

Exhibit P-138

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Dubravka Šimonović
Special Rapporteur on Violence against Women
OHCHR-UNOG,
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

Via Email: vaw@ohchr.org

***RE: Mistreatment & Violence Against Women During Reproductive Care, With Focus on
Childbirth – RE: Forced Sterilization of Indigenous Women in Canada***

Dear Special Rapporteur Dubravka Šimonović:

We would like to sincerely thank the United Nations Special Rapporteur on violence against women, its causes and consequences for calling for submissions on the mistreatment and violence against women during reproductive care, with a focus on childbirth.

Our submission concerns the modern-day forced sterilization of Indigenous women in public hospitals in Canada. This is a practice for which there has been no accountability, no redress, no legislative response, and no meaningful policy reform. Across Canada, there is no consistently defined or applied standard for obtaining informed consent, including with regard to sterilization procedures. Victims of forced sterilization have been unable to avail themselves of administrative or criminal accountability mechanisms, either because they do not exist or because those have proven ineffective or inaccessible, including as a consequence of systemic bias against Indigenous women. Moreover, authorities have failed to collect or make available data that would permit a clear understanding of the scope of this human rights violation and, to our knowledge, have

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similarly failed to complete any administrative or criminal investigation of any alleged instance of forced sterilization in the past 20 years. In the meantime, Indigenous women continue to be forcibly sterilized, including as recently as December 2018; over the past two years, more than 100 Indigenous women have come forward as victims.

OVERVIEW

We, and our clients, express gratitude to the UN Special Rapporteur for paying attention to these important issues concerning violence against women, for being open minded and for listening to the voices of the Indigenous women in Canada who have survived forced sterilization, keeping in mind that some women have passed on. We appreciate the value of your attention to assist us in our ongoing efforts to end this devastating practice and obtain justice for the victims.

I represent Indigenous women in a putative class action in Saskatchewan, Canada, and other Indigenous women across Canada alleging similar experiences. We have been contacted by dozens of women reporting that they have been forcibly or coerced into sterilization in publicly funded and administered hospitals, generally during or shortly after childbirth. When there is a spike in public attention in the matter, more women come forward.

As this has topic received widespread media attention in recent months, more than 30 additional women have contacted us for the first time, bringing the total of such claims to over 100, including one woman who reports being forcibly sterilized in December 2018 in Saskatchewan. Of course, these numbers and stories do not include the women who, for any number of reasons, have not contacted us. There is no government-established mechanism for collecting these complaints, nor any publicly-available data on sterilization procedures, so we must rely on individual women with the ability and willingness to reach out to us.

There are no words to convey the amount of pain and suffering my clients have survived after being robbed of their sacred ability to carry life, to give birth, to care for their child, to pass on knowledge and culture, and to watch their children grow and become parents themselves. For my clients, wealth is life, is children, is family, is culture. The decision on whether to gain in this wealth was stolen from them, and I ask you to remember that.

Many of my clients did not know that they had rights – that they had the choice to consent to be sterilized. Some of my clients did not even know that under Canadian law, doctors, nurses, and government – have no right to make decisions about their fertility for them. Similarly, some of my clients did not know that they have bodily autonomy over any all decisions relation to procedures affecting their reproductive capacity.

SELECT STORIES OF INDIGENOUS WOMEN

I will share the stories of four women who have recently come forward, further to their instruction and with their consent to do so. Their stories are condensed as much as possible without risking the exclusion of critical experiences and information.

Liz – an Ojibwe woman who reports being 20 years old and pregnant with her third child in the late 1970s when Child and Family Services told her, in her words, that “...you might as well abort the baby because if you have it, we’re going to take it anyways.” After a late term abortion, Liz was sterilized without proper and informed consent. Her body still bears the physical scars of the unwanted abortion and sterilization to this day.

