



Women  
With  
Disabilities  
Australia  
(WWDA)

# Redressing Reproductive Violence Against Women with Disability: Justice Beyond the Royal Commission

Briefing Paper prepared for Women with Disabilities Australia

2024





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With  
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Winner, National Human Rights Award 2001  
Winner, National Violence Prevention Award 1999  
Winner, Tasmanian Women's Safety Awards 2008  
Certificate of Merit, Australian Crime & Violence Prevention Award 2008  
Nominee, UNESCO Prize for Digital Empowerment of Persons with Disabilities 2020  
Nominee, National Disability Award 2017  
Nominee, French Republic's Human Rights Prize 2003  
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## Contact

Women with Disabilities Australia (WWDA)  
PO Box 407, Lenah Valley, 7008 Tasmania, Australia  
Phone: +61 438 535 123  
Email: [officeadmin@wwda.org.au](mailto:officeadmin@wwda.org.au)  
Web: [www.wwda.org.au](http://www.wwda.org.au)  
Facebook: [www.facebook.com/WWDA.Australia](https://www.facebook.com/WWDA.Australia)  
Twitter: [www.twitter.com/WWDA\\_AU](https://www.twitter.com/WWDA_AU)

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## About Women With Disabilities Australia (WWDA)

[Women With Disabilities Australia \(WWDA\)](#) is the national Organisation of Persons with Disabilities (OPD) for women, girls, feminine identifying and non-binary people with disability in Australia. As an OPD, WWDA is run by and for women, girls, feminine identifying and non-binary people with disability.

WWDA uses the term 'women and girls with disability', on the understanding that this term is inclusive and supportive of, women and girls with disability along with feminine identifying and non-binary people with disability in Australia.

WWDA represents more than 2 million women and girls with disability in Australia, has affiliate organisations and networks of women with disability in most States and Territories, and is recognised nationally and internationally for our leadership in advancing the rights and freedoms of all women and girls with disability. Our organisation operates as a transnational human rights organisation - meaning that our work, and the impact of our work, extends much further than Australia. WWDA's work is grounded in a human-rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights.

Organisations of Persons with Disabilities (OPDs) are recognised around the world, and in international human rights law, as self-determining organisations led by, controlled by, and constituted of, people with disability. OPD's are organisations of people with disability, as opposed to organisations which may represent people with disability. The United Nations Committee on the Rights of Persons with Disabilities has clarified that States should give priority to the views of OPDs when addressing issues related to people with disability. The Committee has further clarified that States should prioritise resources to organisations of people with disability that focus primarily on advocacy for disability rights and, adopt an enabling policy framework favourable to their establishment and sustained operation.<sup>1</sup>

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# 1. Introduction

This Briefing Paper aims to propose key dimensions of a future advocacy and research framework for redressing reproductive violence against women with disability. It approaches this aim through exploring design and practice of national and supranational (i.e., regional and international) initiatives for individual and collective redress for reproductive violence.

Ultimately, redress of reproductive violence against women with disability must be within a disability human rights framework and designed and led by women with disability. Focus in this Briefing Paper on analysis of existing redress initiatives is done with the intention of contributing lessons from those initiatives (good and bad) to work led by women with disability, rather than suggesting any of these initiatives present an ideal model to be adopted in Australia. Indeed, as we explore in Section 6, none of the schemes can be considered ideal and the greatest insights to be taken from these schemes relate to the complexities and limitations of current approaches to redress for reproductive violence.

The Briefing Paper is structured in seven sections.

Section 1 provides background context. Section 2 introduces international human rights related to redress. Section 3 draws on supranational human rights complaint outcomes that recommend remedies for human rights violations associated with reproductive violence.

Sections 4 and 5 detail redress initiatives. Section 4 draws on academic, civil society, government, and media sources to survey initiatives for individual and collective redress for involuntary sterilisation and contraception. Involuntary sterilisation – and specifically sterilisation pursuant to laws and policies related to eugenics – is the key form of reproductive violence that has been subject of redress initiatives. Section 5 draws on academic, civil society, government, and media sources to survey key examples of initiatives for individual and collective redress for forced removal of children and adoption. The survey includes individual redress (i.e., redress delivered to impacted individuals, such as compensation) and collective redress (i.e., initiatives directed towards all victims as a group, such as apologies and memorials). The survey includes litigation with multiple plaintiffs and class actions because these involve a group of claimants; however it excludes litigation brought by a single plaintiff because the court's decision will not deliver redress to anyone beyond this individual. This section only details initiatives that have been implemented, and thus does not include proposed initiatives or unsuccessful litigation. The survey includes initiatives specifically applicable to people with disability, as well as initiatives applying to other marginalised communities. Initiatives were identified through searching Google, university library catalogues, and journal databases using search terms such as sterilisation/abortion/contraception/adoption and redress/compensation/reparations/apology/litigation. Given many of these initiatives have emerged during the past ten years and are still operational, there is limited academic scholarship on specific initiatives and thus media reports and

government websites were the main source of information. There is a dearth of empirical scholarly evaluation of initiatives, with media reporting being the primary data source on lived experiences and outcomes.

Section 6 reflects on Sections 3-5 to identify key themes related to design and practice of initiatives for redressing reproductive violence against women with disability. Section 7 proposes key dimensions of a future advocacy and research framework for redressing reproductive violence against women with disability.

### **1.1 Redress as unfinished business of the Disability Royal Commission**

Reproductive violence is a key human rights violation and injustice experienced by women with disability in Australia.<sup>2</sup> Reproductive violence includes involuntary sterilisation, menstrual suppression, abortion, and removal and adoption of children, among other practices. To date, Australia has not recognised and redressed the history and present of reproductive violence against women with disability, nor used experiences of this violence as a foundation for transformational change that prohibits and eliminates further violence and supports realisation of reproductive rights.

Women with Disabilities Australia (WWDA) has been advocating for decades for recognition, prevention, prohibition, and reparation in relation to reproductive violence against women with disability, with a particular focus on involuntary sterilisation.<sup>3</sup> The demand for individual and collective redress has been central to this advocacy.<sup>4</sup>

United Nations human rights bodies have called on the Australian government to redress sterilisation of women with disability. In its 2019 review, the United Nations Committee on the Rights of Persons with Disabilities (UN CRPD Committee) expressed concern regarding the 'lack of resources and redress mechanisms available to the Royal Commission into Violence, Abuse, Neglect and Exploitation of Persons with Disabilities.' It recommended the Australian Government '[e]stablish a national accessible oversight, complaint and redress mechanism for persons with disabilities who have experienced violence, abuse, exploitation and neglect in all settings, including all those not eligible for the National Disability Insurance Scheme and, particularly, older women with disabilities' as well as '[e]nsure adequate resources and a redress mechanism for the Royal Commission into Violence, Abuse, Neglect and Exploitation of Persons with Disabilities'.<sup>5</sup>

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (DRC) presented a unique opportunity to make recommendations for recognition, prevention, prohibition, and reparation of reproductive violence. The DRC heard of women's lived experiences of reproductive violence and heard expert evidence from WWDA and other advocates, lawyers, and academics on how to respond to this violence. The issue of reparations was specifically raised by Carolyn Frohmader (Executive Director, WWDA) and Associate Professor Linda Steele (Faculty of Law, University of Technology Sydney) at the 2021 Public Hearing 17: The experience of women and girls with disability with a particular focus on family, domestic, and sexual violence.<sup>6</sup>

