

Forced Sterilizations as a Crime Against Humanity

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I. INTRODUCTION

From 1996 to 2000, the government of Peru carried out the Programa Nacional de Salud Reproductiva y Planificación Familiar (PNSRPF), which aimed to provide Peruvians with greater access to family planning strategies, including AQV (Anticoncepción Quirúrgica Voluntaria).¹ AQV consists of permanent contraceptive methods, such as tubal ligations and vasectomies.² Although AQV formally required voluntary participation, the Peruvian government now acknowledges that thousands of Peruvian citizens were forcibly sterilized.³ Chilling accounts have emerged of women locked in rooms or tied down in order to sterilize them; women sterilized while under anesthesia for other procedures and thus unable to consent; and women who were tricked into consenting through misinformation, including being told that sterilization was “temporary.”⁴ Although the exact number of forcibly sterilized victims remains unknown, as of September 2017, the government has recognized that at least 4,740 women and 133 men were forcibly sterilized under the PNSRPF.⁵ This figure, however, reflects victims from just 13 of the 25 regions of Peru,⁶ and thus the true number of victims is undoubtedly much higher.

Compelling evidence suggests that forced sterilizations under the PNSRPF constitute crimes against humanity. Since at least the post-World War II era, international criminal tribunals have recognized that crimes against humanity may include acts of forced sterilizations. For example, in “the Medical Case,” Nuremberg prosecutors tried and obtained convictions for crimes against humanity

¹ ALEJANDRA BALLÓN, MEMORIAS DEL CASO PERUANO DE ESTERILIZACIÓN FORZADA 27 (2014).

² *Id.*

³ Ministerio de Justicia y Derechos Humanos, Oficio N° 970-2017-JUS-DGDP, Cuadro N° 02, Víctimas Registradas (Oct. 2, 2017) (recognizing nearly 5000 victims of forced sterilization) (on file with the author).

⁴ *See infra* pp. 9-12.

⁵ Ministerio de Justicia y Derechos Humanos, Oficio N° 970-2017-JUS-DGDP, Cuadro N° 02, Víctimas Registradas (Oct. 2, 2017) (on file with the author).

⁶ *Id.*

investigation was re-opened in 2012,¹⁷ but nearly all of the charges were again dismissed in 2014.¹⁸ The following year, however, La Tercera Fiscalía Superior Penal Nacional determined that the complaint had been well-founded in part and ordered the Segunda Fiscalía Penal to conduct additional procedures.¹⁹ In response to that order, in 2015, the Segunda Fiscalía Penal conducted further investigations.²⁰ The following year, the Fiscal de la Tercera Fiscalía Superior Penal Nacional indicated that the focus of that investigation should be whether crimes against humanity occurred and the persons responsible.²¹ In response to this order, prosecutor Marcelita Gutiérrez Vallejos produced a report in July 2016 concluding that forced sterilizations in Peru did not constitute crimes against humanity and closed the case again.²² DEMUS (Estudio Para la Defensa de los Derechos de la Mujer) and its partner organizations appealed the decision to close the case to t

The government of Peru has repeatedly admitted that thousands of women were forcibly sterilized under the PNSRPF between 1996 and 2000. In 2001, for example, the Peruvian Congress established an Investigative Sub-Commission (“Congressional Investigative Sub-Commission”) to investigate individuals and institutions involved in sterilizations performed between 1990 and 2000.²⁹ In its final report, issued the following year, the Congressional Investigative Commission confirmed that forced sterilizations were conducted under the PNSRPF, including through the use of “psychological violence” and “pressure.”³⁰ The Ministry of Health (MINSA) also created a commission in 2001, the Special Commission on AQV Activities (“MINSA Special Commission”), in order to investigate complaints of abuses under the PNSRPF.³¹ Like the Congressional Investigative Commission, the MINSA Special Commission concluded that forced sterilizations had occurred.³² And in 2015, recognizing that “compulsory” sterilizations had taken place, the Peruvian government issued Decree No. 6 of 2015, which created a registry of forced sterilization victims (known by its Spanish acronym “REVIESFO”)³³ to formally recognize and provide legal and medical benefits to victims of forced sterilization.³⁴ As of September 2017, the REVIESFO has registered 4,740 female

