



The Forced and Coerced Sterilization of HIV Positive Women in Namibia

The International Community of Women Living with HIV/AIDS (ICW)

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About ICW

The International Community of Women Living with HIV/AIDS (ICW) is the only global network of HIV positive women. Research and fact finding conducted by ICW is principally done for and by HIV positive women. For more information on ICW see www.icw.org.



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“Before I found out I was HIV positive and I was having a child I was okay. But after I tested positive they treated me badly. They said ‘why do you want to have a baby if you are HIV positive?’” —Positive Woman, Namibia, 2008

Introduction

Women face violations of their reproductive rights at an alarming frequency.ⁱ Being both women and HIV positive renders positive women especially vulnerable to human rights violations, particularly violations of sexual and reproductive health and rights. HIV positive women from around the world have spoken out about the many sexual and reproductive health rights violations they continually face.ⁱⁱ These include forced and coerced sterilization,ⁱⁱⁱ refusal to provide services, hostile attitudes towards HIV positive women who seek to have children, stigmatization at hospitals by hospital staff, breaches of confidentiality, and testing for HIV without informed consent.^{iv} Many of these violations occur during the provision of health services and are perpetrated by health service personnel. Poverty, geographical location, employment, age, migration status, sexuality, and other factors compound the vulnerability faced by HIV positive women.

In this report the International Community of Women Living with HIV/AIDS (ICW) focuses on women in Namibia who have experienced forced and coerced sterilization because they are HIV positive. The Namibia forced sterilization project was initiated at a Young Women’s Dialogue^v held in Namibia when 3 of the 30 participants stated that they may have been sterilized. This alarming fact initiated a series of focus groups and interviews that did in fact suggest that HIV positive women were being coerced or forced into sterilization by hospital staff in significant numbers. ICW realized that the forced sterilization was part of a broader range of discriminations faced by HIV positive women in sexual and reproductive health services and particularly against positive women who are pregnant or desire children. ICW decided to initiate a project to identify women who have experienced this form of discrimination, assist women in seeking redress for wrongs committed against them, and advocate for the end of coerced sterilization in Namibia.

The forced and coerced sterilization of positive women violates numerous rights guaranteed under the Namibian Constitution, Namibia’s obligations under International law and Namibia’s regional human rights obligations under the African Charter on Human and People’s Rights and the Protocol on the Rights of Women in Africa. Namibia has ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Elimination of Discrimination Against Women (CEDAW); and the Convention Against Torture (CAT).^{vi} These international treaties are legally binding and obligate the Namibian government to respect, protect, and fulfill these rights for people living in Namibia. These obligations include the right to information, the right to health, the right to bodily integrity, the right to non-discrimination, the right to equality, the right to live free from inhuman and degrading treatment, the right to non-interference in one’s privacy, the right to health, and the right to reproductive self-determination.^{vii}

This report both outlines the experiences of women within reproductive health services that led to their coerced or forced sterilization and the impact on their emotional and personal lives and articulates the rights violations occurring at the hands of the state. It includes the voices of women who were encouraged to be sterilized due to their positive status but did not follow up to complete the procedure. This report, based on the stories of women whose rights have been violated, demonstrates that the government of Namibia is complicit in the unethical practice of sterilizing positive women.

HIV/AIDS in Namibia

The population of Namibia is approximately 2 million.^{viii} The HIV prevalence is currently 15.3% with women accounting for more than half of all HIV infections in Namibia (55%).^{ix} In 2006 the Namibian government reported that 19.9% of all pregnant women tested HIV positive.^x However, treatment and care services for women and men living with HIV are currently inadequate. Though 85% of all individuals in need of ARVs in Namibia were receiving ARVs in 2007^{xi} only 65% of Namibian women in need of PMTCT are currently receiving them.^{xii} It has been demonstrated that some PMTCT regimens can decrease HIV transmission from mother to child from 32% to less than 2%.^{xiii}

Methodology

This research was conducted between 21st January 2008 and 22nd of April 2008 with a total of 230 HIV positive women. Women participated in focus groups and interviews about their experiences of discrimination and sterilization and were simultaneously educated and trained on human rights in regards to health services. Focus group discussions and interviews were conducted by staff and volunteers of the International Community of Women Living with HIV/AIDS (ICW) and the Namibian Legal Assistance Centre (LAC). Women were identified for focus group discussions through existing community support groups. Women who were victims of egregious violations, including sterilization, were interviewed individually and their cases referred to the Legal Assistance Centre who are assessing cases for litigation and follow up accordingly. Of the 230 trained women, **most** reported some form of discrimination in health services and 40 (nearly 20%) stated that they had been coerced or forced into sterilization. While the purpose of this fact-finding was to identify and speak to women who had experienced discrimination, during the period of research ICW staff also met with available hospital doctors and administrators to explore their knowledge and involvement in forced and coerced sterilization. Where relevant those discussions are included in this report.

Findings of Focus Groups and Individual Interviews with HIV positive women in Namibia

This section of the report outlines issues surrounding forced and coerced sterilization as articulated by HIV positive women.

Violations of: The Right to Bodily Integrity, Security of Person, Dignity, and Protection from Torture, Cruel, Inhuman and Degrading Treatment

I only agreed [to tubal ligation] because I had no choice but I was thinking what if they find a medication one day – the possibility of having a child one day? This was going on in my mind. From that time I went through a lot of emotional confusion. Now I am on treatment for a psychiatric problem. I get treatment every month. When I stop I start headache and I can not sleep. —Positive Woman, Namibia, 2008

Sterilization without consent

Many of the women who participated in ICW focus groups stated that sterilization has been recommended to them. Of these women 40 said that they had been sterilized against their will and without proper consent.