In its final report published in September 2023, the DRC made some recommendations related to preventing and responding to future perpetration of reproductive violence. Notably, it recommended prohibiting 'non-therapeutic' sterilisation,<sup>7</sup> increasing transparency on judicial and tribunal decision-making on sterilisation,<sup>8</sup> enhancing regulation of restrictive practices,<sup>9</sup> and reforming guardianship laws<sup>10</sup>. WWDA has observed the limitations of the DRC's recommendation on non-therapeutic sterilisation:

While the DRC recommendation on involuntary sterilisation – recommendation 6.41 – focuses on prohibition of this practice, it uses the terminology of 'therapeutic' and 'non-therapeutic' sterilisation. This terminology is problematic as determinations of what constitutes 'therapeutic' for women and girls with disability can be different to what is considered 'therapeutic' for women and girls without disability. The current authorisation of 'non-therapeutic' sterilisation "is indicative of gendered ableism because it would be incomprehensible to sterilise non-disabled girls for reasons other than those related to serious and life-threatening medical issues".

The exception to prohibition in the DRC recommendation is where "there is a threat to the life of the person with disability were the procedure not performed". However, it is extremely concerning that the example to illustrate the application of this exception relates to a person with disability experiencing "terrible pain, where alternative therapy has been tried" and where the person "is deemed unable to consent to a medical procedure", which would allow for the sterilisation procedure to occur. In this example, there is no indication if there is a threat to the life of the person with disability and there appears to be no recognition of supported decision-making replacing substitute decision-making. This example appears to adhere to the existing system where sterilisation in the absence of a threat to life can be authorised through substitute decision-making mechanisms. This implies that forced sterilisation of women and girls with disability will remain an ongoing practice that is legal and sanctioned by Australian Governments.

Forced sterilisation is recognised as a particularly egregious form of gender-based violence; a form of social control and a form of torture that has no place in a civilized world. Since 2005, UN treaty bodies, the Human Rights Council, UN special procedures and international medical bodies have recommended Australia enact national legislation prohibiting forced sterilisation, and have clarified that decentralising government power through devolution or delegation does not negate the obligation on a State party to enact national legislation that is applicable throughout its jurisdiction.<sup>11</sup>

The DRC also recommended developing culturally appropriate parenting assessments for First Nations parents with disability in child care and protection matters,<sup>12</sup> an action plan to end violence against women and children with disability,<sup>13</sup> and a disability-inclusive definition of disability and family violence.<sup>14</sup> However, none of these recommendations positively enshrine sexual and reproductive rights for women with disability in law and service provision; nor do they fully prohibit and eliminate reproductive violence against women with



disability. The DRC also made recommendations related to redressing violence, abuse, neglect, and exploitation of people with disability, including introducing a Disability Rights Act with provision for a complaint function and court remedies,<sup>15</sup> NDIS service provider complaints handling and redress,<sup>16</sup> and independent complaint mechanisms.<sup>17</sup> However, none of these provide individual or collective redress for reproductive violence that has already occurred, nor a future requirement to provide such redress. WWDA observed the profound failure of the DRC in relation to redress:

In 2019, following Australia's review, the CRPD Committee recommended that "adequate resources and a redress mechanism" be ensured for the DRC. In its 2020 Interim Report, the DRC observed that "it is clear that the question of redress, including compensation for serious harm, is worthy of further investigation". It proposed to investigate "whether it is feasible to establish a scheme to compensate people with disability who have sustained serious harm from violence, abuse, neglect or exploitation in circumstances where no other redress is available to them".

However, while the issue of redress was raised throughout a number of public hearings, we are extremely disappointed that the DRC did not conduct specific public hearings, prepare issues papers or commission research on the feasibility of a national redress and reparation scheme. The Final Report of the DRC confined its discussion and recommendations on redress to disability services, with a focus on the provision of redress by individual NDIS providers and the development of universal guidelines for inclusive and responsive complaint handling processes. These are important areas, but they fall far short of a systemic, overarching approach to providing redress and reparation to people with disability, including the many people with disability who provided evidence to the DRC about experiences of violence, abuse, neglect and exploitation in almost every aspect of their lives and throughout different life stages.

As outlined throughout the Final Report of the DRC, failures in law, policy and practice across a broad range of systems have facilitated, and in many cases authorised breaches of human rights constituting violence, abuse, neglect and exploitation, which have led to unresolved trauma and distress, long-term effects on physical and mental health, loss of hope and distrust of professionals, support systems and support workers. In the face of the evidence, it is bewildering that there is not a recommendation for the establishment of a national redress and reparation scheme.<sup>18</sup>

A national redress and reparations scheme, co-designed with people with disability through their representative organisations, is needed to respond to individual, structural and collective injustice that facilitate violence, abuse, neglect and exploitation of people with disability. It would provide a broad range of remedies, such as compensation, truth-telling, individual and collective apologies, rehabilitation, and commitments to legal and policy reform. Importantly, it would also enable the community, governments and service and legal systems to confront, acknowledge and take responsibility for the harm caused and to begin the process of healing and providing justice.<sup>19</sup>

Absence of individual and collective redress for reproductive violence and other forms of violence, abuse, neglect, and exploitation is a profound shortcoming of the DRC and an area of advocacy being pursued by WWDA and other Disabled People's Organisations in moving forward from the DRC.<sup>20</sup>

## 1.2 International momentum towards redressing reproductive violence

Absence of individual and collective redress for reproductive violence against women with disability in Australia can be contrasted with initiatives emerging in other nations – notably Europe and North America –redressing sterilisation and other forms of reproductive violence experienced by people with disability and other marginalised groups such as Roma people, Indigenous people, transgender people, and people living with HIV.

Supranational human rights bodies – including the UN Human Rights Committee, Intra-American Court of Human Rights, and European Court of Human Rights – have also recommended remedies for reproductive violence experienced by people with disability and other marginalised groups.

A 2014 interagency statement on eliminating forced, coercive, and otherwise involuntary sterilisation by the Office of the High Commissioner for Human Rights (OHCHR), United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), Joint United Nations Programme on HIV and AIDS (UNAIDS), United Nations Development Programme (UNDP), United Nations Population Fund (UNFPA), United Nations Children's Fund (UNICEF), and World Health Organization (WHO) explicitly provides for the need for individual and collective redress:

Responding to coerced sterilization of indigenous and minority women, particularly Roma women, human rights bodies have emphasized the need to take legal and policy steps to prevent such violations from occurring and to ensure effective remedies, including apologies, compensation and restoration of fertility for victims.<sup>21</sup>

International human rights standards require states to ensure effective accountability processes (including monitoring and evaluation), the availability of effective remedies, and the participation of a wide range of stakeholders in the development, implementation and monitoring of laws, policies and programmes. Individual, community and civil society participation – including of women living with HIV, persons with disabilities and transgender and intersex persons – in the development and monitoring of laws and policies, including budgets and use of public funds, is an important avenue for accountability.

Accountability can be achieved through a variety of processes and institutions that vary from country to country, and include both national and international mechanisms. Some examples include courts, national human rights institutions, professional disciplinary proceedings, and reporting to international and regional human rights bodies, including the United Nations.

