

STERILIZATION

Publications by Co-Directors and Scholars of the International Reproductive and Sexual Health Law Programme, Faculty of Law, University of Toronto

PUBLICATIONS BY CO-DIRECTORS:

“Conscientious Commitment to Women’s Health” by Bernard M. Dickens & Rebecca J. Cook (2011) 113:2 International Journal of Gynecology and Obstetrics 163-166. [mentions sterilization]

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1832549

“Reproductive Health Services and the Law and Ethics of Conscientious Objection” by Bernard M. Dickens (2001) 20 Medicine and Law 283-293. [mentions sterilization]

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1226044

“Sterilization and Limits of Conscientious Objection” by Bernard M. Dickens & Rebecca J. Cook (2000) 71 International Journal of Gynecology and Obstetrics 71-77.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=946461

“The Introduction of Reversible Sterilization” by Rebecca J. Cook & Bernard M. Dickens (2007) 99 International Journal of Gynecology and Obstetrics 1-3.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1029387

“Interactions of Law and Ethics Affecting Reproductive Choice” by Bernard M. Dickens (2005) 24 Medicine and Law 549-559.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1662803

“Voluntary and Involuntary Sterilization: Denials and Abuses of Rights” by Rebecca J. Cook & Bernard M. Dickens (2000) 68 International Journal of Gynecology and Obstetrics 61-67.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=946472

“No Contraceptive Sterilization of the Mentally Retarded: The Dawn of Eve” by Bernard M. Dickens (1987) 137:1 Canadian Medical Association Journal 65-67.

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1492405/>

“Case Comment - Eve v. E - No parental or parens patriae power to authorize non-therapeutic sterilization of mentally incompetent persons” by Bernard M. Dickens (1987) 2 Can. Family Law Quarterly 103-117.

“Comparative Law and Legislation on Eugenic Sterilization and Abortion” by Bernard M. Dickens in F. Vogel and K. Sperling, eds., *Human Genetics* (Berlin: Springer-Verlag, 1987) 673-682.

“Retardation and Sterilization” by Bernard M. Dickens (1982) 5 *International Journal of Law and Psychiatry* 295-318.

<http://www.sciencedirect.com/science/article/pii/0160252782900255>

THESES AND RELATED PUBLICATIONS BY PROGRAMME GRADUATES:

“Towards a human rights-based contraceptive policy: A Critique of Anti-Sterilisation Law in Poland” by Malgorzata Rutkiewicz, Thesis submitted for the degree of Master of Laws, Graduate Department of the Faculty of Law, University of Toronto, 2000.

Abstract: Sterilisation is one of the safest, most effective and most widely used methods of family planning in the world. However, it is illegal and inaccessible in Poland. This thesis argues that there are certain harms imposed by the anti-sterilisation policy in Poland, and that they amount to a violation of human rights. It argues that limiting access to a comprehensive range of contraceptive options is harmful for reproductive and sexual well-being. Certain concerns associated with contraceptive sterilisation (e.g. fear of abuse or post-sterilisation regret) would be addressed more appropriately by less restrictive measures that respect rights of individuals and better respond to their needs. I argue that an array of contraceptive options that is as comprehensive as medical technology and modern health policy will allow is a necessary component of equality for women. As such, sterilisation policy should be part of a comprehensive reproductive health policy, which should be built upon principles of equality and public health rather than on moralities, myths and popular misconceptions about people’s capacity to control fertility.

“Forced and Coerced Sterilization of Women in Europe” by Christina Zampas & Adriana Lamackova, (2011) 114:2 *International Journal of Gynecology & Obstetrics*, 163-166.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2027937

Abstract: Human rights provisions in laws set by international treaties and national legislatures make individuals’ informed and freely given consent a precondition to the legality of their sterilization. Nevertheless, evidence shows that sterilizations have been undertaken by forceful means or coerced acceptance, to which women do not genuinely consent. The women are often members of ethnic minorities in their countries, such as Roma women, or adolescent or disabled women. Some European governments have acknowledged their responsibility for human rights abuses by forced and coerced sterilization of vulnerable women, and committees established by international human rights treaties to monitor states’ compliance with their standards are increasingly vigilant to expose and condemn wrongful sterilization. For instance, the committee monitoring compliance with the Convention on the Elimination of All Forms of Discrimination against Women and the Council of Europe’s Commissioner for Human Rights provide guidance for the prevention of violations.

