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**The Reality Behind the Forced Mass Sterilizations of Indigenous Peruvian Women and its Impact on the Society it Left Behind**

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## INTRODUCTION

During his speech before the IV World Conference on Women on September 15, 1995 in Beijing, China, then-Peruvian President Alberto Fujimori, said “women can have at their disposal with full autonomy and freedom, the tools necessary to make decisions about their own lives.”<sup>1</sup> The events that followed the year after this conference would obliterate those words. In 1996, the “Programa de Salud Reproductiva y Planificación Familiar” (*translated* Reproductive Health and Family Planning Program) was created as part of a policy of social development which fought against the rising numbers of people living in extreme poverty.

The National Reproductive Health and Family Planning Program (hereinafter “the PSRPF”) was established to allow access to reproductive health information so that women would become “owners of their own destiny.”<sup>2</sup> Through the PSRPF, the Peruvian government and the Ministry of Health would act as one, to play a guiding role in the deteriorated health system that continued to fail the Peruvian people.<sup>3</sup> Unfortunately, many areas of the country continued to be absent in the eyes of the government, as they were left without basic health services. The four-year plan aimed to bridge the gap so that people in rural and indigenous communities of the country could have access to health professionals and services.

The basics of the program involved allowing both men and women the freedom to choose responsibly the number of children they wished to have, when to have them and the spacing of the pregnancies.<sup>4</sup> The PSRPF also included the right to information regarding modern contraceptives, as well as insurance and aid to couples facing infertility issues.<sup>5</sup> That was the façade of the

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<sup>1</sup> Speech given by Peruvian President Alberto Fujimori. IV World Conference on Women, September 15, 1995. Beijing, China.

<sup>2</sup> Speech by President Fujimori before Congress on July 29, 1995.

<sup>3</sup> Ministry of Health. National Reproductive Health and Family Planning. 1996-2000. Pg. 3

<sup>4</sup> *Id.* At 5

<sup>5</sup> *Id.*

program, as its real purpose was limiting the rapidly growing Peruvian population, which to the government meant, rising issues in the economy.

On the same year that the PSRPF was created, it did not take much time for the program to go awry. Local organizations for women's rights began investigating and finding that the program originally created to help both men and women were resulting in the forced sterilization of them. The Committee for Latin America for the Defense of Women's Rights (hereinafter the CLADEM), one of the main investigators of the ongoing sterilization practices, was one of the first ones to find out about the changes made to the PSRPF and the unexpected turn that changed the lives of hundreds of thousands of women in Perú.

The CLADEM, along organizations like Movement Manuela Ramos found out that women in rural and indigenous communities were going to their local health centers and being forcefully sterilized. The great majority of these women were illiterate and spoke Quechua, one of Peru's native languages. The language barrier contributed to the actions of their doctors since any information provided by them or their staff was in Spanish, a language they did not understand.

Scholars all over the world have conducted research on their own and alongside non-profit organizations about the topic of forced mass sterilizations. However, while this work and these investigations exist, the Peruvian government continues to fail in reopening the cases brought forward by countless women. The work and research of every scholar and organization has added valuable information to the fight for justice; their only hope is that one day it can be successfully achieved.

This paper will argue how forced mass sterilizations against Indigenous Peruvian women were crimes against humanity that continue to go unpunished; this paper will also evaluate the toll and effects it had on the victims it left behind. This paper consists of four parts. First, the historical

background of forced sterilizations, their implementation in various countries, the caselaw arising from this issue and the reason behind the use of sterilizations, mainly on women of color. Second, it will delve into the specifics of the PSRPF, its original drafting and drastic change in practices. Third, it will discuss the essential role of Peruvian non-profit organizations in investigations and the support offered to the victims of this crime. Fourth, it will discuss the violations of the Rome Statute and other relevant international laws. This paper will conclude evaluating the effects the use of mass forced sterilization had on the women it left behind and a recommendation as to how the Peruvian government must make legal changes to protect the women it has harmed.

## I. HISTORICAL BACKGROUND

Every article found on the history and practices of forced sterilizations yields the same conclusion: Population Control. In 2016, the New York Times published an article titled “When Doctors Took ‘Family Planning’ Into Their Own Hands” which described the horrific stories of forced sterilizations happening in the United States during the 1970s. The article detailed how Latina women who visited their county hospital were “bullied by doctors and nurses who declared their children burdens on California taxpayers.”<sup>6</sup> In 1975, a group of ten women, all victims of forced sterilization gathered the strength to file a class action lawsuit in federal court against the Los Angeles County U.S.C. Medical Center for sterilizing Spanish-speaking mothers who delivered their babies through a C-section.<sup>7</sup> The class action case was Madrigal v. Quilligan, which opinion is not only unpublished but impossible to find.<sup>8</sup>

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<sup>6</sup> Valdes, Marcela “*When Doctors Took ‘Family Planning’ Into Their Own Hands*” New York Times, February 1, 2016.

<sup>7</sup> *Id.*

<sup>8</sup> *Madrigal v. Quilligan*, Civ. 75-2057, 1978 U.S. Dist. LEXIS 20423 (C.D. Cal. June 30, 1978).