ANTICONCEPCIÓN QUIRÚRGICA VOLUNTARIA 102-03 (June 2002), https://1996pnsrpf2000.files.wordpress.com/2011/07/peru_informe_final_aqv.pdf [hereinafter Congressional Investigative Sub-Commission Final Report]; MINSA, COMISIÓN ESPECIAL SOBRE

and 133 male victims of forced sterilizations.³⁵ However, thus far, victims have been registered from

Sabina Huillca had just given birth when a nurse placed her on a stretcher and tied her hands and feet. Ms. Huillca asked for her newborn daughter, but instead she was placed under anesthesia. When she woke up, the doctor was stitching her stomach and she started screaming, realizing that she had been sterilized.⁴⁰

Florenica Huayllas Vásquez went to a medical post for treatment for her anemia. When she arrived, she was told they were actually planning to sterilize her. She told the medical personnel she did not want to be sterilized and that it was unnecessary because she was already on birth control. Before she could try to escape, they tied her hands together, placed her under anesthesia and sterilized her.⁴¹

Many women were unconscious and under anesthesia following a cesarean section or other procedure when they were forcibly sterilized without their knowledge or consent.⁴² For example:

Victoria Vigo was 33 weeks pregnant when she went to the hospital because she was not feeling well. Dr. Nicolás Angulo Silva performed an emergency cesarean section on Ms. Vigo, during which he also sterilized her. When Victoria's premature baby died a few days later, Ms. Vigo was devastated. Her pain was compounded when one doctor tried to console her, telling her she was

Sonia Poma Ramos went to the hospital for a cesarean section. Prior to the procedure, Sonia cried to the doctor, Jorge Fuentes Avila, begging him not to sterilize her. During the cesarean, Dr. Avila performed the sterilization anyway.⁴⁴

Ines Condori went to the hospital for a checkup after the birth of her fourth child. Condori was given an injection and woke up hours later in severe pain. Alluding to the fact she had just been sterilized, the hospital staff told her that she would no longer have children and would be “young again.”⁴⁵

Other women were subjected to severe and often repeated threats – including imprisonment and/or having to pay extra taxes or fines – if they refused to be sterilized.⁴⁶ Faced with these threats,

In addition to admitting that forced sterilizations were carried out under the PNSRPF, the Peruvian government also has repeatedly confirmed that these forced sterilizations were committed as part of a government-mandated program to dramatically increase the number of sterilizations. Although the PNSRPF contained a range of family planning methods, numerous government reports indicate that sterilization was privileged over other methods.⁵⁵ For example, the Peruvian Ministry of Health (MINSA) concluded, based upon verified oral and written directives originally emitted from MINSA itself, that starting in September 1995 the Family Planning Policy “privileged” the offering of tubal ligations and vasectomies.⁵⁶ In addition, one of the indicators used by the government to measure the success of the Peru’s social programs was the number of women who opted for permanent contraceptive methods (i.e., sterilization).⁵⁷ No other contraceptive methods were included in the indicators.⁵⁸ These

In order to achieve these increased numbers of sterilizations, the Peruvian government created numerical quotas for sterilizations, and obligated doctors and health care personnel to meet these quotas. The existence of these quotas has been repeatedly confirmed by numerous governmental entities, including the Congressional Investigative Sub-Commission⁶⁰ and MINSA,⁶¹ as well as by NGOs and others.⁶² High-

their quota or the number of sterilizations expected as part of the Family Planning Campaign that particular month.⁷³

