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Note to the attention of the Parliamentary Assembly Committee on Social, Health and Family Affairs Committee, in relation to the draft report on “Putting an end to coercive sterilisations and castrations”, 17-18 November 2011.

Introduction

Forced or involuntary sterilisation raises serious human rights concerns, particularly with regard to the rights to bodily integrity, health, privacy, family life, and discrimination (including the right to decide on the number and spacing of one's children). It is difficult to imagine any likely context in which either forced or involuntary sterilisation would be justified. The only caveat would be in a situation where a person's life is in imminent danger and that person is incapable of giving consent to the procedure.

Sterilisations and free, prior and informed consent

Prevailing medical ethics and human rights standards require individuals to give free, prior and informed consent (also sometimes referred to as meaningful consent) to any medical procedure, treatment, or test they undergo. From the perspective of medical ethics, the essential nature of informed consent is highlighted in many international documents, including the Helsinki Declaration on Ethical Principles for Medical Research Involving Human Subjects¹ the Council for International Organizations of Medical Sciences (CIOMS) Guidelines,² and the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use Good Clinical Practices (ICH/GCP).³

Informed consent is specifically mentioned in the context of human rights in the Council of Europe's Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine; Convention on Human Rights and Biomedicine,⁴ as well as in the Universal Declaration on Bioethics and Human Rights.⁵ The Council of Europe Convention sets out as a general principle that “[a]n intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.” This convention cites, as the only permissible exception a medical intervention where the individual is not capable of giving appropriate consent and where the health intervention must be carried out immediately for the benefit of the individual's health. Even in this circumstance, however, the convention notes that due consideration must be given to any prior wishes expressed explicitly by the individual when they were in a position to give adequate consent.

¹ *Declaration of Helsinki: Ethical Principles for Medical Research Involving Human Subjects*, art. 20, 22, G.A. Res. (adopted 1964, amended 1975, 1983, 1989, 1996, and 2000). Available at <http://www.wma.net/e/policy/pdf/17c.pdf>

² Council for International Organizations of Medical Sciences [CIOMS], *International Ethical Guidelines for Biomedical Research Involving Human Subjects*, guideline 4 (3rd ed. 2002), superseding the 1993 second edition.

³ International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use, ICH Harmonised Tripartite Guideline for Good Clinical Practice (ICH-GCP) *Federal Register* 62/90 (May 9, 1997) pp. 25692–25702.

⁴ Convention on Human Rights and Biomedicine, available at <http://conventions.coe.int/Treaty/en/Treaties/Html/164.htm>, in particular Chapter II.

⁵ UNESCO Universal Declaration on Bioethics and Human Rights, in particular Article 6, available at http://portal.unesco.org/en/ev.php-URL_ID=31058&URL_DO=DO_TOPIC&URL_SECTION=201.html.

The Universal Declaration on Bioethics and Human Rights sets out a similar general principle in its Article 6: “Any preventive, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information. The consent should, where appropriate, be express and may be withdrawn by the person concerned at any time and for any reason without disadvantage or prejudice.”

Informed consent is also considered implicit in various basic human rights protections, such as the rights to health and privacy, in particular as regards to sterilisation which is not only an invasive (surgical) procedure but also permanently affects an individual’s reproductive life.

In this manner, the World Health Organization comments in its guidelines on Medical Eligibility Criteria for Contraceptive Use that “[g]iven that sterilisation is a surgical procedure that is intended to be permanent, special care must be taken to assure that every client makes a voluntary informed choice of the method.”⁶

This sentiment was echoed in the recent judgment in the case of *V.C. v Slovakia*, where the European Court of Human Rights held that sterilisation without informed consent constitutes a major interference with a person’s reproductive health status.⁷ Sterilisation concerns one of the essential bodily functions of human beings, it 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.

The Court listed situations in which sterilisation may be legitimately performed, at the request of the person concerned. In the Court’s opinion, sterilisation may be performed as a method of contraception, or for therapeutic purposes where the medical necessity has been convincingly established, though never without informed consent.

Forced sterilisation as torture

The Human Rights Committee has pointed out that the prohibition of torture or cruel, inhuman or degrading treatment contained in article 7 of the International Covenant on Civil and Political Rights has special application to patients in medical institutions,⁸ presumably because they are under the care and authority of state actors. Moreover, the European Court of Human Rights has clarified that medical treatments (including sterilisation) that are performed against person’s will or conscience may amount to violation of the prohibition of ill-treatment and torture in article 3 of the European Convention on Human Rights (*Keenan v. the United Kingdom*, no. 27229/95, § 110, ECtHR 2001-III).

