HER RIGHTS INITIATIVE

TRANSFORMING POWER

212 The Bishop| 117 Inanda Road| Hillcrest 3610|KwaZulu-Natal| South Africa| NPC 2021/874/199/08| NPO 275 503

7 December 2022

Dear President Cyril Ramaphosa,

RE: FORCED STERILISATION OF HIV POSITIVE WOMEN IN SOUTH AFRICAN PUBLIC HOSPITALS

We write to you just over two years after the release of the Commission for Gender Equality's ('CGE') investigative report on the forced and coerced sterilisation of HIV positive women in South Africa. It has also been just short of two years since women who were forcibly and/or coercively sterilised in public hospitals in South Africa met with the Independent Committee to Accelerate Redress to Women of Forced Sterilisation appointed by the Minister of Health Dr Z Mkhize in response to Recommendation 12.4 of the Commission of Gender Equality's Report.

At the time of the CGE investigation, 48 HIV positive women bravely stepped forward to speak out about the shame they carry as women who were forced into undergoing sterilisation due to their HIV diagnoses in public hospitals. Since then, more and more women have come forward to share their own stories and Her Rights Initiative (HRI), along with the Women's Legal Centre (WLC), now currently supports and represents more than 85 HIV positive women who were subjected to cruel, torturous, or inhuman and degrading treatment in accordance with finding 11.6 of the CGEs report. The United Nations Special Rapporteur on Torture included HIV positive women as one of the population groups disproportionally vulnerable to forced sterilisations in 2013.

Our letter comes two years and eight months since the CGE released their report and seven years after the original complaint by the 48 women was first lodged. In its investigative report, the CGE identified 26 human rights violations perpetrated by the state against women in our country. The CGE found that complainants were subjected to torture and degrading treatment in that they were not provided adequate information on the sterilisation procedure before their consent was obtained; complainants were not advised of alternative methods of contraception, the medical staff breached their duty of care towards the complainants, and that the consent forms produced in some of the cases were not indicative of the standard required for informed consent.

The issue of forced and coerced sterilisation of poor Black African women who are HIV positive in South Africa was identified in the late 1990s–2000s. The violation has continued for over three decades with the latest case identified as recently as 2021. The South Africa HIV Stigma Index study by the Human Sciences Research Council and other collaborating partners found that 498 (7.6 per cent) of HIV positive women reported that they were forced into sterilisation. In 2015 there were more than four (4) million women in South Africa are HIV positive. This number has increased to more than five (5). million.

In November 2022 South Africa was questioned on forced sterilisation of Black poor HIV positive women at the United Nations Universal Periodic Review Process. South Africa was presenting on progress the country has made on implementation of the United Nations Universal Human Rights Declaration. In July 2022, The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, noted in a report on Racism and the right to health, that ***"Media coverage of forced sterilizations of women based on HIV status requires a nuanced understanding of the "intersection of their gender, race and class which renders them more vulnerable to forced and coerced sterilization***"

In 2021 the Committee on Elimination of All Forms of Discrimination Against Women (CEDAW) after receiving a report from HRI, WLC and Pro Bono.org noted with concern the forced sterilisation of HIV positive women in public health facilities in South Africa. In its concluding observations on South Africa's Fifth Periodic Report, the Committee recommended that South Africa immediately end the practice of forced sterilisation of women HIV positive women and amend the Sterilisation Act 44 of 1998 to require the free, prior, and informed consent of the woman concerned to any sterilisation.

Since the release of their report, the CGE has attempted to monitor the implementation of the report recommendations, but they appear to have exhausted their internal ability or simply lack the political will to hold the Department of Health and government to account for the torture that women suffered in public hospitals in our country.

On 25 November 2020, we were first advised that the Minister of Health had appointed an Independent Committee to Accelerate Implementation of Redress to Complainants of Forced Sterilisation and that this Committee would be made up of specialists that would be assisting the department in implementing the GCE recommendations and assisting the women who had come forward. Since the establishment of this Committee, we have addressed correspondences seeking clarity from this Committee on their mandate, terms of reference and the rights of women in the process of engagement with the state. On 3-4 June 2021, the first in-person meeting with the Committee was held in Durban and close to 85 of the women attended. This was the first opportunity provided to them to seek answers and to share their experiences with the state that bears the obligation to address the injustice they have suffered.

During the meeting's first day, women took the opportunity to share their stories and to ask the Committee questions they had still not received responses for. Unproductively, however, women's questions at this engagement were met with arrogance and hostility from representatives of a state which sought to provide justifications for acts of torture by, among other submissions, stating that the acts were supported by research available at the time. During these engagements, representatives refused to acknowledge the validity of women's claims and insisted that medical evidence was required to substantiate their claims of forced and coerced sterilisation. These statements were made in disregard of the CGE investigation and findings and entrenched the women's belief that they would not be provided with medical evidence as the Department of Health administrates the very hospitals where their medical records are kept. It also confirmed the frustration of the CGE during their investigation where they received no cooperation when requesting medical files.