Doctors and health care workers were forced to meet these quotas or face significant negative consequences. At the time, many doctors and health care workers were employed on temporary contracts, and risked having their employment contracts terminated or not renewed if they refused or failed to sterilize enough patients.⁷⁴ Other consequences included: having their names reported to higher-level medical authorities;⁷⁵ receiving personal threats from hospital management and other higher ranking medical officials;⁷⁶ negative remarks on or during personnel evaluations;⁷⁷ and threats of legal action.⁷⁸ For instance:

A nurse from Ica who did not meet her quota was forced to undergo the sterilization procedure herself so that she would not lose her job. Despite her sacrifice, she was removed from her post.⁷⁹

“M,” a health professional, testified that when he did not meet his quota, he started to be harassed. During his mid-year evaluation, the regional director of Cusco called him out for not fulfilling his PNSRPF quotas. Two months later, he was falsely accused of stealing a check from the health institution and was fired.⁸⁰

⁷³ MINSA Special Commission Final Report, *supra* note 28, at 105-08, 110-11.

⁷⁴ Congressional Investigative Sub-commission Video Transcript, *supra* note 72, at 2, 5 (MAY 18, 2002) (testimony of Dr. Daniel Benites, the former Regional Health Director for Hauncavelica, indicating that medical personnel were required to find patients for AQV or their contracts would be rescinded); Congressional Investigative Sub-Commission Final Report, *supra* note 28, at 70 (Ulises Jorge, advisor to the vice-minister of health, had advised regional health directors to leave their positions if they were not capable of meeting the sterilization quotas); Defensoría del Pueblo Informe N° 27, *supra* note 42, at Indice 80 (noting memorandum to medical staff in Piura indicating that those who failed to meet their quotas would have their contracts suspended); CLADEM, NADA PERSONAL, *supra* note 51, at 41, 56-57; MINSA Special Commission Final Report, *supra* note 28, at 54, 65; EWIG, *supra* note 53, at 152; BALLÓN, *supra* note 1, at 63; Medical College Final Report, *supra* note 54, at 6.

⁷⁵ MINSA Special Commission Final Report, *supra* note 28, at 107.

⁷⁶ See, e.g., CLADEM, NADA PERSONAL, *supra* note 51, at 57; MINSA Special Commission Final Report, *supra* note 28, at 43-44, 53.

⁷⁷ MINSA Special Commission Final Report, *supra* note 28, at 43-44; Defensoría del Pueblo Informe N° 27, *supra* note 42, at Indice 80.

⁷⁸ MINSA Special Commission Final Report, *supra* note 28, at 65.

⁷⁹ Summary of interview described in CLADEM, NADA PERSONAL, *supra* note 51, at 58.

⁸⁰ Summary of interview described in CLADEM, NADA PERSONAL, *supra* note 51, at 57 & n.35.

In addition to these consequences, doctors and other medical personnel were incentivized to conduct sterilizations through a variety of rewards for those who met or surpassed their quotas.⁸¹ These rewards included cash bonuses,⁸² use of a “company car” from the health ministry,⁸³ promotions to a higher positions,⁸⁴ and prizes such as clothing, briefcases, or computers.⁸⁵

The Peruvian government’s prioritization of sterilization over other forms of contraception,⁸⁶ and its adoption of quotas, sanctions, and incentives to increase the number of sterilizations,⁸⁷ appears to have precipitated the widespread and systematic recourse to forced sterilizations. Medical personnel were obligated to find patients that could be sterilized and to conduct a set number of sterilizations,⁸⁸ quotas that were met by using physical force and misinformation.⁸⁹ As the Peruvian Defensoría has recognized, such quotas can lead to abuses,⁹⁰ and indeed several groups that have investigated this issue have concluded that the abuses under the PNSRPF were the result of the quotas and pressure placed on medical personnel.⁹¹ These abuses were not inadvertent. As discussed in greater detail in the *mens rea* section below, there was significant evidence, beginning as early as 1996, that the PNSRPF was resulting in forced sterilizations.⁹² Despite this evidence, the Peruvian government not only continued the program, but publicly declared that it would not halt the program.⁹³ Taken

⁸¹ Congressional Investigative Sub-Commission Final Report, *supra* note 28, at 106; CLADEM, NADA PERSONAL, *supra* note 51, at 53 (describing a communication directed at all health personnel in Huancavelica stating that there would be rewards for the institutions that got the best results in six different categories related to bringing people in to undergo sterilizations).

