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June 18, 2021

VIA EMAIL: cat@ohchr.org

Professor Nils Melzer
Special Rapporteur
United Nations Committee Against Torture
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson – 52, rue des Pâquis
CH-1201
Geneva, Switzerland

Dear Professor Nils Melzer,

Re: Forced and Coerced Sterilization of Indigenous Women in Canada – Survivors' Shadow Periodic Report in follow-up to Canada's Appearance Before the Committee Against Torture on concluding observation 51(a)

In December 2018, the United Nations Committee Against Torture re-affirmed that sterilization without consent is a form of torture and called on Canada to:

- (a) Ensure that all allegations of forced or coerced sterilization are impartially investigated, that the persons responsible are held accountable and that adequate redress is provided to the victims;
- (b) Adopt legislative and policy measures to prevent and criminalize the forced or coerced involuntary sterilization of women, particularly by clearly defining the requirements of free, prior and informed consent with regard to sterilization and by raising awareness among Indigenous women and medical personnel of that requirement.

Canada was directed to respond to the Committee's recommendations no later than one (1) year from their issuance, on December 7, 2019. Canada provided an interim report on February 21, 2020.

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We submitted a Shadow Report to you on May 11, 2020, noting the deficiencies in Canada’s reporting with respect to the recommendations above. In particular, we noted that our government (provincial and federal) have undertaken *no* investigation of any allegation of forced sterilization; held *no* individual accountable (administratively, civilly, or criminally) for performing a sterilization without informed consent; provided *no* redress to known victims; and, adopted *no* legislative or policy measures aimed at preventing or criminalizing forced sterilization. Unfortunately, this situation has not changed as of June 2021, and in fact Canada has missed several additional opportunities to act while sterilizations without consent continue to be reported, some taking place *after* the Committee’s recommendations in December, 2018.

Canada’s Insufficient Efforts

We are aware of two developments that may not have been included in Canada’s interim report to the Committee. In January 2020, the National Collaborating Centre for Indigenous Health, with support from the government of Canada, hosted a conference entitled *Culturally Informed Choice and Consent in Indigenous Women’s Health Services* in Ottawa, which brought together the federal government, provincial and territorial governments, health care professionals and associations, and civil society organizations to discuss the issue of forced and coerced sterilization.¹ To our knowledge, no concrete actions have come from this conference. Second, the government of Canada provided financial support of an unknown quantum to Indigenous women’s organizations to create resources on this issue.²

Canada has not initiated an investigation into the forced and coerced sterilization of Indigenous women in Canada. As will be detailed below, two of its legislative bodies are studying the issue, but no concerted action or commitment has been made to study the extent of the problem, its systemic manifestation, and the need for systemic resolutions. Further, Canada has not met with survivors to discuss options for redress and justice. It lacks a coordinated, comprehensive, transparent, and survivor-centered approach to fully address the issue.

Joyce Echaquan Inquest

The forced sterilization of Indigenous women is still happening today.

In September 2020, an Atikamekw woman named Joyce Echaquan was admitted to hospital in Joliette, Quebec, with stomach pains. She live-streamed racist taunts from health care workers as they treated her, and she died later the same day.³ A commission of inquiry, the Viens Commission, had a year earlier found it "impossible to deny" Indigenous people in Quebec are victims of "systemic discrimination" in accessing public services, including health-care services.⁴

At the coroner’s inquest on the matter, Echaquan’s husband testified that she had been forced into three abortions at the same hospital, and that after her last pregnancy, had been pressured by the attending

¹ Senator Yvonne Boyer, “Our Fights Against Coerced and Forced Sterilization: The first step in eradicating this unthinkable crime is to listen and hear the voices of Indigenous women who have been sterilized,” May 2020, p. 4.

² See, for example, Native Women’s Association of Canada, “Knowing Your Rights Toolkit, “Sexual and Reproductive Health Booklet,” 28 October 2020.

³ <https://www.youtube.com/watch?v=-7Fh96rZr6U>

⁴ Final report from the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Quebec: listening, reconciliation and progress, at p. 203.

physician into undergoing tubal ligation. She did not want to be sterilized and later regretted the procedure.⁵

This information was revealed in a high-profile case, during a public inquest; it leaves open the question of how often it happens outside of the spotlight and goes unreported. Joyce Echaquan’s death, but specifically her recording of the racist treatment to which she was subjected, prompted calls to address racism in health care,⁶ but it is too little and too late for many.

