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Forced Sterilization of Indigenous Women: Courts should strongly Condemn this Persistent Form of Gross Violence against Indigenous Women, their Families and their Communities

In August, domestic and international tribunals advanced consideration of cases about forced sterilization of indigenous women. In Canada, the Quebec Superior Court (a trial court) has authorized a class action suit brought forward by affected indigenous women,ⁱ while the Inter-American Court of Human Rights (I-A Court) will decide on the case of Celia Ramos, a precedent that may be of great assistance to other women, both within the context of the massive, forced sterilizations that took place in Peru in the late 1990s and elsewhere.ⁱⁱ

Forced sterilization of indigenous women is a gross violation of their fundamental human rights, including their right to free, prior and informed consent. In many cases, women were not even informed about the procedures performed on them, and they discovered the truth much later.ⁱⁱⁱ The UN Special Rapporteur on the right to health explains that “guaranteeing informed consent is a fundamental feature of respecting an individual’s autonomy, self-determination and human dignity...”^{iv} This practice is not only a criminal offense against the affected individual victims, but also a continuation of colonial policies and practices directed at the extermination or assimilation of indigenous peoples. Moreover, under the Rome Statute, forced sterilization is characterized as a crime against humanity. That these practices and associated impunity persist, under the guise of health and reproductive care programs, is a clear indication of persistent and structural racism against indigenous peoples and indigenous women and girls.

Various international authorities have rules that forced sterilization constitutes a set of gross human rights violations, including guarantees against inhumane and degrading treatment.^v In 2018, the UN Committee against Torture (CAT) referred to the involuntary sterilization of indigenous women in Canada, calling on Canada to ensure that all instances “are impartially investigated, that the persons responsible are held accountable and that adequate redress is provided to the victims.”^{vi} It further recommended that Canada “[a]dopt legislative and policy measures to prevent and criminalize the forced or coerced sterilization of women, particularly by clearly defining the requirement for free, prior and informed consent with regard to sterilization and by raising awareness among indigenous women and medical personnel of that requirement.”^{vii} In 2019, the Inter American Commission on Human Rights (IACHR)

expressed its ‘deep concern’ about this practice, urging Canada to “to guarantee effective access to justice for survivors and their families, to conduct impartial and immediate investigations, to hold those responsible to account and to take all of the necessary measures to put an end to the practice of sterilizing women against their will.”^{viii}

The Quebec and other Canadian cases are not isolated as ongoing calls for investigations and prosecutions in the USA, Greenland, and Peru attest.^{ix} In Peru, it is estimated that 270,000 women and 22,000 men were sterilized under the *Programa Nacional de Salud Reproductiva y Planificación Familiar* during the period 1990-2000. The program mainly targeted indigenous communities and the rural poor.^x In 2001, the Peruvian Congress started an investigation which concluded that 314,605 women were sterilized under the Program and many cases lacked registers of consent. Despite the number of claims and the serious impacts, the Truth and Reconciliation Commission did not consider this issue. Instead, the victims were forced into a long fight for justice at the national and international levels.^{xi}

In 2000, the case of María Mamérita Mestanza Chávez, who died due to post-operation complications, was admitted by the IACHR.^{xii} In 2003, Peru signed an agreement for friendly settlement, in which it committed to implement measures for integral reparation, including legislative and policy reforms to ensure non-repetition. Twenty years later such measures have not been fully implemented.^{xiii} Although an official registry of victims of forced sterilization was created in 2015 (*Registro de Víctimas de Esterilización Forzada*) with the objective of providing integral support to the affected, no adequate reparation has been provided.

The I-A Court will now consider the case of Celia Ramos, who died in 1997, nineteen days after the procedure was performed on her without her consent. This pending decision may be a first step for the thousands of victims of forced sterilization in Peru to finally access justice and achieve truth and reparation.^{xiv}

In Greenland, the Danish government committed to conduct an investigation in 2022 about thousands of Inuit women and girls – “roughly half of all fertile females” – who were fitted with an intrauterine device during the 1960s and 70s.^{xv} The Special Rapporteur on the Rights of Indigenous Peoples called “upon the governments of Denmark and Greenland to extend the scope of the inquiry into more recent cases and include the oral testimonies of Inuit women as part of the investigation process.”^{xvi} He further observed that this “dramatically dropped the birth rate of Inuit women leading to a drastic change in the composition of the Inuit society,” and that the affected women “are traumatized till today and they seek justice for the pain and suffering imposed on them...”^{xvii}

In its recent General Recommendation No. 39, the UN Committee for the Elimination of Discrimination Against Women (CEDAW) pointed out the need to respect indigenous women and girls’ right to free, prior and informed consent in the context of health care. It notes that they “are often victims of gender-based violence in the health system, including obstetrics violence; coercive practices, such as involuntary sterilizations or forced contraception.”^{xviii} The UN Committee on the Elimination of Racial Discrimination and several UN Special Procedures have also recently expressed

their concern about this practice^{xix} and its link with violence and discrimination against indigenous women, and they stressed the need to eradicate it, to investigate allegations, and provide adequate remedies to victims.^{xx}

IPRI expresses its solidarity and support to the victims and all those that have supported their fight for justice on these issues. We urge both the Canadian Courts and the I-A Court to uphold international human rights standards and to strongly condemn these practices. They must consider the collective impacts of the forced sterilization programs on indigenous peoples and its connection with racism, discrimination, and colonialism. Adequate remedy for the victims, their families and communities should be ordered, as well as strong measures to ensure non-repetition.

