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Report to the Senate of Canada Standing Committee on Human Rights so that Victims of Forced Sterilization Can Seek the Truth, Justice and Comprehensive Reparation, Taking into Account the Experience in Peru

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In the 1990s, under the dictatorial government of former President Alberto Fujimori, a government policy and a National Reproductive Health and Family Planning Program (1996-2000) were designed and introduced that forcibly sterilized more than 200,000 women, the majority of whom were poor, illiterate teen and adult Indigenous Andean and Amazonian or Quechua-speaking peasant farmers.

According to the analysis of data from the National Statistics and Informatics Institute (INEI) and the Ministry of Health (MINSa), 211,000 women who underwent tubal ligation between 1993 and 2000 did not have complete information, and 25,000 women never knew that it was irreversible.<sup>1</sup>

In November 2018, the Public Prosecutor's office condemned Alberto Fujimori and his former ministers of health and other parties before the judiciary for the crimes of serious injury causing death and serious injury in the context of major human rights violations, after 16 long years of preliminary prosecution investigations involving 2,166 complainants.<sup>2</sup>

The Fujimori policy established numerical objectives, user recruitment quotas, incentives and sanctions for health personnel mainly to have women undergo "Voluntary Surgical Contraception (VSC)." They appear in the documents and testimony on the prosecution record.

After investigations conducted by the Ombudsman's Office and society, it became apparent that operations were performed without complying with the international human rights standards of providing free, informed, advance, written consent.

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<sup>1</sup> Rendón, Silvio. Economist PhD, New York University. Sterilization with incomplete information: Peru 1991-2000. September 2017.

<sup>2</sup> See: <https://peru21.pe/politica/ministerio-publico-denuncia-alberto-fujimori-esterilizaciones-forzadas-nndc-440036>

The surgical procedures were performed with insufficient or no prior counselling. The information was biased or was not given in the mother tongue.

Testimonial statements from affected women show that they did not sign any consent. However, there are forms with signatures and pieces of paper which have signatures that are impossible to identify.

In some cases, the operations were performed with the exclusive approval of their male partners (husbands and common-law partners).

Similarly, it was documented that the method was imposed on woman in general who did not know the content of what was written. The voluntary statement was obtained through home harassment, deceit, mistreatment, intimidation and threats to use public force, administrative or criminal sanctions or the suspension of certain rights.

They were performed under conditions that were inadequate or unsafe resulting in complications that to date have impacted women's health. According to the official data, the Ministry of Health has reported that at least 18 women died.

During these family planning campaigns, discrimination based on gender and socio-economic (poverty and extreme poverty), race and/or ethno-linguistic status was practised. All of this has created an emblematic case in Peru: the case of forced sterilizations.

For the past 20 years, along with Demus and other human rights and feminist civil society organizations that help women and families affected by these human rights violations, the victims, individually and collectively, have developed strategies and actions to seek justice, truth and comprehensive reparations. We are sharing them with you in this report.

### **The importance of women victims, their testimony and rights regarding participation and consultation**

To start with, it is important to recognize that a human being is an end in itself not a means. A public policy on poverty reduction cannot be sustained based on a supposed claim of women's reproductive autonomy, violating human dignity and their basic human rights, as Fujimori argued and finally allowed. There is no basis for any public policy that exploits people in general and women in particular.

The rule of free, informed, advance, written consent needs to be implemented. This means knowing about the medical procedure, where people can obtain adequate, reliable, comprehensible, complete and timely information, even more so when it comes to family planning or sexual and reproductive health services, especially when the procedures are irreversible.

In *I.V. v. Bolivia* on forced sterilization, the Inter-American Court of Human Rights confirms that "[i]nformed consent is a condition *sine qua non* for a medical practice, based on the respect for autonomy and freedom of choice in each person's life plan. In other words, informed consent

ensures that the *effet utile* of the norm that recognizes autonomy as a vital element of human dignity.”<sup>3</sup> This process makes it possible to reinforce that a person, as an independent moral subject, can make decisions as to whether to undergo a medical procedure based her/his own convictions, cultural conditions and preferences that are in keeping with her/his life plan.

It is essential to incorporate gender, intercultural and intersectional perspectives, as the populations are Indigenous women, as well as those from marginalized urban areas, who have different and diverse lifestyles and worldviews.

Similarly, all legislation, public policy or state measure to seek the truth, justice and comprehensive reparation for victims of forced sterilization must be designed, adopted and implemented with the funded, active participation of women victims.

The women victims have managed to organize and build support networks. They are overcoming their status as victims to become actors capable of advocacy, being the ones who advance their own agendas, meeting with authorities and using their own voices and stories to seek the truth, justice and comprehensive reparation.

This process has been furthered with the creation of the Unique Registry of Forced Sterilization Victims (REVIESFO) under the Ministry of Justice and Human Rights, as we will see below.

