Australian Human Rights Commission (2012) *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, Australian Human Rights Commission Submission to the Senate Community Affairs References Committee; , also: Shepherd, T. (2013) South Australian disability advocates term forced hysterectomies as torture. *The Advertiser*, February 28, 2013. Accessed online February 2013 at: http://www.adelaidenow.com.au/news/south-australia/south-australian-disability-advocates-term-forced-hysterectomies-as-torture/story-e6frea83-1226587191569

[70] Transcript from 2003 Four Corners (ABC TV) Op Cit.

[71] Transcript from 2003 Four Corners (ABC TV) Op Cit.

[72] Ibid.

[73] Australian Government (2008) *Fourth Report under the Convention on the Rights of the Child: Australia*, October 2008, 159, p31. Accessed online August 2009 at: http://www.ag.gov.au/www/agd/agd.nsf/Page/HumanrightsandantidiscriminationReportsundertheConventionontheRightsoftheChild

[74] WWDA's formal complaint is available online at: http://wwda.org.au/WWDA_Submission_SR2011.pdf

[75] Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Rashida Manjoo, Special Rapporteur on violence against women, its causes and consequences. See Appendix 2.

[76] Committee on the Rights of the Child; Consideration of reports submitted by States parties under article 44 of the Convention*; Concluding observations: Australia*; Sixtieth session, 29 May–15 June 2012; CRC/C/AUS/CO/4; UN General Assembly Human Rights Council (2011) *Draft report of the Working Group on the Universal Periodic Review: Australia*, 31 January 2011, A/HRC/WG.6/10/L. 8 [para. 86.39]. The final document will be issued under the symbol A/HRC/17/10; Committee on the Elimination of Discrimination against Women (2010) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*. CEDAW Forty-sixth session, 12 – 30 July 2010. CEDAW/C/AUS/CO/7; Committee on the Rights of the Child, Fortieth Session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, *Concluding Observations: Australia*, CRC/C/15/Add.268, 20 October 2005, paras 45, 46 (e).

[77] Committee on the Rights of the Child; UN Doc. CRC/C/AUS/CO/4.

[78] Committee on the Rights of the Child; UN Doc. CRC/C/AUS/4.

[79] The Universal Periodic Review (UPR) is a process undertaken by the United Nations and involves the review of the human rights records of the 192 Member States once every four years. The UPR provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. The ultimate aim of the Review is to improve the human rights situation in all countries and address human rights violations wherever they occur. For more information see: http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx

[80] UN General Assembly Human Rights Council (2011) UN Doc A/HRC/17/10, Op Cit.

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81 On 10 December 2012, International Human Rights Day, the Australian Government released its National Human Rights Action Plan. In releasing the Plan, the then Federal Attorney General, Hon Nicola Roxon MP, stated that: *'This action plan explains in detail how Australia will implement the recommendations accepted during its Universal Periodic Review at the United Nations in 2011.'* See for eg: Commonwealth of Australia (2012) *Australia's National Human Rights Action Plan 2012*. Accessed online 10 December 2012 at: http://www.ag.gov.au/Humanrightsandantidiscrimination/Australiashumanrightsframework/Pages/NationalHumanRightsActionPlan.aspx See also: The Hon Nicola Roxon MP, Attorney-General & Minister for Emergency Management, Media Release *'National Human Rights Action Plan Released'*, 10 December 2012.

82 Committee on the Elimination of Discrimination against Women (2010) UN Doc. CEDAW/C/AUS/CO/7, Op Cit.

83 Australian Government (2012) *'Responses by Australia to the recommendations contained in the concluding observations of the Committee following the examination of the combined sixth and seventh periodic report of Australia on 20 July 2010.'* Accessed February 2013 at: http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.AUL.CO.7.Add.1.pdf

84 The CEDAW Committee made two specific recommendations for actions on violence against women and Aboriginal and Torres Strait Islander women, in its Concluding Observations on Australia and requested an update on progress at the 2-year mark, prior to a full review in 2014. The Australian Government was required to report back to the CEDAW committee on its progress on these two areas by July 2012.

85 Manjoo, Rashida (2012) UN Doc. A/67/227, Op Cit.

86 UN Convention on the Rights of the Child (CRC)(2004) *Consideration of Reports Submitted By States Parties Under Article 44 of the Convention; Second and third periodic reports of States parties due in 1998 and 2003:Australia*; 29 December 2004; CRC/C/129/Add.4.

87 UN Committee on the Rights of the Child, UN Doc. CRC/C/15/Add.268, Op Cit.

88 CRC General Comment No.9 [at para.60] 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.' See:* Committee on the Rights of the Child (CRC), *General Comment No. 9 (2006): The rights of children with disabilities*, 27 February 2007, UN Doc.CRC/C/GC/9.

89 Since Australia was last reviewed in 2009, the Human Rights Committee has developed a new optional process for the review of states, known as the List of Issues Prior to Reporting (LOIPR). The Human Rights Committee develops a LOIPR on the basis of previous Concluding Observations and information provided by the Office of the High Commissioner on Human Rights (OHCHR), the Universal Periodic Review (UPR), the UN Special Procedures, NGOs and National Human Rights Institutions. The LOIPR on Australia was adopted by the Human Rights Committee at its 106th session in late 2012.