The Los Angeles County Hospital had unfortunately gathered a bad reputation among its visitors since it was known for having the practice of misleading women about sterilization and reaching the level of coercion so that they would end up consenting at the end.<sup>9</sup> Any close attempt to gather information on this topic was quickly dismissed. Virginia Espino, a historian who began her research in 1994, recalls how any time she would attempt to obtain court documents from the County Hall of Records, the response she would get were “they were lost, missing, somebody had borrowed it, we can’t find it.”<sup>10</sup> Madrigal v. Quilligan discussed two questions: “Did obstetricians at County Hospital perform tubal ligations on their patients without proper consent? And did doctors single out Latinas for the procedures?”<sup>11</sup> During the trial in 1978, the only thing the Judge wrote in his opinion was that the practices of the doctors and their staff were a result of “misunderstandings that occurred because the women were, primarily, Spanish-speakers.”<sup>12</sup> He added that “their emotional distress at being sterilized was caused by their ‘cultural background.’”<sup>13</sup>

Dr. Karen Benker, a former resident from the hospital recalls and testified against the hospital that “the notion of ‘voluntary informed consent’ barely existed during the early 1970s.”<sup>14</sup> She explained that one night, “she saw a medical resident hold a hypodermic needle filled with painkiller in front of an African-American woman in labor and say: ‘You want this? You want the pain to go away? Well, sign this [sterilization consent] paper!’”<sup>15</sup> These are the words many women

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<sup>9</sup> Valdes, Marcela “When Doctors Took ‘Family Planning’ Into Their Own Hands” New York Times, February 1, 2016.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

of color heard when they were facing one of the most important times of their lives, the birth of their children.

Panoramas, a scholarly platform hosted by the University of Pittsburgh's Center for Latin American Studies, published an article titled "The Dark History of Forced Sterilization of Latina Women," which also discussed the practice of sterilization but in Puerto Rico between the 1930s and 1970s.<sup>16</sup> Approximately one-third of the female population in Puerto Rico was sterilized, placing it at one of the highest rates in the world.<sup>17</sup> The practice became so common that it was even referred to as "la operación" (*translated* the operation).<sup>18</sup> The argument behind this was that Puerto Rico was seeking to become a successful and modern economy.<sup>19</sup>

Other countries like Bangladesh, the Philippines, Indonesia, India and Vietnam also had Family Planning programs where people were pressured to have a certain number of children or be faced with monetary penalties.<sup>20</sup> Steven Mosher, discusses in his book, *Population Control*, that tens of millions of dollars are spent by a movement to convince people about "the gravity of the 'population crisis.'"<sup>21</sup> He mentions that in countries like the United States, the media releases information to generate support and funding for population control programs.<sup>22</sup> In quoting Harvard University Economics Professor Amartya Sen,

"[Population control programs] treat the people involved not as reasonable beings, allies facing a common problem, but as impulsive and uncontrolled sources of great social harm, in need of strong discipline."<sup>23</sup>

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<sup>16</sup> Andrews, Katherine "The Dark History of Forced Sterilization of Latina Women" Panoramas Scholarly Platform. October 30, 2017.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Steven Mosher. *Population Control – Real Costs, Illusory Benefits*. (2008). pp. 85.

<sup>21</sup> *Id.* At 88

<sup>22</sup> *Id.* At 89.

<sup>23</sup> *Id.* At 121.

People should not have to face rules for the number of children they are allowed to have, or face penalties for having more than the number permitted. They should be treated as human beings. Unfortunately, history has shown that the use of sterilizations in various countries all over the world was used as a method to control certain populations from reproducing more than others. Sadly, in the 1990's, Peruvian Indigenous women, as well as those in marginalized parts of the country, were the victims of Alberto Fujimori's government's actions through the PSRPF and the sterilizations conducted.

## **II. The National Reproductive Health and Family Planning Program – Lima, Perú**

Ministerial Resolution 071-96 SA/DM decreed on February 6, 1996 that the PSRPF would exist for a period of four years, from 1996 to 2000.<sup>24</sup> It furthered resolved that the program would apply in both local and national levels of the country.<sup>25</sup> Under the Management of the Ministry of Health, the program aimed to target mainly the area of reproductive health, along the physical well-being of the person, treating mental health issues and built a framework to show women better options for contraceptives.<sup>26</sup> The creators of the program believed that this would be able to help the millions of women who were constantly having children and allow them to make responsible, healthy and more importantly free choices relating to their bodies. It sought social equality in attempting to implement the program in all levels, so that women from rural communities and main cities would have equal access to the same information and services provided through the PSRPF.

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<sup>24</sup> Ministry of Health. National Reproductive Health and Family Planning. 1996-2000. pp. 4

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* At 5

At the time the PSRPF was created, Perú was facing one of its highest rates of poverty. Almost half of the country was living in poverty and 1 in every 5 Peruvians was living in extreme poverty.<sup>27</sup> The Andean region, as well as the capital were the focus points of poverty.<sup>28</sup> Perú was in need of a program that would not only bridge the gap between the rich and poor, but also educate various communities since many of them did not have access to education at all. The distribution of pamphlets and information about health reproduction was not enough; this program should have addressed how they would target communities to teach about health reproduction and hence allow people to understand the real meaning behind the PSRPF. The following sections will discuss how the PSRPF went from a family planning program celebrated and applauded in the IV World Conference on Women to a mass sterilization program that directly targeted indigenous and poor women in Perú. It will also show how the quota system was discovered and who took part of the original investigations. Next, it will show which were the particular groups in the country chosen to be sterilized and which regions were mainly targeted. Lastly, it will show the various testimonies of the women who suffered from the sterilizations, what they felt and how they were impacted after these crimes to their bodies were committed.