Morningstar – a Dene woman who reports having been subject to a forced termination in her third trimester, at the age of 14. Morningstar later discovered that this termination also resulted in the removal of her right ovary and fallopian tube. She had a son a couple of years later. She also had a tubal pregnancy in her right fallopian tube that left her infertile at the age of 19. Morningstar is primarily concerned with what was done to the child that was taken from her and that this happened to her when she was a minor herself. Over 40 years later, her experience continues to have daily impacts. Today, she is a strong advocate for the specific criminalization of forced sterilization.

S.A.T. – a Cree woman who gave birth to her sixth child in 2001. When presented with a consent form for her sterilization, S.A.T. reports hearing her late husband exclaiming that he would not sign it, before storming out of the hospital, while she was being wheeled into the operating room over her protests. She repeatedly said, “I don’t want this,” as she cried and as the nurses administered the epidural. In the operating room, S.A.T. kept asking the doctor if he was finished, and finally he said, “Yes – cut, tied and burnt – nothing is getting through that.” Today she is a strong advocate for the specific criminalization of forced sterilization.

D.D.S. – a Nakota woman who was scheduled for a caesarean section delivery for her third and last child in December 2018. Her regular doctor was unavailable and referred her to another doctor to perform the C-section. She met him for the first time two weeks prior to her operation, on November 29, 2018. She reports having difficulties understanding the doctor due to his heavy foreign accent. D.D.S. wanted more children and does not recall any discussion about tubal ligation at that time – she had not inquired about it and did not want a tubal ligation.

On December 13, 2018, D.D.S. was delivered of a daughter. Immediately before the administration of her epidural, the attending doctor interrupted her discussion with the anesthesiologist in an abrupt and aggressive manner. This doctor demanded that she sign a consent form for the operation. D.D.S. noticed that a tubal ligation was listed on the consent form at that time, which the doctor had not mentioned. He remained in her private space the entire time, waiting for her to sign the consent form. She believed that she had no choice but to sign. She knew nothing of the

risks, consequences or alternative birth control options because the doctor never disclosed them. This doctor told D.D.S. that she needed a tubal ligation. D.D.S. believes that this was the first time tubal ligation had been raised with her. She wished to have more children. D.D.S. was and remains devastated and immediately began investigation reversal options from her hospital bed before she was discharged. Her partner reports that the doctor was very aggressive during the C-section. A review of her medical records – created by a number of different medical professionals – repeatedly refer to her race, number of children, number of pregnancies, miscarriages characterized as abortions, and employment and marital status.

HUMAN RIGHTS BODIES' OVERSIGHT

Forced sterilization violates numerous rights protected by regional and universal human rights instruments.¹ In this regard, we call your attention to the Inter-American Court of Human Rights' approach in the case of *I.V. v. Bolivia*,² in which it determined that sterilization performed without adequate respect for free, prior, informed consent may violate, *inter alia*, the human rights to physical integrity, humane treatment, personal liberty and security, respect for honor and dignity, respect for private and family life, freedom of expression, and to raise a family.

Over the past 18 months, we and others have raised the issue of forced sterilization of Indigenous women in Canada before regional and universal human rights oversight bodies, including the Inter-American Commission on Human Rights, UN Committee against Torture, Universal Periodic Review, and UN special procedure mandate holders, including yourself.³ These human rights bodies have responded with alarm and with concrete recommendations for Canada. The government has thus far failed to commit to, let alone implement, any of the proposed actions or reforms.

In February 2018, Canada appeared before the Inter-American Commission on Human Rights, and acknowledged its responsibility for the forced sterilization of Indigenous women, through its administration of the public healthcare system, and pledged to make available the data in its possession.

¹ See, e.g., International Justice Resource Center, *Forced Sterilization: Developments in International Human Rights Law (2016-2018)* (Mar. 2019), <https://ijrcenter.org/wp-content/uploads/2019/04/FS-IHRL-Developments-Summary-w-links.pdf>.

² See I/A Court H.R., *I.V. v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 30 November 2016. Series C No. 329, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_329_esp.pdf (Spanish only). For an English summary, see International Justice Resource Center, *LACtHR Holds Bolivia Responsible for Forced Sterilization in Landmark Case*, IJRC News Room (Jan. 3, 2017), <https://ijrcenter.org/2017/01/03/iacthr-holds-bolivia-responsible-for-forced-sterilization-in-landmark-judgment/>.