Regarding the right to effective remedies, treaty-monitoring bodies have noted that states parties should conduct fair and effective investigations of reports of coercive sterilization, prosecute perpetrators, and provide effective remedies and compensation for all victims of such practices.<sup>22</sup>

## 2. Human right to redress for reproductive violence

International human rights provide a normative foundation for individual and collective redress for reproductive violence against women with disability.

The International Covenant on Civil and Political Rights (ICCPR) stipulates that people have the right to be 'equal before the courts and tribunals'.<sup>23</sup> It also requires that, when individuals are subject to violations of their rights under the ICCPR, States Parties undertake to ensure that persons have an effective remedy; that this remedy is determined by judicial, administrative, or legislative authorities; and is enforceable.<sup>24</sup> The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power stipulates that victims should have their right to access to justice and redress mechanisms fully respected.<sup>25</sup>

In relation to individuals who are subjected to torture, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) provides each State Party 'shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible'.<sup>26</sup> The Committee Against Torture has explained that conduct that amounts to torture or ill-treatment gives rise to a duty to provide remedy and reparation.<sup>27</sup> The right to redress in CAT includes restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition, and the right to truth.<sup>28</sup> The UN Committee on the Elimination of Discrimination Against Women clarified in its General Recommendation No. 35 (on gender-based violence against women, updating general recommendation No. 19) that reproductive violence constitutes torture:

Violations of women's sexual and reproductive health and rights, such as forced sterilizations, forced abortion, forced pregnancy, criminalisation of abortion, denial or delay of safe abortion and post-abortion care, forced continuation of pregnancy, abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.<sup>29</sup>

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (also known as the Van Boven Principles) also provide guidance on redress and support for gross violations of human rights. In general, the 'obligation to respect, ensure respect for and implement international human rights law' includes duties to:

- (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;

- (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
- (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and
- (d) Provide effective remedies to victims, including reparation, as described below.<sup>30</sup>

The Van Boven Principles provide that remedies for gross human rights violations include the victim's right to 'equal and effective access to justice', 'adequate, effective and prompt reparation for harm suffered', and 'access to relevant information concerning violations and reparation mechanisms'. 'Reparation for harm suffered' 'should be proportional to the gravity of the violations and the harm suffered'.<sup>31</sup>

The Van Boven Principles stipulate that victims of gross violations of international human rights law should 'be provided with full and effective reparation'.<sup>32</sup> Forms of reparations consist of:

- (a) **Restitution:** This 'should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred'. Examples of restitution are 'restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property'.
- (b) **Compensation:** This should be 'provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case'. The damage can include: 'physical or mental harm', 'lost opportunities' including employment, education and social benefits, 'material damages and loss of earnings, including loss of earning potential', and 'moral damage'.
- (c) **Rehabilitation:** This includes 'medical and psychological care as well as legal and social services'.
- (d) **Satisfaction:** This should include, where applicable, such forms as: 'effective measures aimed at the cessation of continuing violations', 'verification of the facts and full and public disclosure of the truth', 'an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim', 'public apology, including acknowledgement of the facts and acceptance of responsibility', 'judicial and administrative sanctions against persons liable for the violations', 'commemorations and tributes to the victims', and 'inclusion of an accurate account of the violations that

occurred in international human rights law and international humanitarian law training and in educational material at all levels’.

- (e) **Guarantees of non-repetition:** These measures, which ‘will also contribute to prevention’, can include: reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law’.<sup>33</sup>

Article 16 of the CRPD provides in part that States Parties must support recovery, rehabilitation, and social reintegration of victims-survivors of violence and also ensure in appropriate circumstances that violence is investigated and prosecuted:

States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

As well as providing just outcomes in terms of redress and victim support, States Parties must also provide accessible justice processes for people with disability. Pursuant to Article 13 of the UN Convention on the Rights of Persons with Disabilities (CRPD), States Parties must also ‘ensure effective access to justice for persons with disabilities on an equal basis with others’.<sup>34</sup> The UN CRPD Committee in its General Comment 3 (Women and Girls with Disabilities) explains that women with disabilities face barriers in accessing justice in relation to violence:

due to harmful stereotypes, discrimination and lack of procedural and reasonable accommodations, which can lead to their credibility being doubted and their accusations being dismissed. Procedures or enforcement attitudes may intimidate victims or discourage them from pursuing justice. These can include: complicated or degrading reporting procedures; referral of victims to social services rather than legal remedies; dismissive attitudes by police or other enforcement agencies. This can lead to impunity and invisibility of the issue, resulting in violence lasting for extended periods of time. Women with disabilities may also fear reporting violence, exploitation or abuse because they are concerned they may lose their support requirements from caregivers.<sup>35</sup>

The International Principles and Guidelines on Access to Justice for Persons with Disabilities provide (non-binding) guidance to States Parties in relation to Article 13. The 10 principles are:

**Principle 1:** All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability.

**Principle 2:** Facilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities.

**Principle 3:** Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.

**Principle 4:** Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others.

**Principle 5:** Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.

**Principle 6:** Persons with disabilities have the right to free or affordable legal assistance.

**Principle 7:** Persons with disabilities have the right to participate in the administration of justice on an equal basis with others.

**Principle 8:** Persons with disabilities have the rights to report complaints and initiate legal proceedings concerning human rights violations and crimes, have their complaints investigated and be afforded effective remedies.

**Principle 9:** Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons with disabilities.

**Principle 10:** All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice.<sup>36</sup>

The International Principles and Guidelines provide, in relation to Guideline 8, that States Parties should ensure that 'effective remedies are in place for human rights violations, including the right to be free from disability-based discrimination and the rights to restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition'. These remedies should be 'enforceable, individualized and tailored to meet the needs of claimants', '[e]nsure that victims are protected from repeat violations of their human rights', and '[a]ddress the systemic nature of human rights violations'.<sup>37</sup>

Guidelines by the UN CRPD Committee on deinstitutionalisation identify a specific role for reparations in deinstitutionalisation. In Part IX of the guidelines, which addresses remedies, reparations, and redress, the CRPD Committee states that governments

should provide individualized, accessible, effective, prompt and participatory pathways to access to justice for persons with disabilities who wish to seek redress, reparations and restorative justice, and other forms of accountability.<sup>38</sup>

The guidelines provide that reparations for institutionalisation should include formal apologies, financial compensation, restitution, habilitation and rehabilitation, and establishment of truth commissions.

### **3. Remedies recommended by supranational human rights bodies**

Section 3 draws on supranational human rights complaint outcomes that recommend remedies for human rights violations associated with reproductive violence: United Nations Human Rights Committee (Section 3.1), European Court of Human Rights (Section 3.2) and Intra-American Court of Human Rights (Section 3.3).

