



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 170/2021^{*,**}

<i>Communication submitted by:</i>	María Elena Carbajal Cepeda et al. (represented by Christian Felipe Berndt Castiglione)
<i>Alleged victims:</i>	María Elena Carbajal Cepeda, Gloria Basilio Huamán, Florentina Loayza Cárdenas, Rosa Loarte Sobrado and Elena Rojas Caballero
<i>State party:</i>	Peru
<i>Date of communication:</i>	24 September 2020
<i>References:</i>	Decision taken pursuant to rule 69 of the Committee's rules of procedure, transmitted to the State party on 29 October 2024 (not issued in document form)
<i>Date of adoption of views:</i>	4 October 2024

1. The authors of the communication are María Elena Carbajal Cepeda (born in 1970), Florentina Loayza Cárdenas (born in 1978), Rosa Loarte and Elena Rojas Caballero (born in 1969), and Gloria Basilio Huamán (born in 1971). The authors maintain that the State party violated their rights under articles 2, 3, 12, 14 and 24 of the Convention on the Elimination of All Forms of Discrimination against Women owing to the forced sterilization to which they were subjected in 1996 and 1997 as part of a State birth-control policy. The Optional Protocol entered into force for the State party on 9 April 2001. The authors are represented by counsel.

* Adopted by the Committee at its eighty-ninth session (7–25 October 2024).

** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Nicole Ameline, Marion Bethel, Leticia Bonifaz Alfonzo, Rangita de Silva de Alwis, Esther Eghobamien-Mshelia, Hilary Gbedemah, Daphna Hacker, Nahla Haidar, Dalia Leinarte, Marianne Mikko, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Natasha Stott Despoja, Genoveva Tisheva and Jie Xia.



Facts as submitted by the authors

General context

2.1 In 1995, the Act on the national population policy was amended to authorize the use of voluntary surgical contraception, or female and male sterilization procedures. Those procedures were promoted by means of comprehensive campaigns and so-called health festivals, and healthcare personnel were offered incentives to perform those types of interventions. Female sterilization procedures intensified between 1995 and 2000. In 1997 alone, 109,689 tubal ligations were performed.¹

2.2 On 6 February 1996, by Ministerial Decision No. 071-96-SA-DM, the Programme on Reproductive Health and Family Planning (1996–2000) was approved, with the stated aim of improving the reproductive health of men and women at all stages of their lives, through promotion, prevention, treatment and rehabilitation of the best possible quality.² The programme primarily entailed the use of voluntary surgical contraception, which was allegedly carried out without adequate infrastructure, specialized medical personnel or the proper informed consent of those who underwent procedures.³ Many women under the age of 25 and women without children were sterilized. More than 300,000 women (93 per cent of the total), mostly Indigenous, were sterilized without their consent, especially in low-income and rural areas of the State party. To a lesser extent, men, mostly Indigenous, were also subjected to vasectomies.

2.3 In 2001, a congressional investigative subcommittee concluded that, between 1993 and 1999, 314,605 women and 24,563 men had been forcibly sterilized,⁴ through the establishment of targets, incentives and bonuses and the organization of festivals and campaigns to promote voluntary surgical contraception without informed consent, and using coercion.⁵ On 9 August 2002, Congressperson Héctor Chávez Chuchón filed constitutional and criminal complaints against former President Alberto Fujimori before the Office of the Provincial Prosecutor Specializing in Crimes against Human Rights, leading to the opening, on 27 January 2003, of case No. 10-2002, which was closed in 2004 owing to a lack of evidence. The case was reopened in 2005 after the National Human Rights Commission submitted new evidence. In 2009, the case was closed again due to the expiration of the statute of limitations for criminal prosecution. In parallel, on 13 August 2003, Senator Dora Núñez Dávila filed another constitutional complaint for crimes against humanity, including torture, serious injury, kidnapping and unlawful association, against the former President and the former health ministers. In July 2006, after the benefit related to *antejuicio constitucional* (preliminary constitutional proceedings for the filing of criminal charges against senior government officials) had expired, the information gathered during the investigations carried out within the Congress of the Republic was collected as case No. 18-2002. On 18 June 2007, the provincial prosecutor ordered that the investigation be expanded.

2.4 On 10 October 2003, the State party signed a friendly settlement agreement with the relatives of María Mamérita Mestanza Chávez, a victim of forced sterilization who had died a few days after the procedure, before the Inter-American Commission on Human Rights. In the agreement, the State party acknowledged its international responsibility, and undertook to adopt a series of material and moral reparation

¹ Report of the Ministry of Health of Peru, cited in Supreme Court of Chile, case No. 71.850-2021, Decision, Santiago, 24 June 2024, p. 117.

² Ministry of Health, Programme on Reproductive Health and Family Planning (1996–2000), p. 26.

³ Supreme Court of Chile, case No. 71.850-2021, Decision, Santiago, 24 June 2024, p. 106.

⁴ Official statistics from the Ministry of Health of Peru.

⁵ Final report of the investigative subcommittee on voluntary surgical contraception, established at the plenary congressional session of 25 October 2001.

measures and to launch an exhaustive investigation aimed at punishing those responsible for the forced sterilization of María Mamérita Mestanza Chávez, which had been committed as part of a massive and systematic government policy targeting poor, Indigenous and rural women.⁶ In 2004, the Office of the Public Prosecutor opened an investigation into the forced sterilization of María Mamérita Mestanza Chávez, which was closed in 2009. In 2011, the Office of the Public Prosecutor ordered that the investigation be reopened, arguing that the outcome was not res judicata since the crimes had not been investigated as crimes against humanity. After being closed and reopened several times, the investigation remains pending. On 2 June 2023, the Inter-American Commission on Human Rights referred to the Inter-American Court of Human Rights the case of Celia Ramos Durand,⁷ who died in 1997, allegedly after a non-consensual sterilization performed as part of the Programme on Reproductive Health and Family Planning. After being closed and reopened several times, the investigation remains pending.

2.5 In 2016, the Office of the Supra-provincial Criminal Prosecutor Specializing in Human Rights and Interculturality initiated investigation No. 14-2016 with the aims of elucidating the forced sterilizations performed between 1993 and 2000 in the various healthcare centres, hospitals and medical stations located in various departments of the State party, and of identifying those responsible for the alleged commission of crimes against life, body and health in a context of serious human rights violations. In 2019, the Office initiated investigation No. 59-2019 against those responsible for the medical personnel, nurses and any other health personnel who had participated as the direct perpetrator or perpetrators of serious human rights violations. On 22 November 2022, the Office submitted to the court a request to expand the complaint at the pretrial investigation stage by broadening the scope of the order of 11 December 2021 to institute pretrial proceedings against Alberto Fujimori and his former health ministers, and by including 2,626 alleged victims in connection with case No. 59-2019. In addition, the Office proposed to take preliminary statements from 2,582 alleged women victims, mostly Indigenous, living in remote areas of the country. In 2023, the Supra-provincial Criminal Court returned the request for expansion to the Office and, on 25 August 2023, the constitutional law chamber, through an amparo procedure, decided to declare null and void the December 2021 order to institute pretrial proceedings. On 24 June 2024, the Supreme Court of Chile decided to expand the grounds for its extradition of former President Alberto Fujimori to include the forced sterilization of women as a serious human rights violation.

