

ISSUE PAPER 03***FORCED AND COERCED STERILIZATION
OF WOMEN LIVING WITH HIV***

The forced and coerced sterilization of women living with HIV is a serious violation of women's fundamental human rights to bodily integrity, informed consent and to make our own reproductive choices. Sterilization without informed consent or under coercion is a widespread form of institutionalized violence against women and is part of a systemic pattern of violations of sexual and reproductive rights experienced globally by women living with HIV. The International Community of Women Living with HIV (ICW) has been at the forefront of documenting women's experiences of forced and coerced sterilization and undertaking advocacy to challenge and eliminate this violative practice at the global, regional and national levels.

What is Forced and Coerced Sterilization?

Voluntary and freely chosen sterilization is an appropriate form of family planning for those women and men who do not wish to become pregnant or to have children. Sterilization that takes place involuntarily, meaning without the full, free and informed consent of the woman herself is a violation of her human rights. Additionally coerced sterilization, for example sterilization that has been compelled in exchange for incentives such as loans or cash payments; or access to nutrition or other services or supports or is a result of persuasion via unequal power dynamics, misinformation, exaggeration of the risks, abuse or discrimination also constitutes a serious violation of fundamental human rights.

Women from around the world have reported these violations, but despite differences of geography, the stories of women living with HIV who have experienced coercive or forced sterilization are shockingly similar and are frequently reported in the context of prevention of vertical transmission. The United Nations High Commission on Human Rights and UNAIDS have also highlighted concerns about the use of forcible and coercive measures in the context of prevention of vertical transmission and in particular the counterproductive outcome of coercive measures in terms of meeting public health goals.

Women living with HIV report being sterilized during delivery via caesarean section for the purposes of prevention of vertical transmission of HIV to the baby or while undergoing other surgical procedures. They routinely report being asked to sign papers or verbally consent to sterilization while in labour, or health care workers obtaining consent for the procedure from their husbands or fathers. Women living with HIV frequently experience discriminatory practices such as refusal to provide services, hostile attitudes towards women who seek to have children, stigmatization at hospitals and medical centers by health care providers and staff and breaches of confidentiality. In some cases, women living with HIV report being offered nutrition or cash supports and services in exchange for undergoing sterilization. Women living with HIV report fear that they will be denied lifesaving medicines or treatments if they do not undergo sterilization. Many women report that they do not even learn that they have been sterilized without their consent until they are trying to have another child.

Justifications for these violations of rights are based on a lack of respect for the autonomy of women, misinformation, discriminatory attitudes and stigma and are unacceptable as public health rationales. Thanks to prevention of vertical transmission practices including proper medication, treatment and prevention practices such as infant prophylaxis the chances that women living with HIV will vertically transmit HIV to her child is quite low. Forced and coerced sterilization is under no circumstances a legitimate method of prevention of vertical transmission and sterilization is certainly not an emergency procedure that justifies suspension of rights to informed consent.

The consequences of undergoing forced or coercive sterilization can be devastating for women living with HIV, undermining their self worth and sense of identity as women and mothers and limiting their marriage prospects and increasing their vulnerability to intimate partner violence. Women who cannot have children in some societies are marginalized and experienced diminished social status, which can have a negative impact on women's mental health and well-being.

A Global Phenomenon

Forced or coerced sterilization (FCS) is an egregious human rights violation that occurs within a spectrum of coercive practices that deny the autonomy of women living with HIV to exercise their sexual and reproductive rights, including forced and coerced abortion and contraception, misinformation and abuse. The forced and coerced sterilization of women living with HIV is a pervasive global phenomenon, and has been reported by women living with HIV along with other coercive practices in – Bangladesh,⁵ Botswana,⁶ Brazil,⁷ Cambodia,⁸ Chile,⁹ China,¹⁰ Democratic Republic of Congo,¹¹ Dominican Republic,¹² El Salvador,¹³ Fiji,¹⁴ Honduras,¹⁵ India,¹⁶ Indonesia,¹⁷ Kenya,¹⁸ Malawi,¹⁹ Mexico,²⁰ Mozambique,²¹ Namibia,²² Nepal,²³ Nicaragua,²⁴ Pakistan,²⁵ Philippines,²⁶ South Africa,²⁷ Sri Lanka,²⁸ Swaziland,²⁹ Tanzania,³⁰ Thailand,³¹ Uganda,³² Ukraine,³³ Venezuela,³⁴ Viet Nam,³⁵ and Zambia.³⁶ Forced and coerced sterilization is a part of a wider practice of coercive practices that violate the sexual and reproductive rights of women living with HIV.