#### **3.1 United Nations**

##### **3.1.1 MT v Uzbekistan**

The case of MT v Uzbekistan was brought to the Human Rights Committee (HRC), under the International Covenant on Civil and Political Rights and its Optional Protocol. The Complainant was an Uzbek national and a human rights activist. She was subjected to various forms of persecution and violence by Uzbek authorities including arbitrary arrest, unlawful detention, extended periods of solitary confinement, torture, and various other forms of ill-treatment. The Complainant was also subjected to sexual and reproductive violence including being gang-raped while in detention and, without her consent, being subjected to surgery that included removal of her uterus, leading to forced sterilisation. These acts were part of an officially sanctioned campaign against her due to her human rights activism.<sup>39</sup>

The HRC found multiple grave violations of the prohibition of torture (Article 7, ICCPR). The Committee also noted the failure of Uzbekistan to investigate the Complainant's allegations of torture (violating Article 2 (3) of the ICCPR, read in conjunction with Article 7). The HRC concluded the forced sterilisation, along with the rape, amounted to discrimination on the basis of sex, in violation of the right to equality before the law and non-discrimination on the basis of sex (Article 26, ICCPR).<sup>40</sup>

The HRC recommended Uzbekistan provide the Complainant with an effective remedy, including carrying out an impartial, effective, and thorough investigation into allegations of torture and ill-treatment; initiating criminal proceedings against those responsible; and providing the Complainant with appropriate compensation. The HRC also urged Uzbekistan to take steps to prevent similar violations in the future. Uzbekistan was requested to publish the Committee's views, translate them into the official language, and disseminate them widely.<sup>41</sup>

## 3.2 European Court of Human Rights

European Court of Human Rights (ECtHR) decisions relate to reproductive violence experienced by people from a variety of marginalised communities:

- Women with disability (sterilisation; contraception; abortion).
- Women who are socio-economically disadvantaged (removal of children).
- Roma women (sterilisation).
- Transgender people subjected to surgery resulting in sterilisation as a prerequisite to legal gender recognition (sterilisation).

### 3.2.1 AD and Others v Georgia

AD and Others v Georgia was a case brought to the ECtHR. It concerned 3 transgender men who were unable to obtain legal recognition of gender because they had not undergone medical procedures to change their sex characteristics. The ECtHR found the requirement for transgender persons to undergo surgery or sterilisation as a condition for legal recognition of gender violated the right to respect for private life under Article 8 of the European Convention on Human Rights (ECHR). The ECtHR accepted the applicants had suffered non-pecuniary damage incapable of being compensated through finding a violation and awarded them each EUR 2,000 each for non-financial damage (lower than the 15,000-20,000 EUR requested by the applicants) and 9,812 EUR in legal-related expenses to the third applicant. The ECtHR emphasised the need for quick, transparent, and accessible procedures for legal gender recognition.<sup>42</sup>

### 3.2.2 Affair Soares De Melo v Portugal

Affair Soares De Melo v Portugal concerned an applicant who had been denied parental rights, in part because she refused to be sterilised, and also without adequate consideration of the family's socio-economic challenges and the potential for improvement. The ECtHR found a violation of the right to respect for private and family life (Article 8, ECHR) due to the permanent removal of the applicant's children for adoption. The ECtHR ordered Portugal to pay the applicant 15,000 EUR for non-financial damage and 2,667 EUR for legal-related expenses.<sup>43</sup>

### 3.2.3 AP, Garçon and Nicot v France

AP, Garçon and Nicot v France concerned transgender people who alleged their human rights were violated because their requests to have the gender on their birth certificates corrected were refused on the grounds they had to demonstrate that they actually suffered from a gender identity disorder and they had undergone treatments or procedures to create irreversible changes to their appearance. The ECtHR found that requiring transgender persons to undergo surgery or sterilisation as a condition for legal recognition of their gender identity violated their rights to respect for private life (Article 8, ECHR). The ECtHR emphasised need for processes of gender recognition that are quick, transparent, accessible, and do not force individuals to undergo sterilisation or any other medical procedures. The ECtHR awarded the global sum of 12,000 EUR for legal-related expenses.<sup>44</sup>



### 3.2.4 GM and Others v Republic of Moldova

GM and Others v Republic of Moldova related to involuntary termination of pregnancies and insertion of intrauterine contraceptive devices imposed on 3 women with intellectual disability. The women were residents of a neuropsychiatric residential asylum. Two of the women were raped by the head doctor of one of the units at the asylum. The ECtHR found the forced medical interventions violated the right to freedom from inhuman or degrading treatment (Article 3, ECHR). The ECtHR awarded 30,000 EUR to GM and EUR 25,000 to the other 2 applicants in respect of non-financial damage, and 5,000 EUR in legal-related expenses.<sup>45</sup>

### 3.2.5 KH and Others v Slovakia

In KH and Others v Slovakia, the applicants were 8 Roma women who suspected they were sterilised without their knowledge during caesarean deliveries and who sought access to their medical records. Although they were allowed to consult their records, photocopies were denied under national law. The ECtHR found violations of the rights to respect for private and family life (Article 8, ECHR) and a fair trial (Article 6.1, ECHR) due to the denial of photocopies of medical records, impeding the applicants' ability to effectively pursue potential civil claims for damages. The ECtHR awarded EUR 3,500 to each applicant for non-financial damage and EUR 8,000 jointly for legal-related expenses.<sup>46</sup>

### 3.2.6 VC v Slovakia

VC v Slovakia concerned a Roma woman sterilised without her informed consent during a caesarean section for her second child in a hospital under the management of the Slovak Ministry of Health. She was told if she had one more child, either she or the baby would die, which led her to giving consent while in a state of distress. Her signature was also obtained while she was in advanced labour and in a vulnerable state. The ECtHR found the sterilisation without informed consent constituted a violation of her rights in the ECHR in relation to freedom from torture (Article 3) and respect for private and family life (Article 8). The ECtHR noted the sterilisation interfered grossly with VC's physical integrity and was not a medical necessity at the time it was performed. The ECtHR ordered the Slovak Government to pay VC for non-financial damage and legal-related expenses.<sup>47</sup>

### 3.2.7 YY v Turkey

In YY v Turkey, the applicant was a transgender person whose request for legal authorisation to undergo gender reassignment surgery was initially refused because the applicant did not meet the legal requirement of being 'permanently unable to procreate'. The ECtHR found refusing to allow YY to undergo gender reassignment surgery violated the right to respect for private life (Article 8, ECHR). YY was awarded EUR 7,500 for non-financial damage.<sup>48</sup>

### **3.3 Intra-American Court of Human Rights**

#### **3.3.1 IV v Bolivia**

The Intra-American Court of Human Rights (IACtHR) matter of IV v Bolivia concerned IV undergoing a tubal ligation procedure without her informed consent during a caesarean section in a Bolivian public hospital. The operation resulted in the permanent loss of her reproductive capability. The IACtHR found violations of IV's rights to personal integrity, judicial protection, and guarantees, freedom from discrimination, and rights to start a family, among others. The Court also determined the sterilisation procedure performed without IV's informed consent constituted a form of gender-based violence and discrimination. The IACtHR mandated comprehensive remedies for human rights violations related to sterilisation of the Complainant, including specialised medical care for the victim and therapy for the family, along with a \$50,000 compensation for the direct victim. Additionally, it required the Bolivian Government to publicly acknowledge its responsibility by publishing the judgment and instituting a public apology, as a form of satisfaction. To prevent future violations, the Court ordered the implementation of consent protocols in hospitals; and the establishment of ongoing training programs on gender stereotyping, discrimination, violence, and informed consent for medical professionals.<sup>49</sup>

## **4. Individual and collective redress for involuntary sterilisation and contraception: A global survey**

This section provides an overview of initiatives worldwide for individual and collective redress for involuntary sterilisation and contraception. Sections 4.1 to 4.5 detail official initiatives led by national and state/provincial governments in each global region (noting that none were found for the Middle East and North Africa). Section 4.6 details some initiatives by non-government entities such as charities, churches, professional associations, and universities. Discussion of each initiative generally addresses the legal basis for the initiative (e.g., court judgment or settlement, administrative scheme, public apology); the form and scope of redress; procedural requirements to access it; any accessibility features of the initiative; and details of the sterilisations the focus of the initiative (e.g., the targeted community, time period, law or policy). Discussion also considers the positive and negative dimensions of each initiative, depending upon available information.

