

Organizations in several countries reject decision of the Colombian Constitutional Court allowing for sterilization of minors with disabilities without their consent.

Bogota, Colombia, March 18, 2014. On March 11th, the Colombian Constitutional Court validated the practice of surgical sterilization of minors with intellectual and psychosocial disabilities after considering a constitutional challenge to article 7 of Law 1412 of 2010, which prohibited the practice of surgical sterilization for contraceptive purposes on minors in all cases. (Decision C-133/14 – Press Release No. 08)

Although the Constitutional Court declared article 7 constitutional, it stated that *“when it comes to minors with disabilities for whom there is a proven impossibility to give consent in the future to undergo sterilization procedures, the parents, or in any case, the legal guardian, must request judicial authorization to allow surgical sterilization. In that sense, previous case law has considered that a person that does not have the capacity to understand what sterilization is or its consequences, as it is the case of mental disabilities, she or he will hardly be in a place to understand the responsibility attached to the exercise of maternity or paternity and therefore, the implications of being able to or not to procreate”*. The Court added: *“The decision to undergo surgical sterilization ensures more dignified living conditions for those who cannot make decisions related to the exercise of their reproductive freedom and that may be exposed to forced pregnancies in detriment of their dignity and personal integrity.”* Justices Luis Guillermo Guerrero and Luis Ernesto Vargas will draft concurring opinions because they consider that such interpretation goes against applicable international human rights standards.

Various national and international organizations firmly rejected the statements of the Constitutional Court. *“Sterilization does not protect anybody from sexual violence and in fact it is a risk factor. With this decision the Court disregarded its obligations under the Convention on the Rights of People with Disabilities, ratified by Colombia. The Convention requires that States recognize people with disabilities' full legal capacity to make their own decisions and that they provide the necessary supports to do so”*, said Andrea Parra, Director of the Action Program for Equality and Social Inclusion (PAIS) of the Universidad de los Andes in Colombia. *“The Convention specifically protects people with disabilities' right to maintain their fertility, which historically has been controlled and denied. The Convention recognizes that all the people, regardless of their disability, have will and preferences and the State must recognize and respect them. Validating a third party signature of the consent form to the procedure is forced sterilization”*, Parra added.

Organizations from Australia, Argentina, Canada, the United States, India, Mexico, Peru and the United Kingdom, as well as international organizations rejected the decision. According to Human Rights Watch, *“Women and girls with disabilities are disproportionately vulnerable to forced sterilizations performed under the auspices of legitimate medical care or the consent of*

others in their name.(...) In many of the cases that come before the courts, the motivation for sterilization is not malevolent or ill-intentioned. (...) Regardless, forced sterilization is an act of violence, a form of social control, and a violation of the right to be free from torture and other cruel, inhuman or degrading treatment or punishment."

The International Federation of Gynecology and Obstetrics (FIGO) in its guidelines on female sterilization states that *"Only women themselves can give ethically valid consent to their own sterilization. Family members including husbands, parents, legal guardians, medical practitioners and, for instance, government or other public officers, cannot consent on any woman's or girl's behalf."*

Doctor Claudia Malacrida, sociologist and professor at the University of Lethbridge in Canada, expert in eugenic practices said: *"Involuntary sterilization is not the solution for disabled people's sexuality. Rather, education, support and opportunities to engage and learn, facilitate disabled people's emotional, sexual and reproductive lives. Involuntary sterilization can also often have the effect of hiding the outcomes of sexual abuse; it is NOT a way of protecting disabled people from abuse or unwanted sexual contact, but in fact can make them more vulnerable"*.

Stephanie Ortoleva, from international NGO Women Enabled, Inc. states: *"Forced non-consensual sterilization of women and girls with disabilities cannot be tolerated as it not only violates our core human rights, but also our physical and mental health. Empowering others to make such decisions for women and girls with disabilities is an unacceptable form of violence and control"*.

Erich Kofmel from Autistic Minority International added: *"What is particularly troubling to us is the uncertain scope of the court's decision. Many persons with so-called mental disabilities, for example those on the autism spectrum, may be falsely thought of as incapable of exercising their sexual and reproductive rights, now or in the future, and unjustly judged due to a lack of knowledge about their condition."*

The decision not only disregards the UN Disability Convention, it also ignores the recommendations made to Colombia by the Committee to Eliminate all Forms of Discrimination Against Women (CEDAW), which specifically told Colombia to amend its regulatory framework to guarantee that sterilization is conducted with the free and informed consent of women with disabilities.

This and other aspects related to violations of sexual and reproductive rights of people with disabilities in Colombia will be presented to the Inter-American Commission on Human rights during the upcoming thematic hearing on the issue, which will take place on March 24th in Washington, D.C., United States.

Colombia has the international obligation to adjust its laws, judicial decisions, policies and practices to the mandates of the UN Convention on Disability and to guarantee the autonomy and legal capacity of all people with disabilities as recognized by Law 1618 of 2013.

Signatory Organizations:

Colombia:

Action Program for Equality and Social Inclusion (PAIIS), Universidad de los Andes
Asociación Colombiana de Síndrome de Down (ASDOWN)
Liga Colombiana de Autismo (LICA)
Fundamental Colombia

Other countries:

Autistic Minority International (International)
Burton Blatt Institute, Syracuse University (United States)
Canadian Association of the Deaf (Canada)
Eugenics and Newgenics Research Project, Universidad de Lethbridge (Canada)
Center for Reproductive Rights (International)
Centro Estratégico de Impacto Social – CEIS (Mexico)
Centro de Estudios Legales y Sociales – CELS (Argentina)
Clínica Jurídica de Acciones de Interés Público, sección Discapacidad de la Pontificia
Universidad Católica del Peru. (Peru)
Clínica Jurídica del Programa Universitario de Derechos Humanos de la UNAM (Mexico)
Disability Rights International –DRI (International)
Documenta, análisis y acción para la justicia social a.c. (Mexico)
Human Rights Watch (International)
Impact Litigation Project, American University (United States)
International Disability Alliance (International)
International Network of Women with Disabilities (International)
Open Society Foundations (International)
Proyecto de Litigio de Alto Impacto, American University (Estados Unidos)
Respectful Interfaces (Estados Unidos)
School of Health, Policy and Management, Critical Disability Studies, York University (Canada)
Sisters of Frida (United Kingdom)
Sociedad y Discapacidad (Peru)
Women Enabled, Inc. (International)
Women with Disabilities Australia (Australia)
Women with Disabilities India Network (India)

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Sources:

Constitutional Court of Colombia – Press Release No. 08 – March 11, 2014: <http://goo.gl/pTKohf>

UN Convention on the Rights of People with Disabilities: <http://goo.gl/P72C2s>

Recommendations to Colombia by the CEDAW Committee, October 2013, par. 30(e): <http://goo.gl/94Yjpz>

International Federation on Gynecology and Obstetrics. Guidelines on Female Sterilization, 2011:
<http://goo.gl/Y8xTPn>

Human Rights Watch Report on Sterilization of Women and Girls with Disabilities: <http://goo.gl/OZX0Bi>