Despite the disregard shown, however, at the Committee's behest, women still consented to the Committee obtaining and sharing their medical records so that the Committee could see firsthand what they had been subjected to. At the conclusion of this meeting, an undertaking was made that the Committee would report back to the Minister of Health, reassess its composition, and seek to extend its mandate to engage with women on restitution for the sufferings they have endured.

Notwithstanding the undertaking referred to above and continued correspondences to the Committee, women remain without feedback on their rights under this process of engagement and the women have not had sight of their medical records. Many women have in this time lost hope and trust in the Committee and the Department of Health, with more and more holding the belief that their medical records and proof of their sterilisation have been destroyed.

Women have therefore called us to write this open letter to Your Excellency, Mr President as the fifth democratically elected president of South Africa and given that the above events have occurred under your term as President of our country. Your Excellency, Mr. President, were in fact the Chairperson of the South African National AIDS Council in 2015 when the HSRC and SANAC Stigma Index was launched and within which the torture that women endured was captured and documented in the work done by SANAC. The current Deputy Minister of Justice John Jeffery also as a matter of fact signed the preface of this very same report and could only have lent to an already existing awareness of our plight at a time before the CGE released its report.

Despite this early awareness, however, nothing was done at the time to redress the harm suffered and women were met with silence and a disregard for the violation of rights by state actors. Women now assert that they have been met with silence and ignored, because they are poor, black HIV positive women in a country where women who are positioned at the intersection of multiple forms of discrimination are often overlooked and far too often simply silenced. While 26 cases of human rights abuse were identified by the CGE, no Commission of Inquiry was instituted by Your Excellency, Mr. President, to investigate and seek redress. We, however, cannot help but notice that during this time multiple other commissions investigating all forms of other abuses committed by this very state were established and fully funded.

We've noted that the state has appointed well-funded experts to assist in investigating other atrocities and that through this prioritisation, rights violations have been acknowledged, apologies made, and compensation provided to those victimised. In our case, however, instead of funding a capable and restitution-based process the Department of Health has questioned the validity of the CGE findings. The Department of Health has only sought to hide and justify the torture suffered through instituting the Independent Committee and placing it under an underfunded Maternal Child and Women's Health Unit that has for close to a year now been unable to achieve anything meaningful and who have effectively stopped communicating with the women.

In their last communication they have stated that all correspondence related to their mandate and the CGE report needs to be referred to the Minister and the Director General of Health.

We, therefore, call on Your Excellency, Mr. President as the head of State who bears the obligation in line with our Constitution and international law to address the torture and cruel and inhuman treatment of HIV positive women by:

1. Immediately provide programmes mental health treatment, treatment of side effects, complications of violent sterilisations procedure, social protection, and secondary victimisation in line with Article 14. 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Provisions of Article 5 of the African Charter on Human and Peoples' Rights.
2. To date 32 of the 85 women (37.7) of the women are on mental health medication through charitable assistance from psychiatrists who support our course.
3. Your Excellency, Mr President, you have a duty to ensure that the victims have women in South Africa have access to the highest available standard of sexual and reproductive health care services to treat complications, unhealed operative wounds, reproductive and urinal indignity of the violent operations, committed by doctors, who turned surgical instruments to instruments of violence to butcher us.
4. Appoint a Judicial Redress Committee and that such a Committee be fully funded to attend to the implementation of a comprehensive restitution package after consultation with HIV positive and who are victims of forced sterilisation; pursuant to Article 14 of the Convention against Torture, and Article 5 of the African Charter on Human and Peoples' Rights.
5. Ensuring the inclusion of forced and coerced sterilisation as an extreme form of violence, under the National Strategic Plan on Gender-Based Violence and Femicide so that State sanctioned violence and other forms of violence against HIV positive women are acknowledged, noting that HIV positive women are up to five time more likely to experience violence, than other groups of marginalised women, yet the strategy process resisted to engage and include HIV positive women
6. Instruct the Minister of Health to comply with the recommendations made by the CGE in respect of the Department, which include:

a. Interrogating and scrutinising the provisions of the Sterilization Act and interrogating consent forms for sterilisations to ascertain whether the provisions contained therein provide for and protect the principle of informed consent in all respects;

b. Reporting back to the CGE on the steps it will take to eradicate the harmful practise of forced sterilisation;

c. Facilitating dialogue with the complainants to find ways of providing redress for the complainants;

d. Revising consent forms to bring them into conformity with the guidelines provided by the International Federation of Gynecology and Obstetrics and standardised for all sterilisation procedures;

e. Printing consent forms in all official languages and ensuring that information on the procedure and particularly its irreversible nature is given in a patient's language of choice. This needs to the executed and attested to;

f. Making it an operational policy requirement that where a patient agrees to sterilisation, they must be given a "cooling off" period in order to fully appreciate the risks and consequences of their sterilisation procedure;

g. Ensuring that standard timeframes should be put in place in relation to when the discussion around sterilisation should take place. Patients cannot be informed about this process minutes before going to theatre.

h. Patients must also be informed that they are at liberty to change their minds at any time before the procedure takes place;

i. Ensuring that their filing systems, both manual and electronic are standardized for ease of coordination; and

j. Giving timeous feedback on the above.

