

HIGHLIGHT

SEXUAL AND REPRODUCTIVE RIGHTS OF WOMEN LIVING WITH HIV

Women living with HIV encounter challenges relating to their sexual and reproductive health and rights. Due to ignorance or misconceptions, women living with HIV are often deprived of their rights to exercise control over their sexuality. The right to sexual and reproductive health is recognised as a component of the right to the highest attainable standard of health.¹⁰⁴ Moreover, at Cairo during the International Conference on Population and Development in 1994, the international community agreed that individuals shall have the right to determine freely and responsibly the timing and number of their children. This has been echoed in international human rights instruments including the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and the Protocol to the African Charter on the Rights of Women (Maputo Protocol). The right to sexual and reproductive health is broadly classified into two components: the right to sexual and reproductive health services and the right to sexual and reproductive health autonomy. Thus, states are obligated to ensure available, affordable, accessible, and quality sexual and reproductive health services to all on a non-discriminatory basis. Furthermore, states must ensure that the right of individuals to make decisions about their own bodies is well-respected.

Discriminatory practices against women living with HIV when seeking health care services, including sexual and reproductive health services, undermine the rights to autonomy, dignity, and health, among others. Experience has shown that in many African countries women living with HIV are either compelled to undergo HIV testing or subjected to forced sterilisation. While sterilisation can be a useful means of birth control for women who choose this method, when it is coercive it becomes a threat to the enjoyment of human rights. Forced sterilisation raises both ethical and human rights issues. Health care providers are ethically required to seek informed consent from patients before embarking on any treatment. This implies that the patient must have a full understanding of the treatment sought and be able to decide whether or not to continue with it. It also means that the patient must have been informed in a language that he/she understands. Where it cannot be ascertained that the patient appreciates the nature of treatment being conducted or the consequences that might follow, it cannot be said that the patient has consented to such a treatment. Forced sterilisation undermines the rights to autonomy and to found a family of women living with HIV. The Namibian Supreme Court in *Government of Namibia v. LM and others*¹⁰⁵ held that forcible sterilisation constitutes a gross violation of human rights. It further notes that the essential elements of informed consent include knowledge, appreciation, and consent. These elements are cumulative and the onus is on the person claiming consent was obtained to prove them.