### **4.1 Africa**

#### **4.1.1 Kenya**

In 2023, the Kenya High Court awarded four women living with HIV Sh12 million in damages for being sterilised without their informed consent.<sup>50</sup> The High Court ruled the sterilisations violated the women's fundamental rights including rights to dignity, freedom from discrimination, and to establish a family.<sup>51</sup> The damages were to be paid jointly by Marie Stopes International, Pumwani Maternity Hospital and Médecins Sans Frontières.<sup>52</sup> A 2012 study by the African Gender and Media Initiative documented 40 women who had been coerced into sterilisation, including some who were disabled. However, there are no comprehensive data on the extent of this practice.<sup>53</sup> This High

Court decision follows a 2022 decision awarding Sh3 million in compensation to a woman living with HIV who had been subject to tubal ligation without her consent while in a maternity hospital.<sup>54</sup>

#### 4.1.2 Namibia

In November 2014, Namibia's Supreme Court rejected an appeal by the Government of the Republic of Namibia.<sup>55</sup> The Government was appealing against an earlier High Court decision awarding damages to 3 HIV-positive women who were sterilised without their informed consent after giving birth at state hospitals.<sup>56</sup> The Supreme Court upheld the original decision that the women's sterilisations violated their constitutional rights. A study conducted during 2007 and 2008 found that, of 240 women living with HIV, 40 had been sterilised,<sup>57</sup> despite there being no official state policy requiring sterilisation of women living with HIV.<sup>58</sup>

The decision has been criticised because of the Supreme Court's finding 'obtaining consent during the height of labour is inappropriate because labouring women lack the capacity to consent because of the intensity of their labour pains'. This argument relies on the 'harmful gender stereotype that labouring women lack the capacity to make decisions', which is criticised as 'baseless', and has 'harmful consequences'.<sup>59</sup>

## 4.2 Asia

### 4.2.1 Japan

In 2019, the Japanese Government passed a law for apology and compensation in relation to the Eugenic Protection Law that was in effect from 1948 to 1996 and enabled the sterilisation of approximately 25,000 people. Many of these people were 'physically or cognitively disabled, and others suffered from mental illness, leprosy – now a curable affliction known as Hansen's disease – or simply had behavioural problems'.<sup>60</sup> The 2019 law provides a public apology and a commitment to pay each victim 3.2 million yen in compensation.<sup>61</sup>

The CRPD Committee's adopted 'List of Issues' for the initial periodic review of Japan late September 2019 included questions about compensation and redress for people with disabilities who were subjected to eugenic sterilisations under the former Eugenic Protection Law.<sup>62</sup> In 2019, the Japan Disability Forum (JDF), a national umbrella organisation of/for persons with disabilities in that country, raised issues with compensation in its parallel report to the CRPD Committee. These included the low amount of compensation in contrast to court-ordered compensation for involuntary sterilisation. The inaccessible process of compensation was also identified:

there are those who are unable to apply for this compensation by themselves due to the particular characteristics of disabilities and those who do not recognize they are victims because they were deceived and unknowingly received the surgery. The provision of accommodation to these persons who need support or interpreters to communicate is insufficient. Therefore, there are many issues that still remain.<sup>63</sup>

The JDF also identified specific issues with accessing documents to support applications:

most of the related documents to identify victims are already lost, that in some cases, victims who are deemed to have “consented” to the surgery on paper were actually forced, as well as the privacy of the victims and possible secondary damage. Therefore, it must be kept in mind that it is necessary to establish an application method that reflects the opinions of the victims themselves, victim support organizations and organizations of persons with disabilities.<sup>64</sup>

It recommended more outreach to victims to raise awareness of the compensation and ‘investigations and verifications on the actual conditions of sterilization’ by an independent committee ‘that includes representatives of organizations of persons with disabilities in order to prevent something similar from occurring again’.<sup>65</sup>

The 2019 Law and its associated apology and compensation have also been criticised because state responsibility was not adequately recognised. Many victims and their supporters voiced dissatisfaction with the state not being identified as the main perpetrator.<sup>66</sup>

Two years into the scheme’s operation, the number of applicants was very low, with suggestions failure to notify individuals directly was a factor.<sup>67</sup>

Some disability civil society organisations made recommendations around the compensation scheme, notably to extend the timeframe for applications due to such factors as COVID and the time it was taking eligible individuals to learn of its existence and apply.<sup>68</sup>

A 2023 report detailed further issues:

Surviving victims of forced sterilization say their appeals for urgent compensation based on their advanced age have been repeatedly ignored. Non-profit organizations supporting sterilization victims and disabled people are calling for a reexamination of the law behind the lump sum relief payment. They point out that the relief law did not take into account the victims’ experiences and wishes.<sup>69</sup>

The compensation scheme followed successful litigation against the Japanese government which found the Eugenics Protection Law was unconstitutional.<sup>70</sup> In January 2022, the Osaka High Court ordered the central government pay 27.5 million yen to a married couple in their 70s who had been sterilised.<sup>71</sup> Similar outcomes have followed.<sup>72</sup> In one of these cases, the Osaka High Court referred to the lump sum payment as negligently low.<sup>73</sup>

In 2020, the House of Representatives and the House of Councillors’ Health, Welfare, and Labour Committee Research Office launched a new investigation into the eugenics law and the 2019 Law. This investigation was done pursuant to Article 21 of the 2019 Law that provides the State will investigate eugenics to ensure it is

never repeated.<sup>74</sup> Some disability civil society organisations recommended the investigation explore the history of the eugenics law's enactment and operation and the 'involvement of local governments, academic societies, educational institutions and other related organizations'.<sup>75</sup> A 1400 page report by the Parliament's research bureau was released in June 2023. The report provides that 16,500 people (most of whom were women) were sterilised 'without their consent' between 1948 and 1996 and a further 8,000 people 'gave their consent – almost certainly under pressure'.<sup>76</sup> The report was criticised because 'it doesn't provide any analysis or judgment on why such practices persisted in Japan for so long' and 'lacks any conclusions or proposals on what the government should do to prevent their recurrence'.<sup>77</sup>

## 4.3 Europe

### 4.3.1 Czech Republic

A Public Decree on Sterilisation was in force in the former Czechoslovakia from 1972 until 1993. The decree 'enabled public authorities to take programmatic steps to encourage the sterilisation of Romani women and women with disabilities placed in mental institutions in order to control their birth-rate' which 'resulted in giving public authorities more or less free reign to systematically sterilise Romani women and women with disabilities without their full and informed consent'.<sup>78</sup> It was officially abolished in 1993, but according to the European Roma Rights Centre, sterilisation continued 'with the last known case occurring as recently as 2007'.<sup>79</sup> In 2009, the Czech Ombudsman estimated 90,000 people were involuntarily sterilised in former Czechoslovakia.<sup>80</sup>