7. Commencing a review through the South African Law Reform Commission of the Sterilisation Act 44 of 1998 to ensure that recommendation 54(C) of the Committee on the Elimination of All Forms of Discrimination Against Women's (CEDAW) concluding observations on the fifth periodic report of South Africa is implemented.

8. The recommendations require that the South African state "[I]mediately stop the practice of forced sterilisation of HIV positive women and amend the Sterilisation Act 44 of 1998 in order to require the free, prior and informed consent of the woman concerned to any intervention".

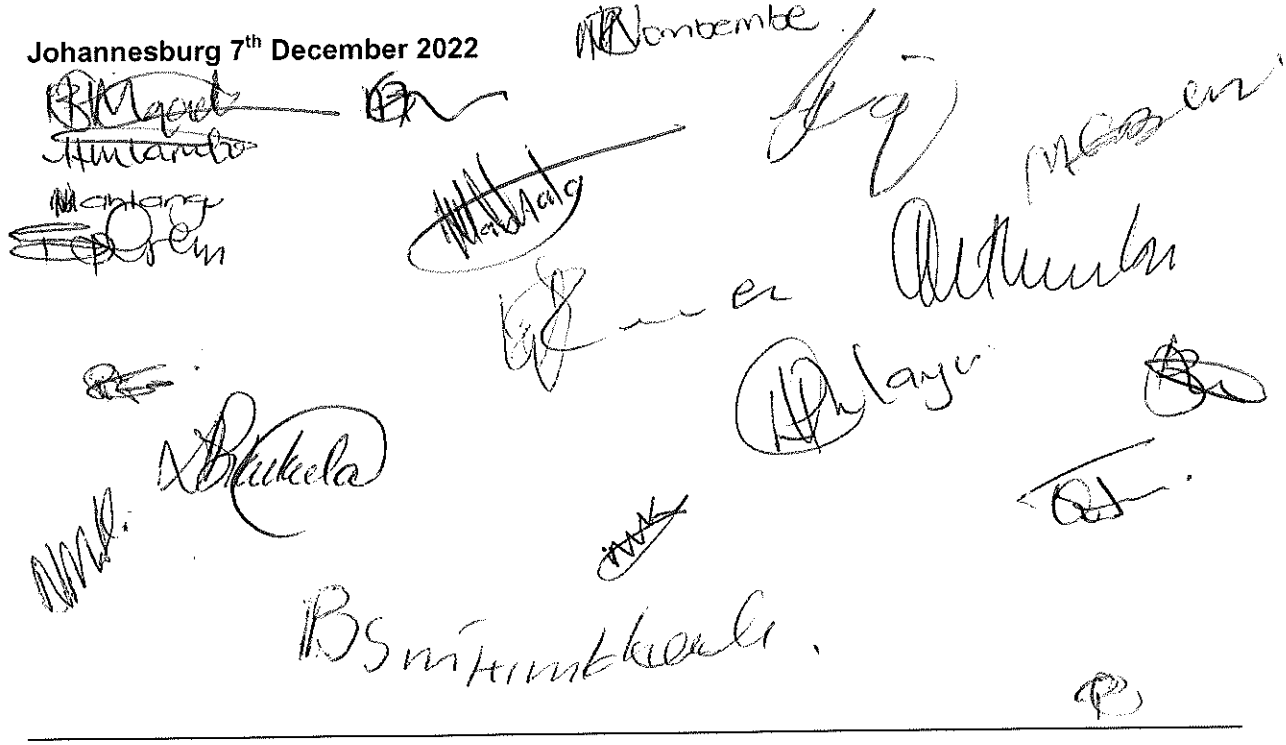
The time has come for this government to recognise and acknowledge what it has done to the women of this country and to seek to make amends. It is time to acknowledge the lived reality, systematic violence, and pain experienced by HIV positive women.

Sincerely,

Her Rights Initiative and

85 Black poor HIV positive women are victims of forced sterilisation in South Africa.

Johannesburg 7th December 2022



Her Rights Initiative *is a feminist social impact organisation formed in 2009 to claim and defend the Constitutional rights of HIV positive women in South Africa*