#### **A. From Family Planning Program to Quota System**

On November 1996, Giulia Tamayo, feminist attorney and specialist in women's rights, found in the then Health Center of Huancabamba, Piura (northern Perú), paper forms that were used to draw in women to be treated in the ZONADIS (Zones of Health Development).<sup>29</sup> Tamayo's world was changed at that moment; she could not believe that the so-called Family Planning Program was really one of quotas, one full of mysteries and illicit activities. She made

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<sup>27</sup> *Id.* At 10

<sup>28</sup> *Id.*

<sup>29</sup> Machacuay, Michael "Giulia Tamayo, la feminista que descubrió el sistema masivo de esterilizaciones forzadas" La República. December 15, 2018.



it her duty to investigate what the PSRPF hid and achieve justice for the women who fell victims to these crimes. After almost twenty years of investigation, Tamayo found that this issue was much bigger than isolated reports about the practices under the PSRPF or the negligence women suffered from; she found this to be a program of massive forced sterilizations.<sup>30</sup> The real purpose of the program: to control the population and to pick and choose what regions would reproduce and grow in numbers.<sup>31</sup>

As more and more cases began to be reported, Tamayo found the macabre reasons the Peruvian government adopted this program. Perú is known for allowing international companies to mine in its rich soil, but with mining and the contamination that the companies produce, resistance groups are organized to combat illegal mining and the pollution of their provinces. Hence, when creating the PSRPF, then-President Alberto Fujimori, along with the Minister of Health changed the family planning program and increased the number in quotas so that more women in these mining regions would be sterilized.<sup>32</sup> The reason why? They believed that by sterilizing women and men in higher numbers, the resistance against illegal mining would decrease; it was really only about business.<sup>33</sup> Forcibly sterilizing women would leave them vulnerable in their recovery, both physically and mentally, not allowing them to be involved in other activities that required force. Doctors, nurses and healthcare staff were scarce in these regions, leaving the communities who were living in extreme poverty at a disadvantage and without access to healthcare. However, with the implementation of the quota system through the PSRPF, the government sent healthcare professionals to regions where healthcare was non-existent, with the sole purpose of meeting the numbers they had for the month. As the numbers began to soar, women's rights organizations

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

began to investigate and receive information directly from the victims. These organizations eventually paved the way for international organizations and committees to get involved and start investigating.

## **B. Investigations Begin**

The CLADEM (Committee for Latin America for the Defense of Women’s Rights) was founded in 1987 in Costa Rica after prior discussions in a United Nations World Conference to protect and defend women’s rights.<sup>34</sup> In 1996, the CLADEM began its investigation titled “Silencio y Complicidad: Violencia Contra las Mujeres en los Servicios Públicos de Salud en el Perú ” (*translated* “Silence and Complicity: Violence Against Women in Public Health Services in Perú”) where it was able to find the first cases of sterilization reported to the authorities.<sup>35</sup> The CLADEM found that there were international organizations that would necessarily be involved in this subject and hence monitor the acts committed.<sup>36</sup>

Over seventeen years ago, a group of 2,166 women presented their first criminal complaint to the Prosecutor’s Office in Lima to discuss the specifics of the crimes committed against them.<sup>37</sup> When the government was questioned about these practices, it denied it in its entirety, “accepting such acts would be admitting a crime,” discusses Patricia Carrillo, Coordinator of Sexuality and Physical Autonomy in non-profit organization Movimiento Manuela Ramos (*translated* Movement Manuela Ramos).<sup>38</sup> She added that these decisions were being made by top officials

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<sup>34</sup> CLADEM. Gruber Foundation. Yale University. <https://gruber.yale.edu/womens-rights/cladem>

<sup>35</sup> Ballón, Alejandra. “*Archivo PNSRPF*” <https://1996pnsrpf2000.wordpress.com/fechas/>

<sup>36</sup> “*Silencio y Complicidad: Violencia Contra las Mujeres en los Servicios Públicos de Salud en el Perú.*” Comité de América Latina y El Caribe para la Defensa de los Derechos de la Mujer. Centro Legal Para Derechos Reproductivos y Políticas Públicas. August 1998. pp. 30.

<sup>37</sup> Landaburu, Amaia, “*Patricia Carrillo, Activista del Movimiento Manuela Ramos de Perú: ‘En Cuanto a las Esterilizaciones Forzadas Tenemos Que Hablar de Impunidad Porque Hasta Ahora Las Mujeres No Han Recibido Justicia.*” *Revista Pueblos.* July 2, 2018.