90 Human Rights Committee, International Covenant on Civil and Political Rights; *List of issues prior to the submission of the sixth periodic report of Australia* (CCPR/C/AUS/6), adopted by the Committee at its 106th session (15 October–2 November 2012); UN Doc No. CCPR/C/AUS/Q/6; 9 November 2012.

91 See: http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session9.aspx

92 The Australian Civil Society CRPD Shadow Report is available at: http://www.disabilityrightsnow.org.au/node/15

93 See Disability Council International's 2013 Independent Review of Australia's initial state party report (CRPD/C/AUS/1) available at: http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session9.aspx; See also Australian Civil Society CRPD Shadow Report, also available at: http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session9.aspx

94 FIGO (International Federation of Gynecology and Obstetrics), *Female Contraceptive Sterilization*. Available at: http://www.wwda.org.au/FIGOGuidelines2011.pdf See also Appendix 1.

95 Shepherd, T. (2013) South Australian disability advocates term forced hysterectomies as torture. The Advertiser, February 28, 2013. Accessed online February 2013 at: http://www.adelaidenow.com.au/news/south-australia/south-australian-disability-advocates-term-forced-hysterectomies-as-torture/story-e6frea83-1226587191569

96 World Medical Association (WMA) in conjunction with the International Federation of Health and Human Rights Organizations (IFHHRO) (2011) *Global Bodies call for end to Forced Sterilisation*: Press Release, 5 September 2011. Available at: http://www.wwda.org.au/sterilWMA2011.htm

97 The International NGO Council on Violence Against Children was formed in 2007 to support strong and effective follow-up to the UN Study on Violence against Children. See: http://www.crin.org/violence/NGOs/

98 International NGO Council on Violence against Children (October 2012) *Violating Children's Rights: Harmful practices based on tradition, culture, religion or superstition*. Available online at: http://www.crin.org/docs/InCo_Report_15Oct.pdf

99 In recent months, WHO led a broad and inclusive consultation process which included: 12 September 2012: a meeting with governments and civil society during the Conference of States Parties in New York. After the consultation, participants were requested to comment on the Statement and twenty responses were received; 27 October 2012: a consultation with people with intellectual disabilities at the Global Forum of Inclusion International in Washington DC; Further consultation with people with intellectual disabilities on a plain language version of the Statement; 15-16 October 2012: an expert consultation held in Geneva to discuss the Statement in detail. As a result of these inputs, the proposed Statement has been strengthened. Other UN agencies are now reviewing the Statement and assessing how they may be able to support its implementation. See: http://www.who.int/disabilities/media/news/2012/14_11/en/index.html

100 The *Global Stop Torture in Health Care Campaign* is an alliance of international health and human rights organisations working together to put an end to the abuse of individuals in health settings. It is co-ordinated by the Open Society Foundations. See: http://www.facebook.com/StopTortureInHealthCare

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[101] See: http://www.facebook.com/StopTortureInHealthCare

[102] Women With Disabilities Australia (WWDA), Human Rights Watch (HRW), Open Society Foundations, & International Disability Alliance (IDA) (2011) Op Cit. See also: Brady, S., Briton, J., & Grover, S. (2001), Op Cit.

[103] Re H [2004] FamCA 496 (20 May 2004)

[104] Online response to The Australian Newspaper article: *Family Court lets couple sterilise disabled daughter*; By Caroline Overington, March 09, 2010. Comment 70 of 162 posted at 10:14 AM March 09, 2010. Accessed online March 2010 at: http://www.news.com.au/national-old/family-court-lets-couple-sterilise-disabled-daughter/story-e6frfkvr-1225838469430

[105] Online response to The Advertiser article *'The International Day of Disability sheds light on the murky world of disability'*; Dec 2, 2012. Response posted by Sarah at 9:53 AM December 03, 2012. Accessed December 2012 at: http://www.adelaidenow.com.au/news/opinion/the-international-day-of-disability-sheds-light-on-the-murky-world-of-disability-writes-ali-carle/story-e6freai3-1226528397995

[106] Online response to The Australian Newspaper article: *Family Court lets couple sterilise disabled daughter*; By Caroline Overington, March 09, 2010. Response posted by Nicki of Brisbane at 8:43 AM March 09, 2010. Accessed online March 2010 at: http://www.news.com.au/national-old/family-court-lets-couple-sterilise-disabled-daughter/story-e6frfkvr-1225838469430

[107] Online response to The Australian Newspaper article: *Family Court lets couple sterilise disabled daughter*; By Caroline Overington, March 09, 2010. Response posted by James at 3:52 AM March 09, 2010. Accessed online March 2010 at: http://www.news.com.au/national-old/family-court-lets-couple-sterilise-disabled-daughter/story-e6frfkvr-1225838469430

[108] Online response to The Australian Newspaper article: *Family Court lets couple sterilise disabled daughter*; By Caroline Overington, March 09, 2010. Response posted by Ben of Sydney at 12:13 PM March 09, 2010. Accessed online March 2010 at: http://www.news.com.au/national-old/family-court-lets-couple-sterilise-disabled-daughter/story-e6frfkvr-1225838469430

[109] Online response to News article *'Mother tells senate inquiry that sterilising her disabled daughter was a blessing'*. Response posted by Jo at 7:11 PM December 03, 2012. Accessed online December 2012 at: http://www.news.com.au/lifestyle/parenting/sterilisation-was-a-blessing-mother/story-fnet085v-1226529050764