³ For additional detail and documentation related to this advocacy, please see International Justice Resource Center, *Forced Sterilization of Indigenous Women in Canada*, <https://ijrcenter.org/forced-sterilization-of-indigenous-women-in-canada/>.

In April 2018, the United Nations Special Rapporteur on violence against women visited Canada and urged authorities to address systemic discrimination and violence against Indigenous women. You will recall that at the end of your visit to Canada in April 2018, you called on Canada to take “urgent action on systemic violence against indigenous women.”⁴ You noted that Indigenous women continue to “face intersectional discrimination and violence at a higher level than non-Indigenous women, and therefore require specific attention and focus.”⁵ You recommended that the government create a separate, Indigenous-led national action plan on violence specifically against Indigenous women, First Nations, Inuit, and Métis, using both the CEDAW inquiry recommendations and other UN treaty bodies’ specific recommendations on VAW against indigenous women, and the United Nations Declaration on the Rights of Indigenous Peoples.⁶ You further called for the urgent repeal of discriminatory provisions that remain in Canada’s *Indian Act*.⁷

In May 2018, Canada’s Universal Periodic Review yielded a recommendation, by Argentina, that Canada address forced sterilization, which Canada accepted.⁸

In November 2018, the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras, visited Canada. He noted that healthcare remains often difficult for Indigenous people in Canada to access as well as a lack of trust in healthcare relationships, which may be the result of pervasive discriminatory attitudes toward Indigenous people. He mentioned specifically that he had received information on “remaining practices of obstetric violence and forced sterilization amongst indigenous women,” an issue which he noted he would be elaborating on further in his upcoming report.⁹ He noted that these challenges are indicative of Canada’s need to implement a human rights-based approach in healthcare.¹⁰

In November 2018, Canada had its periodic review before the UN Committee against Torture (CAT), at its 65th session. We contributed to the review by submitting an alternative report¹¹ and

⁴ Press Release, United Nations Office of the High Commissioner for Human Rights, Canada: UN Expert Urges New Measures to Target Gender-based Violence, Especially against Indigenous Women (Apr. 27, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22999&LangID=E>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Canada (Addendum)*, UN Doc. A/HRC/39/11Add.1, 18 September 2018, para. 17, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session30/CA/A_HRC_39_11_Add%201_AUV_Canada_E.docx.

⁹ OHCHR, Preliminary observations - Country visit to Canada, 5 to 16 November 2018, (16 November 2018), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23896&LangID=E>.

¹⁰ *Id.*

¹¹ Maurice Law, *Submission Regarding Examination of Canada’s State Report, 65th Session*, October 15, 2018, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fCSS%2fCAN%2f32800&Lang=en.

by participating in the in-person briefing with the Committee. In its concluding observations, the Committee directly raised its concerns regarding involuntary sterilization of Indigenous women.¹² Specifically, it stated:

The Committee is concerned at reports of extensive forced or coerced sterilization of Indigenous women and girls dating back to the 1970s and including recent cases in the province of Saskatchewan between 2008 and 2012. According to the information before the Committee, at least 55 women have contacted lawyers representing Indigenous women who have filed a pending class action lawsuit against doctors and health officials at a Saskatchewan public hospital for undergoing tubal ligation procedures without proper consent. The Committee takes note of the information provided by the delegation on the external review on this matter launched by the Saskatchewan Health Authority (formerly Saskatoon Health Region) in January 2017, but remains concerned at the lack of information regarding the implementation of the ‘calls of action’ included in the final report, especially those related to reparations (arts. 2, 12, 13, 14 and 16).¹³

Therefore, the Committee 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; [and]
- (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.¹⁴

The Committee identified this issue as one of four priority concerns, requesting that Canada report back within one year on its implementation of the Committee’s recommendations.¹⁵