2.6 In parallel, on 6 November 2015, by Supreme Decree No. 006-2015-JUS, the State party declared the provision of priority support for the victims of the forced sterilizations performed between 1995 and 2001 to be of national interest and stipulated that a register of victims should be established. On 4 December 2015, by Ministerial Decision No. 0319-2015-JUS, the Ministry of Justice and Human Rights established the Registry of Victims of Forced Sterilization⁸ with a view to the provision of legal assistance, psychological and social support and comprehensive healthcare for the victims of forced sterilization.⁹ In 2018, the State party set up a working group on persons affected by forced sterilizations during the period 1995–2001, and in 2020 it established a multisectoral working group to examine and

⁶ Inter-American Commission on Human Rights, report No. 71/03, *Friendly Settlement: María Mamérita Mestanza Chávez v. Peru*, 10 October 2003, para. 14.

⁷ See Inter-American Commission on Human Rights, merits report No. 287/21.

⁸ Ministerial Decision No. 0319-2015-JUS, by which the Ministry approved the procedure for entry in the Registry of Victims of Forced Sterilization.

⁹ Committee on the Elimination of Racial Discrimination, concluding observations on the combined twenty-second and twenty-third periodic reports of Peru, 23 May 2018 (CERD/C/PER/CO/22-23), para. 26.

propose mechanisms to address the issue of persons affected by forced sterilizations during the period 1995–2001. On 16 November 2022, special constitutional court No. 5 of the High Court of Lima recognized the constitutional right of such persons to reparations and ordered the Ministry of Justice and Human Rights to put in place a policy on reparations for women entered in the Registry of Victims of Forced Sterilization. The Ministry was to ensure the effective participation of, and coordination with, victims' associations and organizations in the design, development and implementation of the policy.

Case of María Elena Carbajal Cepeda

2.7 On 18 September 1996, María Elena Carbajal, originally from Chepén, La Libertad, who was 26 years old, arrived alone at María Auxiliadora Hospital in Lima to give birth to her fourth child. María Elena asked to see her newborn, but the hospital staff refused, telling her that she already had four children and that this must be her last. Days later, they told her that her son would be returned to her only if she agreed to be sterilized. The author states that they hid her newborn son from her and that she was put under so much pressure that she ultimately agreed. She adds that she was traumatized following a second-degree prolapse. Her husband abandoned her at the hospital when he found out about the sterilization and, after their separation, she faced serious financial problems. Shortly thereafter, she experienced physical and emotional disorders. At the age of 31, after a hysterectomy, María Elena was told by doctors that her low level of hormone production was the result of the sterilization and was given hormone replacement therapy, which caused her to suffer repeated nervous breakdowns. She had no choice but to discontinue the treatment, and was diagnosed with osteoporosis, arthritis and early menopause. Being poor and having a low level of education, María Elena did not fully understand what had happened and assumed that sterilization was common and legal. Unaware of her rights and without financial means, she did not take legal action against the Government. In 2017, as a result of an event in her municipality, she learned that forced sterilization was a crime. On 18 July 2017, she was registered in the Registry of Victims of Forced Sterilization and her case was subsequently included in investigation No. 14-2016, by Decision No. 111 of 11 September 2018. She is currently President of the Association of Victims of Forced Sterilization of Lima and Callao.

Case of Florentina Loayza Cárdenas

2.8 In 1997, 19-year-old Florentina Loayza lived with her husband and son in the mountains near Huancavelica, at more than 3,500 metres above sea level. In April of that year, public officials arrived to deliver food to the poorest women. Florentina went to the Paucarbamba health centre, where the food was supposed to be distributed. However, upon arrival, the women were locked in and the doctors announced that the women on their list would undergo an operation, free of charge, before receiving the food. When she realized that she was going to be sterilized, Florentina tried to escape, but was forcibly restrained and told “You’re not leaving here because you’re on the list”. She states that she did not sign any document and that, when she asked why the sterilizations were being performed, they responded “You’re from the highlands, you’re going to have lots of children”, adding that it was “a small cut” and that the ligation would only last five years. After the operation, Florentina started to experience severe abdominal pain. After learning of the sterilization, her husband abandoned her because he wanted to have more children. Motherhood is highly valued in her community, and her only son was constantly harassed for not having siblings. She did not take legal action at the time, as she mistakenly believed that she would be able to have children again in five years. On 29 November 2017, by Decision No. 66, her case was included in investigation No. 14-2016. Having provided a statement to the Office of the Prosecutor, she was

included in the Registry of Victims of Forced Sterilization and is receiving psychological support.

Case of Rosa Loarte Sobrado

2.9 During a health campaign in Pichgas, Huánuco, in October 1996, 35-year-old Rosa Loarte was stopped by medical practitioners who took her, along with a group of other women, to La Unión medical centre, approximately two hours away from her village. The practitioners told the women that all of them had to go, without telling them that they would be operated on. Her 8-year-old daughter and her baby waited outside the centre. She states that she is illiterate and did not sign anything. She was put to sleep and when she woke up, the nurses told them: “You won’t be having children now, we’ve cured you”. Upon waking, Rosa felt strong pains in her belly, but the staff immediately sent her home; she had to walk carrying her baby. She did not receive post-operative care. A month after the operation, she moved to Lima. She did not file any form of complaint. When her husband found out that she had been sterilized, he abandoned her. In 2016, some women in her village told her that they were gathering information in order to file a complaint. She was entered in the Registry of Victims of Forced Sterilization on 20 December 2016 and her case was included in investigation No. 14-2016 on 15 November 2018, by Decision No. 127. Rosa states that she feels intense pain in her torso and pain in her spine, but she has not received treatment.

Case of Elena Rojas Caballero

2.10 In 1996, 30-year-old Elena Rojas, a resident of the Dos de Mayo district, Huánuco, was stopped, along with her sister, by some nurses, who asked her if she received social benefits and ordered her to get into a truck “so that you can have your tubes tied in La Unión, so that you don’t have more children, don’t have lots of children. If you don’t have the surgery we won’t give you your benefits under the ‘Vaso de Leche’ (glass of milk) and ‘Juntos’ (together) programmes”. They were forced into a truck along with other women. At the medical centre in La Unión, Elena was made to sign a document “for medicines”. Subsequently, she was anaesthetized; when she awoke, she felt weak and had intense pain in her abdomen. The staff reiterated that she had been operated on “so that you don’t have more children”, but failed to inform her that she had been sterilized or that it was permanent. She was sent home after four hours without medication or instructions. She did not undergo any post-operative checks. After finding out about the sterilization, her husband abandoned her, telling her that she had “let herself be operated on”, so she had to go and work in the jungle. Six months later, Elena began to suffer severe pain and was diagnosed with uterine cancer, but she could not afford the necessary operation and was forced to beg in order to pay for it. Eventually, a doctor agreed to operate on her, but she could not afford post-operative care. Today, she continues to live with severe pain and in a highly precarious situation, without the knowledge or means to take legal action. She states that, in Huánuco, she received a document inviting her to register as a victim, but, after she moved to Lima in 2016, the various prosecutors’ offices she approached there told her that they did not have jurisdiction. On 6 February 2017, she was entered in the Registry of Victims of Forced Sterilization.