As reported by women, the reasons cited by health care personnel for encouraging sterilization included prior caesarian sections or miscarriages, status as single or widowed, unemployment, already has children, poor health, and/or complications with ARVs. One woman reported that she was asked by a provider what she felt she had to offer a baby “*given that she was unemployed and without a partner.*” No reason for sterilization warrants the procedure without the full informed consent of the woman. Women who reported being sterilized or pressured to be sterilized stated that they sensed a direct correlation between their HIV status and their being encouraged to be sterilized.

Emotional Distress and Impact on Mental Health

Sterilizing a woman when she does not fully understand the consequences of the procedure and when she does not feel fully in control of the decision can cause untold emotional distress. For the women interviewed, the emotional impact of sterilization was not only a result of their own anguish but also a product of the reactions of their immediate and extended families to the news of the sterilization. Women received varying levels of support from family and partners after sterilization had occurred. Some women were unable to tell their relatives for fear of the reaction or experienced heightened stress in relation to telling family members or their sexual partner(s). Others had the decision to tell others wrested out of their control because indiscreet health care workers informed family members.

Women expressed particular worry about informing both current and future sexual partners with whom they may have liked to have children. For many women in Namibia,

having children is an important part of claiming a full and fulfilling life. HIV positive women should not be excluded from this aspect of life. Family or social norms about having children also mean that child-bearing generally gives women a higher social status, whereas women who do not have children may be stigmatized or abandoned by male partners in favour of a woman who is perceived to be able to produce offspring. Women who were sterilized expressed a loss at the inability to have children with future partners or husbands. As one woman expressed:

I almost forget what happened because of counselling but from 2007 I started to think about having a baby – and how can I do it if this has been done. It has caused me a problem. When I have a boyfriend who marries me – when I am stopped to have birth how can he accept this issue? —Positive Woman, Namibia, 2008

Violations of: The Right to Equality and Non Discrimination

I have seen a lot of stigma from health worker. I tried to ask something now that I am HIV and pregnant what can I do but they ignored me. But another patient helped me, gave some counselling and basic info about HIV. The nurse said you are HIV and you are pregnant, your baby already die. —Positive Woman, Namibia, 2008

Discriminating Against Positive Women

When a health care provider does not ensure that an HIV positive woman is allowed to make her own, fully informed decisions in a safe, comfortable and confidential environment, this violates a woman's sexual and reproductive rights. Mirroring the perspective of many societies, the view amongst many service providers in Namibia is that HIV positive women should not have children. Discrimination comes from all levels of hospital staff including receptionists, doctors, and nurses.

Interviews with health care providers demonstrated that HIV positive women, particularly women who become pregnant, are often viewed as irresponsible and incapable of managing their own health care needs and those of their families. Doctors interviewed by ICW in Oshikoto Hospital articulated discriminatory views against HIV positive women. These doctors felt that some patients could not manage their own health care needs and therefore doctors should be authorized to make decisions on behalf of HIV positive women. One doctor remarked that he is protecting the needs of the “community” when he makes decisions to sterilize on behalf of positive women. Doctors also expressed the belief that women did not know how best to care for their own bodies or did not understand the information that was given to them. One doctor at Katutura State Hospital justified her ill-treatment of HIV positive patients by claiming that patients' health passports are “dirty” and that the patients themselves “do not wash”.

“The hospital staff said to us you are not supposed to have more kids because there is no-one supporting you. You cannot support yourself or your kid so it is best if you are sterilized.” —Positive Woman, Namibia, 2008

At Katatura State Hospital (in the Capital City, Windhoek) the widespread feeling that HIV positive women should not have children manifests in the numerous tubal ligations performed on HIV positive women. One of the women interviewed by ICW was told that tubal ligation was standard procedure for HIV positive women accessing caesarean sections at Katatura State Hospital. In the Oshikoto region tubal ligation is reportedly the dominant recommendation for HIV positive women who already have children or experience ill-health. HIV positive women in Oshikoto stated that the fear of being recommended for sterilization often discourages them from seeking services in the hospital.

My main concern is how the hospital will treat me because I refused sterilisation. They know I am HIV positive and I am afraid now. I want to plan a child if I have another and not because condom burst. —Positive Woman, Namibia, 2008

The attitudes of health care providers, coupled with a lack of power amongst positive women in health care settings, contribute to staff members exerting their power to determine HIV positive women's health care needs for them.

Pressure to Use Injectable Contraceptives

Discrimination against HIV positive women in relation to childbirth also surfaces through pressure to use other contraceptives including Depo-Provera, an injectable hormonal contraceptive.

In my case they said I must have injection – I am HIV positive and I am not working – what will you give the child and so I agreed. —Positive Woman, Namibia, 2008

Many positive women, due to power dynamics within the health services and lack of full information, feel that they cannot refuse injectable contraceptives. Women who do not feel that they can decline services often choose not to return to health care facilities as they are fearful that it would result in procedures without consent or consultation. One woman stated that she was encouraged to take injectable contraceptives and therefore did not return for follow-up injections as she still wanted to have another child. Women stated that the side effects and drug interactions of injectable contraceptives were not discussed.

Other examples of discrimination were also highlighted by positive women including:

- In Otjiwarongo HIV positive women were told to stand at the back of the line when they lacked the money needed for health services.
- Telling HIV positive women that they should not be pregnant because they are HIV positive (both to the woman directly during consultations and in public spaces including reception areas).
- Keeping separate waiting areas for HIV positive and negative patients.