[110] Online response to The Advertiser News article *'The International Day of Disability sheds light on the murky world of disability'*. Response posted by Earl Grey at 10:20 PM December 02, 2012. Accessed online December 2012 at: http://www.adelaidenow.com.au/news/opinion/the-international-day-of-disability-sheds-light-on-the-murky-world-of-disability-writes-ali-carle/story-e6freai3-1226528397995

[111] Online response to The Australian Newspaper article: *Family Court lets couple sterilise disabled daughter*; By Caroline Overington, March 09, 2010. Response posted by 'mother of one in WA' at 4:01 PM March 09, 2010. Accessed online March 2010 at: http://www.news.com.au/national-old/family-court-lets-couple-sterilise-disabled-daughter/story-e6frfkvr-1225838469430

[112] Brady, S. and Grover, S. (1997) Op Cit.

[113] Manjoo, Rashida (2012) UN Doc. A/67/227, Op Cit.

[114] Frohmader, C. and Meekosha, H. (2012) Op Cit.

[115] Re: Angela [2010] FamCA 98 (16 February 2010)

[116] Between: the Attorney-General of Queensland and Parents Re S [1989] FamCA 80; (1990) FLC 92-124 13 Fam Lr 660 Children (22 November 1989)

[117] Re H [2004] FamCA 496 (20 May 2004)

[118] Re Katie FamCA 130 (30 November 1995)

[119] HGL (No 2) [2011] QCATA 259 (19 September 2011)

[120] Between: the Attorney-General of Queensland and Parents Re S [1989] FamCA 80; (1990) FLC 92-124 13 Fam Lr 660 Children (22 November 1989)

[121] Re M (An Infant) [1992] FamCA 19 (3 April 1992)

[122] Re Elizabeth Suit [1989] FamCA 20 (3 May 1989)

[123] Between: L and GM Applicants and MM Respondent and the Director-General Department of Family Services and Aboriginal and Islander Affairs Respondent/Intervener [1993] FamCA 124; (1994) FLC 92-449 17 Fam Lr 357 Family Law (26 November 1993)

[124] Between: the Attorney-General of Queensland and Parents Re S [1989] FamCA 80; (1990) FLC 92-124 13 Fam Lr 660 Children (22 November 1989)

[125] Re Katie FamCA 130 (30 November 1995)

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[127] Dowse, L. and Frohmader, C. (2001) Op Cit. See also: Dowse, L. (2004) Op Cit.

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FOOTNOTES

[132] Ibid. See also: Steele, L. (2008) Op Cit.; Brady, S., Briton, J. and Grover, S. (2001) Op Cit.

[133] Women With Disabilities Australia (WWDA) (2007) *Policy & Position Paper: The Development of Legislation to Authorise Procedures for the Sterilisation of Children with Intellectual Disabilities*. Available at: http://www.wwda.org.au/polpapster07.htm See also: New South Wales Council for Intellectual Disability (2006) *Submission on the Draft Model Bill to regulate the sterilisation of children with an intellectual disability.* Available online at: http://www.wwda.org.au/sternswcid06.htm; Intellectual Disability Rights Service (IDRS) (2006) *Submission on the Draft Model Bill to regulate the sterilisation of children with an intellectual disability.* Available online at: http://www.wwda.org.au/sterirds06.htm

[134] This happens in two main ways: a) the child is removed by child protection authorities and placed in foster or kinship care; and b) a Court, under the *Family Law Act*, may order that a child be raised by the other parent who does not have a disability or by members of the child's extended family. See: Victorian Office of the Public Advocate (OPA) (2012) *OPA Position Statement: The removal of children from their parent with a disability*. http://www.publicadvocate.vic.gov.au/research/302/

[135] Victorian Office of the Public Advocate (OPA) (2012) *OPA Position Statement: The removal of children from their parent with a disability*. http://www.publicadvocate.vic.gov.au/research/302/

[136] Cited in: Cocks, K. (2012) *Human Rights of Parents with Intellectual Disability*. Speech by Queensland Anti-Discrimination Commissioner, to the Bold Network and QUT Symposium *Realising the Dreams and Hopes of Parents with Intellectual Disability* held at QUT Gardens Point, Brisbane City on Monday, 19 November 2012. Accessed online February 2013 at: http://www.adcq.qld.gov.au/Speeches/Parents_with-Intellectual_Disability.html

[137] In Women With Disabilities Australia (WWDA) (2009) *Parenting Issues for Women with Disabilities in Australia: A Policy Paper.* WWDA, Rosny Park, Tasmania. Available online at: http://www.wwda.org.au/subs2006.htm

[138] Ibid.

[139] Ibid.

[140] For example, in 2007, the Victorian Law Reform Commission (VLRC) released its final report on Assisted Reproductive Technology (ART) and adoption. The VLRC had been commissioned by the Victorian Government to enquire into and report on the desirability and feasibility of changes to the *Infertility Treatment Act 1995* [Vic] and the *Adoption Act 1984* [Vic] to expand eligibility criteria in respect of all or any forms of assisted reproduction and adoption (VLRC 2007). In relation to access to assisted reproductive technology, the VLRC decided *"not to include impairment or disability as one of the grounds on which discrimination in relation to access to ART should be prohibited. This is because in some cases there is a nexus between disability and risk of harm to a child (for example, some forms of severe mental illness). Such a nexus does not exist in relation to marital status or sexual orientation. This does not mean that people with a disability or impairment should be refused treatment, but that in some cases a different approach is justified. Such an approach should involve making enquiries about any potential risk to the health and wellbeing of a prospective child"* See: Victorian Law Reform Commission (VLRC) (2007) *Assisted Reproductive Technology & Adoption: Final Report.* Victorian Law Reform Commission, Melbourne, Victoria.