Missing and Murdered Indigenous Women and Girls – National Action Plan

In addition to simply not doing much, Canada has missed important opportunities to build in measures to address forced sterilization in the actions it has taken.

The National Inquiry into Missing and Murdered Indigenous Women and Girls (“NIMMWIG”) issued its final report on June 3, 2019, which includes two (2) volumes ([1a](#) and [1b](#)), a [Supplementary Report directed to the Province of Québec](#), and a [Supplementary Report on Genocide](#).⁷ The NIMMWIG Final Report detailed the issue of forced sterilization⁸ in both First Nations and Inuit communities, and made sweeping recommendations to address discrimination in the health care system.⁹ The federal government finally issued its responding [National Action Plan](#) two (2) years to the date afterwards, on June 3, 2021.¹⁰ The National Action Plan makes no mention of forced sterilization and constitutes a missed opportunity to address a manifestation of health care discrimination that is both debilitating and reportedly and demonstrably ongoing.

Parliamentary Efforts

Another missed opportunity was within one of Canada’s legislative bodies.

The Senate continues its efforts to address the eradication and examination of the forced sterilization of Indigenous women, largely through the efforts of Senator Yvonne Boyer. Senator Boyer was appointed to the Senate in 2018, was the author of the report into forced sterilization in Saskatoon Health Region in 2017¹¹ and continues to champion the issue. She addressed the forced sterilization of Indigenous women in her first speech in the Senate in 2018, and again in Spring 2021. She was also instrumental in having the Standing Senate Committee on Human Rights study the extent and scope of forced and coerced sterilization

⁵ Julia Page and Franco G. Mignacca, [“‘I told her I loved her,’ Joyce Echaquan’s husband tells inquest into her death at Quebec hospital,”](#) CBC, 13 May, 2021.

⁶ Benjamin Shingler, [“Joyce Echaquan’s death lays bare, once again, problems in Quebec’s health-care system,”](#) CBC, 29 May 2021.

⁷ National Inquiry into Missing and Murdered Indigenous Women and Girls, [“Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls,”](#) June 2019.

⁸ National Inquiry into Missing and Murdered Indigenous Women and Girls, [Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls,”](#) 1a, at pages 53, 230, 266-267, 309, 608; [Supplementary Report – Genocide](#), at pages 17, 24.

⁹ National Inquiry into Missing and Murdered Indigenous Women and Girls, [Master List of Report Recommendations](#).

¹⁰ [National Action Plan](#)

¹¹ Dr. Yvonne Boyer and Dr. Judith Bartlett, [External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women](#), 22 July 2017.

of persons in Canada in 2019. While that study was not tabled at the time for various procedural reasons, she managed to have it tabled just this month, June 2021. The report notes UNCAT’s findings, traces the history of the forced sterilization of Indigenous women in Canada, identifies some of the root causes of ongoing vulnerabilities, and calls on the government to respond to the report and that parliament build on the report to undertake further study with the goal of identifying solutions to stop the practice. We view these recommendations as a step in the right direction after years of dithering, and hope that the government seizes this opportunity and builds on the Senate Standing Committee’s work.

An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples (Bill C-15) was passed in the Senate on June 16, 2021. It entrenches the principles of the Declaration into domestic law. The Act calls for an action plan, which must include measures to:

- (i) address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination, including systemic racism and discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons, and
 - (ii) promote mutual respect and understanding as well as good relations, including through human rights education; and
- (b) measures related to monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the Declaration.¹²

Specifically, Article 7 of the United Nations Declaration on the Rights of Indigenous Peoples, annexed in the above passed legislation, provides:

Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.¹³

However, legitimate distrust prevails. In the departing words of Ms Mumilaaq Qaqqaa, the New Democrat MP for Nunavut,

There is a refusal and unwillingness for change, not an inability to accomplish it...During my time in this chamber I have heard so many pretty words, like reconciliation, diversity and inclusion. I have been called courageous, brave and strong by people outside of my party. But let me be honest, brutally honest, nice words with no action hurt when they are uttered by those with power over the federal institution and refuse to take action. There is nothing to take pride in in the legacy this institution continues to not only maintain, but to build and fuel. People in power have choices and they consistently choose priorities that uphold systems of oppression...listen, believe us, and do something about it. When we tell you to act now, you need to act now. And if you “understand”, then shame on you. Because if you “understand” how much this hurts, you understand how deep

¹² An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, at section 2.