Case of Gloria Basilio Huamán

2.11 In 1996, Gloria Basilio Huamán, from Huánuco, reported having been constantly harassed during health campaigns by nurses who told her that her husband, being a farmer, would not be able to support their children, and that, “in the countryside, women breed like rabbits, like guinea pigs, and don’t use contraception”. Despite her refusal, in July 1996, when she was 25 years old, a couple of nurses picked

her up along with other women, stating that they were doing so by order of the President and the Ministry of Health, and that the women could not disobey. Frightened, Gloria boarded the trucks with other women and was taken to the medical centre in La Unión. There, she was asked to sign a document in order to receive food for her children. The resources and infrastructure were inadequate, with “medical practitioners sharpening knives and cutting us up like animals, cutting open our bellies and letting the blood spill out, as if we were sheep in a slaughterhouse, onto the floor”. After suffering a nervous breakdown, Gloria was restrained by force and anaesthetized. She did not receive post-operative treatment, stating that she had been left with permanent trauma. Later, she was diagnosed with 20 cm cysts in her ovaries, had to relocate to Lima for treatment and is currently suffering from uterine detachment. The experience affected her self-esteem, as she considers herself to be “a barren woman”, and it also damaged her relationship with her husband, who does not forgive her for having been sterilized without his consent. Gloria did not take legal action because of her lack of knowledge and financial resources. In 2017, during a trip to Huánuco, other women informed her that she could register in the Registry of Victims of Forced Sterilization, which she subsequently did in Lima.

Exhaustion of domestic remedies

2.12 The authors claim that they did not file a complaint before the civil courts to request compensation because they did not know the type of surgical procedure performed or that it was permanent, for fear of reprisals, or because they were unaware of the available resources (some of them being illiterate or Indigenous with little knowledge of Spanish). Furthermore, according to the authors, at the time of the events, the State party was under a dictatorial regime and, after the fall of that regime in 2001, the statute of limitations for bringing civil actions had expired. The events were not initially investigated as crimes against humanity, so the associated crimes under ordinary law were also time-barred. The authors add that, at the time of the events, the available appeals would have been ruled upon by courts that lacked impartiality, since there had been interference with the Constitutional Court in 1997, with the dismissal of three judges by the Congress of the Republic.¹⁰ Despite the fact that the cases of three of the authors were subsequently included in investigation No. 14-2016 into “those who are found responsible for the crime of serious injury in the context of serious human rights violations”, 24 years after the events, there are at least five orders for no further action to be taken, the investigations are still pending, and there is no criminal trial under way against those directly or indirectly responsible for the forced sterilizations suffered by the authors.¹¹ Similarly, the authors state that they have been included in the Registry of Victims of Forced Sterilization since 2017 but have not received any form of comprehensive reparation to date.

Complaint

3.1 The authors allege that the forced sterilization to which they were subjected violated their rights under articles 2, 3, 12, 14 and 24 of the Convention, in the light of the Committee’s general recommendations No. 19 (1992) on violence against women, No. 24 (1999) on women and health, No. 33 (2015) on women’s access to justice, No. 34 (2016) on the rights of rural women and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19.

3.2 The authors argue that the communication is admissible under article 4 (e) of the Optional Protocol because, although the events occurred prior to the entry into

¹⁰ Inter-American Commission on Human Rights, 1997 annual report, 17 February 1998, chap. IV, paras. 23 and 24.

¹¹ On 9 August 2024, Act No. 32107, on the application of the statute of limitations to crimes against humanity committed before 1 July 2002, entered into force.

force of the Optional Protocol, the consequences continued even after its ratification. They argue that the State party, despite having acknowledged in 2003 that the forced sterilizations of women committed between 1996 and 2001 represented serious human rights violations, has not carried out sufficiently diligent investigations to identify those responsible and punish them under criminal law, and has not implemented any measures that would allow the authors and their families to obtain full reparation.

3.3 The authors allege that they were captured through the use of violence, deception or coercion by State agents and sterilized without their consent, that the benefits and risks of those procedures were not explained to them and they were not offered alternatives, and that they received no post-operative medical assistance, all of which had serious consequences for their physical and mental health. The authors also allege that they belong to a vulnerable sector of the population, most of them being rural and Indigenous women, that the forced sterilizations affected their life plans and that they have suffered non-material damage as a result of a cultural context in which sterility is assumed to be a “punishment” that affects the status of women in their communities, in violation of articles 2, 3, 12, 14 and 24 of the Convention.

3.4 The authors allege that they suffer serious physical and psychological consequences as a result of the sterilizations and that the State party violated their rights under articles 12 and 14, read in the light of article 2 (c), (d) and (g) of the Convention, by failing to protect their right to health, by failing to take into account the particular needs of the rural and Indigenous population regarding access to sexual and reproductive health, by failing to guarantee free, prior and informed consent in a manner adapted to their language and customs, by failing to provide post-operative medical treatment, by failing to adopt measures to prevent the violation of those rights and by failing to make full reparation to the authors. They add that the State party failed in its duty to guarantee them a life free of violence.

3.5 The authors also allege that the Programme on Reproductive Health and Family Planning did not guarantee effective protection through either the national courts or any other type of institution, allowing the systematic abuse of power against women. The authors argue that, in addition to including them in the official registry as victims of forced sterilization, the State party has acknowledged its international responsibility and has assumed the obligation to investigate and punish, under its criminal law, those responsible for all forced sterilizations and to make full reparation for the damage caused. In addition, the authors allege that the forced sterilizations carried out between 1993 and 2001 in the State party constitute crimes against humanity and that, as such, there is an *ex officio* obligation on the part of the State party to investigate all those forced sterilizations.¹² They allege that the remedies have not been effective for investigating the matter adequately, determining responsibility and punishing those allegedly responsible for crimes against humanity for the forced sterilizations. In addition, the authors allege that they are in a vulnerable situation, that they are rural and that some of them are illiterate; the State therefore has a heightened duty to bring criminal cases taking into account the social and cultural context to which the authors belong. Although the cases of María Elena Carbajal Cepeda, Florentina Loayza Cárdenas and Rosa Loarte Sobrado were included in investigation No. 14-2016, the time frames related to that investigation have been excessive, the investigation has been closed and reopened on several occasions, and, after 24 years, no significant progress has yet been made. Lastly, the authors allege that the State party has not taken measures to enable them and their family members to obtain full reparation, in violation of articles 3 and 24, read in the light of article 2 of the Convention, since the State party has not created the necessary conditions for

¹² Constitution of Peru, art. 159.

women to exercise their human rights or to have access to full reparation for violations suffered.

3.6 The authors allege that, in 2007 and 2014, the Committee reiterated its concern about the lack of investigation and prosecution, as well as the difficulties faced by women victims of forced sterilization in accessing relevant remedies.¹³ Other international bodies, such as the Human Rights Committee and the Human Rights Council, have made similar recommendations.