Transgender and intersex individuals and forced sterilisation

Many transgender individuals wish to legally change their names and gender markers in order to fully reflect their identity. In addition, often transgender individuals cannot participate equally in public life or partake of social entitlements, until they legally change their names and/or gender marker. In many countries, laws governing such changes in names or gender markers require individuals to submit to medical treatment they otherwise would not have wanted, such as, most frequently, sterilisation. In fact, while the practice of forced sterilisation affects a number of disadvantaged communities, transgender individuals are currently the only persons of whom forced sterilisation is openly required by law.

⁶ World Health Organization, *Medical Eligibility Criteria for Contraceptive Use*, 2010, p. 97, available at http://whqlibdoc.who.int/publications/2010/9789241563888_eng.pdf.

⁷ *V.C. v Slovakia*, no. 18968/07, ECtHR, 2011

⁸ General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7) : . 10/03/1992. CCPR General Comment No. 20. (General Comments), para 5

To be sure, some transgender individuals who wish to undergo surgical intervention might also want to have their reproductive organs removed. However, others do not. Decisions about sterilisation, whether or not in connection with other surgical interventions, must be protected in law and practice as an individual choice made in private consultations with an individual's health care provider, and taking into consideration the medical needs and history of each person.

Legal requirements of sterilisation are in and of themselves a violation of international human rights norms on health, non-discrimination, and privacy in that they subject individual health decisions in the most intimate area of a person's life to arbitrary state intervention and control, on the basis of gender identity. The provision of such operations is an additional violation and constitutes medical abuse. Transgender individuals should not be forced to make the choice between working or functioning in society (for which they need adequate documentation) and only submitting to such medical treatment as they want. Sterilisation should never be a state-enforced procedure that is required to change name or gender or receive any other form of gender identity recognition.

Intersex individuals are most frequently subjected to forced sterilisation as infants or children in an attempt by parents or guardians to assign a primary gender to them. Often, such gender assignment surgery or other medical intervention—of which sterilisation is a secondary effect—is applied without due consideration for the best interests of the child, and certainly at a time where the child is incapable of providing meaningful consent. The procedures can cause lasting mental and physical health problems, including loss of fertility, in intersex individuals. These procedures, when performed without consent which is the norm, violate the rights to health, to protection from medical abuses, to non-discrimination, equal protection under the law, and to found a family.

Amnesty International urges all states to: abolish any requirements of sterilisation in relation to legal name or gender marker change; ensure that any medical or psychological treatment or counselling does not treat gender identity as a condition to be cured or suppressed; protect transgender individuals from forced gender reassignment treatment and unwanted psychiatric monitoring; ensure that transgender individuals have access to the highest attainable standard of health; ensure that intersex individuals are not subjected to medical treatment, including sterilisation procedures, without their free, prior, and informed consent; and ensure that state and private medical facilities do not discriminate on the grounds of gender identity.

People in detention

Some jurisdictions apply chemical or physical castration to convicted sex offenders. Where such medical interventions are applied as punishment or otherwise constitute part of judicial sentences, they are counter to the prohibition of torture or cruel, inhuman, or degrading treatment or punishment.

Moreover, any restrictions on the human rights of individuals must be necessary to serve a legitimate public interest, the relationship between the interest and the means chosen to advance it must be a close one, and the laws must be the least restrictive possible. For example, as the UN Human Rights Committee has stated with regard to limiting the right to movement: “[I]t is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.”⁹ Although the Committee was addressing freedom of movement, the criteria it enunciated apply for all protected rights, including—as would be the case for forced sterilisation—the rights to privacy and health.

⁹ General Comment 16/32, in ICCPR/C/SR.749, March 23, 1988, para. 4. *Nicholas Toonen v. Australia*, Human Rights Committee, 50th Sess., Case No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992, para. 8.3.

Prisoners in state detention should, of course, have access to medical services on an equitable basis with the community at large. If, in this regard, prisoners wish to be castrated either surgically or chemically, they may choose to do so subject to free, prior, and informed consent and in consultation with a medical professional who gives consideration to their individual health needs and history.

In this connection, where individuals are offered a more lenient sentence if they subject themselves to otherwise unwanted medical procedures and interventions—including castration or sterilisation—their consent should not be considered “free.” In this case, the medical intervention becomes part of the punishment and thus counter to international human rights law.

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