<sup>38</sup> *Id.*

in the Ministry of Health.<sup>39</sup> At this time, Marino Costa Bauer was sitting as Minister of Health, only years later admitting that his department made mistakes while he was an official.<sup>40</sup> While the original stance of the Ministry of Health was to inform the citizens about reproductive health, many made independent decisions of ordering the sterilizations of women in different provinces.<sup>41</sup> Carrillo labeled this practice as “State Policy,” because while the officials involved attempted to pass it off as just a mistake, there were too many top government representatives involved whose goal was achieving surgical contraception and vasectomies in the poorest and most rural areas of the country.<sup>42</sup> Women were profiled. This “state policy,” newly adopted and put into practice would send healthcare professionals to rural areas of the country, where women were tricked and even threatened.<sup>43</sup> Carrillo recalls the testimony of one woman she spoke to, she said that “the police would take her and put in jail for having more than five kids.”<sup>44</sup> She was obviously afraid and had no other option but to comply.<sup>45</sup> Carrillo calls the state policy one that abused the ignorance or lack of knowledge of the target victims; she saw how the use of threats and the fear instilled in these groups, many times not even fluent in Spanish, had outrageous effects.<sup>46</sup> These practices, although performed by doctors and their staff, was still one created behind the façade of a government health program.<sup>47</sup> The women, the targets, who fell victims to these practices did not look or blame the program, they blamed one person and that was: Alberto Fujimori.<sup>48</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> Cabitza, Mattia, “*Esterilizadas a la Fuerza en Perú*” BBC.

[https://www.bbc.com/mundo/noticias/2011/12/111206\\_Peru\\_salud\\_esterilizaciones\\_rg](https://www.bbc.com/mundo/noticias/2011/12/111206_Peru_salud_esterilizaciones_rg). December 25, 2011.

<sup>41</sup> Landaburu, Amaia, “*Patricia Carrillo, Activista del Movimiento Manuela Ramos de Perú: ‘En Cuanto a las Esterilizaciones Forzadas Tenemos Que Hablar de Impunidad Porque Hasta Ahora Las Mujeres No Han Recibido Justicia.’*” Revista Pueblos. July 2, 2018.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

### **a. Target Groups**

When most of the injustices we see in the world impact specific groups, they tend to be the most vulnerable, the ones without access to education, the ones whose lives depend on the money they earn day by day. Unfortunately, those groups in Latin America and in Perú in this case, tend to be those invisible to the government, those who receive no aid, no healthcare and are basically abandoned and disrespected as the decades go by. Here, then-President Fujimori and his cabinet targeted specific groups of people to be subject to these forced sterilizations. The Ministry of Health and health administrators knew that it would be easy to manipulate, threaten and instill fear in groups of people who had no knowledge of their basic human rights and the decisions they were entitled to make on their own, without force. Unfortunately, in this case, groups of indigenous, Andean, and Amazon women were the main targets of mass forced sterilizations.<sup>49</sup> Carrillo discusses how these women already suffered from exclusion and were always marginalized, the harm that was done to them is a cultural one, deepening the already injured indigenous community.<sup>50</sup>

### **b. Testimonies (*translated*)**

*“They tied my feet and my body”*<sup>51</sup>

– Teodora Guzman Velazquez, District of Mollepata, Santiago de Chuco, La Libertad

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Emmanuelson, Miriam, “Perú : El Crimen Fujimorista; La Esterilizacion Forzada de 370,000 Peruanas y Peruanos” [www.resumenlatinoamericano.org](http://www.resumenlatinoamericano.org). December 27, 2017.

*“I saw the line of women changed (of clothes), others with their hands and feet tied to the stretchers, others on the floor. I wanted to leave but they ordered me to stay, they said: ‘Change, change, you’re next.’”*<sup>52</sup>

– Demetria Molina Huilca, Anta, Cusco

*“Some of them only speak Quechua, they don’t know how to speak Spanish and they are illiterate. They were not told and did not know, what the operation really was like. Sometimes they were even told that if they had too many children, they were going to pay the price for it.”*<sup>53</sup>

– Hilaria Supa<sup>54</sup>

These are only three of the thousands of stories that continue to be unheard in Perú and the world. It is difficult to hear these words or even imagine the pain and suffering these women had to experience. What is most difficult to fathom is that they were victims of a crime created and planned by government officials who abused their positions of power and the vulnerability of these groups of Peruvians, to control the population, to prevent protesters from gathering at illegal mining sites, and for increasing the rate of poverty. Poverty is not fixed by sterilizing more women and men, poverty is fixed when leaders of a country care about their citizens, create programs to reach those in the most remote areas of the country, and provide the basic services they need to survive and work for their families. Teodora, Demetria and Hilaria are just three of the women

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<sup>52</sup> *Id.*

<sup>53</sup> Cabitza, Mattia, “*Esterilizadas a la Fuerza en Perú*” BBC.

[https://www.bbc.com/mundo/noticias/2011/12/111206\\_peru\\_salud\\_esterilizaciones\\_rg](https://www.bbc.com/mundo/noticias/2011/12/111206_peru_salud_esterilizaciones_rg). December 25, 2011.

<sup>54</sup> Hilaria Supa is a local activist and has been denouncing the issue for years. She realized that something was wrong from the beginning. Now, she is engaged in politics and began her campaign in 1996 looking for answers, when she began receiving reports of abuse.

who had the strength to continue living and report these atrocities to the authorities. They did not wish this on anyone since their lives were changed forever.

