

Press Release

The South African government must do more to prevent coerced sterilisations in public hospitals

On World Aids Day, the Women's Legal Centre (WLC) calls on government to do more to investigate cases of forced sterilisation in public hospitals, especially with regard to women who are HIV positive. The practice continues and the WLC says that sterilisation should be based on full, free and informed consent of the individual.

In 2015, the Women's Legal Centre (WLC) partnered with Her Right Initiative (HRI) and the International Community of Women Living with HIV Southern Africa (ICWSA) in an initiative to prevent HIV positive women from being sterilised without their consent. Following HRI's research into the occurrence of coercive sterilisations in State hospitals in three South African provinces, the WLC prepared a complaint on behalf of HRI, ICWSA and 48 victims which was lodged on 20 March 2015 with the Commission for Gender Equality (CGE).

The complaint calls upon the CGE to investigate the prevalence of coercive sterilisation in public hospitals and proposes certain remedial actions, including the law reforms that should be undertaken. In addition, the complaint requests the CGE to intervene in an attempt to provide redress for the women who were sterilised and who participated in the research because their damage claims have prescribed. The CGE has accepted the complaint and is currently investigating the issues that were raised.

In June and July of 2015, the WLC instituted two damage claims against public hospitals on behalf of women who are HIV positive, who were sterilised without their informed consent. Both women alleged that the sterilisations related to their HIV status.

Jody-Lee Fredericks, Attorney at the Women's Legal Centre says: "World Aids Day takes place on 1 December and it needs to be highlighted that this is not an uncommon practice and that women must come forward as unless they do, it will be difficult to put an end to the practice. Currently the statistics are vague and this is another reason why they should come forward. More accurate statistics will reveal exactly what the extent of the problem is."

Fredericks feels that the South African government needs to do more to investigate cases of forced sterilisation in public hospitals. More needs to be done, especially with regard to women who are HIV positive.

Forced sterilisation is not unique to South Africa as it has also been reported in Namibia, Kenya and Chile. Kenyan women with HIV are in fact suing hospitals and aid organisations over their forced sterilisations.

The WLC has lodged civil claims against the KwaZulu-Natal Department of Health by two women who claimed they were forced into sterilisation at State hospitals in 2014. These two HIV positive women are just 2 of 48 women who came forward between 2011 and 2014 claiming they had been forced to undergo sterilisations by health care workers in Gauteng and KwaZulu-Natal.

The Sterilisation Act of 1998 is clear in stating that when a woman needs to be sterilised, her informed consent must be obtained. The Act actually provides rules as to how the consent must be obtained. And more importantly that a women must fully understand that the procedure is permanent and she will not be able to bear children in the future.

“The South African Constitution makes it clear that every woman has the right to make decisions about her own reproductive health. With coerced sterilisation this right is taken away from her. In these cases the women are not making the decision for themselves. Someone else is,” says Fredericks

Her Rights Initiative is calling for a reform of the law to put more measures in place when a patient is informed about sterilisation as in the case of pre-counselling.

It is clear that South Africa is lagging behind some other countries in this issue. Currently, it is the government’s position that it is not its policy to carry out forced sterilisation. However, cases are still being uncovered. The State’s policies are progressive and there are requirements that must be met before a sterilisation will be considered valid. However, the forced sterilisation takes place at the most opportunistic time—when the pregnant woman has to undergo a Caesarean section.

Irrespective of what Physicians may feel, it is not their right or their prerogative to take these decisions. Coerced sterilisation is indicative of the unequal balance of power which easily leads to the violation of rights. Physicians performing forced sterilisations are not only violating internationally-recognised human rights but also their duties as medical professionals.

“Forced, coercive and otherwise involuntary sterilisation must be eliminated in South Africa and elsewhere. Sterilisation as a method of contraception and family planning should be available, accessible, acceptable, of good quality and free from discrimination, coercion and violence. Furthermore, laws, regulations, policies and practices should ensure that the provision of procedures resulting in sterilisation are based on the full, free and informed decision-making of the person concerned,” concludes Fredericks.

About the Women’s Legal Centre

The WLC is a non-profit, independently funded law centre, started by a group of lawyers in Cape Town in 1999, with a vision to achieve equality for women in South Africa. The centre has identified five strategic focus areas. These are: violence against women; fair access to resources in relationships; access to land/housing; access to fair labour practices; and access to health care (particularly reproductive health care).

The WLC has been at the forefront of legal reform in relation to women’s equality in South Africa since the Constitution came into effect, having won several precedent setting cases in the past.

In order to empower women through knowledge of their rights, the Centre also offers free legal advice to women. Women are assisted or referred to the relevant body, NGO or court for assistance.

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