“Conceptualising Restrictions on Abortion and Involuntary Sterilisation Procedures as Torture or Cruel, Inhuman or Degrading Treatment” by Dr. Ronli Sifris, Thesis completed for Ph.D. degree, Faculty of Law, Monash University, 2011. Thesis external examiner: Rebecca J. Cook.

<http://arrow.monash.edu.au/hdl/1959.1/523813>

Abstract: The notion that international law is a gendered legal system which prioritises those matters that disproportionately affect men above those matters that disproportionately affect women provides the context for this thesis, which contemplates a gendered approach to the right to be free from torture and other cruel, inhuman or degrading treatment (CIDT). Accordingly, this thesis challenges the essentialism inherent in the traditional, male-centric conceptualisation of torture and CIDT by conceptualising restrictions on women's reproductive freedom within the framework of the right to be free from torture and CIDT. Consequently, this thesis contributes to a feminist understanding of international human rights by examining restrictions on reproductive freedom through the lens of the right to be free from torture and CIDT.

In order to achieve this objective, this thesis asks and answers the following key question: Can restrictions on reproductive freedom be categorised as torture? It answers this question by analysing each element of the definition of torture set out in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. After concluding that both restrictions on abortion and involuntary sterilisation procedures frequently fall within each element of the article 1 definition of torture, this thesis proceeds to consider whether, if one of the elements of torture is not established in a given situation, restrictions on reproductive freedom can be categorised as CIDT. Ultimately, it concludes that in many cases, all of the elements of the definition of torture will be established in the case of both restrictions on abortion and involuntary sterilisation procedures. However, it also acknowledges that in some cases, an element will be missing. Where the missing element is the element that distinguishes torture from CIDT, the conduct in question will constitute CIDT. Where a different element is missing, the conduct will constitute degrading treatment if it is particularly humiliating. If the necessary level of humiliation is absent, then it will not constitute torture, inhuman treatment or degrading treatment.

Through this analysis, this thesis makes a significant contribution to international legal scholarship. While there have been indications at the international human rights level that at least some restrictions on reproductive freedom violate the prohibition of torture and CIDT, there has been no thorough, systematic analysis of how, why and which restrictions on reproductive freedom constitute torture or CIDT. This thesis provides such an analysis and constructs a normative framework thereby extending the current trajectory of incorporating women's concerns into the international legal framework along its logical path. In addition, while the scholarship to date has traditionally viewed restrictions on abortion and involuntary sterilisation procedures as completely separate issues, to be addressed in different ways and fora, this thesis adds to the literature by demonstrating the commonalities between both of these forms of restrictions on reproductive freedom and by considering them through the lens of the right to be free from torture and CIDT.

“Involuntary Sterilization of HIV-Positive Women: An Example of Intersectional Discrimination” by Ronli Sifris (2015) 37:2 Human Rights Quarterly 464-491.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2442139

Abstract: This article considers the involuntary sterilization of HIV-positive women through the lens of intersectional discrimination. It begins by examining the international human right to be free from discrimination before considering involuntary sterilization as a form of discrimination against women. The article then draws on the example of the involuntary sterilization of HIV-

positive women to make the point that, in order to truly understand the insidious nature of involuntary sterilization, it must be viewed through the prism of intersectional discrimination.

COMMENTARIES ON REPROHEALTHLAW-L:

Andy Sprung, “**ECHR decisions re Slovakia: forced sterilization of Roma women**”, Reproductive and Sexual Health Law Listserve, July 31, 2012.

<https://reprohealthlaw.wordpress.com/2012/07/31/echr-decisions-re-slovakia-forced-sterilization-of-roma-women/>

Decisions online: [http://hudoc.echr.coe.int/eng?i=001-111427#{%22itemid%22:\[%22001-111427%22\]}](http://hudoc.echr.coe.int/eng?i=001-111427#{%22itemid%22:[%22001-111427%22]}) (N.B. v Slovakia); [http://hudoc.echr.coe.int/eng?i=001-107364#{%22itemid%22:\[%22001-107364%22\]}](http://hudoc.echr.coe.int/eng?i=001-107364#{%22itemid%22:[%22001-107364%22]}) (V.C. v Slovakia)

Andy Sprung, “**European Court of HR Ruling: Slovakia: Forced Sterilization of Roma Women**”, Reproductive and Sexual Health Law Listserve, December 19, 2012.