¹³ An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, at Article 7, as annexed.

it cuts. It would be easier for me to be told that I am wrong and that you disagree, than to be told I am right, and I am courageous, but there is no room in your budget for basic – basic - human rights that so many others take for granted. Our history is stained with blood, children, youth, adults, and elder’s blood. It’s time to face the scale of justice. On one side we have a mountain of suffering, and whenever the government gives us a grain of sand of support, they seem to think the trauma from our past has been rectified, that somehow, they deserve a pat on the back. But it will take a mountain of support to even begin the healing process, and as long as these halls echo with empty promises, instead of real action, I will not belong here. ¹⁴

Recommendations

Our recommendations have not materially changed, and are reproduced below for convenience, augmented and varied as appropriate:

1. The provision of additional details requested from Canada by the Committee with respect to how their implementation measures actually respond to the true nature of the problem.
2. The mandating of Provincial Inquiries, headed by Indigenous persons, with a national dimension to satisfy, in part, the requirement for impartial investigation.
3. Initiation of a survivor-centered reparation process capable of reflecting the different degrees of harms experienced by the survivors and their families. This process could draw on past complex settlement processes, such as the Independent Assessment Process as Part of the Indian Residential Schools Settlement Agreement.
4. Provide additional support and policy attention to the poverty, exclusion and violence experienced by Indigenous women and girls.
5. Make public any data on sterilization that is in the possession of provincial or federal authorities, with disaggregated data for sterilization procedures performed on Indigenous women compared to non-Indigenous women, as well as on sterilization procedures broken down by geographic regions.
6. Where current data collection and analysis is lacking, put policies in place to collect data on sterilization procedures across Canada, noting geographic regions and number of procedures performed on Indigenous women, without instituting a practice of identifying a woman as Indigenous on the face of documents she needs to receive services.
7. Direct the RCMP, and other jurisdictions, to fulfill their legal duty to fully and professionally investigate using media reports and statements of claim as third party complaints. Conduct follow-up as needed.
8. Ensure that provincial health care authorities and medical profession licensing bodies investigate and appropriately address reports of failure to ensure proper and informed consent to medical procedures.
9. Immediately institute measures to enforce existing provisions of the Criminal Code, and immediate measures to close gaps in the criminal law regime with respect to forced and coerced sterilization of vulnerable groups.
10. Legislation entrenching the legal standard of proper and informed consent to sterilization procedures, birth control and other treatments associated with reproductive and obstetric health care.
11. Direct Health Canada and provincial health agencies to issue guidance regarding sterilization procedures, including that such procedures are never urgent in nature, are most often not medically necessary, that consent for such procedures during labour, delivery or postpartum is not proper or

¹⁴ [Watch Nunavut MP's powerful goodbye message highlighting racism in Canada](#), The Canadian Press, 15 June 2021.

informed; and that the risks, side effects and permanency of tubal ligation are clearly understood. A caution under applicable international and domestic law, including section 7 of the *Canadian Charter of Rights and Freedoms*,¹⁵ should be compulsorily provided to any person presented with birth control options, including a clear statement that the patient: has an inalienable right to bodily autonomy, that consent must be voluntary (no coercion and no misrepresentation); provided by a patient with capacity; specific to the physician and the procedure; and finally, consent must be informed and provided with adequate time, in an appropriate environment, to consider the information imparted including risks, consequences, benefits, side effects and a full range of options.

12. Direct Health Canada and provincial health agencies to produce an information brochure for health care providers and patients on proper and informed consent – particularly in the contexts of women’s health services. We have drafted this document and are happy to provide the State with a copy of the same for broad dissemination.
13. Cease the practice of mandating the disclosure of racial identification on the face of any document required to access universal health care services across Canada. In particular, cease the practice of mandating the disclosure of Registered Indian status in health care applications and the practice of identifying registered status Indians with an “R” on the face of health cards in Saskatchewan.
14. Provide training for health professionals on treating Indigenous peoples – in particular women – and on free, prior and informed consent. Proper screening of health professionals for racial biases and to refuse licensing of candidates who do not meet standards set for treating Indigenous patients.
15. Institutionalize training programs and requirements for all health care providers on free, prior and informed consent, women’s human rights, culturally competent care, and anti-racism.

Respectfully,

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On behalf of MRLP, SAT, DDS, SDP, PDI, MM, EAE and,
other survivors of forced and coerced sterilization

¹⁵ Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.