⁸² MINSA Special Commission Final Report, *supra* note 28, at 62 (medical personnel earned 30 to 40 soles per patient sterilized);

together, such evidence indicates that these crimes were not the inadvertent or accidental result of well-intentioned but flawed policies, but rather an intentional decision to sterilize a large portion of the population through any means necessary, even force. This intentional mistreatment of the population plainly constitutes an attack.

B. ATTACK MUST BE DIRECTED AGAINST A CIVILIAN POPULATION

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otherwise recognized as

subjected to the attack.¹⁰⁷ Rather, “[i]t is sufficient to show that enough individuals were targeted in the course of the attack, or that they were targeted in such a way as to . . . [show] the attack was in fact directed against a civilian ‘population,’ rather than against a limited and randomly selected number of individuals.”¹⁰⁸

To determine whether a “population” was targeted, international criminal courts frequently evaluate the “scale of the attack,” meaning the number of individuals affected.¹⁰⁹ Although there is no set number of victims that must be affected, the International Criminal Tribunal for the former Yugoslavia (ICTY) has held that “several thousand victims” plainly satisfies the requirement that the attack be directed against a “population” rather than “against a limited number of individuals.”¹¹⁰ As described in detail above, as of September 2017, the Peruvian government has recognized nearly 5,000 victims of forced sterilizations.¹¹¹ Under international jurisprudence, such a large number of victims is plainly not “limited” and meets the population requirement.

In addition, although there is no requirement under customary international law that an attack be based on discriminatory motives¹¹² or that the perpetrators have had a discriminatory intent,¹¹³

¹⁰⁷ Tadić Trial Judgment, *supra* note 23, at ¶ 708; Kordić and Čapčić Trial Judgment, *supra* note 23, at ¶ 182; Kaing Trial Judgment, *supra* note 94, at ¶ 303; Taylor Trial Judgment, *supra* note 23, at ¶ 507; Karadžić Trial Judgment, *supra* note 23, at ¶ 475; Prosecutor v. Stanišić, Case No. IT-03-69-T, Judgement Vol. I, ¶ 964 (ICTY Trial Chamber II, Judgment, 2009), <http://www.legal-tools.org/doc/066e67/pdf>; Nuon Trial Judgment, *supra* note 25, at ¶ 182.

¹⁰⁸ Kordić and Čapčić Trial Judgment, *supra* note 23, at ¶ 95; see also Kaing Trial Judgment, *supra* note 94, at ¶ 303; Taylor Trial Judgment, *supra* note 23, at ¶ 507; Karadžić Trial Judgment, *supra* note 23, at ¶ 475; Stanišić Trial Judgment Vol. I, *supra* note 107, at ¶ 964; Prosecutor v. Stakić, Case No. IT-97-24-T, Judgement, ¶ 182 (ICTY Trial Chamber II, Judgment, 2001), <http://www.legal-tools.org/doc/32ecfb/pdf>; see also Prosecutor v. Perišić, Case No. IT-04-74-T, Judgment, ¶ 17 (ICTY Trial Chamber II, Judgment, 2013), <http://www.legal-tools.org/doc/32ecfb/pdf>.

international criminal courts often consider evidence of targeting of particular groups when evaluating whether an attack was directed at a civilian population.¹¹⁴ Such targeting may be based on any definable characteristic, including but not limited to national, political, ethnical, racial, or religious grounds.¹¹⁵

