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Statement submitted by International Justice Resource Center, Inc., a non-governmental organization in consultative status with the Economic and Social Council*

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31.

* The present statement is issued without formal editing.



Statement

The Beijing Declaration and Platform for Action reflects a determination to “[p]revent and eliminate all forms of violence against women and girls”, and to “ensure equal access to and equal treatment of women and men in education and health care and enhance women’s sexual and reproductive health as well as education”. Paragraph 115 of the Beijing Declaration and Platform for Action identifies forced sterilization as a form of violence against women, and Paragraph 106 emphasizes the importance of women’s access to reproductive health care services that respect the principle of informed consent and meet human rights, ethical, and gender-sensitive standards. Since 1999, and particularly in the last five years, international oversight bodies have provided additional guidance to Member States in fulfilling their obligations with regard to women’s reproductive health and rights, in general, and forced sterilization, in particular.

Nonetheless, it remains the case that, 25 years later, women, and especially marginalized women, continue to be sterilized without their informed consent around the world. Canada, the United States, Kenya, Hungary, Chile, Honduras, India, Poland, China, Cape Verde, Mexico, and Slovakia are among the dozens of countries where women have reported being forcibly sterilized in the years since the Fourth World Conference on Women. States’ human rights obligations are well established; synthesizing and reinforcing the recommendations already made to Member States in fulfilling these obligations can help guide governments to action.

Human rights law requires Member State action to address forced sterilization

Human rights bodies have recognized, for at least two decades, that sterilization performed without a person’s full, free, and informed consent violates various human rights protected by regional and universal human rights instruments (See, e.g., I/A Court H.R., *I.V. v. Bolivia*, Judgment of 30 November 2016; World Health Organization et al., *Eliminating Forced, Coercive and Otherwise Involuntary Sterilization: An Interagency Statement* (2014); ECtHR, *V.C. v. Slovakia*, Judgment of 8 November 2011, para. 108; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, para. 20). When carried out in a public hospital, this violation is directly attributable to the Member State (See, e.g., *I.V. v. Bolivia*, Judgment of 30 November 2016, para. 203).

States’ general obligations to respect, protect, and fulfill human rights mandate that governments take steps to ensure women’s reproductive and sexual health and rights more broadly (See, e.g., *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*). States are responsible for regulating and monitoring private healthcare providers and, for ensuring accountability and redress for human rights violations committed in the healthcare context (See, e.g., *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, UN Doc. [A/HRC/22/53](#), at paras. 24–25).

Relatedly, international law has increasingly mandated that States act with due diligence to prevent acts of sexual or gender-based violence (including forced sterilization), to protect victims by appropriately responding to these acts of violence, and to provide victims with an adequate remedy (See, e.g., *Committee on the Elimination of Discrimination Against Women, General Recommendation No. 35: Gender-based violence against women, updating general recommendation No. 19*, UN Doc. [CEDAW/C/GC/35](#), 18 July 2017, para. 2; *Integration of the Human Rights of Women and the Gender Perspective: Violence against Women, Report of the Special Rapporteur on violence against women, its cases and consequences*, Ms. Radhika

Coomaraswamy, UN Doc. [E/CN.4/1999/68](#), 10 March 1999, para. 6). A State becomes internationally responsible for rights violations by private actors, including instances of forced sterilization, when it fails to meet the due diligence standard.

Moreover, when a person is subjected to forced sterilization because of her race or ethnicity, or denied equal protection or access to a remedy, her rights to equality, non-discrimination, and equal protection are also implicated. (See, e.g., Committee on the Elimination of Racial Discrimination, Concluding observations on the combined eleventh and twelfth periodic reports of Slovakia, UN Doc. [CERD/C/SVK/CO/11-12](#), 12 January 2018, para. 23).

Among the most concrete recommendations made by human rights oversight bodies to States are that they: adopt a clear, national definition of informed consent through legislation or official policy; investigate allegations of forced sterilization; hold accountable those responsible; ensure victims receive redress, including compensation; specifically criminalize forced sterilization; raise awareness among medical personnel of the requirements of informed consent; and, collect data on sterilization procedures.

Forced sterilization of Indigenous women in Canada demonstrates the gap between standards and reality

Canada is one of many countries where women continue to be forcibly sterilized and where women who have been forcibly sterilized in prior decades are still being denied redress. While involuntary sterilization was previously authorized by official policy, it continues to this day as an unlawful, but tacitly permitted, practice. Women belonging to diverse Indigenous communities in Canada have been subjected to forced sterilization in the country's public health care system, typically after being admitted to public hospitals to give birth. While the full extent of this practice is not documented, more than 100 Indigenous women have voluntarily come forward since 2015.

In its 2018 Concluding Observations on Canada, the Committee Against Torture made clear that forced sterilization may constitute torture, and urged Canada to investigate all allegations of forced sterilization, hold accountable those responsible, adopt legislation to prevent and criminalize forced sterilization, and ensure redress for victims. In January 2019, the Inter-American Commission on Human Rights endorsed and expanded upon the Committee against Torture's concluding observations, urging Canada to define the requirements of consent with regard to sterilization procedures, to maintain and update public records on reports of forced sterilization, to provide comprehensive training to health practitioners, and to raise awareness about sexual and reproductive rights among Indigenous communities. The Special Rapporteur on violence against women and the Special Rapporteur on health also endorsed the Committee against Torture's recommendations in their reports on their 2018 visits to Canada.

In spite of this clear guidance, Canada has not taken action to protect past or future victims. Authorities have failed to investigate, punish, or provide redress for known instances of forced sterilization. Persistent gaps in protection are clear in the training of healthcare professionals, public hospitals' policies and practices with regard to informed consent, the oversight of healthcare facilities and practitioners, the collection of relevant data, statute-of-limitations restrictions on victims' ability to pursue civil liability, and the failure to criminalize forced sterilization. The lack of protection is perhaps most obvious in the fact that no person has been held civilly or criminally liable for performing a forced sterilization on an Indigenous woman and that no victim has been compensated.

Recommendations

In view of the pervasive and persistent occurrence of forced sterilization, governments should be encouraged to:

- o Codify the duty to obtain informed consent to medical procedures
- o Investigate reported instances of forced sterilization with a view to the prosecution and punishment of those responsible and prevention of this practice in future
- o Provide reparations to identified victims, including monetary compensation, mental health treatment, and healthcare services necessary to allow them to become pregnant and carry a child, if so desired
- o Provide or otherwise require training for health professionals on cultural competency and informed consent and screen health professionals for discriminatory biases
- o Criminalize forced sterilization
- o Explicitly exempt forced sterilization from short statutes of limitations on civil claims
- o Ensure that healthcare authorities and medical professional licensing entities receive, investigate, and appropriately address reports of failure to ensure informed consent to medical procedures
- o Issue guidance to healthcare providers regarding sterilization procedures, including that such procedures are never urgent in nature, that consent for such procedures must never be sought while a woman is in labor or delivery or immediately postpartum, and that the risks, side effects, and permanency of tubal ligation must be clearly communicated and understood
- o Ensure broad access to information, such as through brochures, on reproductive and sexual health and rights for patients, and specifically on sterilization procedures
- o Collect and make publicly available data on sterilization, including data disaggregated by patients' race or ethnicity.
