

Status of Human Rights in Australia for the 2020 Universal Periodic Review

Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organisation dedicated to promoting and protecting human rights around the world. The ECLJ holds Special Consultative Status before the United Nations Economic and Social Council. The purpose of this report is to raise concerns regarding the practice of sterilisation of people with disabilities as well as the legalisation of euthanasia in Australia for the 2020 Universal Periodic Review (UPR).

Background

2. Australia's previous review was held on 9 November 2015. As a result of that review, France, Germany, Canada, Spain, and the U.K. addressed the fact that in Australia, it is currently legal to sterilize people with disabilities, and in some instances even minors have been subjected to forced sterilization¹. Member States encouraged Australia to “[a]dopt national uniform legislation prohibiting, except where there is a serious threat to life or health, the sterilisation of children and of adults with disability, in the absence of prior, fully informed and free consent”². Also, the Committee on the Rights of Persons with Disabilities asked that Australia “repeal all legislation that authorized medical intervention without the free and informed consent of the persons with disabilities”³.

3. After the review,

Australia assured delegates of its support of the right of people with disability to exercise their legal capacity and recognized that, in some cases, people with disabilities might require support in exercising that capacity. Regarding forced sterilization, the delegation noted that a sterilization procedure could only occur with the person's consent or, if the person were unable to give valid consent, with authorization from a court or guardianship tribunal⁴.

4. Furthermore, although the Australian Senate Committee completed an inquiry into the sterilisation practices of individuals with disabilities, the Committee concluded that “an outright ban on non-therapeutic sterilization procedures would potentially deny the rights of persons with disability to access all available medical support on an equal basis without disability”⁵.

Legal Framework

5. Australia has a long history of protecting human rights, as it was one of the eight nations involved in drafting the Universal Declaration of Human Rights (UDHR). In addition, Australia is a party to both the International Covenant on Civil and Political Rights (ICCPR) and the Convention on Rights of Persons with Disabilities (CRPD). Article 6 of the ICCPR states that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”⁶.

6. Similarly, Article 10 of the CRPD states: “every human being has the inherent right to life and [State Parties] shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others”⁷. Moreover, Art. 17 of the CRPD holds that “[e]very person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others”⁸.

And Article 23 (b) and (c) of the CRPD states:

(b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

(c) Persons with disabilities, including children, retain their fertility on an equal basis with others⁹.

7. Australia is also a signatory to the Convention on the Rights of the Child (CRC). Under Article 19 of the CRC:

States Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child¹⁰.

8. Additionally, Article 23 states that, “State Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community”¹¹.

Forced Sterilisation

9. Despite the legal protections Australia has assured are in place, the forced sterilisations of disabled persons are still occurring in Australia. While documentation of these cases is difficult to obtain, there are reported cases. The CEO of Women with Disabilities in Australia, Carolyn Fromhader, stated:

[Australia] still allow[s forced sterilisation] to occur, we haven’t got any legislation that prohibits it, it can depend on a family court or guardianship tribunals but trying to get access to information is impossible We’ve got a long way to go, at the end of the day is not about how it’s done, how it’s regulated, it’s about the fact it’s an egregious human rights violation and it is recognised as a form of torture, there is no excuse for torture so there is no argument [for the forced sterilisation of women with disabilities]¹².

Ms, Fromhader further stated, “What we do know is that the forced and coerced sterilisation of women and girls with disability . . . continues unabated, and remains sanctioned by Australian Governments, in clear violation of six of the seven human rights treaties to which Australia is a party”¹³.

10. Women and girls with disabilities are often the most at risk for forced sterilisation¹⁴. From July 2016 to June 2017 ten cases of forced sterilization were approved¹⁵. One example of the types of cases in which forced sterilisations occur is that of an Australian woman “who was sterilised when she was seven years old because she had a vision impairment”¹⁶.

11. In 2013 the UN Special Rapporteur on torture, Juan Mendez illustrated the dangers of these procedures stating that “[m]edical treatments of an intrusive and irreversible nature when lacking a therapeutic purpose, may constitute torture or ill treatment when informed without the free and informed consent of the person concerned”¹⁷.

12. The practice of forced sterilisation relies on a false and discriminatory stereotype saying that persons with disabilities would not be able to live a happy life and would not be capable of raising children properly.

Legalising Euthanasia

13. In 2017, Australia legalised the radical and deeply concerning practice of euthanasia in the state of Victoria¹⁸. Euthanasia is defined as “the act or practice of causing or hastening the death of a person who suffers from an incurable or terminal disease or condition, especially a painful one, for reasons of mercy”¹⁹. The law took effect in June of 2019, and now the state of Queensland and Western Australia are considering similar legislation²⁰.

14. As stated above, in June of 2019 euthanasia became legal in the Australian state of Victoria²¹. Less than a month after its legalization, a 61 year old cancer patient became the first to be euthanized under this new law²². Health Minister Jenny Mikakos estimates that between 100 and 150 patients will choose to be euthanized *every year*²³.