3.7 The authors request: (a) compensation in the amount of \$17,046 each for material and non-material damages; (b) the adoption of the measures necessary for the investigation of the events related to the authors' forced sterilizations in order to punish those responsible under criminal law; (c) the provision of psychological assistance to the authors and their family members as direct and indirect victims in the present communication; and (d) the establishment of a trust to pay for the primary, secondary, university and/or technical education of the authors' children.

State party's observations on admissibility and the merits

4.1 In its observations of 20 September 2021 and 20 January 2022, the State party alleges that the events occurred before the entry into force of the Optional Protocol and that the communication is inadmissible under article 4 (e) of the Protocol on the grounds of failure to show that domestic remedies have been exhausted and lack of substantiation.

4.2 The State party maintains that the authors' allegations of lack of judicial impartiality are based on subjective assessments and that drawing general conclusions from specific cases does not demonstrate the ineffectiveness of a remedy. The State party clarifies that the violation of the constitution did not impede the administration of justice and affirms that the circumstances that could have affected the proper administration of justice at the national level did not affect any judicial proceedings initiated by the authors. The composition of the Constitutional Court was affected between May 1997 and November 2000, but the authors do not explain the extent to which that affected them. The State argues that there was no hijacking of the institutions in the service of the Executive Branch or generalized distrust of the justice system that would justify the failure of the authors to exhaust remedies.

4.3 The State party emphasizes that the authors could have filed domestic remedies such as a civil claim for compensation, an administrative complaint, a criminal complaint on the grounds of discrimination and sterilization or an amparo procedure on the grounds of discrimination. The State party argues that international responsibility can only be determined after the State has had the opportunity to establish, if necessary, the violation of a right and to make reparation, by its own means, for the damage caused; the State has had no such opportunity in the present communication, since the authors have not shown that they have filed any remedy. The State party adds that the authors are formally recognized as victims of forced sterilization through their inclusion in the Registry of Victims of Forced Sterilization but that they have not filed any complaint on the grounds of discrimination.

4.4 The State highlights that the cases of María Elena Carbajal Cepeda, Florentina Loayza Cárdenas and Rosa Loarte Sobrado are included in investigation No. 14-2016, adding that the investigation is complex and therefore remains open. Numerous proceedings have been conducted, and thousands of statements have been collected throughout the country. In addition, the State party argues that the investigations

¹³ Concluding observations on the sixth periodic report of Peru, 20 February 2007 (CEDAW/C/PER/CO/6), para. 20.

concerning the author's forced sterilizations began in 2016 and therefore cannot be considered to be unduly delayed.

4.5 The State party adds that it is necessary for persons who consider themselves aggrieved to file a complaint,¹⁴ in order to be included in investigation No. 14-2016 and/or investigation No. 59-2019. Gloria Basilio Huamán and Elena Rojas Caballero, however, have not yet filed a complaint,¹⁵ despite having the opportunity to do so.

4.6 The State party argues that the communication is unfounded because the Programme on Reproductive Health and Family Planning was intended not only for women but for the general public, that voluntary surgical contraception was carried out on both men and women, and that the birth control policy was not intended to harm people, but rather the opposite; the State party adds that the Programme was not aimed at a specific population group and did not apply exclusively to women, much less Indigenous women, women of limited means or women from rural areas, so the alleged events are not related to discrimination against women.

4.7 Regarding the alleged violations of article 2 of the Convention, the State party argues that equality and protection against discrimination against women are guaranteed under article 2 (2) of the Constitution of 1993. The Programme on Reproductive Health and Family Planning sought to uphold the right to reproductive health for the entire population, reduce barriers to health services for traditionally excluded groups and promote responsible parenthood, allowing both men and women to decide on the number of children. The Programme was established to address problems such as high maternal and perinatal mortality, inequality in women's health, reproductive risks in adolescents, maternal and perinatal risks due to sexually transmitted diseases, and morbidity and mortality due to preventable gynaecological pathologies. The State party argues that the Programme does not in itself constitute a discriminatory regulation and that the authors did not provide sufficient information to demonstrate that the sterilizations or their consequences were discriminatory.

4.8 The State party argues that measures exist to ensure the free, prior, full and informed consent of women in sexual and reproductive health procedures and adds that, under the Programme, personnel were trained and all forms of pressure, coercion, violence and manipulation were prohibited.¹⁶ Moreover, in cases of alleged forced sterilizations, the Office of the Inspector General of the Ministry of Health initiated administrative and judicial proceedings.

4.9 In addition, the State party indicates that, on the basis of the information provided by the authors, it cannot be verified that they in fact underwent surgery under the Programme or that they did not consent to the sterilizations. Nevertheless, various criminal investigations and proceedings, in which three of the authors are included as having allegedly been affected by crimes of serious injury, are under way.

4.10 In 2015, the Ministry of Justice and Human Rights declared that the provision of support for victims of forced sterilizations was of national interest, undertaking to provide free legal assistance services in coordination with the Registry of Victims of Forced Sterilization, and that, through their inclusion in the Registry, the authors could access subsidies and financing, in addition to medical coverage.

4.11 In relation to article 3 of the Convention, the State party affirms that various legislative and administrative measures have been adopted to promote equal rights

¹⁴ Organic Law on the Office of the Public Prosecutor, art. 11.

¹⁵ The State party cites *Cecilia Kell v. Canada*, 19/2008, para. 4.4.; *B.J. v. Germany*, 1/2003, para. 8; and *N.F.S. v. United Kingdom*, 10/2005, para. 7.

¹⁶ Technical standard on family planning, of 31 August 2016.

for women and to eliminate discrimination, including the Act on equal opportunities for women and men of 2007 and the National Gender Equality Policy of 2019.

4.12 With respect to article 24 of the Convention, the State party claims that it has adopted various legislative and administrative measures to ensure that women can fully exercise their rights on equal terms,¹⁷ including the National Plan against Gender-based Violence 2016–2021.

4.13 With respect to article 12 of the Convention, the State party claims that the Act on equal opportunities for women and men of 2007 contains explicit recognition of the existence of sexual and reproductive rights and establishes the obligation to ensure, without any discrimination, that health programmes serve to provide comprehensive coverage for illness and maternity to those living in poverty and extreme poverty.

4.14 In relation to article 14 of the Convention, the State party claims that the Government established the Round Table to Promote the Rights of Indigenous or Aboriginal Women in 2017 to coordinate, promote, propose and implement actions aimed at safeguarding the exercise of the individual and collective rights of Indigenous women, applying a cross-cutting, intercultural and gender-sensitive approach.

Authors' comments on the State party's observations on admissibility and the merits

5.1 In their comments of 15 September 2023 and 15 January 2024, the authors claim that the State party has had access to all necessary information on their forced sterilization and that it has been given the opportunity to remedy the violation of their rights.¹⁸ The authors claim that the fact that Gloria Basilio and Elena Rojas have not filed criminal complaints, and that no civil claims have been filed, has not prevented the State party from becoming aware of the violations committed. The authors claim that they provided the State party with an opportunity to remedy the matter when they made use of the special administrative procedure established by the Ministry of Justice and Human Rights itself when it set up the Registry of Victims of Forced Sterilization. Inclusion in the Registry implies more than a simple manifestation of the victims' desire to be added, because, in registering them, the State party acknowledged that the violations occurred. As a requirement for registration, the authors submitted a medical certificate verifying that the sterilization procedure had been performed or, as appropriate, a medical diagnosis confirming that such a procedure had been performed. Nevertheless, the violations have yet to be remedied, despite the knowledge that they occurred.