The following is a list of the number of women who were confirmed cases of forced sterilizations all over Perú. These numbers are based on the Registro de Víctimas de Esterilizaciones Forzadas (hereinafter REVIESFO). The REVIESFO is the Registry of Victims of Forced Sterilization. The numbers are:

1,389 in Cusco  
918 in San Martín  
841 in Huancavelica  
488 in Ayacucho  
368 in Huánuco  
340 in Piura  
250 in Junín  
198 in Cajamarca  
136 in la Libertad  
113 in Lima  
56 in Moquegua<sup>55</sup>

The reported numbers above have been recognized by the Peruvian Ministry of Justice and Human Rights. In total, the register shows that between 1995-2001, the government only recognized 5,097 sterilized women.<sup>56</sup> The number of women who were forcibly sterilized was around 300,000.<sup>57</sup> While the testimonies of many sterilized women have yet to be taken, those who gathered the strength to seek help and inform the non-profit organizations helping them, remain as the voice for all the women that still need to be heard. Thankfully, the role of feminist and women's rights organizations was prominent, one that helped those who felt most vulnerable. These organizations and its members were at the front of the fight for justice.

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<sup>55</sup> Ballón, Alejandra. "Archivo PNSRPF" <https://1996pnsrpf2000.wordpress.com/reviesfo/>

<sup>56</sup> *Id.*

<sup>57</sup> Landaburu, Amaia, "Patricia Carrilo, Activista del Movimiento Manuela Ramos de Perú: 'En Cuanto a las Esterilizaciones Forzadas Tenemos Que Hablar de Impunidad Porque Hasta Ahora Las Mujeres No Han Recibido Justicia.'" Revista Pueblos. July 2, 2018.

### III. Role of Peruvian Non-Profits

#### A. Movimiento Manuela Ramos (*translated Movement Manuela Ramos*)

Movement Manuela Ramos (hereinafter MMR) is a non-profit organization created in 1978 as a safe space for women with few to no possibilities of obtaining information about their basic rights.<sup>58</sup> Their mission revolves around the idea of social development where women can live in a democracy that respects gender equality.<sup>59</sup> MMR has been fighting for the basic rights, mainly of women, for over thirty years.<sup>60</sup> It is also a pioneer institution in promoting the defense of human rights, especially in the area of domestic violence and violence against children and teens.<sup>61</sup> Having offices all over Perú, MMR's goal is to help women, mainly living in poverty whose rights are constantly violated or who suffer from violence daily in their homes.<sup>62</sup> MMR offers training, legal aid, and investigates complex matters.<sup>63</sup>

Patricia Carrillo, activist from MMR explained in an interview that MMR is actually part of the CLADEM<sup>64</sup> and works closely with them.<sup>65</sup> When filing a complaint, MMR also works with and participates with the public sector, the office of the ombudsman, the public defender's office, among others.<sup>66</sup> The work MMR has performed has been of great importance, in fact, it has helped to investigate and document throughout the years, testimonies of the victims, pictures

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<sup>58</sup> <https://www.aldehus.org/mmr.html>

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Committee for Latin America for the Defense of Women's Rights

<sup>65</sup> Landaburu, Amaia, "*Patricia Carrillo, Activista del Movimiento Manuela Ramos de Perú: 'En Cuanto a las Esterilizaciones Forzadas Tenemos Que Hablar de Impunidad Porque Hasta Ahora Las Mujeres No Han Recibido Justicia.'*" *Revista Pueblos*. July 2, 2018.

<sup>66</sup> *Id.*

hung at the local health centers performing the sterilizations, and collected documents which asked of the medical staff, to meet the quotas for the month.<sup>67</sup>

Another big role played by the MMR is the organizing of rallies and protests in Perú. On March 8, 2018, MMR along other organizations, planned and conducted a successful march whose slogan was “Todas por Justicia” (*translated* “All for Justice”).<sup>68</sup> Carrillo details how MMR marched with the flags representing women’s rights, they made it their goal to put the topic of “forced sterilizations” in the agenda for the Ministry of Justice to review.<sup>69</sup>

#### **IV. Analysis and Recommendation**

Over two-hundred thousand women were forcefully sterilized under the mandate of then-President Alberto Fujimori.<sup>70</sup> These actions are in direct violation of Article 7, Paragraph 1, Section (g) of the Rome Statute which states:

“Crime against humanity” means any of the following when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity [...]<sup>71</sup>

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> “Denuncian a Alberto Fujimori por la esterilización forzosa de 236 mil mujeres” Clarin. [https://www.clarin.com/mundo/denuncian-alberto-fujimori-esterilizacion-forzosa-236-mil-mujeres\\_0\\_rJXFauz2W.html](https://www.clarin.com/mundo/denuncian-alberto-fujimori-esterilizacion-forzosa-236-mil-mujeres_0_rJXFauz2W.html) (2017)

<sup>71</sup> Rome Statute of the International Criminal Court.



The Rome Statute also qualifies forced sterilizations as war crimes under Article 8, Paragraph 2, Sections b(xxii) and c(vi).<sup>72</sup> The sterilizations under the Family Planning Program in the 90's was nothing else but a crime against humanity, one that continues to go unpunished. Till this day, while many government officials have been investigated, not a single individual has been held responsible for these crimes. At the top was then-President Alberto Fujimori, followed by the Minister of Health, Ministry of Health officials who had knowledge of these sterilizations, doctors, nurses, staff who complied with orders, knowing they were not only breaking the law but gravely changing and affecting the lives of thousands of women.