With respect to forced sterilizations in Peru, substantial evidence – including findings by Peruvian government entities – indicates that forced sterilizations were targeted at the poor, rural, and often indigenous female population, particularly in the jungle and mountainous regions of the country. For example, MINSA concluded that the Peruvian government’s sterilization campaign was aimed at poor, indigenous women living in rural zones, particularly in the jungle and mountainous sierra regions of the country, and that most of the victims shared these characteristics.¹¹⁶ An investigation by the Peruvian Ombudsman’s Office also found that government quotas were set only for fertile women, but not men, confirming that women were the primary targets for sterilizations.¹¹⁷

Academics, NGOs, and foreign institutions investigating the PNSRPF have also concluded that the program targeted poor, rural, indigenous women. For example, USAID, which provided support to the Peruvian government to expand family planning services, and members of the U.S. Congress

¹¹³ See, e.g., Prosecutor v. Bagosora, Case No. ICTR-98-41-T, Judgement and Sentence, ¶ 2166 (ICTR Trial Chamber Dec. 18, 2008), <https://www.legal-tools.org/doc/6d9b0a/pdf/>; Prosecutor v. Seromba, Case No. ICTR-2001-66-I, Judgement, ¶ 359 (ICTR Trial Chamber Dec. 13, 2006), <http://unictr.unmict.org/sites/unictr.org/files/case-documents/ictr-01-66/trial-judgements/en/061213.pdf>.

¹¹⁴ Prosecutor v. Tadić, IT-94-1-A, Judgment, ¶ 297 (ICTY Appeals Chamber July 15, 1999) (“in most cases, crimes against humanity are waged against civilian populations which have been specifically targeted for national, political, ethnic, racial or religious reasons”), <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>.

¹¹⁵ Nuon Trial Judgment, *supra* note 25, at ¶ 189. To the extent the targeting is based on a definable characteristic of the group, not all of the victims need share the targeted characteristic, so long as many of them do. Prosecutor v. Bisengimana, Case No. ICTR-00-60-T, Judgement and Sentence, ¶ 56 (ICTR Trial Chamber Apr. 13, 2006) (concluding that ethnic Tutsis were targeted were most of the victims were Tutsis), <http://unictr.unmict.org/sites/unictr.org/files/case-documents/ictr-00-60/trial-judgements/en/060413.pdf>; see also Prosecutor v. Ndindabahizi, Case No. ICTR-2001-71-I, Judgement and Sentence, ¶ 477 (ICTR Trial Chamber July 15, 2004) (“the attack as a whole, but not the individual offence, must be committed on these particular grounds”), <http://unictr.unmict.org/sites/unictr.org/files/case-documents/ictr-01-71/trial-judgements/en/040715.pdf>.

¹¹⁶ MINSA Special Commission Final Report, *supra* note 28, at 6, 89, 131; MINSA 2006 Report, *supra* note 55, at 14, 29, 36, 40, 43, 44, 53, 102.

¹¹⁷ Defensoría del Pueblo Informe N° 7, *supra* note 55, at 28.

concluded that the program targeted poor, rural and/or indigenous women.¹¹⁸ CLADEM, an international women’s NGO, following an extensive investigation of AQVs in Peru, similarly concluded that poor, rural, indigenous women were targeted by the program.¹¹⁹ And an independent econometrics analysis of sterilization data in Peru concluded that women sterilized because of the government sterilization campaign were more likely to live in rural areas, particularly the mountain and jungle regions of Peru.¹²⁰

The scale of the crimes – which numbered in the thousands – and the substantial evidence of targeting of poor rural indigenous women confirms that a “population” was affected by forced

widespread or systematic.¹²³ As described below, the forced sterilization attack in Peru was both widespread and systematic, and thus satisfies this element of crimes against humanity.