5.2 The authors reiterate their arguments relating to the exhaustion of domestic remedies, adding that the investigations remain ongoing more than six years after their cases were included in investigation No. 14-2016 and that such a time frame cannot be considered reasonable.

5.3 The authors claim that the lack of reparations and the very practice of forced sterilization constitute discrimination against women and recall the Committee's concluding observations to the State party from 2014.¹⁹

¹⁷ The Act on equal opportunities for women and men; the Act on the prevention, punishment and eradication of violence against women and their families; the National Gender Equality Policy of 2019; the National Strategy for the Prevention of Gender-based Violence of 2021; and the 2021 National Strategic Development Plan.

¹⁸ Communication 149/2019, *N.A.E. v. Spain*, para. 14.3.

¹⁹ See CEDAW/C/PER/CO/7-8, para. 21.

5.4 The authors reiterate that more than 300,000 women, mostly Indigenous women from the altiplano region, were forcibly sterilized between 1996 and 2001 precisely as a result of the Programme on Reproductive Health and Family Planning. The implementation of the Programme enabled State agents to sterilize the authors forcibly as part of a State policy aimed at controlling the birth rate among the Indigenous population, on the assumption that doing so would reduce poverty levels. Even after acknowledging its international responsibility, the State party has yet to take full responsibility for the alleged incidents.

5.5 The authors state that they have proved their status as victims through their testimonies, which are consistent with a pattern of systematic violations by the State party. The authors maintain that, in cases of mass, widespread and systematic violations of human rights, it is incumbent upon the State to demonstrate that the alleged violation did not occur. Since the forced sterilizations were the result of a deliberate policy, it is the State party that must demonstrate that the victims were not sterilized against their will. Furthermore, the authors are included in the Registry of Victims of Forced Sterilization and thus the State party itself has recognized their status as victims.

5.6 The authors claim that the State party did not address their assertion regarding the impossibility of filing civil suits that would allow them to obtain full reparations for the forced sterilization that they had undergone; since the statute of limitations had already expired when the dictatorship ended and there were no other remedies available, there were no effective legal mechanisms available to the victims to seek redress. They also claim that criminal proceedings offer no guarantee of redress and that they have no recourse to any other legal mechanism that would enable them to receive adequate reparations.

5.7 The authors claim that, on 7 December 2023, the Supreme Court granted the application for amparo filed by the former Minister of Health, Alejandro Aguinaga, thereby nullifying all the proceedings related to the criminal investigations into the forced sterilizations performed between 1996 and 2001, including the order of December 2021 to institute pretrial proceedings against Alberto Fujimori. The Court ruled that all the investigations would be reset to their status in 2018, when the investigation had been formally launched. The authors claim that, on the basis of those court proceedings, it can be concluded that there is no indication in the ongoing criminal proceedings of a willingness to shed light on the events.

State party's additional observations on admissibility and the merits

6.1 In its additional observations of 2 May 2024, the State party reiterates that the domestic remedies have not been exhausted. It adds that, with respect to the amparo proceedings, the Supreme Court nullified the order to institute pretrial proceedings of 11 December 2021 owing to a lack of proper reasoning and that the granting of amparo implies neither a final verdict nor the nullification of the investigations conducted; rather, the aim is to ensure that constitutional guarantees are respected throughout the pretrial investigation stage of the criminal proceedings.

6.2 The State party claims that it can neither recognize that the violations experienced by the authors occurred nor demonstrate that the authors were not sterilized against their will, because the reported incidents are under investigation as part of ongoing criminal proceedings. The fact that the authors are included in the Registry of Victims of Forced Sterilization does not imply acknowledgement of responsibility by the State, because that is a determination that must be made by the courts.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 In accordance with rule 64 of its rules of procedure, the Committee is to decide whether the communication is admissible under the Optional Protocol.

7.2 The Committee takes note of the State party's argument that the incidents occurred prior to the entry into force of the Protocol. The Committee also takes note of the authors' arguments that, although the State party has, since 2003, acknowledged that the forced sterilizations performed between 1996 and 2001 represented grave violations, and despite its launch of several criminal investigations since the Protocol entered into force, the investigations pertaining to the forced sterilization of the authors remain unresolved and the alleged victims have yet to receive full reparations. The Committee notes that both the launch of the criminal investigations into the forced sterilization of the authors and their entry in the Registry of Victims of Forced Sterilization occurred after the Protocol entered into force and that the authors' allegations primarily concern the lack of investigation and reparations, an issue that remained unresolved after the Optional Protocol entered into force. The alleged failure of the State party to fully acknowledge its responsibility and fulfil its obligations to provide the authors with just and adequate reparations therefore occurred after the State party's recognition of the Committee's jurisdiction under the Optional Protocol.²⁰ Consequently, the Committee declares the communication admissible *ratione temporis* under article 4, paragraph 2 (e), of the Optional Protocol.²¹

7.3 The Committee takes note of the State party's comments regarding the failure to exhaust domestic remedies. The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.²² The Committee notes that both parties maintain that the present case concerns not the sterilization itself, but the authors' right to an efficient investigation and adequate reparations. The Committee must also satisfy itself that the remedies were available to the authors.²³ The Committee takes note of the State party's arguments that the alleged lack of judicial impartiality at the time of the events is based on general observations and subjective assessments; that the authors could have filed civil and administrative suits, in addition to a criminal complaint and amparo proceedings on the grounds of discrimination, which are the appropriate remedies for seeking redress; and that there is no evidence establishing that there were real, tangible and verifiable circumstances that hindered the authors' access to the domestic remedies.

7.4 The Committee also takes note of the authors' claim that, since they were not properly informed about the type of procedure performed on them, at first they were not fully aware that they had been forcibly sterilized or that such sterilization was a crime. The Committee takes note of the fact that legal remedies are not always truly available to alleged victims, either *de jure* or *de facto*.²⁴ On that point, the Committee recalls that, in accordance with its general recommendation No. 39 (2022),

²⁰ *S.H. v. Bosnia and Herzegovina* (CEDAW/C/76/D/116/2017), para. 7.6.

²¹ *A contrario sensu, Cristina Muñoz-Vargas y Sainz de Vicuña v. Spain* (CEDAW/C/39/D/7/2005), para. 11.5.

²² *J.D. et al. v. Czech Republic* (CEDAW/C/73/D/102/2016), para. 8.2; *E.S. and S.C. v. United Republic of Tanzania* (CEDAW/C/60/D/48/2013), para. 6.3; and *L. R. v. Republic of Moldova* (CEDAW/C/66/D/58/2013), para. 12.2.

²³ *A.S. v. Hungary* (CEDAW/C/36/D/4/2004), para. 10.3.