[141] Between: the Attorney-General of Queensland and Parents Re S [1989] FamCA 80; (1990) FLC 92-124 13 Fam Lr 660 Children (22 November 1989)

[142] Re Katie FamCA 130 (30 November 1995)

[143] Re: Angela [2010] FamCA 98 (16 February 2010)

[144] Re H [2004] FamCA 496 (20 May 2004)

[145] Re A Teenager [1988] FamCA 17 (15 November 1988)

[146] Re H [2004] FamCA 496 (20 May 2004)

[147] See for example: Sheerin, F. (1998) Parents with learning disabilities: a review of the literature. *Journal of Advanced Nursing*; Vol.28, No.1, pp.126-133; Osfield, S. (2012) 'This girl has special needs and one day dreams of being a mum. Does anyone have the right to stop her having a baby?' In *marie claire Magazine*, June 2012; Llewellyn, G. (1993) Parents with Intellectual Disability: Facts, Fallacies and Professional Responsibilities *Community Bulletin* 17 (1), 10 - 19.

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[151] Between: the Attorney-General of Queensland and Parents Re S [1989] FamCA 80; (1990) FLC 92-124 13 Fam Lr 660 Children (22 November 1989)

[152] Ibid.

[153] Re Katie FamCA 130 (30 November 1995)

[154] Between: L and GM Applicants and MM Respondent and the Director-General Department of Family Services and Aboriginal and Islander Affairs Respondent/Intervener [1993] FamCA 124; (1994) FLC 92-449 17 Fam Lr 357 Family Law (26 November 1993)

[155] HGL (No 2) [2011] QCATA 259 (19 September 2011)

[156] Re H [2004] FamCA 496 (20 May 2004)

[157] Re Katie FamCA 130 (30 November 1995)

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158 Office of the High Commissioner for Human Rights (undated) *WORKING GROUP 4 - Evolving capacities as an enabling principle in practice*. Accessed online February 2013 at: www2.ohchr.org/english/bodies/crc/docs/20th/BackDocWG4.doc

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161 BAH [2009] NSWGT 8 (28 July 2009)

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163 Between: L and GM Applicants and MM Respondent and the Director-General Department of Family Services and Aboriginal and Islander Affairs Respondent/Intervener [1993] FamCA 124; (1994) FLC 92-449 17 Fam Lr 357 Family Law (26 November 1993)

164 Brady, S. (2001) Op Cit.

165 Re Katie FamCA 130 (30 November 1995)

166 Re A Teenager [1988] FamCA 17 (15 November 1988)

167 JLS v JES [1996] NSWSC 217 (21 June 1996)

168 Re Elizabeth Suit [1989] FamCA 20 (3 May 1989)

169 Between: the Attorney-General of Queensland and Parents Re S [1989] FamCA 80; (1990) FLC 92-124 13 Fam Lr 660 Children (22 November 1989) Re Katie FamCA 130 (30 November 1995)

170 Cited in Brady, S. (2001) Op Cit.

171 Between: the Attorney-General of Queensland and Parents Re S [1989] FamCA 80; (1990) FLC 92-124 13 Fam Lr 660 Children (22 November 1989) Re Katie FamCA 130 (30 November 1995)

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174 Online response to The Australian Newspaper article: *Family Court lets couple sterilise disabled daughter*; By Caroline Overington, March 09, 2010. Response posted by Millie at 10:06 AM March 09, 2010. Accessed online March 2010 at: http://www.news.com.au/national-old/family-court-lets-couple-sterilise-disabled-daughter/story-e6frfkvr-1225838469430

175 Online response to The Australian Newspaper article: *Family Court lets couple sterilise disabled daughter*; By Caroline Overington, March 09, 2010. Response posted by OddMaude at 5:08 AM March 09, 2010. Accessed online March 2010 at: http://www.news.com.au/national-old/family-court-lets-couple-sterilise-disabled-daughter/story-e6frfkvr-1225838469430

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179 Dowse, L. and Frohmader, C. (2001) Op Cit. See also: Dowse, L. (2004) Op Cit.

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181 Department of Health & Community Services v JWB & SMB ("Marion's Case") [1992] HCA 15; (1992) 175 CLR 218 (6 May 1992)

182 See the Australian Government's response to the UN Special Rapporteurs (at Appendix 3).

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FOOTNOTES

192 CRC Committee General Comment No. 13 [at para.61] states: *"The Committee emphasizes that the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention."* See: UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011): *Article 19: The right of the child to freedom from all forms of violence*, 17 February 2011, CRC/C/GC/13

193 Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.

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209 Eastgate, G., Scheermeyer, E., van Driel, M. & Lennox, N. (2012) Intellectual disability, sexuality and sexual abuse prevention: A study of family members and support workers. *Australian Family Physician* Vol. 41, No. 3, pp. 135-139.