There are basic obligations that countries must fulfill, mainly in the area of healthcare. They are responsible for providing the most basic services to their citizens and to make sure that anything that may affect or violate their basic human rights is subject to review and the utmost scrutiny. Therefore, in monitoring the obligations owed to the people, the CEDAW Committee (Convention on the Elimination of All Forms of Discrimination Against Women) applied the Cairo Declaration<sup>73</sup> to determine the standard as to which Perú would be held responsible for.<sup>74</sup> Perú, being a signatory of the Cairo Declaration and the CEDAW is held up to those standards, hence,

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<sup>72</sup> *Id.*

<sup>73</sup> Cairo Declaration “*Gender Equality and Empowerment of Women*” <https://www.unfpa.org/resources/cairo-declaration-population-development>. In addressing [...] The empowerment of women and the improvement of their political social, economic and health status are highly important ends in themselves. We further believe that human development cannot be sustained unless women are guaranteed equal rights and equal status with men. In this process women should be seen not merely as the beneficiaries of change but as the agents of change as well. This entails an enhancement of their own gender awareness. We believe that education is the single most important element on the road to equality and empowerment of women. Education should also aim at eliminating negative gender stereotypes in order to improve the status of women, with a view to achieve cooperation and partnership between men and women. We therefore strongly support the education goals set forth in the ICPD Program of Action as adopted in Cairo, and commit ourselves to removing all legal, social and cultural barriers in our countries that discriminate against women and prevent their full participation in society, including in public and political life. We call upon legislators all over the world to join us in our efforts to empower women as a matter of national priority, and we call upon Governments to enforce legislation in this respect.

<sup>74</sup> “*Silencio y Complicidad: Violencia Contra las Mujeres en los Servicios Públicos de Salud en el Perú.*” Comité de America Latina y El Caribe para la Defensa de los Derechos de la Mujer. Centro Legal Para Derechos Reproductivos y Politicas Publicas. Pp. 30 August 1998.

any action in violation of the articles would be subject to review. In the practices of forced sterilization, the CLADEM found that Perú was in violation of CEDAW's Article 12, which states:

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.<sup>75</sup>

In applying part one of Article 12, Perú as a state, targeted a specific group of people, in this case women, making this action discriminatory. Behind the façade of the PSRPF, the Peruvian Ministry of Health was supposed to offer women through this program, equal access to information, healthcare professionals and services. However, the sterilization—both to men and women—happened in higher numbers to the latter, hence violated and discriminated against women by choosing them to be the victims of a crime. As for part two, women were not only receiving improper health services, but were deceived since they would walk into the health clinics with the idea of receiving treatment or getting a regular checkup and would then walk out sterilized. The DEMUS (Defensa de los Derechos de la Mujer – *translated* “Defense of Women’s Rights”) investigated and turned over to the Lima Prosecutor Luis Landa specifying that around 211,000 women received incomplete information regarding the consequences of the procedures they had in their local health centers.<sup>76</sup> The pool of victims included women below the age of twenty-five,

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<sup>75</sup> Convention on the Elimination of All Forms of Discrimination Against Women.

<sup>76</sup>76 “Denuncian a Alberto Fujimori por la esterilización forzosa de 236 mil mujeres” Clarin. [https://www.clarin.com/mundo/denuncian-alberto-fujimori-esterilizacion-forzosa-236-mil-mujeres\\_0\\_rJXFauz2W.html](https://www.clarin.com/mundo/denuncian-alberto-fujimori-esterilizacion-forzosa-236-mil-mujeres_0_rJXFauz2W.html) (2017)

women who were illiterate, quechua-speaking and indigenous.<sup>77</sup> These women walked into these places with the hope of receiving some type of aid, not knowing they would walk out with a result that was irreversible.

In 1993, the Vienna Declaration and Programme Action discussed its concern with violence and discrimination against women all over the world.<sup>78</sup> It specifically noted in Article 18 that:

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.<sup>79</sup>

Although the mass forced sterilizations involved both men and women, the difference in numbers showed that the clear target were women, especially women from humble backgrounds who were illiterate, did not speak Spanish and were in dire need of health services. These were sterilizations based on gender, violence against a targeted group that was vulnerable and that would result in less of a threat if it faced the government. The crimes committed by Fujimori and some of his government officials had two purposes: (1) the PSRPF was a mechanism through which the populations would be controlled and (2) eliminating future generations that could pose a “risk” to the government. First, through the Family Planning Program, the Ministry of Health hid behind a

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<sup>77</sup> *Id.*

<sup>78</sup> Vienna Declaration and Programme of Action. Adopted by the World Conference on Human Rights in Vienna on June 25, 1993.