²⁴ Inter-American Court of Human Rights, Advisory Opinion 11/90, para. 17.

justiciability, availability, accessibility and the provision of remedies for victims are among the components necessary to ensure access to justice with an intersectional and intercultural gender perspective.²⁵ For Indigenous and rural women, the remoteness of their areas of residence, illiteracy and lack of knowledge of existing laws and judicial avenues constitute obstacles to their access to justice. The Committee also takes note of the fact that, in this particular case, the authors were not given access to information before, during or after the procedure. The Committee further takes note of the difficulties faced by the authors, who are rural women of limited means and victims of forced sterilization, in gaining access to the relevant remedies at the appropriate time, and notes that criminal proceedings offer no guarantee of redress and that no other legal mechanism is in place to ensure adequate reparations.²⁶ The Committee notes that no victim is required to pursue multiple avenues for redress in order for domestic remedies to be considered exhausted. Furthermore, given that the wrong suffered by the authors of the communication clearly requires comprehensive reparations²⁷ based on a survivor-centred approach, which would result from criminal proceedings, administrative and civil remedies alone would not have provided sufficient reparations and would not have resulted in an effective remedy.²⁸ In that regard, the Committee notes that, in 2016 and 2017, after having been informed of the violations to which they had been subjected, three of the authors (María Elena Carbajal, Florentina Loayza and Rosa Loarte) went to the Office of the Prosecutor and their cases were included in investigation No. 14-2016.

7.5 The Committee takes note of the State party's argument that investigation No. 14-2016 is a complex case involving at least 2,500 alleged victims throughout the country and requiring numerous procedural steps to gather evidence and testimony and that, given that the investigation was launched in 2016, it cannot be considered to have been unduly delayed. The Committee takes note of the authors' argument that, more than 24 years after their forced sterilization and more than 6 years after their inclusion in the Registry of Victims of Forced Sterilization, they have not received reparations; that no significant progress has been made in any of the investigations that have been ongoing since 2002, some of which have been shelved on several occasions; and that the only justification provided by the State party for the delay is its assertion that the investigation is complex and thus remains ongoing. The Committee also notes that the State party has not provided sufficient information on the specific steps taken or on the obstacles that have impeded its progress, and that it has not responded to the authors' allegations that the criminal investigations have been unreasonably prolonged without producing significant progress or results. In view of the State party's failure to justify the alleged delay in investigation No. 14-2016, which has been ongoing for eight years, the Committee considers that the delays cannot be attributed to the complexity of the case or to the number of victims and concludes that the remedy has been unreasonably prolonged and does not have to be exhausted for the purposes of the admissibility of the present communication.²⁹ The Committee therefore finds that article 4, paragraph 1, of the Optional Protocol to the Convention does not constitute an obstacle to the admissibility of the communication submitted on behalf of María Elena Carbajal, Florentina Loayza and Rosa Loarte.

²⁵ General recommendation No. 33 (2015) on women's access to justice, para. 14, and general recommendation No. 39 (2022) on the rights of Indigenous women and girls, paras. 26 and 30.

²⁶ Ibid.

²⁷ Inter-American Commission on Human Rights, report No. 71/03, *Friendly settlement: María Mamérita Mestanza Chávez v. Peru*, 10 October 2003, para. 14.

²⁸ *G.H. v. Hungary* (CEDAW/C/76/D/114/2017), para. 7.2.

²⁹ *Alyne da Silva Pimentel v. Brazil* (CEDAW/C/49/17/2008), para. 6.2.

7.6 The Committee takes note of the State party's argument that Gloria Basilio and Elena Rojas have not filed criminal complaints, despite having the opportunity to do so, and have not, therefore, been included in investigation No. 14-2016. On that point, the authors maintain that the State party has had access to all the necessary information on their forced sterilization and has been given the opportunity to remedy it, and that the fact that Gloria Basilio and Elena Rojas have not filed a complaint has not prevented the State party from becoming aware of the violations. In addition, the authors allege that the forced sterilizations carried out between 1996 and 2001 in the State party constitute crimes against humanity and that, as such, there is an ex officio obligation on the part of the State party to investigate. The Committee recalls that the purpose of the requirement that domestic remedies be exhausted is to give the State party the opportunity to fulfil its duty to protect and uphold the rights enshrined in the Convention.³⁰ The Committee notes that, if they had filed a complaint, Gloria Basilio and Elena Rojas would have been included in investigation No. 14-2016 as alleged victims, as indicated by the State party. Having concluded that investigation No. 14-2016 has been unreasonably prolonged (see para. 7.5 above) and that insufficient progress has been made in that investigation, the Committee considers that, if they had filed a complaint, the effectiveness of the remedy and the results of the investigation for Gloria Basilio and Elena Rojas would be the same as for María Elena Carbajal, Florentina Loayza and Rosa Loarte. The Committee recalls its jurisprudence, according to which "mere doubts about the effectiveness of the remedies do not absolve an individual from exhausting domestic remedies".³¹ The Committee considers that, in this case, it is certain that the existing remedies have been unduly prolonged and therefore ineffective, and concludes that Gloria Basilio and Elena Rojas would be absolved from exhausting those remedies. Consequently, the Committee finds that article 4, paragraph 1, of the Optional Protocol does not constitute an obstacle to the admissibility of the communication submitted on behalf of Gloria Basilio and Elena Rojas.

7.7 The Committee takes note of the State party's claim that the communication is inadmissible under article 4, paragraph 2 (c), of the Optional Protocol for lack of substantiation on the grounds that the facts presented in the communication do not entail sex-based discrimination because the Programme on Reproductive Health and Family Planning was aimed at the general public. Moreover, the Committee takes note of the fact that the lack of investigation and adequate reparations for victims of forced sterilization are acts of discrimination against women. The Committee notes that at least 314,000 women (93 per cent of the victims), including the authors, and 24,000 men, most of whom were Indigenous, illiterate and/or from poor or rural areas, were sterilized as part of a family planning policy under which mass surgical contraception was prioritized with the intention of lowering the birth rate and reducing poverty levels. The Committee considers that its determination regarding whether the forced sterilizations constituted discrimination on the basis of sex, socioeconomic conditions or ethnic group is directly related to the merits of the communication and thus it finds that it is competent to examine the issue.³²

7.8 The Committee notes that the facts and the authors' other allegations concerning lack of access to healthcare services, family planning services in rural areas and guarantees for the enjoyment of rights and freedoms under equal conditions are ancillary to the lack of prompt and thorough investigation and the lack of full and adequate reparations. Accordingly, in the absence of any other issue relating to the

³⁰ *E.L.A. v. France* (CED/C/19/D/3/2019), para. 6.6, and Human Rights Committee, *Hidalgo Rea and Rivera Hidalgo v. Mexico* (CCPR/C/131/D/3259/2018), para. 8.4.

³¹ See, *a contrario sensu*, *J.D. et al. v. Czech Republic* (CEDAW/C/73/D/102/2016), para. 8.3, and *Zhen Zheng v. the Netherlands* (CEDAW/C/42/D/15/2007), para. 7.3.

³² *N.A.E. v. Spain* (CEDAW/C/82/D/149/2019), para. 14.4.

admissibility of the communication, the Committee declares it admissible as raising issues under article 2, read in the light of articles 3, 12 (1), 14 (2) (b) and 24 of the Convention. The Committee also considers that the complainants' allegations concerning the lack of information about their forced sterilization raise substantive issues under article 10 (h) of the Convention and declares them admissible.