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211 Committee on the Rights of the Child; Consideration of reports submitted by States parties under article 44 of the Convention*; Concluding observations: Australia*; Sixtieth session, 29 May–15 June 2012; CRC/C/AUS/CO/4; UN General Assembly Human Rights Council (2011) *Draft report of the Working Group on the Universal Periodic Review: Australia*, 31 January 2011, A/HRC/WG.6/10/L. 8 [para. 86.39]. The final document will be issued under the symbol A/HRC/17/10; Committee on the Elimination of Discrimination against Women (2010) *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*. CEDAW Forty-sixth session, 12 – 30 July 2010. CEDAW/C/AUS/CO/7; Committee on the Rights of the Child, Fortieth Session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, *Concluding Observations: Australia*, CRC/C/15/Add.268, 20 October 2005, paras 45, 46 (e).

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214 The CRPD is underpinned by a 'human rights' model of disability (which upholds persons with disabilities as equal and active subjects of their rights) and guiding principles and values, which include respect for inherent dignity, autonomy, including the freedom to make one's own choices, independence, non-discrimination, full and effective participation in society, respect for difference, and equality of opportunity.

FOOTNOTES

[215] The Committee on the Rights of Persons with Disabilities (CRPD) is the body of independent experts which monitors implementation of the Convention by the States Parties. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Convention and thereafter every four years. The Committee examines each report and shall make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned. The Optional Protocol to the Convention gives the Committee competence to examine individual complaints with regard to alleged violations of the Convention by States parties to the Protocol. The Committee meets in Geneva and normally holds two sessions per year. See: http://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx

[216] Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: Spain*. UN Doc. No: CRPD/C/ESP/CO/1; 19 October 2011.

[217] Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: Peru*. UN Doc. No: CRPD/C/PER/CO/1; 9 May 2012.

[218] Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: China*. UN Doc. No: CRPD/C/CHN/CO/1; 27 September 2012.

[219] Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: Hungary*. UN Doc. No: CRPD/C/HUN/CO/1; 27 September 2012.

[220] Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: Tunisia*. UN Doc. No: CRPD/C/TUN/CO/1; 13 May 2011.

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

[222] Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.

[223] See: Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit., Nowak, M. (2008) UN Doc. A/HRC/7/3; Op Cit.

[224] Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.

[225] Nowak, M. (2008) UN Doc. A/HRC/7/3; Op Cit.

[226] Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.

[227] Committee against Torture; *Concluding observations on the combined fifth and sixth periodic reports of Peru*, adopted by the Committee at its forty-ninth session (29 October - 23 November 2012). UN Doc. No: CAT/C/PER/CO/5-6; 21 January 2013.

[228] Committee against Torture; *Concluding observations of the Committee against Torture: Czech Republic*. UN Doc. No: CAT/C/CZE/CO/4-5; 13 July 2012.

[229] Committee Against Torture; *Concluding Observations: Slovakia*, UN Doc. No: CAT/C/SVK/CO/2; 17 December 2009.

[230] In relation to women with disabilities, CEDAW requires governments to specifically report on measures taken to ensure that disabled women can enjoy all economic, social, cultural, civil and political rights. See: UN High Commissioner for Refugees (2009) *Displacement, Statelessness and Questions of Gender Equality under the Convention on the Elimination of All Forms of Discrimination against Women*, August 2009, PPLAS/2009/02, available at: http://www.unhcr.org/refworld/docid/4a8aa8bd2.html [accessed 18 June 2010].

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[232] Committee on the Elimination of Discrimination against Women. *General Recommendation 19. Violence against women Article 16.* Eleventh Session, 1992, contained in UN Doc A/47/38.

[233] Ibid.

[234] Committee on the Elimination of Discrimination against Women; *Concluding observations on the fifth and sixth periodic reports of Chile*, adopted by the Committee at its fifty-third session (1–19 October 2012); UN Doc. CEDAW/C/CHL/CO/5-6; 12 November 2012.

[235] Committee on the Elimination of Discrimination against Women; *Concluding observations: Jordan.* UN Doc. CEDAW/C/JOR/CO/5; 23 March 2012.

[236] Committee on the Elimination of Discrimination against Women; *Concluding observations: Comoros.* UN Doc. CEDAW/C/COM/CO/1-4; 24 October 2012.

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[238] Committee on the Elimination of Discrimination against Women; *Concluding observations: Czech Republic.* UN Doc. CEDAW/C/CZE/CO/5; 10 November 2010.

[239] Committee on the Elimination of Discrimination against Women; Views: Communication No. 4/2004; *Ms. Andrea Szijjarto v Hungary*; UN Doc. CEDAW/C/36/D/4/2004 (29 August 2006)

[240] Sifris, R. (2010) Op Cit.

[241] Zampas, C. & Lamackova (2011) Forced and coerced sterilization of women in Europe. *International Journal of Gynecology and Obstetrics*, Vol. 114; pp. 163–166.

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242 See: Human Rights Committee (2000) International Covenant on Civil and Political Rights (CCPR), *General Comment No. 28: Equality of rights between men and women*, 29 March 2000, CCPR/C/21/Rev.1/Add.10, [paras.11 & 20].

243 General Assembly; Report of the Human Rights Committee, *Volume 1; Official Records*, Fifty-Fourth Session; Supplement No.40, A/54/40; para. 173.

244 Human Rights Committee; *Concluding observations: Lithuania*; adopted by the Human Rights Committee at its 105th session, 9-27 July 2012; CCPR/C/SR.2916.