<sup>79</sup> *Id.*Note: Article 18 also states [...] The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women. The World Conference on Human Rights urges Governments, institutions, intergovernmental and nongovernmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.

façade that convinced Peruvians the numbers of people living in extreme poverty would be reduced. Additionally, like mentioned in a previous section, those who lived in areas where the mining business reigned, would organize and halt any foreign attempt to mine. The groups who opposed these actions were only defending their own rights, since the government had completely abandoned and betrayed them by allowing such companies access to their land. Any mining in those areas would not only pollute the air but kill thousands of people as a result of the contamination in their rivers. While these new ecological crimes went unpunished, the people who were only standing up for their own rights were again betrayed when their own government ordered mass sterilizations of the women of these regions. Second, in targeting these groups of women whose rights were violated, the sterilizations led to even worse consequences. These crimes eliminated, wiped out and got rid of generations that were to follow these communities. No government or official or in this case, no President, should authorize such actions, considered crimes against humanity. These crimes not only impacted women's bodies, it changed families, left many dead, abandoned and broken.

These acts of violence not only violated the Rome Statute but also violated the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (*hereinafter* Convention of Belem Do Para).<sup>80</sup> The Convention of Belem Do Para affirms that:

[...] violence against women constitutes a violation of their human rights and fundamental freedoms, and impairs or nullifies the observance, enjoyment and exercise of such rights and freedoms [...]<sup>81</sup>

Additionally, Chapter III, Article 7 states that:

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<sup>80</sup> Inter-American Convention on the Prevent, Punishment and Eradication of Violence Against Women “*Convention of Belem Do Para*”

<sup>81</sup> Id.

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation [...]<sup>82</sup>

The only question after reading the Convention of Belem Do Para is: then how did Perú and its government get away with committing crimes that violated women's human rights? Then-Peruvian president Alberto Fujimori and Minister of Health Marino Costa Bauer were the top government officials overseeing the PSRPF; they, as well as any health professional involved should be subject to an investigation. But, like Patricia Carrillo from Movement Manuela Ramos, at this moment, the victims of the crime have yet to receive reparations for what they suffered through.<sup>83</sup> It is a long battle. Many women continue to live their lives still asking for justice. While many of them have come together to be heard by Peruvian authorities, others did not have the same luck. Few are the cases of women who lost their lives mid-procedure but they too, deserve the same justice the ones who are living hope to get. The following section discusses in detail the first case taken to the Inter-American Commission on Human Rights in Costa Rica.

#### **A. Maria Mamérita Mestanza Chavez v. Perú (Petition 12.191)**

Unfortunately, when Maria Mamérita Mestanza Chavez's (hereinafter "Mestanza") case was heard in 2003 before the Inter-American Commission on Human Rights, she had already lost

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<sup>82</sup> Id.

<sup>83</sup> Landaburu, Amaia, "*Patricia Carrillo, Activista del Movimiento Manuela Ramos de Perú: 'En Cuanto a las Esterilizaciones Forzadas Tenemos Que Hablar de Impunidad Porque Hasta Ahora Las Mujeres No Han Recibido Justicia.'*" *Revista Pueblos*. July 2, 2018.

her life from complications with the sterilization she suffered from.<sup>84</sup> Her family, indigenous from Perú, was brave enough to bring this case forward, especially in an international tribunal. The petitioner organizations representing Mestanza alleged that the government's actions against her violated Articles 4, 5, 1 and 24 of the American Convention on Human Rights<sup>85</sup>, Articles 3, 4, 7, 8 and 9 of the Convention of Belem do Para, Articles 3 and 10 of the Additional Protocol to the America Convention on Human Rights in the Area of Economic, Social and Cultural Rights, and Articles 12 and 14.2 of the Convention on the Elimination of All Forms of Discrimination Against Women.<sup>86</sup>

Although Perú stated to the Court that it was aware of women's human rights, it promised to investigate the alleged facts and apply the appropriate punishment to the planners or perpetrators of these crimes.<sup>87</sup> The Peruvian State pledged to investigate and punish:

- a. Those responsible for the acts of pressuring the consent of Ms. Mestanza to submit to tubal ligation.
- b. The health personnel who ignored the need for urgent care for Ms. Mestanza after her surgery.
- c. Those responsible for the death of Ms. Mestanza
- d. The doctors who gave money to the spouse of the deceased woman in an attempt to cover up the circumstances of her demise.
- e. The Investigative Commission, named by Cajamarca Sub-Region IV of the Health Ministry, which questionably exonerated the health personal from responsibility for Ms. Mestanza's death.<sup>88</sup>

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<sup>84</sup> *Maria Mamérita Mestanza Chavez v. Perú*. Inter-American Commission on Human Rights. Petition 12.191. October 22, 2003.

<sup>85</sup> American Convention on Human Rights. Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969.

<sup>86</sup> *Maria Mamérita Mestanza Chavez v. Perú*. Inter-American Commission on Human Rights. Petition 12.191. October 22, 2003.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

Mestanza was threatened by health workers to consent to being sterilized, otherwise they would turn her in to the police.<sup>89</sup> This was one of the countless threats made to all other women that were in a similar position as Mestanza. Not only was she robbed of her right to choose to have a family but robbed of her life. Her case reached what is called a friendly settlement in the IACHR, which was to result in the payment of monetary damages to the family she unfortunately left behind. However, till this day, Mestanza's family, like many, have yet to see the money in reparations.