In 2009 the Czech government made an official 'expression of regret' for the country's sterilisation practices,<sup>81</sup> with reference to 'instances of errors ... in the performance of sterilizations'.<sup>82</sup> The 'expression of regret' has been criticised for being 'worded in such a way as to communicate that these wrongs were "individual" (in other words, isolated) cases, downplaying the systemic nature of the acts'.<sup>83</sup> Even before the expression of regret, activists had been lobbying for compensation.<sup>84</sup> However, the Czech government resisted, maintaining its position that redress should be pursued through the court system.<sup>85</sup>

In 2021, the Czech government passed a law for compensation for women who were unlawfully sterilised between 1966 and 2012. The scheme is administered through the Ministry of Healthcare and eligible claimants receive payments of 300,000 CZK.<sup>86</sup> However, activists have criticised the scheme for its limitations. For example, it relies on original medical records 'despite the fact that the explanatory report on the legislation states that other kinds of evidence to be considered could, for instance, be sworn statements from the applicant or others with knowledge of these events'.<sup>87</sup>

In her September 2023 report on her visit to Czech Republic, the Council of Europe Commissioner for Human Rights observed issues with documentation including 'almost exclusive reliance on medical records'. In many instances victims have had their applications dismissed because they have been unable to access their medical files, including because of reasons outside of their control such as Czech laws only requiring retention of medical files for 40 years, disposal of some documents prior

to the 40-year deadline, destruction of records due to fires and floods, and files being lost.<sup>88</sup> Relatedly, the Commissioner observed a problematic burden on claimants to establish the involuntary nature of the sterilisation including because of absence of 'a specific legal presumption that an applicant who can provide basic information about the circumstances of the sterilisation' was subjected to that sterilisation involuntarily. That is despite the facts and policies concerning involuntary sterilisation 'should now be widely known by decision makers'.<sup>89</sup> There have also been delays in processing applications with some women dying before their claims are determined, inconsistencies in decision-making, and little community outreach to promote the scheme.<sup>90</sup> The Commissioner observed 'the difficulties in pursuing medical evidence, are adding to the emotional and psychological burdens that victims already face' and 'are sometimes humiliating to the victims, which risks retraumatising them'.<sup>91</sup> The Commissioner also observed long-term impacts of sterilisation 'on their family and social lives', including difficulty accessing IVF treatment.<sup>92</sup>

The Commissioner called on Czech authorities to take steps to improve the scheme's operation:

to establish a clear methodology for the assessment of compensation claims, ensuring consistency and fairness. This should include clear guidance on the submission and assessment of evidence other than medical files.

Once such a methodology is established, to reassess rejected claims in light of the new guidance.

To take measures to prevent the burden of proof being disproportionately put on victims, including by working on the presumption that claimants are indeed victims of unlawful sterilisation.

To ensure sufficient human resources to enable decisions to be made within the deadline of 60- days, and to provide decision makers in the Ministry of Health with sufficient expert support in relation to the human rights, cultural and historical issues involved, as well as in relation to working with victims and reparations claims.

To ensure sufficient information about any updated procedures is provided to victims and to proactively reach out to potential victims to enable them to submit claims. The extension of the running time of the compensation scheme should be considered to ensure access to all victims.

To consider organising the existing caseload of compensation claims so that those at an advanced age are prioritised.<sup>93</sup>

Similar issues were raised and recommendations put forward in an August 2022 open letter by Czech campaigners.<sup>94</sup>

### 4.3.2 Denmark

In November 2023, the Minister for Social Affairs, Pernille Rosenkrantz-Theil, apologised on behalf of the Danish state to children and adults with disability who experienced abuse in state institutions, including sterilisation.<sup>95</sup> Hanne Klitgaard, a woman who was in a disability institution as a child, also gave a speech.<sup>96</sup>

The apology was preceded by a historical investigation by the Danish Welfare Museum (Danmarks Forsorgsmuseum).<sup>97</sup> This Museum is located on the site of a former 'poorhouse' in Svendborg (Denmark). In 2022, the Museum published a report on its 'historical investigation of special and mentally handicapped welfare 1933-1980', which examined 'whether there were children, young people and adults who were exposed to neglect or abuse while staying in special and mentally ill institutions under state custody in the period 1933-1980'. The study was requested and financed by the Ministry of Social Affairs and Senior Citizens.<sup>98</sup> The Museum's website provides access to teaching resources aimed at developing awareness of and critical reflection upon contemporary legislation and professional practice.<sup>99</sup> The website also includes a subtitled free-access film detailing some individuals' experiences.<sup>100</sup>

Litigation is currently under way in relation to involuntary sterilisation of Inuit women in Greenland. One hundred and forty-three Inuit women have sued the Danish government for nearly 43 million kroner. The women were fitted with IUDs in the 1960s and 70s as part of a widespread practice of involuntary contraception of this group.<sup>101</sup>

### 4.3.3 Germany

In 1933, the Nazi state passed legislation for the 'compulsory sterilisation of the sick and disabled', resulting in approximately 350,000 sterilisations in Germany and Nazi-annexed Austria between 1934 and 1945.<sup>102</sup> Compensation has been only small and ad hoc:

After the war, surgical reversal of sterilization was not offered by the German medical profession or state authorities. Allied efforts to prosecute doctors involved with sterilization were unsuccessful. Compensation in terms of a single 5,000 DM payment was granted only from 1980, and a monthly pension supplement of 300 DM (now approximately 1,200 euros) was approved. A full apology to the victims by the German state has yet to be made, although there have been a series of partial gestures. Compensation for victims of sterilization can be characterised as late and limited.<sup>103</sup>

In contrast, victims of medical experimentation were able to access lump sum compensation, although the amount was lower than for other victims.<sup>104</sup> The German government has failed to recognise sterilisation as a Nazi injustice and the individuals as victims of Nazi persecution.<sup>105</sup>

#### 4.3.4 Netherlands

In December 2020, the Dutch Government apologised to transgender people for requiring surgery (including sterilisation) for official gender recognition and committed to 5000 Euro compensation payments for affected individuals.<sup>106</sup> Between 1985 and 2014, transgender people could change their gender designation on their birth certificate 'subject to a number of conditions, such as modifying the body to align with the desired gender and an irreversible sterilisation procedure'.<sup>107</sup> The compensation scheme opened in October 2021.<sup>108</sup> Some civil society organisations 'criticised the compensation scheme for excluding people who postponed [legal gender recognition] because of the requirements and for the amount being a fourth of Sweden's [compensation payment amount]'.<sup>109</sup>

#### 4.3.5 Norway

In December 2000, the Minister of municipalities, Sylvia Brustad, apologised on behalf of the Norwegian government for the former policy of Norwegianisation that included forced sterilisation of Romani persons and removal of children from their families.<sup>110</sup> From 1950 to 1970, around 40% of the women who were placed in Svanviken (a labour camp run by a Mission as part of the settlement policy for Romani persons) were sterilised at the camp.<sup>111</sup> However, at the time of the apology the government rejected providing compensation because of remedies available under the general law; instead committing funding for a national centre for the documentation, study, and history of Romani Tater people.<sup>112</sup> Following advocacy by Romani civil society, in October 2002 the Norwegian Parliament established an inter-ministerial working group to consider compensation for victims.<sup>113</sup> In its 2003 report, the working group 'proposed to establish a special compensation scheme for predefined, abused minorities, requiring as evidence, firstly the applicant's own story, and secondly, documentation of surgical intervention for the involuntarily sterilised', with an amount of 150,000 Norwegian Kroner set for compensation to Romani victims of involuntary sterilisation.<sup>114</sup>