245 Human Rights Committee; *Concluding observations: Slovakia*; Adopted by the Human Rights Committee at its 101st session 14 March-1 April 2011; CCPR/C/SVK/CO/3; 20 April 2011.

246 Human Rights Committee, International Covenant on Civil and Political Rights; *List of issues prior to the submission of the sixth periodic report of Australia* (CCPR/C/AUS/6), adopted by the Committee at its 106th session (15 October–2 November 2012); UN Doc No. CCPR/C/AUS/Q/6; 9 November 2012.

247 Committee on the Rights of the Child (CRC), *General Comment No. 9 (2006): The rights of children with disabilities,* 27 February 2007, CRC/C/GC/9, available at: http://www.unhcr.org/refworld/docid/461b93f72.html [accessed 3 March 2010]

248 Ibid.

249 Committee on the Rights of the Child (CRC), *General comment No. 13 (2011): Article 19: The right of the child to freedom from all forms of violence*, 17 February 2011, CRC/C/GC/13 [paras.16, 21].

250 *CRC Committee General Comment No.9* [at para.60]

251 *CRC Committee General Comment No. 13* [at para.61] states: "The Committee emphasizes that the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence. It cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity. An adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention."

252 Committee on the Rights of the Child, *General Comment No 9 (2006): The Rights of Children with Disabilities,* UN Doc CRC/C/GC/9 (2007). See: http://www.ohchr.org/english/bodies/crc/comments.htm

253 Committee on the Rights of the Child; UN Doc. CRC/C/AUS/CO/4, Op Cit.

254 Ibid.

255 Committee on the Rights of the Child, UN Doc. CRC/C/15/Add.268, Op Cit.

256 Committee on the Rights of the Child, *Concluding observations: Austria*; UN Doc. CRC/C/15/Add.98; 29-01-1999.

257 UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations* (Art. 2, Para. 1, of the Covenant), 14 December 1990, UN Doc. E/1991/23, available at: http://www.unhcr.org/refworld/docid/4538838e10.html [accessed 22 June 2010]

258 Committee on Economic, Social and Cultural Rights (CESCR) (1994) *General Comment No. 5: Persons with disabilities*, 9 December 1994, UN Doc. E/1995/22.; See also: Committee on Economic, Social and Cultural Rights; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Brazil*. UN Doc. E/C.12/1/Add.87.; 05/23/2003.

259 CESCR General Comment No.5, Op Cit.

260 See: Hunt, P. (2005) *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, paras. 48-50, UN Doc. E/CN.4/2005/51 (Feb. 11, 2005); See also: Grover, A. (2011) UN Doc. A/66/254, Op Cit.; Grover, A. (2009) UN Doc. A/64/272, Op Cit.

261 Special Rapporteur Anand Grover also clarified that: *'Informed consent invokes several elements of human rights that are indivisible, interdependent and interrelated. In addition to the right to health, these include the right to self-determination, freedom from discrimination, freedom from non-consensual experimentation, security and dignity of the human person, recognition before the law, freedom of thought and expression and reproductive self-determination. All States parties to the International Covenant on Economic, Social and Cultural Rights have a legal obligation not to interfere with the rights conferred under the Covenant, including the right to health. Safeguarding an individual's ability to exercise informed consent in health, and protecting individuals against abuses (including those associated with traditional practices) is fundamental to protecting these rights.'* Grover, A. (2009) UN Doc. A/64/272, Op Cit.

262 Grover, A. (2009) UN Doc. A/64/272, Op Cit.

263 Grover, A. (2011). UN Doc. No: A/66/254, Op Cit.

264 From 2007 until December 2010, the Northern Territory Intervention (NTI) legislation suspended the operation of Australia's legal protection from racial discrimination, the Racial Discrimination Act 1975 (Cth) (RDA), to acts done under, or for the purposes of, the NTI. See: http://www.hrlrc.org.au/files/Fact-Sheet-2-NT-Intervention.pdf

265 As far back as 1999, the CERD Committee was identifying forced sterilisation of women belonging to indigenous communities as a matter of great concern. See for eg: Committee on the Elimination of Racial Discrimination; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Peru*; UN Doc. CERD/C/304/Add.69

266 Shirane, D. (2011) *ICERD and CERD: A Guide for Civil Society Actors*. International Movement Against All Forms of Discrimination and Racism (IMADR); IMADR Geneva Office, Switzerland.

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[267] Committee on the Elimination of Racial Discrimination; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Mexico*; UN Doc. CERD/C/MEX/CO/15; 4 April 2006.

[268] Committee on the Elimination of Racial Discrimination; *Concluding observations of the Committee on the Elimination of Racial Discrimination: Slovakia*; UN Doc. CERD/C/65/CO/7; 10 December 2004.

[269] International Conference on Population and Development (ICPD) Programme of Action, *Summary of the Programme of Action*. See: http://www.un.org/ecosocdev/geninfo/populatin/icpd.htm

[270] The MDGs serve as a time-bound, achievable blueprint for reducing poverty and improving lives agreed to by all countries and all leading development institutions. They guide and focus development priorities for governments, donors and practitioner agencies worldwide. For more information go to: http://www.un.org/millenniumgoals/

[271] The need for special protections guaranteeing a woman's right to informed consent is reinforced by the Beijing Declaration. Any requirement for preliminary authorisation by a third party is a violation of a woman's autonomy. See: United Nations, *The Beijing Declaration and the Platform for Action:* Fourth World Conference on Women, Beijing, China, 4-15 September 1995; A/CONF.177/20/Add.1.; See also: Grover, A. (2009) UN Doc. A/64/272, Op Cit.