### **The importance of strategic litigation and guaranteed access to national and international justice**

Demus and other national and international organizations approached the Inter-American Commission on Human Rights in the case of María Mamérita Mestanza Chávez, who died after being subjected to forced sterilization in unsafe conditions. It is an emblematic case because it was the first time a state in Latin America assumed responsibility before an international body for applying a national public health policy in sexual and reproductive health that violated women’s human rights.

By signing the Friendly Settlement Agreement in 2003, the Peruvian State recognized the violation of the rights to life, personal integrity, and equality before the law and the non-compliance with the duty to adopt policies that prevent and sanction violence against women. It therefore undertook to implement reparation measures for the victims, such as compensation, investigation of facts, administrative, civil and criminal sanctions against those responsible, as well as the adoption of measures that prevent these events from happening again.

Regarding the obligation to investigate and sanction, the commitment made was not only for the case of María Mamérita Mestanza Chávez but for all the victims of forced sterilization. It also undertook to comply with the recommendations of the Ombudsman’s Office, which include health reparations and compensation.

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<sup>3</sup> Inter-American Court of Human Rights, *I.V. v. Bolivia*, 30 November 2016 (Preliminary Objections, Merits, Reparations and Costs).

To ensure that the State honoured its commitments, a number of national and international actions were taken. This included reopening the national investigations and then having the Public Prosecutor's Office lodge the complaint before the Judicial Branch against Alberto Fujimori and his former ministers of health as the authors of the alleged offences of serious injuries causing death in five cases and serious injuries in the cases of the 2,166 complainants, serious human rights violations against life, body and health, as we have mentioned.

In the working meetings held in different sessions of the Inter-American Commission on Human Rights (IACHR), various advances were made.

In October 2016, the State undertook to set up a working group that, with the competent State sectors, victims of forced sterilization and civil society, would begin the implementation of a comprehensive reparation policy to be included in the 2018-2021 National Human Rights Plan. Similarly, in October 2018, the State recognized at a public hearing before the IACHR that this crime was perpetrated as part of a State policy that violated human rights and that, for the first time, in addition to having the right to justice, victims had the right to reparation. The working group was set up in November 2018.

### **The importance of setting up the Registry of Forced Sterilization Victims and the statement of national interest for the priority consideration of victims**

In November 2015, as a result of efforts with the IACHR and reports from the Ombudsman's Office, as well as various legislation, the **Registry of Forced Sterilization Victims (REVIESFO)** was created, making a statement through Supreme Decree N°006-2015-JUS of the national interest in the priority consideration of victims (REVIESFO) under the Ministry of Justice and Human Rights, the Ministry of Women and Vulnerable Communities and the Ministry of Health.<sup>4</sup> In December 2015, the Procedure for registration on the Registry of Forced Sterilization Victims created in 1995-2001<sup>5</sup> (REVIESFO) was approved, which was subsequently amended in June 2017.<sup>6</sup>

This registry is important because it is aimed at setting out the universe of victims and ensuring that they have access to justice. It establishes the judicial framework for implementing free legal assistance, psychological support and integrated healthcare. It also makes it possible to approximate the national number of people affected by forced sterilizations. It must be made clear that it does not replace what should be a comprehensive reparation policy demanded by organizations supporting women victims, which is still pending.

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<sup>4</sup> <https://busquedas.elperuano.pe/normaslegales/decreto-supremo-que-declara-de-interes-nacional-la-atencion-decreto-supremo-n-006-2015-jus-1308828-2/>

<sup>5</sup> <https://busquedas.elperuano.pe/normaslegales/aprueban-el-procedimiento-para-la-inscripcion-en-el-registr-resolucion-ministerial-n-0319-2015-jus-1320268-1/>

<sup>6</sup> <https://busquedas.elperuano.pe/normaslegales/aprueban-tercera-etapa-de-implementacion-del-registro-de-vic-resolucion-ministerial-no-0157-2017-jus-1537444-1/>

It is key to recognize that the State, through the Ministry of Women and Vulnerable Communities (MIMP), in the first term that the legislation was adopted, complied with providing psychological and social support services. This made it possible for victims from the various regions of the country to meet, get acquainted and organize associations. Then, unfortunately, MIMP stopped allocating the public budget to support this service.

According to REVIESFO data, as of January 24, 2019, 7,149 people had started registration procedures in 17 judicial districts of Peru. The largest number of applications came from the Cusco region, followed by San Martín and Huancavelica. In addition, 6,196 victims have been able to obtain their registration records.

Among the strategies implemented to ensure effective registration and to overcome economic and geographical barriers and mistrust in the process that prevents women from going to provincial capitals to register, itinerant campaigns have been added. These campaigns put out calls for the registry, assistance and delivery of records, as well as for complaints from women registered as victims of forced sterilization. In addition, periodic itinerant days, including legal advice on REVIESFO, have been held at women's organizations. As of January 2019, 1,047 complaints had been filed with the Public Prosecutor's Office with the assistance of the Public Defense Department, Ministry of Justice.