Consideration of the merits

8.1 The Committee has considered the present communication in the light of all the information made available to it by the authors and by the State party, as provided for in article 7 (1) of the Optional Protocol.

8.2 The Committee takes note of the authors' allegations that they were victims of forced sterilizations performed by public officials as part of a State birth control policy and that the violations committed against them have been neither investigated nor remedied, although they have been recognized as victims in the Registry of Victims of Forced Sterilization. The Committee also takes note of the State party's argument that the Programme on Reproductive Health and Family Planning does not in itself constitute a discriminatory regulation, since it was not intended solely for women but for the general public, and was focused not only on voluntary surgical contraception but also on the overall promotion of sexual and reproductive health. It further takes note of the fact that, according to the State party, voluntary surgical contraception was carried out on both men and women and did not target a specific economic sector or ethnic group. The Committee takes note of the authors' argument that 93 per cent of the sterilizations were performed on women and that the vast majority of those women were Indigenous, from low-income groups and/or from rural areas, and that the practice of forced sterilization is in itself discriminatory against women and one of the most severe forms of gender-based violence.³³ It also takes note of the fact that, according to the authors, their forced sterilizations were carried out as part of a systematic and generalized attack against rural women of peasant or Indigenous origin, and that the policy resulted in the nullification and substitution of their reproductive autonomy. Lastly, the Committee observes that male and female sterilization differ substantially in terms of the nature of the procedure and the surgical risks involved, and that the risks associated with female sterilization are generally considered higher than those associated with male sterilization.³⁴ The Committee notes, in particular, the context in which the authors were sterilized, namely, by non-specialized medical personnel and in inadequate sanitary conditions, which constitutes a form of sexual discrimination.

8.3 The Committee recalls that, in its general recommendation No. 35, it stated that violations of women's sexual and reproductive health and rights, such as forced sterilization, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.³⁵ According to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, "some women may experience multiple forms of discrimination on the basis of their sex or other status or identity. Targeting ethnic and racial minorities, women from marginalized communities and women with

³³ General recommendation No. 35 (2017) on gender-based violence against women, paras. 15 and 16.

³⁴ World Health Organization, *Female Sterilization: A Guide for Provision of Services*, p. 72.

³⁵ General recommendation No. 35 (2017), para. 18; general recommendation No. 19 (1992) on violence against women, paras. 1 and 22; *L.C. v. Peru* (CEDAW/C/50/D/22/2009), para. 8.18; report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/31/57), para. 45; and United Nations Declaration on the Rights of Indigenous Peoples (General Assembly resolution 61/295, annex), art. 2. See also the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/61/338), paras. 13 and 17 (b).

disabilities for involuntary sterilization [...] is an increasingly global problem”.³⁶ The Special Rapporteur has also asserted that “forced abortions or sterilizations carried out by State officials in accordance with coercive family planning laws or policies may amount to torture”.³⁷ In the same vein, the Special Rapporteur on violence against women and girls, its causes and consequences has asserted that “forced sterilization and forced abortion are crimes and forms of gender-based violence against women”,³⁸ and that “forced sterilization is an example of intersectional discrimination often targeting women belonging to minorities and Indigenous women”.³⁹ The Committee is aware that many women (including women who are of African descent, HIV-positive, living in poverty, incarcerated, or lesbian, bisexual, transgender or intersex) may be affected by intersectional forms of discrimination. Indigenous women with disabilities, for example, commonly experience the denial of legal capacity, which leads to further human rights violations, including in the areas of access to justice, institutionalized violence and forced sterilization.⁴⁰

8.4 The Committee takes note of the State party’s argument that measures exist to ensure the free, prior, full and informed consent of women in sexual and reproductive health procedures and that, on the basis of the information provided by the authors, it cannot be verified that they in fact underwent procedures as part of the Programme on Reproductive Health and Family Planning or that they did not give their consent. In the coherent and consistent narrative presented by the authors, they were co-opted by means of coercion, pressure or deception, as part of campaigns, in clinics without specialized infrastructure or personnel; they underwent procedures without their informed consent; some of them did not know how to read and/or did not speak Spanish and lived in remote areas; and, in some cases, they did not understand the significance of the procedure or the fact that it was permanent. The Committee also notes that the authors have been included in the Registry of Victims of Forced Sterilization since 2017 and that, in order to be included, they submitted documents attesting to the fact that they had been sterilized under the Programme on Reproductive Health and Family Planning. The Committee recalls that, in accordance with its general recommendation No. 24 (1999), quality healthcare services are those that are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her confidentiality and is sensitive to her needs and perspectives.⁴¹ However, since 2002, the Committee has noted with concern numerous cases of women being sterilized without their prior informed consent, through the use of psychological violence or the promise of financial incentives, thereby affecting those women’s right to decide on the number and spacing of their children.⁴² The Inter-American Court of Human Rights has underscored that sterilization without consent is a phenomenon that, in various contexts and parts of the world, has had a greater impact on women belonging to groups that are more likely to suffer that human rights violation, as a result of their socioeconomic position, race, disability or HIV status.⁴³ Although sterilization is used as a form of contraception for both women and men, forced sterilization disproportionately affects women, because of their gender, on the basis of perceptions about their primarily reproductive role and their inability to make responsible reproductive health and family

³⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/22/53), para. 48.

³⁷ Ibid.

³⁸ Report of the Special Rapporteur on violence against women, its causes and consequences (A/74/137), para. 21.

³⁹ Ibid., para. 44.

⁴⁰ General recommendation No. 39 (2022), para. 21.

⁴¹ See *N.A.E. v. Spain* (CEDAW/C/82/D/149/2019), para. 15.7.

⁴² Concluding observations on the fifth periodic report of Peru, 23 August 2002 (A/57/38 (Supp)), para. 484.

⁴³ Inter-American Court of Human Rights, *I.V. v. Bolivia*, Judgment, 30 November 2016, para. 247.

planning decisions,⁴⁴ about their not being fit to be “good mothers” or about their offspring not being desirable.⁴⁵ Some healthcare providers also withhold information or mislead women into consenting to sterilization, acting with “gross disregard for [their] right to autonomy and choice as [patients]”.⁴⁶ The Committee notes that, as has been extensively documented and recognized in the report of the congressional investigative subcommittee (see para. 2.3 above), the forced sterilization in the 1990s of at least 314,000 women, most of whom were Indigenous, illiterate and/or from poor or rural areas, was part of a family planning policy that prioritized mass surgical contraception through health campaigns and the promotion of incentives for healthcare personnel. The Committee also notes that, in the present case, the State party has failed to provide information concerning the informed consent of the authors and has simply stated that it cannot demonstrate that the authors were not sterilized against their will, because the events referred to are under investigation as part of ongoing criminal proceedings.

8.5 The Committee takes note of the allegations by the authors that the policies adopted by the State party have not allowed them to establish the truth, punish those responsible or obtain full reparations, and that their inclusion in the Register of Victims of Forced Sterilization was more than a simple manifestation of their desire to be added, since such inclusion was an acknowledgement by the State party that the violations in question had occurred. The Committee also notes that the authors provided the Registry with certificates verifying that they had been sterilized between 1996 and 1997, that they came from places where health campaigns had been conducted as part of the Programme on Reproductive Health and Family Planning, and that they had all reported physical and psychological repercussions consistent with the events described.