The compensation scheme was established in 2004. However, only a small number of applications were made for involuntary sterilisation of Romani people, compared to other categories of harm such as bullying.<sup>115</sup> The low number has been attributed to factors including 'the compensation scheme was introduced a long time after the interventions took place', 'many victims have died, are old and/or ill', 'sterilisation is perceived as stigmatising', 'accessing old medical files is difficult and traumatic', 'the application procedure is difficult', and lack of awareness of or clarity on the scheme.<sup>116</sup>

Additional to compensation, the Norwegian government has granted collective and symbolic remedies. For example, the government conducted a human rights-based investigation which included Romani people's involvement as research participants and project investigators.<sup>117</sup> The Norwegian government has apologised to the Romani people in 1998, 2000, and 2015; but the apologies were not broadcast, thus undermining 'their "public" character and ultimate symbolic nature'.<sup>118</sup> The Norwegian church has also apologised three times.<sup>119</sup> There have also been monuments, exhibitions, and a public fund.<sup>120</sup>



#### 4.3.6 Slovak Republic

In November 2021, the Slovak Republic Government apologised for involuntary sterilisation of Roma people.<sup>121</sup> Although there is no comprehensive data on this practice, it is widely acknowledged by human rights advocates and scholars that thousands of Roma women were sterilised in Slovakia from 1966 until 2014.<sup>122</sup> In June 2023, the Slovakian government debated a compensation law, although the Human Rights Commissioner of the Council of Europe, Dunja Mijatovičová criticised the proposed amount as too low and the two-year application period as too short.<sup>123</sup>

#### 4.3.7 Sweden

In 1999, the Swedish government passed the Act on Compensation to Sterilized Persons in Certain Cases. The law provided compensation for persons who had been sterilised between 1936 and 1976 pursuant to a eugenics policy under which between 20,000 and 33,000 people were sterilised. The policy 'aimed at stopping the spread of hereditary disease and at preventing people, considered unfit to become parents, from procreating'. The policy targeted 'vagrants', and 'people with other "deviant" behaviours were sterilised as well: Roma, prisoners, people with ID and women who had sought to terminate their pregnancies'.<sup>124</sup>

Compensation was announced following a Government inquiry recommending a redress scheme<sup>125</sup>, which had been prompted by 'media scandalisation of the historical sterilisations in 1997'.<sup>126</sup> The government inquiry that recommended the redress scheme also included a historical mapping and evaluation of 'ethical principles to avoid similar practices in the future' as well as the publishing of 'an exhaustive historical study'. However, the mapping, evaluation and historical study were 'disconnected from the design and implementation of the compensation scheme'.<sup>127</sup>

Compensation was available to

all direct victims who were alive and could prove that they had been involuntarily sterilised under the 1934 or 1941 sterilisation laws, or before 1976 without legal ground, were entitled to financial compensation. The sterilisation was considered involuntary if the applicant: (i) was a legal minor or legally incapable at the time of sterilisation; (ii) had not signed the sterilisation application or consented to it; (iii) was institutionalised at the time of sterilisation; (iv) was sterilised on the grounds of being mentally ill, feeble-minded or epileptic; (v) was sterilised as a requirement by the authorities to enter into marriage, to have an abortion, or to receive other public support and (vi) consented to sterilisation because of general negligence or inappropriate influence of public authorities.<sup>128</sup>

The legislation aimed to lower the burden on claimants by asking them to complete a form 'indicating where and when they were sterilised to authorise administrative officials to find their medical journals. The journals were then used as the main evidence'.<sup>129</sup> Redress involved a one-time payment of SEK175,000. Compensation was only available to 'direct victims and could not be transferred to successors,

spouses, children or other possible indirect victims'.<sup>130</sup> The payments were *ex gratia* (a voluntary payment that is not legally required such as by reason of liability) and the scheme ran from 1999 until 2002. Out of a total of 2042 claims, 1591 people received compensation.<sup>131</sup> Despite the relatively simple and informal evidence requirements, this is a low number.<sup>132</sup> A variety of reasons have been proposed for the low number of applications:

Why did so few victims apply for compensation? The Sterilisation Compensation Committee posited that reasons for the low number of applications could lie in the death of the direct victims, old age and illness, emotional distress and trauma, lack of access to information about the compensation scheme (despite nation-wide information campaigns) or lack of knowledge concerning how to file compensation claims. Moreover, the prevalence of involuntary interventions might have been overestimated in the first place. Other possible reasons for the low number are distrust in public authorities, manifested in fear of the official nature of the procedure or of sharing personal details with the authorities, and feelings of humiliation. Applying for compensation from the state was an experience of recognition and relief for some victims, but one of pain and shame for others.<sup>133</sup>

The scheme has been criticised for avoiding questions of state responsibility. The scheme was established 'on the basis of political goodwill rather than legal obligation' and the Government's inquiry preceding the compensation 'did not engage with questions of rights or state responsibility'.<sup>134</sup> Furthermore, the *ex gratia* status of the compensation 'has given the Government a possibility to redress victims without holding the state liable' thus circumventing 'the crucial question of state responsibility'. The avoidance of addressing state responsibility 'raises questions concerning victim recognition, which is both symbolically and materially important for access to remedies'.<sup>135</sup>

The 2018 Act on State Compensation to People who Have Obtained Legal Gender Recognition under Certain Circumstances provides compensation to transgender individuals who underwent surgery between 1 July 1972 and 30 June 2013 involving sterilisation or other procedures which rendered them infertile.<sup>136</sup> Between 1972 and 2013, Swedish legislation for gender recognition 'preconditioned change of legally registered gender on the applicant being sterilised or otherwise infertile'.<sup>137</sup> Around 1000 people registered their gender under the legislation.<sup>138</sup> This was the first law in the world to provide compensation to transgender people for gender recognition-related sterilisation.<sup>139</sup> Transgender civil society groups were involved in development of the scheme, particularly in contrast to lack of involvement of victims of historical sterilisation schemes in Sweden.<sup>140</sup>

The scheme was administered by Kammarkollegiet (Legal, Financial, and Administrative Services Agency).<sup>141</sup> The scheme provided *ex gratia* payments of SEK225,000 and accepted applications for two years. During this period, 530 applications out of a total of 573 applications were approved, which is considered 'relatively high', particularly 'in comparison to the victims of historical sterilisation practices, a group of which only a small minority of the victims applied for and accessed compensation'.<sup>142</sup>

The payments were *ex gratia* and aimed to compensate for pain and suffering.<sup>143</sup> Therefore, the scheme did not recognise public liability such that '[t]he 2018 Compensation Act consequently contains elements of redress without recognising state responsibility for violation of rights'.<sup>144</sup>