- In one case, a woman was given an abortifacient by a nurse who felt that the patient should not be pregnant. The patient only realized what had happened when a physician came into the treatment area and chastized the nurse.

Violations of: The Right to Information and Informed Consent

Unfortunately there was one sterilisation form that I was not aware of and I had already signed it. —Positive Woman, Namibia, 2008

The right to information and informed consent is integral to respecting a woman’s sexual and reproductive rights. The following scenarios reported to ICW and LAC represent the range of ways women described their experience of sterilization. In all of these cases, medical personnel failed to provide the women with a full description of the nature of the procedure, its effects, consequences, and risks associated with sterilization.

Failure to obtain consent

Tubal ligation is sometimes performed without the knowledge of the service user. A number of our interviewees reported only finding out when they checked their health passports or accessed family planning services.

Demanding consent for sterilization to access other necessary services including abortion and delivery

I was admitted for a pregnancy and the doctor came to tell me I am HIV positive and I was confused and I took the poison [overdose]. They say when we do this abortion we will also do BTL [bilateral tubal ligation]. I say no I don’t want. If you don’t want it we can not do the abortion. I am stuck. Later I agree to sign the form for operation – not my will. —Positive Woman, Namibia, 2008

Women stated that they were asked to sign a tubal ligation consent form in order to access other services including abortion and caesarean section. In two cases women were required to sign forms authorizing tubal ligation to receive assistance with childbirth. “Consent” forms are required for sterilization prior to the administration of the abortion, delivery, or other service:

- A 31 year old HIV positive woman from Goreagab Dam was sterilized at Katatura State Hospital after being told that if she wanted help delivering her baby she would need to give consent to be sterilized. She was told that help was necessary because the baby was larger than a normal child.
- A 29 year old woman from Havana was also told that her large baby would require birthing assistance and that none would be provided unless she consented to sterilization.

- A third interviewee stated that after being told by health staff that she would need help with birthing due to the large size of the baby, health staff refused to proceed unless she agreed to be sterilized.

Consent under duress

Alongside obtaining “consent” while a woman is in labor, seeking consent shortly after the diagnosis of one’s HIV positive status also constitutes obtaining consent under duress.

Women in Namibia are routinely tested for HIV when they access ante-natal clinics (ANCs). Testing HIV positive when pregnant is extremely traumatic and if counseling is not given the results can be grievous. One woman reported that she attempted suicide by ingestion of pills shortly after learning her positive status without post-test counseling. As a result of potential harm to the fetus due to the overdose of medication the physicians recommended abortion but offered the service contingent on her agreeing to be sterilized.

Demanding and/or obtaining consent for sterilization without providing information about sterilization

In a number of circumstances women were not told what form they were signing and/or what the implications of the procedure are. One woman had no idea that a tubal ligation would prevent her having children in the future until informed by the members of her support group.

Demanding and/or obtaining consent for sterilization without providing other options

Lack of information on alternative methods of family planning, PMTCT and safe motherhood during and after pregnancy: tubal ligation is presented as being the main or only option. This lack of information was exacerbated by language difficulties in some cases.

Misinformation in order to obtain consent for sterilization

In some instances women are told that they are putting the health and lives of future children at risk. Creating mental anguish and inspiring guilt, HIV positive women are coerced into agreeing to procedures they otherwise would not consent to. For example, women were told that future children will die during birth due to HIV.

Inability to speak languages leads to misinformation and miscommunication

Many doctors are not from Namibia and do not speak native languages. Often no translators are available. These language barriers lead to a lack of communication due to inability to communicate with patients. An inability to communicate in the same language contributes to a lack of informed and consensual hospital treatment.

Recording misinformation on medical passports

Medical passports often did not reflect the health care concerns of the women interviewed. In one instance a woman’s passport stated that she requested tubal ligation. In fact, the woman had not requested tubal ligation and was surprised to learn that her passport stated that she had made this request given that she desired more children.

Denial of access to medical records

In Oshikoto the doctors we talked to said that HIV positive women were only provided access to their medical records under the doctors' supervision and only if their patient explained what the information was needed for. Reasons that would not warrant viewing one's medical record included potential lawsuits. Denying women access to medical records post – sterilization meant that many women are unable to effectively seek physical and legal remedies to their sterilization. Often women were unable to read their passports due to a lack of literacy skills.

Misinformation from health care staff

Several interviewees were led to believe that it was necessary to be sterilized due to one's HIV status or that HIV positive women are unable to bear healthy children. This misinformation contributed to an inability to give full informed consent.

Violations of: confidentiality

Women interviewed by ICW cited several examples of violations of confidentiality. For example, lack of ability to speak local languages results in auxiliary hospital staff being asked to translate. In one case, translation was provided by a hospital cleaner. In the hospital reception, HIV positive women complained that they often had to identify themselves as such and be placed in a separate waiting area and saw this as a means of discriminating against HIV positive women. Compromises in confidentiality were common and lead to misinformation and mistrust.

International and Domestic Law and Policy: Analysis of Facts and Rights Violations

When I was in hospital I asked one of the nurses I am HIV and pregnant and she referred me to casualty. The people there instead of helping said - you know you [are] HIV positive probably your baby is already dead. —Positive Woman, Namibia, 2008

ICW’s fact-finding has determined that there are ongoing violations of women’s reproductive rights including the sterilization of HIV positive women without their full informed consent. This gross violation of human rights must be seen within a culture of stigma and discrimination against HIV positive women, especially positive women who want to be or are pregnant. The following section of the report highlights the domestic and international rights violations against positive women in Namibia.