ii. Systematic

Systematic refers to “the organised nature of the acts of violence and the improbability of their random occurrence.”¹³⁹ “Patterns of crimes – that is non-accidental repetition of similar criminal conduct on a regular basis – are a common expression of such systematic occurrence.”¹⁴⁰ Other factors considered by international criminal courts include the participation of officials or high-level authorities and whether the crimes were committed pursuant to or in furtherance of a state policy.¹⁴¹

a. Patterns of Crimes

The crimes committed in Peru during the PNSRPF followed a common pattern. All of the crimes were of the same nature – forced sterilizations.¹⁴² The victims were almost exclusively women.¹⁴³ The crimes were committed predominately in poor, rural areas, especially in the mountain and jungle regions of Peru, as described in more detail earlier.¹⁴⁴ And the testimonies of the victims, which were described in more detail in the attack section, reveal common patterns of violence and threats.¹⁴⁵ For example, many women described being physically forced to undergo sterilizations, including women who were locked in a room and sterilized.¹⁴⁶ Many other women report being sterilized after a cesarean while still under anesthesia and therefore unable to consent.¹⁴⁷ Still others were threatened with imprisonment and fines to coerce their consent.¹⁴⁸ The consistency of these

¹³⁹ Kunarac Appeal Judgment, *supra* note 26, at ¶ 94; Kordi Appeal Judgment, *supra* note 23, at ¶ 94; Blaški Appeal Judgment, *supra* note 121, at ¶ 101; Kaing Trial Judgment, *supra* note 94, at ¶ 300; Bagosora Appeal Judgment, *supra* note 125, at ¶ 389; Taylor Trial Judgment, *supra* note 23, at ¶ 511. -ait6A4DWq8E1

patterns

that forced sterilizations were not an accidental result of the program, but rather an intentional policy to sterilize a large number of women through any means necessary, including force.¹⁵⁷

The sterilization program was planned, organized, and closely supervised by high-level public officials in the central government,¹⁵⁸ including the President and his personal advisor. In 1995, President Fujimori urgently requested that Congress amend Peruvian law to permit sterilizations.¹⁵⁹ In addition, as described above, both the President and his advisor Dr. Yong Motta were in weekly contact with medical personnel to set sterilization quotas, made frequent calls to and held meetings with Regional Health Directors to promote the use of sterilizations and indicate the required quotas, and attended weekly meetings to monitor progress on the quotas.¹⁶⁰ President Fujimori also directly approved requests for sterilization supplies.¹⁶¹ Vice Minister Alejandro Mesarina signed a resolution stating that PNSRPF directives were obligatory and that health personnel who failed to meet them would be sanctioned.¹⁶² Based on this and other evidence, MINSA concluded that the PNSRPF was designed and monitored directly by President and various Ministers of Health.¹⁶³

Finally, the PNSRPF was prepared, funded and implemented using a significant amount of both public and private resources. During the time period of the PNSRPF, the Peruvian government

criminal courts often consider when determining whether a nexus exists include: “similarities between the perpetrator’s acts and the acts occurring within the attack; the nature of the events and the circumstances surrounding the perpetrator’s acts; [and] the temporal and geographic proximity of the perpetrator’s acts with the attack.”¹⁶⁹ In particular, where an individual’s acts were “undertaken in furtherance of, and pursuant to, [state] policies and plans,” courts have concluded that those acts formed part of the attack.¹⁷⁰

As discussed in greater detail in the attack section,¹⁷¹ the attack in this case consists of the widespread and systematic use of forced sterilizations against civilians. The crimes committed as part of this attack all share similar characteristics:

they consist of forced sterilizations (or acts to plan, support, or supervise such sterilizations);

they were geographically proximate, as they all occurred in Peru, with an emphasis on poor, rural, and/or indigenous areas;¹⁷²

they were temporally proximate, occurring during the time period of (or in the planning for) the PNSRPF; and

they were committed in furtherance of, and pursuant to, the PNSRPF.¹⁷³

Although the specific acts and modes of liability of the alleged perpetrators is specified in the Prosecution’s analysis,¹⁷⁴ the acts that are likely under investigation are either acts of forced

described as including a second element related to the knowledge of the accused. Kunarac Appeals Judgment, *supra* note 26, at ¶ 99. That requirement is addressed in the *mens rea* section below. *See infra* p. 30

sterilization or acts of planning, support, implementation, and supervision of the state program that resulted in forced sterilizations. If the acts of the accused fit these circumstances then it is likely that the acts are not random and unconnected, and thus the nexus element is satisfied.