¹² See UN Web TV, Consideration of Canada - 1695th Meeting 65th Session of Committee Against Torture, 21 Nov. 2018, <http://webtv.un.org/meetings-events/human-rights-treaty-bodies/committee-against-torture/watch/consideration-of-canada-1695th-meeting-65th-session-of-committee-against-torture/5970060614001>; UN Web TV, Consideration of Canada (Cont’d) – 169th Meeting 65th Session of Committee Against Torture, 22 Nov. 2018, <http://webtv.un.org/meetings-events/human-rights-treaty-bodies/committee-against-torture/watch/consideration-of-canada-contd-1698th-meeting-65th-session-of-committee-against-torture/5970826548001>; Committee against Torture, *Concluding Observations on the seventh periodic report of Canada*, UN Doc.CAT/C/CAN/7, 7 December 2018, para.50, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fCAN%2fCO%2f7&Lang=en.

¹³ Committee against Torture, *Concluding Observations on the seventh periodic report of Canada*, UN Doc.CAT/C/CAN/7, para.50.

¹⁴ *Id.* at para. 51.

¹⁵ *Id.* at para. 54.

In January 2019, the Inter-American Commission on Human Rights endorsed and expanded upon the Committee against Torture's concluding observations, stating that it "has received, in a consistent and systemic manner, reports from indigenous women, girls and adolescents who claim to have been subjected to sterilizations without their full, free and informed consent in Canada."¹⁶ After reiterating the Committee against Torture's recommendations, the Inter-American Commission urged Canada to

adopt[] legislative and policy measures to prevent and criminalize the forced sterilization of women, In particular, the Commission urge[d] the State to clearly define the requirements of consent with regard to the procedure of sterilization, in line with the Inter-American standards on the matter; to maintain public and periodically updated records on reports of forced sterilizations, duly disaggregated by gender, ethnicity and other relevant criteria; to provide comprehensive training to health practitioners; and to raise awareness among Indigenous communities on their sexual and reproductive rights.¹⁷

CANADA'S RESPONSE

As a result of this advocacy, the government of Canada has had multiple reminders of its international human rights obligations, and this issue has received high-profile international media attention. Yet, the government has failed to act. The Canadian government has repeatedly referred to the importance of "cultural sensitivity" and "cultural safety" in healthcare. Similarly, the provincial government of Saskatchewan has limited its response to mandating cultural competency training for maternal healthcare providers. In its oral response before the Committee against Torture, the Canadian government asserted that it is "responding to" the recommendations made to it before the Inter-American Commission on Human Rights in February 2018, regarding ensuring informed consent.¹⁸ The only detail Canada has offered with regard to these recommendations is the potential development of "pamphlets and guidance" on culturally informed medical care. We also recommend reparations as well as specific and effective preventative measures.

While recognizing that forced sterilization is a human rights violation, the government has failed to identify or adopt adequate measures of protection, prevention, or reparation. Prior to the release of the CAT's concluding observations, then-Justice Minister Jody Wilson-Raybould's office said the government is taking a "public-health approach" to the issue, and that the government believes everyone must receive culturally safe health services no matter where they live.¹⁹ Wilson-

¹⁶ Press Release, Inter-American Commission on Human Rights, IACHR Expresses its Deep Concern over the Claims of Forced Sterilizations against Indigenous Women in Canada (Jan. 18, 2019), *available at* http://www.oas.org/en/iachr/media_center/PReleases/2019/010.asp.

¹⁷ *Id.*

¹⁸ UN Web TV, Consideration of Canada (Cont'd) – 169th Meeting 65th Session of Committee Against Torture, *supra* note 12 at minute 7:54.

¹⁹ Kristy Kirkup, CTV News, *UN Committee Tells Canada to Do More on Sterilizations of Indigenous Women*, Dec. 7, 2018, <https://www.ctvnews.ca/politics/un-committee-tells-canada-to-do-more-on-sterilizations-of-indigenous-women-1.4208873>.