Namibia’s Obligations under Namibian Law and Policy

Constitution of Namibia

The Namibian Constitution protects the right to human dignity, to be free from cruel, inhuman and degrading treatment, equality and freedom from discrimination, and the right to found a family. These rights are violated when women are coercively sterilized. Article 6^{xiv} of the constitution states that “the right to life shall be respected and protected”; Article 8(1) states that “the dignity of all persons shall be inviolable”; Article 8(2)(b) states that “no person should be subject to torture or to cruel, inhuman or degrading treatment or punishment”;^{xv} Article 10(1) states that “All persons shall be equal before the law”; Article 10(2) states that “no persons shall be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status”;^{xvi} and finally Article 14(1) states that “Men and women....shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage, and its dissolution”.^{xvii}

Namibian National HIV/AIDS Plan

The rights enshrined in the Namibian Constitution are stated in the National HIV/AIDS Policy (2007), which articulates standards for health that meet Namibia’s obligations under international and regional treaties. The preamble of the Namibian National Policy on HIV/AIDS states that “an effective response to HIV/AIDS requires respect for, protection and fulfillment of all human, civil, political, economic, social and cultural rights...”. The government has specifically recognized the “unequal position of girls and women in society...” and further recognizes that people living with HIV/AIDS are “discriminated against and marginalized”.^{xviii} Human rights are identified as a guiding principle of the HIV/AIDS strategy and the policy points specifically to women and

young girls as a group which suffers discrimination based on HIV/AIDS. The policy states that the “rights and dignity of people living with or affected by HIV/AIDS shall be respected, protected, and fulfilled and that a conducive legal, political, economic, social and cultural environment in which the rights of people living with HIV/AIDS are respected, protected, and fulfilled shall be created.”^{xix} Elaborating on these rights the government states that “women and girls, including women living with HIV/AIDS...shall have equal access to appropriate, sound HIV-related” information, prevention,

and education programmes” prevention programs and health services “including women and youth friendly sexual and reproductive health services.”^{xx}

The national policy statement on the prevention of mother to child transmission (PMTCT) provides explicit guidance regarding discrimination against HIV positive women. The government has clearly stated that “couples, in which one or both partners are HIV positive, wanting to have a child should be provided with adequate information on the risk of mother-to-child transmission as well as the risk of re-infecting each other so that they can make an informed decision as to whether or not to have a child.” Furthermore, the national policy states that the “government shall provide free access to safe obstetric care and antiretroviral treatment to all HIV positive pregnant women to prevent HIV transmission from mother to child. PMTCT programmes shall provide for treatment, care, and support for both parents.”^{xxi}

In 2006 the Ministry of Health and Social Services issued Guidelines for Voluntary Counseling and Testing. These guidelines also articulate the need to respect human rights for HIV positive people and the community at large: “Increasingly it is recognized that public health often provides an added and compelling justification for safeguarding human rights. In the context of HIV/AIDS, an environment in which human rights are respected ensures that vulnerability to HIV/AIDS is reduced, those infected and affected by HIV/AIDS live a life of dignity without discrimination, and the personal and societal impact of HIV infection is alleviated.”^{xxii}

The reality of HIV positive women’s experiences in the health sector is drastically different from the standards that the Namibian government articulates in the National HIV/AIDS policy. Cases of forced sterilization have demonstrated that the Namibian government has failed to realize these rights or create an environment in which such rights could be realized. This report, based on the stories of women whose rights have been violated, demonstrates that the government of Namibia is complicit in the unethical practice of sterilizing positive women.

Namibia's Obligations under International and Regional Human Rights Law

Overview

Namibia has ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Elimination of Discrimination Against Women (CEDAW); and the Convention Against Torture (CAT).^{xxiii} These international treaties are legally binding and obligate the Namibian government to respect, protect, and fulfill these rights for people living in Namibia. These obligations include the right to information, the right to health, the right to bodily integrity, the right to non-discrimination, the right to equality, the right to live free from inhuman and degrading treatment, the right to non-interference in one's privacy, the right to health, and the right to reproductive self-determination.^{xxiv}

In addition to international treaties, Namibia is party to regional human rights treaties including the African Charter on Human and People's Rights ratified by Namibia on July 30, 1992.^{xxv} Namibia has also ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. This regional treaty helps clarify the scope of similar provisions from Namibia's international obligations.^{xxvi}

Support for a woman's right to accessible and appropriate reproductive health care is also supported by documents adopted at international conferences which interpret and guide the realization of legally binding treaties. These include the 1994 International Conference on Population and Development Programme of Action (ICPD) and the 1995 Fourth World Conference on Women. Specific to HIV/AIDS is the United Nations General Assembly Special Session on HIV/AIDS through which member states "pledge to eliminate gender inequalities, gender-based abuse..."^{xxvii}

The Right to Equality and Non Discrimination

The targeting of HIV positive women for sterilization and the denial of adequate and comprehensive health services discriminates against HIV positive women. The ICCPR in Article 3 articulates that "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant" which includes all men and all women. The ICESCR in Article 2(2) clarifies the need for states to respect, protect, and fulfill human rights obligations "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

CEDAW further enshrines the rights of all women in regards to health. In Article 2(e) CEDAW states that "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:...to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise".^{xxviii} Specific to health, CEDAW articulates that "States Parties shall take all

appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”^{xxxix} In General Recommendation 19 the CEDAW Committee states that “Discrimination against women includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”^{xxx} In General Recommendation 24 on “Women and Health” the CEDAW Committee acknowledges that discrimination against women be eliminated by all appropriate measures “in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”^{xxxi}

The African Charter on Human and People’s Rights articulates that “Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.” Article 18 of the African Charter calls on all States Parties to “eliminate every discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions.” The Protocol of the African Charter articulates that “States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.”