8.6 The Committee notes that, in 2003, in the context of the Mamérita Mestanza case (para. 2.4 above), the State party acknowledged its responsibility before the Inter-American Commission on Human Rights; that, in 2015, it declared that the provision of support to victims of forced sterilization was of national interest and stipulated that the Registry of Victims of Forced Sterilization should be established; that, in the following years, it set up multisectoral committees and working groups recognizing that sterilizations constituted a serious human rights violation; that, in 2022, the High Court established the obligation to implement a policy of reparations for women included in the Registry; and that the Office of the Prosecutor has launched various criminal investigations into serious human rights violations, including investigation No. 14-2016, in which three of the authors have been included as alleged victims. However, the Committee notes that a reparations programme has not yet been implemented as provided for by the High Court and that the State party has failed not only to provide information on how the measures implemented have improved the authors’ life plans but also to indicate to what extent the authors have received full reparations, including with respect to the collective impact of forced sterilization on rural and Indigenous women. The Committee takes note of the argument by the State party that the authors’ right to full reparations is dependent not on their inclusion in the Registry of Victims of Forced Sterilization but on the outcome of the criminal investigations and that, in 2014, the Committee expressed its concern at the lack of redress and compensation for the victims of forced sterilization.⁴⁷ The Committee considers that the cumulative facts of the present case, in particular, all the events that

⁴⁴ Ibid., paras. 243 and 252. See also general recommendation No. 39 (2022) and general recommendation No. 24 (1999).

⁴⁵ Report of the Special Rapporteur on violence against women, its causes and consequences (A/74/137), para. 21.

⁴⁶ European Court of Human Rights, *V.C. v. Slovakia*, Application No. 18968/07, Judgment, 8 February 2012, para. 119.

⁴⁷ Concluding observations on the combined seventh and eighth periodic reports of Peru, 24 July 2014 (CEDAW/C/PER/CO/7-8), para. 21.

led to physical and psychological repercussions for the authors, constitute a form of gender-based violence against women and of intersectional discrimination based, inter alia, on the authors' sex, gender, rural origins and socioeconomic status.

8.7 In addition, the Committee takes note of the argument by the State party that the criminal investigations are complex, involving thousands of testimonies and pieces of evidence. The Committee also takes note of the argument by the authors that, since 2002 at least, the various complaints and investigations have been shelved and reopened on several occasions, reflecting a lack of enhanced due diligence, and that the criminal proceedings have resulted in no guarantees or comprehensive reparations. In 2007, the Committee noted that investigation and prosecution for all acts of violence against women were not being conducted and that remedies for individual victims were not readily available.⁴⁸ The Committee recalls that, under article 2 of the Convention, a State may be responsible for private acts if it fails to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation to victims.⁴⁹ The Committee notes that the proceedings have been returned, shelved and closed on various occasions, making victims of the authors and their relatives once again. In that connection, the Committee recalls that, under article 2 (b), (c), (d) and (f), States parties have the obligation to take all appropriate measures to modify or abolish not only existing laws and regulations, but also customs and practices that constitute discrimination against women,⁵⁰ in particular Indigenous and rural women; that measures to prevent and combat discrimination against Indigenous women and girls must also integrate an intersectional gender perspective that takes into account the many factors that combine to exacerbate unequal treatment;⁵¹ and that "the right to access to justice for women is essential to the realization of all the rights protected under the Convention".⁵² The Committee considers that, in the present case, the State party failed to act with due diligence to ascertain the facts related to the sterilization of the authors; that, despite being included in the Register of Victims of Forced Sterilization, the authors have not received full and adequate reparations, since the State party has not yet implemented a policy of comprehensive reparations; and that the State has not taken appropriate measures or acted with due diligence to guarantee a prompt and effective investigation or full and adequate reparations for the authors.⁵³

8.8 Consequently, acting under article 7 (3) of the Optional Protocol, the Committee is of the view that the facts before it reveal a violation of the rights of the authors under article 2, read in conjunction with articles 3, 10 (h), 12, 14 and 24 of the Convention.

8.9 The Committee notes that forced sterilization, when widespread or systematic, constitutes a crime against humanity under the Rome Statute of the International Criminal Court.⁵⁴ While a conclusion of this nature is outside the Committee's purview, it is noted that, on 9 August 2024, the State party adopted an Act preventing the prosecution of crimes against humanity committed prior to 1 July 2002.⁵⁵ The Inter-American Court of Human Rights has urged the State party to repeal that Act, as it violates international law.⁵⁶ The United Nations High Commissioner for Human

⁴⁸ Concluding observations on the sixth periodic report of Peru, 20 February 2007 (CEDAW/C/PER/CO/6), para. 20.

⁴⁹ General recommendation No. 19 (1992), para. 9.

⁵⁰ See *González Carreño v. Spain* (CEDAW/C/58/D/47/2012), para. 9.7.

⁵¹ General recommendation No. 39 (2022), para. 4.

⁵² General recommendation No. 33 (2015) on women's access to justice, para. 1.

⁵³ See *N.A.E. v. Spain* (CEDAW/C/82/D/149/2019), para. 15.7.

⁵⁴ Rome Statute of the International Criminal Court, art. 7 (1) (g).

⁵⁵ Act No. 32107 of 9 August 2024.

⁵⁶ Inter-American Court of Human Rights, *Case of Barrios Altos v. Peru* and *Case of La Cantuta v. Peru*, Order (Provisional Measures and Monitoring Compliance with Judgment), 1 July 2024, paras. 50, 68 and 71.

Rights also issued a statement in which he noted that the Act “contravenes the country’s obligations under international law”.⁵⁷

9. In the light of the above conclusions, the Committee makes the following recommendations to the State party:

(a) With respect to the authors, and taking into consideration the gender-based and intersectional discrimination; the complexity of the damage suffered; the potential stigmatizing effect of the crimes and reparations; and the potential transformative effect of certain measures on the structure of gender exclusion:⁵⁸

(i) Provide adequate financial compensation to the authors and their family members for the physical and psychological harm suffered;

(ii) Provide psychological assistance to the authors and their family members;

(iii) Take the urgent measures needed to expedite investigation No. 14-2016 relating to the forced sterilization of the authors, in order to ascertain the facts and identify and punish those responsible;

(b) In general:

(i) Take appropriate measures to investigate any act of forced sterilization committed under the Programme on Reproductive Health and Family Planning (1996–2000);

(ii) Take appropriate measures to implement a programme of full reparations, including compensation, for all women included in the Registry of Victims of Forced Sterilization;

(iii) Ensure that the legal framework is adequate to diligently address the investigations and the corresponding reparation processes.

10. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee’s views and recommendations and disseminate them widely in order to reach all relevant sectors of society.

⁵⁷ See <https://www.ohchr.org/en/statements-and-speeches/2024/08/un-human-rights-chief-volker-turk-regrets-statute-limitations-war>.

⁵⁸ A/HRC/54/24, para. 53.