It should be noted that associations of women victims of forced sterilization have identified a number of barriers and problems in accessing REVIESFO and the services that they are entitled to, especially public health services. They have requests and proposals to improve REVIESFO and these other services, as they have pointed out in the statement from their last meeting.<sup>7</sup>

### **The importance of recommendations from committees that monitor compliance with human rights treaties**

The Peruvian State has adopted a series of international human rights treaties for which they must file periodic reports on the measures adopted and the progress made. They receive periodic recommendations, which must be in keeping with the provisions of the ratified international agreement. In accordance with the above, the Peruvian State has been slowly fulfilling its commitments for access to justice, truth and reparation for women victims of forced sterilization; in some cases, there have been setbacks.

This was how the State received a number of recommendations from treaty monitoring committees, such as the Committee on the Elimination of Discrimination Against Women

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<sup>7</sup> <https://www.demus.org.pe/noticias/manifiesto-del-tercer-encuentro-de-mujeres-afectadas-por-esterilizacion-forzada/>

(CEDAW),<sup>8</sup> the Committee on Economic, Social and Cultural Rights (CESCR)<sup>9</sup> and the Committee on the Elimination of Racial Discrimination,<sup>10</sup> who have observed that the State has not fully investigated, sanctioned or offered reparations to the victims, and therefore they issued recommendations that it do so immediately.

The Human Rights Council in its first Universal Periodic Review of Peru in 2008 expressed its concern for forced sterilizations through its representative from Malaysia: "information was also requested on the extent of cases of women who reported undergoing involuntary sterilization and on the legal and policy measures taken to address the issue."<sup>11</sup> Similarly, in 2012, the Human Rights Council, through its representative from Belgium, [recommended] "carry[ing] out a thorough and independent investigation on the policy of forced sterilization undertaken by the authorities in the 1990s, so as to ensure that those persons responsible do not enjoy impunity and that victims can obtain reparation."<sup>12</sup> Finally, in 2017, the representative from Argentina considered in the framework of the fight against impunity [to] "effectively investigate the cases of forced sterilization that occurred in the context of the Reproductive Health and Family Planning Programme 1996–2000 and establish a programme to provide compensation to victims."<sup>13</sup>

## Final Recommendations

- We urge the Senate of Canada to consider this report in order to adopt measures that can contribute to seeking truth, justice and reparation for the victims who have reported forced sterilization in its country.
- We recommend to the Senate of Canada that it approve a mission to Peru made up of women senators, representatives of Indigenous women reporting forced sterilization in

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<sup>8</sup> CEDAW (2014) 21. 7<sup>th</sup> and 8<sup>th</sup> periodic reports of Peru CEDAW/C/PER/CO/7-8. Para. 21

21. The Committee ... notes that the cases of some victims of the forced sterilizations undertaken in the context of the National Programme on Reproductive Health and Family Planning 1996-2000 have not been effectively investigated and the victims have received no compensation.

<sup>9</sup> Committee on Economic, Social and Cultural Rights (2012) Concluding Observations on the 2<sup>nd</sup> to 4<sup>th</sup> periodic reports of Peru. E/C.12/PER/CO/2-4. Para. 24.

The Committee is concerned that women who were subjected to forced sterilizations under the National Reproductive Health and Family Planning Program between 1996 and 2000 have not yet received reparations (art.12).

24. ... The Committee recommends that the State party effectively investigate, without further delay, all cases of forced sterilization, guarantee adequate resourcing for these criminal investigations, and ensure that victims receive adequate reparations.

<sup>10</sup> Committee on the Elimination of Racial Discrimination (2014). Concluding observations on the 18<sup>th</sup> to 21<sup>st</sup> periodic reports of Peru. CERD/C/PER/CO/18-21. Para. 22

22. The Committee urges the State part to:

(c) Reopen the investigation into the case of victims of forced sterilization and ensure that those responsible are duly punished and that the victims receive appropriate reparation.

<sup>11</sup> Human Rights Council (2008). Universal Periodic Review – Peru, 8<sup>th</sup> session A/HRC/8/37- Para.24

<sup>12</sup> Human Rights Council (2012). Universal Periodic Review – Peru, 22<sup>nd</sup> session, A/HRC/22/15 - Para.116.56.

<sup>13</sup> Human Rights Council (2017). Universal Periodic Review – Peru, 37<sup>th</sup> session, A/HRC/37/8 - Para.111.97.

Canada and civil society that supports and defends the victims, so that they can speak directly with representatives from organizations representing victims of forced sterilization in Peru, Andean and Amazonian Indigenous peoples and people from urban working-class areas, as well as with the competent authorities in charge of REVIESFO and the services mentioned in this report.