The International Guidelines on HIV/AIDS and Human Rights drafted by the United Nations Programme on HIV/AIDS (UNAIDS) and the Office of the High Commissioner on Human Rights acknowledge that “systematic discrimination based on gender also impairs women’s ability to deal with the consequences of their own infection and/or infection in the family, in social, economic, and personal terms.”^{xxxii}

The ICPD Programme of action also speaks of equality of men and women in health services and specifically states that “Governments should take effective action to eliminate all forms of coercion and discrimination in policies and practices.”^{xxxiii}

The sterilization of HIV positive women discriminates based on sex and HIV status. In order to meet its commitments and obligations to respect, protect, and fulfill human rights the Namibian government will have to stop the sterilization of positive women. The government can take active steps towards the sensitization of health care workers to the rights of HIV positive women.

The Right to Health and Reproductive Self-Determination

The right to health and the right to reproductive self-determination includes the right not be sterilized and the ability to make fully informed reproductive choices. By sterilizing HIV positive women in state hospitals without their informed consent the Namibian government has violated positive women’s right to health and reproductive self-determination.

The Universal Declaration of Human Rights (UDHR) recognizes the dignity of each member of the human family. Further the UDHR recognizes the right to an adequate standard of health. The International Covenant on Economic, Social, and Cultural Rights (ICESCR), ratified by Namibia on February 28, 1995 states the right “of everyone to the enjoyment of the highest attainable standard of physical and mental health.”^{xxxiv} General Comment 14 to the ICESCR articulates that the “right to health not be understood as a right to be healthy...The freedoms include the right to control one’s health and body including sexual and reproductive freedom.”^{xxxv} The right to health is inclusive of “the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from...non consensual medical treatment and experimentation.”^{xxxvi} Namibia’s obligations towards realizing the right to health are founded in the “progressive realization” of the rights recognized in the ICESCR. As articulated by General Comment 14 on the Right to Health the term progressive realization means that State parties have “a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization” of the right to health.^{xxxvii}

The Convention on the Elimination of All Forms of Discrimination Against Women article 12(2) articulates that “States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”^{xxxviii} In General Recommendation 19 on Violence Against Women the CEDAW Committee articulated that “Compulsory sterilization or abortion adversely affects women’s physical and mental health, and infringes the right of women to decide on the number and spacing of their children.”^{xxxix}

The right to health is also found in Article 16(1) of the African Charter on Human and People’s Rights of 1981 which states that “Every individual shall have the right to enjoy the best attainable state of physical and mental health.”^{xl} The Protocol to the African Charter on the Rights of Women in Africa articulates that “States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted. This includes: a) the right to control their fertility; b) the right to decide whether to have children, the number of children and the spacing of children; c) the right to choose any method of contraception.”^{xli}

The coerced sterilization of HIV positive women in Namibia violates HIV positive women’s right to health both in the lack of full information and services provided to women and also in the interference in a woman’s ability to access her full sexual and reproductive health rights.

The Right to Information and Informed Consent

Forced and coerced sterilization in Namibia represents the failure of the health care workers to give full information and obtain fully informed consent from women prior to sterilization.

General Comment 14 on the right to health states that the right to health includes the right to be free from “non-consensual medical treatment.”^{xlii} In accordance with this obligation, when making family planning decisions HIV positive women must be provided with complete and full information about the healthcare options available. These must be presented in an understandable way and all known risks involved and available alternatives must be presented. Further, consent can only be sought from a woman when she has been given appropriate time to consider the information presented and is in a state of mind to make the decision. This specifically precludes instances where the woman may be under anesthesia or in labor.

When making family planning decisions HIV positive women must have complete and full information about family planning . Further, they must be presented in an understandable way and all known risks involved and available alternatives must be presented. Consent can only be sought from a woman when she has had time to think about the information presented and is in a right state of mind to make the decision (i.e. she is not under anesthesia or in labor). A woman cannot consent to sterilization without full information about her health and the specifics of what sterilization means and full understanding of the procedure’s ramifications.

In Article 11(1)(h) CEDAW calls to governments to increase “access to specific educational information to help ensure the health and well-being of families, including information and advice on family planning.”^{xliii} CEDAW art. 16(e) specifies that “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women... the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.” Information is necessary for informed consent.^{xliv} CEDAW’s General Recommendation 24 states that “state parties should not permit forms of coercion, such as non-consensual sterilization...”^{xlv} Furthermore, General Comment 14 states that the Committee has interpreted the right to health as inclusive of “access to health-related education and information, including on sexual and reproductive health.”^{xlvi} By denying HIV positive women full information about their reproductive choices the government has failed to fulfill its obligation under the provisions of CEDAW.