References and further information

- i <http://tinyurl.com/49c4xbjx>; <http://tinyurl.com/ycy52nmc>
- ii 'IACHR Files Case Concerning Peru with IA Court on Sterilization without Consent', IACHR Press Release, 18 August 2023, <http://tinyurl.com/5yukchkz>
- iii See <http://tinyurl.com/3yyba333> (A university study released late last year found there have been at least 22 cases of forced sterilization of First Nations and Inuit women in Quebec since 1980. The researchers at Université du Québec en Abitibi-Témiscamingue reported that several of the 35 study participants did not realize they had been sterilized until years after, when they sought treatment for fertility issues.) Also <http://tinyurl.com/mr3kpycb>
- iv *Report of the special rapporteur on the right to the enjoyment of the highest attainable standard of physical and mental health*, A/64/272 (10 August 2009), para 18.
- v E.g., CAT/C/SVK/CO/2, para. 14; CEDAW, General Recommendation No. 24 (women and health), A/54/38/Rev.1 (1999), para. 22; VC v Slovakia. No. 18968/07, ECtHRts (2011) (finding that forced sterilization violated the right to private and family life and the right to be free from torture and inhuman or degrading treatment); and *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/22/53 (1 February 2013), para. 48 ("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").
- vi CAT/C/CAN/CO/7, paras 50-51.
- vii *Id.*
- viii <http://tinyurl.com/3synvp2b>
- ix <http://tinyurl.com/2ecn375w>
- x IAComHR. NFORME No 71/03[1]. PETICIÓN 12.191. SOLUCIÓN AMISTOSA. MARÍA MAMÉRITA MESTANZA CHÁVEZ, PERÚ.10 de octubre de 2003. Para 9. *Las peticionarias legan que el caso de la Sra. María Mamérita Mestanza representa uno más entre un número significativo de casos de mujeres afectadas por la aplicación de una política gubernamental de carácter masivo, compulsivo y sistemático que enfatizó la esterilización como método para modificar rápidamente el comportamiento reproductivo de la población, especialmente de mujeres pobres, indígenas y de zonas rurales.* At: <http://tinyurl.com/53yuhta5>; See also <http://tinyurl.com/2v2ffr9j>
- xi CHIRIF, Alberto (Ed.) *Las esterilizaciones forzadas, en la década del terror. Acompañando la batalla de las mujeres por la verdad, la justicia y las reparaciones.* IWGIA. DEMUS. 2021. At <http://tinyurl.com/47dusdaz> Also, ONAMIAP/IWGIA documentary, <http://tinyurl.com/4svn8p3b>. Relevant reports of the Peruvian Ombudsman Office available at <http://tinyurl.com/4psvxmcs>. See also <http://tinyurl.com/49as3xdp>.
- xii IAComHR, INFORME No 66/00 CASO 12.191 MARÍA MAMÉRITA MESTANZA CHÁVEZ PERÚ 3 de octubre de 2000. <http://tinyurl.com/3k6vzz83>.

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- xiii <http://tinyurl.com/bde45c2u>
- xiv The case was considered admissible by the IAComHR in 2019, <http://tinyurl.com/yuxcxak9>.
- xv 'Inuit Greenlanders demand answers over Danish birth control scandal', BBC News, 30 September 2022, <http://tinyurl.com/3r83y8x7>.
- xvi Visit to Denmark and Greenland, 1-10 February 2023. End of Mission Statement, <http://tinyurl.com/ntuf3se9>
- xvii *Id.*
- xviii CEDAW General recommendation No. 39 (2022) on the rights of Indigenous women and girls CEDAW/C/GC/39, para 51.
- xix CERD First draft General recommendation No. 37 (2023) on Racial discrimination in the enjoyment of the right to health, CERD/C/GC/R.37, 12 May 2023, para 21.
- xx Special Rapporteur on the rights of indigenous peoples. *Rights of indigenous women and girls*. A/HRC/30/41. 6 August 2015, para 34: *There have also been severe historical violations of indigenous women's rights in relation to sexual and reproductive rights in the context of denial of their rights to self-determination and cultural autonomy. Those violations include forced sterilization of indigenous women and attempts to force indigenous women to have children with nonindigenous men as part of policies of cultural assimilation.* Special Rapporteur on violence against women, its causes and consequences. *Violence against indigenous women and girls*, A/HRC/50/26, 21 April 2022, para 7: *Indigenous women and girls face complex and intersectional forms of violence, linked to patriarchal structures, racial and ethnic discrimination and socioeconomic status. Evidence from various countries shows that indigenous women have been particularly exposed to serious forms of gender-based violence, such as forced sterilization; trafficking and sexual violence in the context of displacement or migration; harmful traditional practices; and gender-based violence in the context of conflict.* And para 30: *As the Inter-American Commission on Human Rights has rightly observed, these "acts of violence and discrimination against indigenous women not only harm those women individually, but also negatively impact the collective identity of the communities to which they belong". The violation of their collective rights is particularly pronounced through the denial of dignified and culturally sensitive enjoyment of their sexual and reproductive health and rights, as indigenous women and girls have been subjected to eugenically imposed birth control, forced sterilization and attempts to force them to have children with non-indigenous men as part of assimilation policies.* Special Rapporteur on freedom of religion or belief. *Indigenous peoples and the right to freedom of religion or belief: Interim Report*, A/77/514, 10 October 2022, para 22: *Several reports of State efforts to further assimilation initiatives detail attempts to control indigenous women's sexuality and reproductive capacities, including sterilization of Native American women in the USA; "biological absorption" (via forced impregnation) in Australia's Stolen Generations; and Denmark's insertion of IUD devices into approximately 4,500 Greenlandic women and girls often without their consent.*