E. *MENS REA*

Under customary international law, an accused must have knowledge of the attack and that his acts comprised part of the attack.¹⁷⁵ The accused only has to understand the overall context in which his or her acts occurred; he or she does not need to have known of the details of the attack.¹⁷⁶ In addition, the motives “of the accused for taking part in the attack are irrelevant” and the accused “need not share the purpose or goal behind the attack.”¹⁷⁷ Nor is there any requirement that an accused have a willful disregard for human dignity or an intent to punish or intimidate the victims of the attack.

The specific evidence of knowledge on the part of an accused depends on the facts of each case; there is no list of evidentiary criteria which must be satisfied.¹⁷⁸ Although the knowledge of the alleged perpetrators is not specified in the Prosecution’s analysis,¹⁷⁹ the facts described below demonstrate that there was widespread knowledge of the forced sterilizations carried out under the PNSRPF, particularly among high-level public officials. In light of how pervasive this public knowledge was, it is highly unlikely that an accused would not have known of the attack or that his or her actions in support of the sterilization program were part of that attack.

¹⁷⁵ Kordi Appeal Judgment, *supra* note 23, at ¶¶ 99-100; Kaing Trial Judgment, *supra* note 94, at ¶ 319; Taylor Trial Judgment, *supra* note 23, at ¶ 515; Blagojevi Trial Judgment, *supra* note 23, at ¶ 548. In addition, the accused must have the *mens rea* for the enumerated crime, namely forced sterilization. See Kordi Appeal Judgment, *supra* note 23, at ¶ 99. As this amicus brief concerns only the requirements of crimes against humanity in general, and not specific enumerated crimes, it does not analyze the elements of forced sterilization.

¹⁷⁶ Kaing Trial Judgment, *supra* note 94, at ¶ 319; Kunarac Appeal Judgment, *supra* note 26, at ¶ 102; Sesay Trial Judgment, *supra* note 96, at ¶ 90; Fofana Trial Judgment, *supra* note 96, at ¶ 121; Prosecutor v. Kayishema, Case No. ICTR-95-1-T, Judgement, ¶ 133 (ICTR Trial Chamber May 21, 1999), <https://www.legal-tools.org/doc/0811c9/pdf/>; Blagojevi Trial Judgment, *supra* note 23, at ¶ 548.

¹⁷⁷ Kordi Appeal Judgment, *supra* note 23, at ¶ 99; see also Kunarac Appeal Judgment, *supra* note 26, at ¶ 103; Sesay Trial Judgment, *supra* note 96, at ¶ 90; Fofana Trial Judgment, *supra* note 96, at ¶ 121; Blagojevi Trial Judgment, *supra* note 23, at ¶ 548.

¹⁷⁸ Blaški Appeal Judgment, *supra* note 121, at ¶ 126; Sesay Trial Judgment, *supra* note 96, at ¶ 90.

¹⁷⁹ See generally Resolución Fiscal No 16, *supra* note 13.

Concerns about forced sterilizations under the PNSRPF began surfacing in 1996, shortly after implementation of the program began.¹⁸⁰ These concerns were raised by and to a variety of high-level public officials, including the Defensor del Pueblo, the President and other members of the Peruvian Congress, and the Minister of Health,¹⁸¹ prompting the Ministry of Health to begin an investigation and to promise to sanction those responsible.¹⁸²

By mid-July 1996, the existence of sterilization quotas and abuses committed in efforts to meet them became public information.¹⁸³ In response, the United States Agency for International Development (USAID) had more than 80 contacts with Peruvian government officials, including the Minister of Health, the Minister of Women's Advancement and Human Development, and a presidential advisor, to express opposition to these quotas and concern that the program had the potential for abuse.¹⁸⁴ Indeed, the United States was so concerned about Peru's sterilization program that it refused to support parts of the PNSRPF related to sterilizations as early as July 1996.¹⁸⁵

Between 1996 and 1998, dozens of newspaper articles reported allegations of forced sterilizations conducted as part of the PNSRPF.¹⁸⁶ As the Prosecutor has acknowledged, several

¹⁸⁰ The Peruvian Population Control Program, *El Sol* (July 2, 1996), <https://1996pnsrpf2000.files.wordpress.com/2012/10/el-sol-2-de-julio-de-19961.pdf>.