Gender inequalities and unequal power dynamics inherent within societies around the world—and particularly in the provision of health care services—make it challenging for women to assert their reproductive rights and ultimately to have their autonomy and decision-making respected. Pervasive stigma and discrimination against women living with HIV, inadequate legal and policy frameworks to prohibit this violative practice, and a lack of mechanisms to help women seek justice and hold those responsible accountable have created an environment where the forced and coerced sterilization of women living with HIV continues almost unfettered. The widespread nature of these practices demands a strong and coordinated response at the national, regional and global levels.

A Violation of Fundamental Human Rights

The forced or coerced sterilization of women living with HIV violates a number of fundamental human, sexual and reproductive rights as well as accepted principles of medical ethics. Critically, the practice violates rights to bodily integrity, full, free and informed consent and the right of women living with HIV to marry,³⁷ have a family and to decide freely on the number and spacing of their children.³⁸ The forced and coerced sterilization of women living with HIV violates governmental obligations to respect, protect and fulfill the right to the highest attainable standard of physical and mental health. Forced and coerced sterilization has also been recognized both as a form of violence against women and as a form of torture, violating women's rights to be free from cruel, inhuman, or degrading treatment or punishment.³⁹

Full, free and informed consent requires that a woman can exercise her decision-making autonomously and is provided with full information about her reproductive options,⁴⁰ the nature, risks and consequences of the procedure and, in the absence of emergency, is provided with sufficient time to reflect upon and weigh these options. The Convention on the Elimination of Discrimination Against Women outlines that '[a]cceptable services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives.'⁴¹ Women living with HIV have the right to full and informed consent to any medical procedures and testing and to make autonomous decisions about their reproductive choices.

The International Federation of Gynecology and Obstetrics' Guidelines on Female Contraceptive Sterilization makes clear that 'only women themselves can give ethically valid consent to their own sterilization' and that consent should not be a condition to access to any treatment, care, support, benefit or '*when women may be vulnerable, such as when requesting termination of pregnancy, going into labor or in the aftermath of delivery.*'⁴²

Despite increased awareness of the practice and public condemnation the forced and coerced sterilization of women living with HIV continues. ICW demands a strong and coordinated response at the national, regional and global levels to eliminate this practice once and for all.

Recommendations

ICW calls on governments, health care providers, and medical professionals to:

1. Take decisive and immediate action to prohibit this practice and create accountability mechanisms to hold perpetrators accountable;
2. Require mandatory training for all personnel who provide health care services on gender equality, autonomy, human rights and informed consent;
3. Secure sexual and reproductive rights for all women living with HIV;
4. Ensure that women living with HIV have access to justice via the development of mechanisms where women who have experienced human rights abuses will have a forum to report these violations and to seek and obtain redress.
5. Compensate women living with HIV who have experienced sterilization, provide avenues for medical examinations for women who believe that they may have been sterilized, offer medical reversals for those women whose situations permit.
6. Ensure that policy or regulatory prohibitions on adoption for people living with HIV are reformed;
7. Develop and implement ethical standards for health care providers that respect the autonomy and agency of women living with HIV and set forth specific standards to prevent violations of sexual and reproductive health and rights;
8. Support networks of women living with HIV to educate other women about their rights to empower them in their exchanges with health care workers.

Endnotes

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- 12 Human Rights Watch A Test of Inequality: Discrimination against Women Living with HIV in the Dominican Republic 2004 available at <http://www.hrw.org/sites/default/files/reports/dr0704.pdf>
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- 18 At Risk Rights Violations of HIV-Positive Women in Kenyan Health Facilities, Center for Reproductive Rights 2008 Available at: <http://reproductiverights.org/sites/crr.civicactions.net/files/documents/At%20Risk.pdf>: Kasiva F, Kii G.; See also Robbed of Choice: Forced and coerced sterilization experiences of women living with HIV in Kenya. Nairobi, African Gender and Media Initiative, 2012.
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- 27 *Id.*
- 28 Busting the myth that sterilization can end AIDS available at <http://www.ohchr.org/EN/NewsEvents/Pages/ForcedSterilization.aspx>
- 29 ICW Southern Africa Member Reports; Member Network Swaziland Network for People Living with HIV/AIDS (SWANEPHA) Swaziland: HIV Stigma Still a Barrier available at <http://www.irinnews.org/report/96761/swaziland-hiv-stigma-still-a-barrier>
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- 39 CESCR General Comment 14, supra note 64, at P 8.
- 40 Rep. on the Comm. on the Elimination of Discrimination against Women, General Recommendation 21: Equality in Marriage and Family Relations, 13th Sess, Apr. 12, 1994, P 22, U.N. Doc. A/49/38, GAOR, 48th Sess., Supp. No. 38 (1994) [hereinafter CEDAW General Recommendation 21].
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