[272] United Nations General Assembly (2000) Resolution adopted by the General Assembly: Further actions and initiatives to implement the Beijing Declaration and Platform for Action. Twenty-third special session, UN Doc. A/RES/S-23/3

[273] United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) (2007) *Biwako Plus Five: Further Efforts Towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific.* As adopted by the High-level Intergovernmental Meeting on the Midpoint Review of the Asian and Pacific Decade of Disabled Persons, 2003-2012, on 21 September 2007. UN Doc. E/ESCAP/APDDP(2)/2.

[274] United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) (2002) *Biwako Millennium Framework for Action towards an Inclusive, Barrier-free and Rights based Society in Asia and the Pacific*. UN Doc. E/ESCAP/APDDP/4/Rev.1.

[275] See for eg: The National Disability Strategy (NDS); National Disability Insurance Scheme (NDIS); National Plan to Reduce Violence against Women and their Children 2010-2022; Australia's Human Rights Framework; National Women's Health Policy (NWHP); National Framework for Protecting Australia's Children 2009–2020

[276] See: Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011;

[277] Australian Law Reform Commission (2012) *Family Violence and Commonwealth Laws—People with Disability*. Access online December 2012 at: http://www.alrc.gov.au/CFV-disability

[278] European Court of Human Rights; *I.G. and Others v. Slovakia*; (Application no. 15966/04); Judgement, Strasbourg; 13 November 2012.

[279] European Court of Human Rights, case of *V. C. v Slovakia*, Application No 18968/07 (judgement delivered on 8 November 2011).

[280] Centre for Reproductive Rights (17 September 2012) *Correspondence to the United Nations Committee on the Elimination of Discrimination against Women; Re: Supplementary Information on Chile*, scheduled for review by the U.N. Committee on the Elimination of Discrimination against Women during its 53rd session (October 2012). Accessed online January 2013 at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CentroDeDerechosReproductivos_ForTheSession_Chile_CEDAW53.pdf

[281] See: Southern Africa Litigation Centre (30 July 2012) *Namibia: High Court Finds Govt Coercively Sterilised HIV Positive Women*. Accessed on line August 2012 at: http://allafrica.com/stories/201207301026.html

[282] Kibira, H. (23 August 2012) *Kenya: Women Seek Justice Over Sterilisation*. The Star. Accessed online January 2013 at: http://allafrica.com/stories/201208240201.html

[283] Tegel, S. (November 8, 2011) *Peru: forced sterilization cases reopened*. The Global Post; Accessed online January 2013 at: http://www.globalpost.com/dispatch/news/regions/americas/111107/peru-abuse-cases-reopened

[284] Sepúlveda, L. (25 July 2012) *Forced Sterilization Preys on Women with HIV-AIDs*. In Women's ENews. Accessed online January 2013 at: http://womensenews.org/story/hivaids/120726/forced-sterilization-preys-women-hiv-aids#.UTbOQDCnB8E See also: *F.S. V Chile* at: http://reproductiverights.org/en/lbs-fs-vs-chile

[285] REDRESS is an organisation founded by a British torture survivor in 1992. Since then, it has consistently fought for the rights of torture survivors and their families in the UK and abroad. See: www.redress.org

[286] International Federation for Human Rights (FIDH) and REDRESS (27 February 2013) *Nobel Prize nominee and human rights defender Mutabar Tadjibayeva files key complaint against Uzbek government for forcible sterilisation and torture*. Accessed online February 2013 at: http://www.redress.org/downloads/PressreleaseMutabar-270213.pdf

[287] Nelson, R. (14 January 2013) *Transgender People in Sweden No Longer Face Forced Sterilization*. TIME Newsfeed, Accessed February 2013 at: http://newsfeed.time.com/2013/01/14/transgender-people-in-sweden-no-longer-face-forced-sterilization/; See also: Cussins, J. (25 January 2013) *Sweden Repeals Forced Sterilization for Transgender People*. Accessed February 2013 at: http://www.psychologytoday.com/blog/genetic-crossroads/201301/sweden-repeals-forced-sterilization-transgender-people

[288] United Nations General Assembly (2006) *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. UN Doc. A/RES/60/147. See also: Office of the United Nations High Commissioner for Human Rights and the International Bar Association (2003) *Human Rights In The Administration Of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*. Professional Training Series No. 9; OHCHR, Geneva.

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289 See UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, 2200A (XXI) United Nations, Treaty Series, vol. 999, p. 171; also Office of the United Nations High Commissioner for Human Rights and the International Bar Association (2003) Op Cit.

290 Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit., Nowak, M. (2008) UN Doc. A/HRC/7/3; Op Cit.

291 Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.