15. Article 6 of the ICCPR states, “Every human being has the inherent right to life. This right shall be protected by law”²⁴. The legislation that has been passed in the state of Victoria highlights a disturbing trend in some countries where human dignity is no longer considered inherent in human nature, but is relative and reflective of an individual’s (or society’s) personal view.

16. The UDHR – the founding document of the UN for the protection of Human Rights as Australia helped draft, does not permit nor tolerate euthanasia, nor is it a “right”. Rather, the practice of allowing euthanasia to is in itself a flagrant violation of Article 2, which requires the State to respect and protect the lives of all people, without exception, and establishes the principle that “*No one shall be deprived of his life intentionally.*” If it is true that States have only a relative obligation to prevent suicide, it is also true that they have an absolute obligation not to take part in an intentional killing by a third person, either by providing the means or by not preventing it when possible. The Convention does not allow the consent of the victim to exempt the killer from liability, or exempt the State that let the killing take place.

17. In order to protect and preserve the fundamental right to life for *all people*, Australia must prohibit the practice of euthanasia.

Conclusion

18. As has been shown, the right to life is enshrined in numerous U.N. Conventions. Forced sterilisation of people, especially people with disabilities is an abhorrent practice that must be stopped. Often people with mental disabilities lack the ability to fully understand the procedure and cannot offer their free consent to the intrusive and irreversible procedure.

19. In addition, the legalization of euthanasia within Australia is extremely concerning, and must not be allowed to continue in order to preserve human rights, which begin with the right to life.

¹ *UN Examines Australia's Forced Sterilisation of Women with Disabilities*, AUSTRALIA NEWS, (10 Nov. 2015), <https://www.theguardian.com/australia-news/2015/nov/10/un-examines-australias-forced-sterilisation-of-women-with-disabilities>.

² Database of Recommendations - Australia, UPR-INFO, https://www.upr-info.org/database/index.php?limit=0&f_SUR=9&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly (last visited 19 Mar. 2020).

³ Compilation Prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15 (b) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21, *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/195/70/PDF/G1519570.pdf?OpenElement>.

⁴ *Id.*

⁵ National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 Australia, *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/175/09/PDF/G1517509.pdf?OpenElement>.

⁶ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, art. 6.

⁷ Convention on the Rights of Persons with Disabilities and Optional Protocol, art. 10, *available at* <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>.

⁸ *Id.* art 17.

⁹ *Id.* art. 23.

¹⁰ Convention on the Rights of the Child, art. 19 *available at* <https://www.ohchr.org/documents/professionalinterest/crc.pdf>.

¹¹ *Id.* at art. 23.

¹² *UN Examines Australia's Forced Sterilisation of Women with Disabilities*, THE GUARDIAN (10 Nov. 2015), <https://www.theguardian.com/australia-news/2015/nov/10/un-examines-australias-forced-sterilisation-of-women-with-disabilities>.

¹³ *UN Calls Out Australia for Allowing Forced Sterilisation of Women with Disabilities*, 10 DAILY (25 Jul. 2018), <https://10daily.com.au/news/australia/a180724rok/un-calls-out-australia-for-allowing-forced-sterilisation-of-women-with-disabilities-20180725>.

¹⁴ *Id.*

¹⁵ *Australian Sterilisation Data Report*, AGAC, <https://www.agac.org.au/images/stories/agac-sterilisation-data-rep-2016-2017.pdf>.

¹⁶ *UN Examines Australia's Forced Sterilisation of Women with Disabilities*, *supra* note 12.

¹⁷ *The Right to Choose and Refuse Sterilisation*, OHCHR (6 Jun. 2014), <https://www.ohchr.org/EN/NewsEvents/Pages/Therighttochooseandrefusesterilization.aspx>.

¹⁸ *Euthanasia: Victoria Becomes the First Australian State to Legalise Voluntary Assisted Dying*, ABC (29 Nov. 2017), <https://www.abc.net.au/news/2017-11-29/euthanasia-passes-parliament-in-victoria/9205472>.

¹⁹ BLACK'S LAW DICTIONARY 634 (Bryan A. Garner ed., 9th ed. 2009).

²⁰ *Id.*

²¹ *Euthanasia Law Takes Effect in Australia's Victoria State*, REUTERS (19 Jun. 2019), <https://www.reuters.com/article/us-australia-euthanasia/euthanasia-law-takes-effect-in-australias-victoria-state-idUSKCN1TK0PW>.

²² *Cancer Patient the First to Die Under Victoria's Euthanasia Law*, THE GUARDIAN (4 Aug. 2019), <https://www.theguardian.com/australia-news/2019/aug/04/cancer-patient-is-first-to-die-under-victoria-euthanasia-law>.

²³ *Voluntary Euthanasia Becomes Legal in Australian State*, ASSOCIATED PRESS (19 Jun. 2019), <https://apnews.com/ec6c5c73846f4b1899f6a5168bc31599>.

²⁴ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, art. 6.