The Protocol to the African Charter on the Rights of Women in Africa states in Article 2 that States Parties shall take all appropriate measures to: a) provide adequate, affordable and accessible health services, including information, education and communication programmes to women especially those in rural areas.^{xlvii} The International Guidelines on HIV/AIDS and Human Rights state that the “protection of the sexual and reproductive rights of women and girls is...critical. This includes the rights of women to have control over and to decide freely and responsibly, free of coercion, discrimination and violence, on matters related to their sexuality, including their sexual and reproductive health.” The guidelines go on to state that women in antenatal treatment “should be provided with accurate information, about the risk of perinatal transmission to support them in making voluntary and informed choices about reproduction.”^{xlviii}

The International Federation of Gynecology and Obstetrics (FIGO) in their Ethical Considerations on Sterilization state that “the physicians...should always conduct themselves primarily for the benefit of the patient, recognizing that the patient’s personal values are fundamental.” The guidelines further articulate that physicians should withhold their own decision and actions so as “not to become merely agents of patients or others, in matters involving medical judgment or personal conscience.” Finally, in stating that the “canon of free and informed consent should be rigorously followed”, the FIGO guidelines articulate that “the process of informed choice must precede informed consent to surgical sterilization. Recognized available alternatives, especially reversible forms of family planning which may be equally effective, must be given due consideration. The physician performing sterilization has the responsibility of ensuring that the person has been properly counseled concerning the risks and benefits of the procedure and of its alternatives.” The FIGO guidelines specifically highlight that women should be informed on and have access to other contraceptive methods, that sterilization is considered a permanent form of contraception, and the low but significant failure rate of sterilization.^{xlix}

In sterilizing women without consent, the government of Namibia has deviated from its international obligations, the International Guidelines on HIV/AIDS and Human Rights, the guidelines of FIGO, and violated their commitment to the African Charter.

The Right to Bodily Integrity, Security of Person and Protection from Torture, Cruel, Inhuman and Degrading treatment

Sterilization without a woman’s full consent is a violation of her right to bodily integrity, security of person, and dignity. Further, sterilization without consent constitutes inhuman and degrading treatment.

Several legally binding treaties specifically reference the rights related to freedom from physical or mental harm. ICCPR article 9(1) states that “Everyone has the right to liberty and security of person.”^{li} Article 17 of the ICCPR states that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.”^{lii} Further the ICCPR specifically states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”^{liii} General Comment 20 on the Human Rights Committee specifically states that provisions protecting individuals from cruel, inhuman, or degrading treatment apply in “medical institutions”.^{liiii} There is a duty upon public authorities to afford protection against torture, cruel treatment or punishment.^{liv} General Comment 28 to the ICCPR articulates specifically that forced sterilization is a concern that must be addressed by states.^{lv}

The Convention Against Torture (CAT) states in Article 16 that “Each state party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment...”.^{lvi} The African Convention on Human and

People's Rights states in Article 4 that "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right." Further, Article 5 articulates that "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status."

The Protocol of the African Charter on Women's Rights Article 4(1) states that "Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited."^{lvii}

Stripping HIV positive women of agency to make choices regarding their own bodies and inflicting harm on women's bodies and lives through sterilization is a violation of the commitments of the Namibian government outlined by the ICCPR, CAT, African Charter, and the Protocol to the African Charter.

Right to Found Family

HIV positive women have the right to a family. The forced sterilization of an HIV positive woman is a violation of her right to found a family. The right to found a family is protected by the Universal Declaration of Human Rights^{lviii} and the ICCPR.^{lix} In the Universal Declaration of Human Rights the family is described as the natural and fundamental group unit of society.^{lx} General Comment 19 on the ICCPR articulates that "the right to found a family implies...the possibility to procreate...When State parties adopt family planning policies, they should be compatible with the provisions of the Covenant and should, in particular, not be discriminatory or compulsory."^{lxi}

The International Guidelines on HIV/AIDS and Human Rights specifically articulate that forced abortions and sterilization of HIV positive women "violates the human right to found a family, as well as the right to liberty and integrity of the person." The Guidelines articulate that women should be "provided with full and accurate information about the risk of perinatal transmission to support them in making voluntary, informed choices about reproduction."^{lxii} This information must be inclusive of education around prevention of mother to child transmission.

Conclusion

The sterilization of positive women is one of the most egregious forms of discrimination against HIV positive women in the health care setting. This report demonstrates the profoundly damaging physical, personal and emotional impact on the lives of HIV positive women when health care workers do not seek informed and voluntary consent from women prior to administering healthcare services. Further, this research and report highlights the need for the Namibian government to respect, protect, and fulfil its domestic, regional, and international human rights obligations towards HIV positive women in the country, by bringing an immediate end to cases of coerced or forced

sterilization of HIV positive women, and by ensuring that the sexual and reproductive rights of HIV positive women are fully protected.

Recommendations

The International Community of Women Living with HIV/AIDS (ICW) calls for the Government of Namibia to immediately address the reproductive rights violations of HIV positive women with particular focus and attention on the coerced and forced sterilization of HIV positive women.

To the Parliament

- Set up an independent monitoring committee to monitor and address the rights violations of HIV positive women who are pregnant or desire a family. This committee must include women living with HIV/AIDS.
- The monitoring committee should also monitor violations of bodily integrity faced by HIV positive women. These violations are particularly egregious for women forced or coerced into sterilization.
- Establish a human rights monitoring body to oversee the integration of human rights principles and values into various government bodies. This body must have members who are women living with HIV/AIDS.

To the Ministry of Health

- Investigate and take action against hospital staff and management who have wrongly or coercively sterilized women.
- Provide a complaints mechanism by which women who are discriminated against in the healthcare setting can utilize to demand accountability and justice.
- Offer sterilization reversal procedures for women who have been coercively sterilized.
- Follow through with policy directives which mandate that women have full access to their medical records.
- Health care staff should be thoroughly educated about the principles of informed consent and the correct way to obtain consent.
- Ensure that health services staff have adequate knowledge about ARV regimens for pregnant women and educate women on options available.
- Provide family planning information in a non coercive manner allowing women, including HIV positive women, to make fully informed and voluntary decisions about family planning.
- Provide training for all healthcare staff on stigma and discrimination related to HIV/AIDS and the rights of individuals living with HIV/AIDS.
- Develop guidelines on minimum requirements for informed consent. Guidelines should be developed with a participatory approach including the involvement of HIV positive women.
- Adopt a sterilization law which expressly prohibits obtaining “consent” while the woman is in full labor, on the delivery table and/or under anesthesia. C-sections should not be listed as an indication for sterilization.