292 'Transitional justice' refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses. The different elements of a comprehensive transitional justice policy are not parts of a random list, but rather, are related to one another practically and conceptually. The core elements are: *Criminal prosecutions*, particularly those that address perpetrators considered to be the most responsible; *Reparations*, through which governments recognise and take steps to address the harms suffered. Such initiatives often have material elements (such as cash payments or health services) as well as symbolic aspects (such as public apologies or day of remembrance); *Institutional reform* of abusive state institutions such as armed forces, police and courts, to dismantle—by appropriate means—the structural machinery of abuses and prevent recurrence of serious human rights abuses and impunity; *Truth commissions* or other means to investigate and report on systematic patterns of abuse, recommend changes and help understand the underlying causes of serious human rights violations. For more information see: http://ictj.org/about/transitional-justice

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294 See Potts, H. (undated) *Accountability and the Right to the Highest Attainable Standard of Health*. Human Rights Centre, University of Essex, UK.

295 Dowse, L. & Frohmader, C. (2001) Op Cit.

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297 Committee on the Elimination of Discrimination against Women (2010) UN Doc. CEDAW/C/AUS/CO/7, Op Cit. See also: Australian Human Rights Commission (2012) *The Involuntary or Coerced Sterilisation of People with Disabilities in Australia*, Australian Human Rights Commission Submission to the Senate Community Affairs References Committee.

298 Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: Peru*. UN Doc. CRPD/C/PER/CO/1; 9 May 2012.

299 Committee on the Rights of Persons with Disabilities; *Concluding observations of the Committee on the Rights of Persons with Disabilities: China*. UN Doc. CRPD/C/CHN/CO/1; 27 September 2012.

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301 Méndez, Juan. E, (2013) UN.Doc A/HRC/22/53, Op Cit.,

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303 European Court of Human Rights; *I.G. and Others v. Slovakia*; (Application no. 15966/04); Judgement, Strasbourg; 13 November 2012. European Court of Human Rights, case of *V. C. v Slovakia*, Application No 18968/07 (judgement delivered on 8 November 2011). Centre for Reproductive Rights (17 September 2012) *Correspondence to the United Nations Committee on the Elimination of Discrimination against Women; Re: Supplementary Information on Chile*, scheduled for review by the U.N. Committee on the Elimination of Discrimination against Women during its 53rd session (October 2012). Accessed online January 2013 at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CentroDeDerechosReproductivos_ForTheSession_Chile_CEDAW53.pdf See: Southern Africa Litigation Centre (30 July 2012) *Namibia: High Court Finds Govt Coercively Sterilised HIV Positive Women*. Accessed on line August 2012 at: http://allafrica.com/stories/201207301026.html; Tegel, S. (November 8, 2011) *Peru: forced sterilization cases reopened*. The Global Post; Accessed online January 2013 at: http://www.globalpost.com/dispatch/news/regions/americas/111107/peru-abuse-cases-reopened

304 The Aquinas Program: Truth in Society 2008-2009, *Leilani Muir and the Alberta Government,* accessed online February 2013 at: http://people.stu.ca/~truth/0809/reports/eugenics.pdf; See also: *Leilani Muir successfully sues Alberta govt for wrongful sterilization*, The Current, Monday, November 14, 2011. Accessed online February 2013 at: http://www.cbc.ca/thecurrent/episode/2011/11/14/leilani-muir-successfully-sues-alberta-govt-for-wrongful-sterilization/

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311 Somasundaram, D., cited in REDRESS (September 2010) *Rehabilitation as a Form of Reparation: Opportunites and Challenges Workshop Report*, Accessed online February 2013 at: http://www.redress.org/downloads/publications/Report_of_the_Expert_Seminar_on_Rehabilitation_October_2010.pdf

FOOTNOTES

[312] CRPD Article 26 (Habilitation and rehabilitation) states:

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

(a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

(b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. tates Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

[313] UN General Assembly (2000) *Further actions and initiatives to implement the Beijing Declaration and Platform for Action.* Resolution adopted by the General Assembly: S-23/3.A/RES/S-23/3 [para.27].

[314] Women With Disabilities Australia (WWDA) (2009) *Parenting Issues for Women with Disabilities in Australia: A Policy Paper*. OpCit.

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[316] Dowse, L. and Frohmader, C. (2001) Op Cit.

[317] Dowse, L. (2004) *'Moving Forward or Losing Ground? The Sterilisation of Women and Girls with Disabilities in Australia'*. Paper presented to Disabled Peoples' International (DPI) World Summit, Winnipeg, September 8-10, 2004. Available online at: http://www.wwda.org.au/steril3.htm ; Steele, L. (2008) Making sense of the Family Court's decisions on the non-therapeutic sterilisation of girls with intellectual disability; *Australian Journal of Family Law*, Vol.22, No.1.; Prilleltensky, O. (2003) A Ramp to Motherhood: The Experiences of Mothers with Physical Disabilities. *Sexuality and Disability,* Vol. 21, No. 1, pp. 21-47.

[318] See for example: the Sexuality Education Counselling and Consultancy Agency (SECCA) in Western Australia, provides education and training workshops which are able to be customised. One example is the 'Menstrual Management, Personal Hygiene & Sexual Health' Training Workshop which aims to 'provide participants with strategies to teach women with a disability, their carers and other health professionals a positive approach to menstruation'. SECCA also provides a one-on-one specialist counselling and education service in the area of human relationships and sexuality to people who have a disability, their family and significant carers.

[319] Women With Disabilities Australia (2011) *Submission to the Preparation Phase of the UN Analytical Study on Violence against Women and Girls with Disabilities* (A/HRC/RES/17/11). Available online at: http://www.wwda.org.au/viol2011.htm

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