¹⁸¹ See, e.g., Carlos Ramos, *Defensoría vería caso de ligaduras*, *EL SOL* (July 2, 1996) (expressing concern about the use of prizes to coerce patients to submit to sterilizations), <https://1996pnsrpf2000.files.wordpress.com/2012/10/el-sol-2-de-julio-de-19961.pdf>; *Esterilización debe ser opción libre y sin condicionamiento*, *EL PERUANO* (July 2, 1996) (during a discussion with the President of the Peruvian Congress, Martha Chávez, the Defensor del Pueblo expressed concern about reports of the use of incentives to coerce patients to submit to sterilizations); *Gobierno alienta esterilización en zonas de bajo nivel cultural*, *LA REPÚBLICA* (July 8, 1996) (Legislator Lourdes Flores Nano expressed concern that sterilization campaigns were being conducted without providing complete information to the patients); *Ministro negó política de incentivos a cambio de esterilizaciones*, *GESTION* (July 19, 1996), <https://1996pnsrpf2000.files.wordpress.com/2012/10/gestiocc81n-19-de-julio-de-1996.pdf>.

¹⁸² *Ministro negó política de incentivos a cambio de esterilizaciones*, *GESTION* (July 19, 1996), <https://1996pnsrpf2000.files.wordpress.com/2012/10/gestiocc81n-19-de-julio-de-1996.pdf>.

¹⁸³ See, e.g., *Sigue afán de esterilización*, *El Sol* (July 12, 1996), <https://1996pnsrpf2000.files.wordpress.com/2012/10/el->

prgraom, was issued in 1998,¹⁹¹ MINSA took another year before issuing new regulations incorporating the Defensoría's recommendations.¹⁹²

International criminal courts have recognized that an accused's *mens rea* can be shown by evidence that information about the crimes was common knowledge and that the accused held a public position and was involved in implementation of the attack.¹⁹³ With respect to Peru, the extensive evidence presented above demonstrates that there was widespread knowledge of the abuses

As the Peruvian government has admitted, thousands of individuals were forcibly sterilized under the PNSRPF. These victims were physically forced to submit to sterilizations against their will, including by being locked in rooms and tied up; operated on without their knowledge or consent while under anesthesia for another medical procedure; subjected to severe and repeated threats; and given false or incomplete information. These forced sterilizations were committed as part of a government-mandated program to dramatically increase the number of sterilizations, a goal which was pursued by obligating doctors and health care workers to meet sterilization quotas. These quotas, and the sanctions medical personnel were subjected to if they failed to meet them, appear to have precipitated the widespread and systematic recourse to forced sterilizations. Such abuses were not inadvertent – despite significant evidence of forced sterilizations as early as 1996, the government refused to halt the program.

directed against a civilian population

It is undisputed that the victims of forced sterilizations under the PNSRPF in Peru were civilians, not members of the armed forces or other combatants. The nearly 5,000 victims are plainly sufficient to constitute a population, rather than a limited number of individuals, and, although targeting is not required, there is evidence that the PNSRPF targeted poor, rural, and indigenous women.

that was widespread and systematic

The attack was widespread, affecting nearly 5,000 direct victims (and many more indirectly) in at least 13 regions in Peru. In addition, the attack was systematic, as the

victims and the crimes were perpetrated in pursuit of a state program that was planned, organized, and closely supervised by high-level public officials and supported by significant public and private resources.

there is a nexus between the acts of the accused and the attack