- Provide confidential translation services.

To the Ministry of Justice

- Take measures to ensure that all medical records and other potential evidence of coerced and forced sterilization of women are protected.
- Ensure that women who have been sterilized receive fair and just compensation and redress for their physical and emotional loss.
- Take action against violators of human rights and establish accountability mechanisms so that violations are not permitted in the future.
- Provide free legal assistance to indigent patients who wish to bring administrative and judicial claims of abuse in the provision of health services.
- Provide training to law enforcement, including the judiciary, to appropriately investigate, prosecute, and adjudicate allegations of violations of reproductive rights especially as they relate to HIV positive women.

ⁱ CENTER FOR REPRODUCTIVE RIGHTS AND FEDERATION OF WOMEN LAWYERS, FAILURE TO DELIVER: VIOLATIONS OF WOMEN’S HUMAN RIGHTS IN KENYAN HEALTH FACILITIES 2007 available at http://www.reproductiverights.org/pdf/pub_exec_failurenocover.pdf; *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Slovakia*, 41st Sess. CEDAW/C/SVK/CO/4 (2008); Andrea Cornwall & Alice Welbourn, *Realizing Rights: Transforming Approaches to Sexual and Reproductive Well-Being* Zed Books (2003).

ⁱⁱ *Id.*

ⁱⁱⁱ “Coerced sterilisation” is generally defined as the use of coercion in obtaining the necessary informed consent for the sterilisation procedure. “Forced sterilisation” refers to instances where the woman is unaware that she would be undergoing a sterilisation procedure at the time of the surgery and only learns of the sterilisation after the fact.

^{iv} Andrea Cornwall & Alice Welbourn, *Realizing Rights: Transforming Approaches to Sexual and Reproductive Well-Being* Zed Books (2003).

^v The Young Women’s Dialogue is an ICW initiative which brings together young HIV positive women to explore the issues facing their lives and develop and advocacy strategy in order to address identified challenges.

^{vi} OFFICE OF THE HIGH COMMISSION FOR HUMAN RIGHTS, STATUS OF THE RATIFICATION OF PRINCIPAL HUMAN RIGHTS TREATIES, (2004) available at <http://www.unhchr.ch/pdf/report.pdf>.

^{vii} Declaration of Commitment on HIV/AIDS, United Nations General Assembly Special Session on HIV/AIDS June 25-27, 2001, G.A. Res. S-26/2, U.N. Doc. A/RES/s-26/2; Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979); International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 49, U.N. Doc A/6313 (1966), 999 U.N.T.S. 3; International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, G.A. Res 2200A (XXI), U.N. GOAR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976).

^{viii} UNITED NATIONS DEVELOPMENT PROGRAM. HUMAN DEVELOPMENT REPORT 2007/2008, available at http://hdrstats.undp.org/buildtables/rc_report.cfm. (Last visited November 20, 2008).

^{ix} JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS. NAMIBIA.

<http://www.unaids.org/en/CountryResponses/Countries/namibia.asp> (Last visited December 9, 2008). [hereinafter UNAIDS, NAMIBIA COUNTRY REPORT]

^{xx} REPUBLIC OF NAMIBIA MINISTRY OF HEALTH. UNITED NATIONS GENERAL ASSEMBLY SPECIAL SESSION COUNTRY REPORT, available at http://data.unaids.org/pub/Report/2008/namibia_2008_country_progress_report_en.pdf.

^{xi} WORLD HEALTH ORGANIZATION, UNAIDS, & UNICEF, EPIDEMIOLOGICAL FACT SHEET ON HIV AND AIDS, 2008 available at http://www.who.int/globalatlas/predefinedReports/EFS2008/full/EFS2008_NA.pdf. (Last visited December 11, 2008).

^{xii} UNAIDS, NAMIBIA COUNTRY REPORT, available at <http://www.unaids.org/en/CountryResponses/Countries/namibia.asp>

^{xiii} JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS, RATES OF MOTHER-TO-CHILD TRANSMISSION AND THE IMPACT OF DIFFERENT PMTCT REGIMES 3, available at <http://www.epidem.org/Publications/PMTCT%20report.pdf>.

^{xiv} NAMIB. CONST. art. 6.

^{xv} *Id.* at art. 8 §§ 1 – 2(b).

^{xvi} *Id.* at art. 10 §§ 1-2.

^{xvii} *Id.* at art. 14 § 1.

^{xviii} REPUBLIC OF NAMIBIA NATIONAL POLICY ON HIV/AIDS, pmb. (2007) (Namib.). [hereinafter NATIONAL POLICY ON HIV/AIDS]

^{xix} *Id.* at Chapter 2.2.1-2.2.4.