<https://reprohealthlaw.wordpress.com/2012/12/19/european-court-of-hr-ruling-slovakia-forced-sterilization-of-roma-women/>

Decision Online: [http://hudoc.echr.coe.int/eng?i=001-114514#{%22itemid%22:\[%22001-114514%22\]}](http://hudoc.echr.coe.int/eng?i=001-114514#{%22itemid%22:[%22001-114514%22]})

Andy Sprung, “**Namibia: Forced Sterilization of Women Living with HIV**”, Reproductive and Sexual Health Law Listserve, March 7, 2013.

<https://reprohealthlaw.wordpress.com/2013/03/07/namibia-forced-sterilization-of-women-living-with-hiv/>

Decision online: <http://www.saflii.org/na/cases/NAHC/2012/211.html> ; <https://www.escri-net.org/sites/default/files/Govt%20of%20Namibia%20v%20LM.pdf> (appeal)

[Detailed case analysis](#) by Godfrey Kangaude and Phillipa Tucker for *Legal Grounds III: Reproductive and Sexual Rights in Sub-Saharan African Courts*, forthcoming 2016.

Cara Davies, “**Inter-American Commission on Human Rights: Admissibility of Bolivia’s International Liability for Sterilization without Consent and Denial of Access to Justice**”, Reproductive and Sexual Health Law Listserve, November 19, 2008

www.law.utoronto.ca/documents/reprohealth/LS041_Bolivia_Admissibility_case.pdf

Decision online: <http://www.cidh.org/annualrep/2008eng/Bolivia270.07eng.htm>

Simone Cusack, “**Roma sterilization case in Hungary: CEDAW**”, Reproductive and Sexual Health Law Listserve, November 21, 2006.

www.law.utoronto.ca/documents/reprohealth/LS006_Roma_sterilization_Hungary_CEDAW.doc

Decision online: <http://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/Decision%204-2004%20-%20English.pdf>

Christina Zampas, “**UN anti-torture rapporteur denounces RSH violations**”, REPROHEALTHLAW blog, April 10, 2013.

<https://reprohealthlaw.wordpress.com/tag/sterilization/>

Forced sterilization case against Bolivia – expert testimony by Christina Zampas
REPROHEALTHLAW Blog, June 9, 2016.

Case Summaries for Legal Grounds III (forthcoming)

[LM and Others v. Government of the Republic of Namibia](#), [2012] NAHC 211 (High Court of Namibia) [Court found forced sterilization of women without informed consent; unproven link to HIV-positive status] [Decision online](#).

[Government of the Republic of Namibia v L.M. & 2 Others](#) [2014] NASC 19 (Supreme Court of Namibia). [Court links forced sterilisation to infringement of constitutional rights] [Decision online](#).

FURTHER READING:

Forced abortions and sterilizations in China – **“Women’s rights group submits complaint to UN on Forced Abortion in China”**

News article: <http://www.cnsnews.com/news/article/womens-rights-group-submits-complaint-un-forced-abortion-china>

European Court of Human Rights: Gauer v France: Forced sterilisation of 5 women with intellectual disabilities without informed consent and against their wishes.

News article: <https://echrnews.wordpress.com/2011/11/22/gauer/>

Interights summary: <http://www.interights.org/gauer/index.html>

Center for Reproductive Rights, **“Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom”** (2003).

<http://www.reproductiverights.org/document/body-and-soul-forced-sterilization-and-other-assaults-on-roma-reproductive-freedom>

“Eliminating forced, coercive and otherwise involuntary sterilization – An interagency statement”, by OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO (May 2014).

http://www.who.int/reproductivehealth/publications/gender_rights/eliminating-forced-sterilization/en/

Involuntary Female Sterilisation (case study) in Part II of FIGO Introduction to Principles and Practice of Bioethics: Case Studies in Women’s Health (2012).

www.figo.org/sites/default/files/uploads/wg-publications/ethics/FIGO%20Ethical%20Issues%202015.pdf4893.pdf

For FIGO’s Contraceptive Sterilization Guidelines, 2011, see page 150 of FIGO’s Ethical Issues in Obstetrics and Gynecology (2015).

www.figo.org/sites/default/files/uploads/wg-publications/ethics/FIGO%20Ethical%20Issues%202015.pdf4893.pdf