Unfortunately, in 2014, the Center for Reproductive Rights wrote a Press Release titled "Perú Ends Criminal Investigation into Mass Forced Sterilizations."<sup>90</sup> This Press Release contains yet another disappointment for the victims of these crimes. Peruvian prosecutors closed their investigation of Alberto Fujimori and his administration's health officials, stating there was not enough evidence to bring a case forward. Monica Arango, regional director for Latin America and the Caribbean and the Center for Reproductive Rights stated:

"By failing to prosecute the individuals responsible for this grave human rights violation, the Peruvian government has turned its back on the thousands of women forcibly sterilized during Alberto Fujimori's regime under the false pretense of family planning."<sup>91</sup>

The Peruvian government again, fails the 300,00 women whose rights were gravely violated. While the Rome Statute qualifies these government acts as crimes against humanity and war crimes, the Peruvian government remains untouched and impenetrable by the rule of law.

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<sup>89</sup> "Perú Ends Criminal Investigation into Mass Forced Sterilizations" Press Release. Center for Reproductive Rights. <https://www.reproductiverights.org/press-room/Peru-Ends-Criminal-Investigation-into-Mass-Forced-Sterilizations> (2014).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

## B. Conclusion and Recommendation

**Three-hundred thousand woman were forcibly sterilized.** Three-hundred thousand women were robbed of their decision to have children and to live in the family they planned to have.

*“When I woke up, the doctor was stitching my stomach. I started screaming, I knew I had been sterilized”<sup>92</sup>*

*“[...] her husband alleged that she was not given any information about the risks involved.”<sup>93</sup>*

*“First they offered medicine and then they treated us like animals”<sup>94</sup>*

*“We all arrived innocent and happy, then we heard screams and I just ran”<sup>95</sup>*

*“At the beginning I just wanted to die, but my four children kept me alive”<sup>96</sup>*

These are some of the words spoken by the women and men who suffered through these crimes. The victims of these crimes were not only left with physical scars on their bodies, but with traumas that will not be easily erased from their minds. Till this day, thousands of women will have to live with a memory that changed their lives forever. Many of them considering suicide, have only remained alive because their children gave them the strength to stay. Many of them

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<sup>92</sup> Lizarzaburu, Javier, “*Forced sterilization haunts Peruvian women decades on.*” BBC News. <https://www.bbc.com/news/world-latin-america-34855804>. December 2, 2015.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*



were abandoned by their husbands, accused of getting the “surgery” to be able to cheat on their spouses and not get pregnant. Many of them are left with trauma to their bodies that never again allowed them to work because the pain and side effects they felt would prevent them from doing so.

Around three-hundred thousand women stand together, for those that could not make it and for the families that suffered with them. They stand together as one, in hopes that one day the government that lied and deceived them will own up for what they have done and pay at least something back to them that will barely allow them to continue living. These women not only deserve justice but deserve a system that will actually support them, that will actually care for them and one where every single person is seen as an equal. Not only do these women deserve a working healthcare system and access to basic healthcare services, they deserve psychological help. Living in a society where women continue to be vulnerable and abused every day is not easy. It is time for the Peruvian government to act and give each of these women the justice they so desperately seek.

President Fujimori is currently serving a twenty-five-year prison sentence for crimes against humanity for violation of human rights.<sup>97</sup> Those violations include the ordering of the killing of Barrios Altos (1991) and the Cantuta (1992), where twenty-five individuals lost their lives, as well as for the kidnapping of a businessman and journalist who investigated his self-coup in 1992.<sup>98</sup> This sentence does not include his involvement in the forced mass sterilizations from his presidency. The Peruvian Prosecutor’s Office must again reopen the cases not only against Fujimori but all the health administrators who were also involved in these acts. The prosecutors

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<sup>97</sup> “Denuncian a Alberto Fujimori por la esterilización forzosa de 236 mil mujeres” Clarin. [https://www.clarin.com/mundo/denuncian-alberto-fujimori-esterilizacion-forzosa-236-mil-mujeres\\_0\\_rJXFauz2W.html](https://www.clarin.com/mundo/denuncian-alberto-fujimori-esterilizacion-forzosa-236-mil-mujeres_0_rJXFauz2W.html) (2017)

<sup>98</sup> *Id.*

must conduct an extensive and thorough investigation where every woman who has gone through these procedures and has come forward in the past is interviewed. Around 2,000 women have come forward in the past already to show and explain to Lima prosecutors the atrocities they suffered from. It is not only unfair but unjust that till this day, not a single person has been able to receive the justice they seek.

The society that these acts left behind is deeply affected. Those who directly suffered from forced sterilizations are not only living with the trauma from the 90's but continue to be part of a vulnerable group. Women in Peru have not only been left without protection but continue to suffer from the absence of laws that protect them. Till this day, they are not only ignored by the government but are victims of violence. Femicides in Peru continue to be on the rise, as women who report these crimes to the police are laughed at, questioned and then ignored by the untrained police officials who are the first group to hear about the abuse. While mass sterilizations may have happened over two decades ago, it has left women exposed and vulnerable to the abuse and injustice of the Peruvian government.

It is time that new laws and policies are created and implemented to protect the future generations that will follow. Three-hundred thousand women continue to seek justice in 2020, they hear nothing in response. No one should experience what they have gone through, no woman should have to be told that they are not allowed to have one more child. These women were robbed of their right to choose to have a bigger family, if they were robbed of that, what will follow?