Raybould's parliamentary secretary, Arif Virani has since reiterated that statement, adding that "[t]he coerced sterilization of Indigenous women is a serious violation of human rights and it is completely unacceptable."²⁰ In the House of Commons on November 21, 2018, Prime Minister Justin Trudeau said that "the coerced sterilization of some indigenous women is a serious violation of human rights" and acknowledged that "indigenous patients can face systemic barriers in accessing services, including discrimination and racism."²¹ He stated that the government must work on "ensuring health workers receive cultural competency training as laid out in the Truth and Reconciliation Commission's calls to action."²²

Informed consent and the right not to be forcibly sterilized are not matters of cultural relativism. Among other flaws, the government's approach apparently does not contemplate: accountability of any kind for the doctors and other individuals responsible for forcibly sterilizing Indigenous women, reparations for known and identifiable victims, any investigation into the full scale of this practice or the factors that have allowed it to continue for decades, or implementing preventive measures such as adequately regulating the process of obtaining informed consent and criminalizing forced sterilization. Thus far, Canada has not moved to address these wrongs.

Within the national legislature, there has been increased willingness to examine forced sterilization of Indigenous women, including through hearings and a proposed study. We welcome these efforts. However, they are inadequate alone, as they cannot provide justice and accountability to victims. As discussed above, D.D.S. was sterilized without proper and informed consent after the United Nations Committee Against Torture issued its recommendations to Canada and over a year after a statement of claim was filed in this matter. D.D.S.'s forced sterilization was foreseeable and preventable. It is well past time that concrete safeguards and functioning accountability mechanisms are implemented.

We take this opportunity to reiterate that Canada's international obligations require it to stop, prevent, and remedy this human rights violation, and that it could achieve this by implementing the following:

- Investigate reported instances of forced sterilization with a view to the prosecution and punishment of those responsible and prevention of this practice in future;
- Provide reparations to identified victims, including monetary compensation, mental health treatment, and healthcare services necessary to allow them to become pregnant and carry a child, if so desired;

²⁰ Penny Smoke, CBC News, UN Committee Recommends Canada Criminalize Involuntary Sterilization, Dec. 7, 2018, <https://www.cbc.ca/news/indigenous/un-committee-involuntary-sterilization-1.4936879>.

²¹ 42nd Parliament, 1st Session, (daily ed. Nov. 21, 2018) (Statement of Prime Min. Justin Trudeau), <http://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-355/hansard>.

²² *Id.*

- Provide training for health professionals on cultural competency and on proper and informed consent, to screen health professionals for racial biases, and to refuse licensing where candidates do not meet the required degree of cultural competence;
- Criminalize forced sterilization in the federal *Criminal Code*;
- Explicitly exempt forced sterilization from the statute of limitations on tort claims for assault and battery;
- Ensure that provincial health care authorities and medical professional licensing entities receive, investigate, and appropriately address reports of failure to ensure full, free, proper and informed consent to medical procedures;
- Cease the practice of racial identification on the face of any document required to access health care across Canada, including the practice of mandating the disclosure of Registered Indian status in health care applications and the practice of identifying status Indians with an "R" on health cards issued in Saskatchewan, which results in differential treatment for an already disadvantaged group of vulnerable Indigenous women and girls;
- Direct Health Canada 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 must never be sought while a woman is in labor, delivery or postpartum; and that the risks, side effects and permanency of tubal ligation are clearly understood;
- Direct Health Canada to produce an information brochure for health care providers and patients on proper and informed consent in the context of women's health services;
- Institutionalize training programs and requirements for all healthcare providers on proper and informed consent, women's human rights, and culturally competent care;
- 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, and specific data on geographic locations;
- Where current data collection and analysis are lacking, put policies into place to collect data on sterilization procedures across Canada, noting geographic locations 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;
- Create an independent body to investigate the instances of forced sterilization of Indigenous women throughout Canada; and,
- More generally, provide additional support and policy attention to the poverty, exclusion and violence experienced by Indigenous women and girls.

We have no reason to believe the forced sterilization of Indigenous women will stop unless and until Canada implements meaningful measures of accountability and reform, including the steps identified above.

We thank you for your attention to this urgent matter. We will provide any information or assistance that may be useful in your ongoing efforts to monitor this situation and to eradicate violence against women in the context of reproductive health care and childbirth.

Yours very truly,
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Per: _____
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