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- ^{xx} *Id.* at Chapter 2.3.1
- ^{xxi} *Id.* at Chapter 3.5.3-3.5.6
- ^{xxii} REPUBLIC OF NAMIBIA MINISTRY OF HEALTH AND SOCIAL SERVICES, GUIDELINES FOR VOLUNTARY COUNSELLING AND TESTING, (2006) § 1.2.
- ^{xxiii} OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, STATUS OF THE RATIFICATION OF PRINCIPAL HUMAN RIGHTS TREATIES, (2004) available at <http://www.unhchr.ch/pdf/report.pdf>.
- ^{xxiv} Declaration of Commitment on HIV/AIDS, United Nations General Assembly Special Session on HIV/AIDS June 25-27, 2001, G.A. Res. S-26/2, U.N. Doc. A/RES/s-26/2; Convention on the Elimination of All Forms of Discrimination against Women, adopted Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979); International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 49, U.N. Doc A/6313 (1966), 999 U.N.T.S. 3; International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GOAR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).
- ^{xxv} UNIVERSITY OF MINNESOTA, LIST OF COUNTRIES WHO HAVE SIGNED, RATIFIED/ADHERED TO THE AFRICAN CHARTER OF HUMAN AND PEOPLE'S RIGHTS, available at <http://www1.umn.edu/humanrts/instree/ratz1afchr.htm>
- ^{xxvi} African Charter on Human and People's Rights, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67/3, rev.5, 21 I.L.M. 58 (1982); Protocol to the African Charter on the Rights of Women in Africa, adopted Sept. 13, 2000, CAB/LEG/66.6 (2005).
- ^{xxvii} Declaration of Commitment on HIV/AIDS, United Nations General Assembly Special Session on HIV/AIDS June 25-27, 2001, G.A. Res. S-26/2, U.N. Doc. A/RES/s-26/2 available at [hereinafter UNGASS Declaration of Commitment].
- ^{xxviii} Convention on the Elimination of All Forms of Discrimination against Women, adopted Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979). [hereinafter CEDAW]
- ^{xxix} *Id.*
- ^{xxx} *General Recommendation of the Committee on the Elimination of Discrimination Against Women: General Recommendation*, 11th Session, 19, UN GAOR, 1992, Doc. No. A/47/38. [hereinafter CEDAW GR 19].
- ^{xxxi} *General Recommendation of the Committee on the Elimination of Discrimination Against Women: General Recommendation*, 20th Session, 24, UN GAOR, 1999, Doc. No. A/54/38 at 5.
- ^{xxxii} OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS AND JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS, INTERNATIONAL GUIDELINES ON HIV/AIDS AND HUMAN RIGHTS 85 (2006), available at http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf. [hereinafter Guidelines on HIV/AIDS and Human Rights]
- ^{xxxiii} *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, U.D. Doc. A/CONF.171/13.Rev.1 (1995). [hereinafter ICPD]
- ^{xxxiv} International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 49, U.N. Doc A/6313 (1966), 999 U.N.T.S. 3 [hereinafter ICESCR]
- ^{xxxv} *General Comment of the Committee on Economic, Social, and Cultural Rights*. 22nd Session 2000 E/C.12/2000/4. [hereinafter CESCR GC 14].
- ^{xxxvi} CESCR GR 14 para. 8.
- ^{xxxvii} CESCR GR 14 para. 31.
- ^{xxxviii} CEDAW at art 12(2).
- ^{xxxix} CEDAW GR 19 at para 22.
- ^{xl} African Charter on Human and People's Rights, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67/3, rev.5, 21 I.L.M. 58 (1982). [hereinafter African Charter].
- ^{xli} Protocol to the African Charter on the Rights of Women in Africa, adopted Sept. 13, 2000, CAB/LEG/66.6 (2005). [hereinafter Protocol to the African Charter].
- ^{xlii} CESCR GC 14 para. 8.
- ^{xliii} CEDAW at art. 11(1)(h).
- ^{xliv} *Id.* at art. 16(e).
- ^{xlv} CEDAW GR 24 para. 22.
- ^{xlvi} CESCR GC 14 para. 11.

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- ^{xlvii} Protocol to the African Charter at art. 2.
- ^{xlviii} GUIDELINES ON HIV/AIDS AND HUMAN RIGHTS 85 (2006), *available at* http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf [hereinafter Guidelines on HIV/AIDS and Human Rights].
- ^{xliv} International Federation of Gynecology and Obstetrics (FIGO), Recommendations on Ethical Issues in Obstetrics and Gynecology by the FIGO committee for the Ethical Aspects of Human Reproduction and Women's Health (2006) *available at* <http://www.figo.org/docs/Ethics%20Guidelines%20%20English%20version%202006%20-2009.pdf>.
- ^l International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res 2200A (XXI), U.N. GOAR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976). [hereinafter ICCPR]
- ^{li} *Id.* at art. 17.
- ^{lii} *Id.* at art. 7.
- ^{liii} Human Rights Committee, *General Comment 20*, Article 7 (44th Session 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev. 1 at 30 (1994).
- ^{liv} Human Rights Committee, *General Comment 28: Equality of Rights Between Men and Women (Art. 3)* (68th Sess. 2000), in Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies, at 168, ¶ 11 U.N. Doc. HRI/GEN/Rev.5 (2001).
- ^{lv} *Id.*
- ^{lvi} Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess. Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (*entered into force* June 26, 1987) [hereinafter Convention Against Torture].
- ^{lvii} Protocol to the African Charter
- ^{lviii} UDHR at art. 16(1)
- ^{lix} ICCPR at art. 23(2)
- ^{lx} Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, G.A. Res. 217A (III), at 71, art. 25, U.N. Doc. A/810 (1948) [hereinafter UDHR].
- ^{lxi} UN Human Rights Committee (HRC), *CCPR General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses*, 27 July 1990. Online. UNHCR Refworld, available at: <http://www.unhcr.org/refworld/docid/45139bd74.html> [accessed 12 December 2008]
- ^{lxii} Guidelines on HIV/AIDS and Human Rights at 89.