Trans civil society organisations also identified some limitations with the scheme, 'express[ing] a wish for a compensation scheme which would provide a higher amount and would be more inclusive, along with a public apology'.<sup>145</sup> The limited recognition of harm was also identified as a shortcoming. The legislation only narrowly recognised 'invasiveness of the surgical procedures and the violation of involuntary loss of reproductive capacity for the trans people concerned', and did not additionally acknowledge 'harm endured by partners', 'symbolic and collective harm of the trans community' and harm to victims who were 'symbolically branded as unfit for reproduction'. Moreover, 'the wish from the Swedish trans civil society for a public apology remains unmet'.<sup>146</sup>

#### 4.3.8 Switzerland

In 2004, the Swiss Government agreed to pay SFr5,000 to surviving victims of forced sterilisation (around 100 people).<sup>147</sup> In Switzerland, the regulation of sterilisation differed between cantons. Only Vaud had legislation on sterilisation (1928-1985), aimed at 'preventing certain people from having 'degenerate' progeny, prejudicial to the existing order'. In other jurisdictions, sterilisation was regulated through 'local guidelines or agreements between local authorities and doctors'.<sup>148</sup> Victims of sterilisation were 'mainly handicapped or mentally disabled women who were sterilised or forced to have abortions under the threat of being institutionalised', as well as some 'women from poor or deprived social backgrounds'.<sup>149</sup> The amount of compensation has been criticised by campaigners as 'paltry' and 'well below original proposals of SFr80,000'.<sup>150</sup>

In April 2013, the Swiss Minister of Justice Simonetta Sommaruga apologised to victims of 'compulsory social measures' that were in place until the 1980s. Pursuant to these measures, 'so-called "discarded children" ... were taken from their families as part of a harsh foster care system sanctioned by the state, which evolved from a rural custom of taking on poor children as servants and labourers'<sup>151</sup> (also referred to as "Verdingkinder" (slave children) practice<sup>152</sup>). Some girls were subjected to sterilisation as part of these measures.<sup>153</sup> A memorial event was held and attended by 700 people who had experienced forced welfare measures.<sup>154</sup> Following the apology in 2013, the Government created a Round Table 'bringing together all parties implicated in the practices of the past, including representatives of the churches and the Swiss Farmer's Union'.<sup>155</sup> In 2014, the Round Table released its report, recommending compensation measures, including an immediate one-off emergency payment.<sup>156</sup>

Soon after, funds began 'being distributed via the humanitarian foundation of the Swiss Broadcasting Corporation (SBC), Swiss Solidarity'.<sup>157</sup> The Government made clear that the fund was 'not financial compensation', but rather a 'gesture of solidarity' for individuals to turn to 'if they are in financial difficulty'.<sup>158</sup> The fund and its one-off payments were seen as a temporary measure until a compensation

scheme could be established.<sup>159</sup> In 2016, the Swiss Parliament approved a one-off payment of SFr300 million for a hardship fund.<sup>160</sup> The scheme operated 2016-2018.<sup>161</sup> Take-up was much lower than the Federal office of justice initially expected, however a representative claimed the office had 'tried everything in their power to contact people, sending out more than 10,000 letters to various organisations and care homes'. The representative rejected claims 'some people found the administration work daunting or were afraid of the authorities' and noted 'the ministry had received some messages that people were not interested because they did not want to revisit their painful histories'.<sup>162</sup>

## 4.4 North America

### 4.4.1 Canada

#### **Alberta**

In 1996, Leilani Muir was awarded \$740,000 in damages following a successful lawsuit against the Alberta provincial government in relation to her sterilisation as a 14-year-old at a government-operated institution.<sup>163</sup> The amount was 'split roughly half-and-half for unlawful confinement and unlawful sterilization'.<sup>164</sup> Muir was sterilised pursuant to the *Sexual Sterilization Act (1928)*, which allowed sterilisation of people institutionalised under the *Mental Diseases Act* and *Mental Defectives Act* who were recommended for release. The *Sexual Sterilization Act (1928)* was in force until 1972 and it is estimated around 2,800 people were sterilised during the period of the legislation.<sup>165</sup> The sterilisation was considered unlawful because the legislation only permitted sterilisation to prevent transmission of an inheritable disease, and despite WWII eugenics assertions about the inheritability of disability falling into disfavour, sterilisation under the legislation continued.<sup>166</sup> Although the litigation was successful, it risked failing on the basis of the law related to limitation periods:

Ms. Muir was only successful because, in admitting liability for the battery and proceeding to trial on her additional claims, the province chose not to invoke the limitation defence that would have been a complete bar to her claim. Although she became aware of her sterilization during her first marriage, she did not initiate her claim until many years later. By this time, her claim would have been time-barred, since Alberta's limitations statute provided that she had to initiate her claim within two years of becoming an adult or discovering her wrongful sterilization. The Court found the province's treatment of Ms. Muir to have been "unlawful, offensive and outrageous," but declined to award punitive damages, in part because the government did not invoke the limitation defence. The Court stated that "[a]s a matter of public policy, this and other governments should be encouraged to recognize historical wrongs and to make fair amends for them. They should not be punished for doing so."<sup>167</sup>

More litigation followed in relation to sterilisations under the *Sexual Sterilization Act (1928)*, with a settlement of \$48 million for 500 claimants in 1998. This settlement involved establishing a Settlement Panel that could provide two levels of compensation: payments of up to \$150,000 for 'claims of sterilisation and other

matters relating to confinement' and a further \$150,000 if 'the individual's life was severely impacted'.<sup>168</sup> This was then followed by a further settlement of \$82 million in 1999 for a further 247 claimants.<sup>169</sup> The 1999 settlement included an 'expression of regret' in which the Alberta Government 'expresse[d] its profound regret to those who have suffered as a result of being sterilized'.<sup>170</sup>

The Government also held Alberta Eugenics Awareness Week events in 2011, 2012, and 2013.<sup>171</sup> The inaugural awareness week included an art exhibition, a screening of a documentary on Leilani Muir, public lectures, discussion groups, and performances.<sup>172</sup> During that week, the Mayor of Edmonton declared 23 October 'Remembering the History of Eugenics in Alberta Day'.<sup>173</sup>

In December 2018, a class action was commenced against the Alberta Government on behalf of Indigenous women subjected to forced sterilisations in that state. The action seeks \$500 million in damages and \$50 million in punitive damages. It is alleged the Government 'had specific and complete knowledge of widespread coerced sterilizations perpetrated upon Indigenous women' but 'turned a blind eye to this conduct, was negligent, breached its fiduciary duties and violated the *Canadian Charter of Rights and Freedoms*'.<sup>174</sup> The litigation is ongoing.<sup>175</sup>

### **British Columbia**

In 2005, 9 women were awarded a settlement of \$450,000,<sup>176</sup> consisting of individual awards between \$25,000 and \$100,000. The settlement related to a claim brought by the women against the Government of British Columbia. The women had been forcibly sterilised at Riverview psychiatric hospital between 1940 and 1968 under the *Sexual Sterilization Act 1933*.<sup>177</sup> The legislation permitted sterilisation of any institutionalised person who 'if discharged ... without being subjected to an operation for sexual sterilization would be likely to beget or bear children who by reason of inheritance would have a tendency to serious mental disease or mental deficiency'.<sup>178</sup> The women claimed unlawful sterilisation. Hospital notes showed that the women were sterilised because of: 'promiscuity, amoral behaviour and unfitness for motherhood based on low intelligence'.<sup>179</sup> The 9 women were described as 'elderly', and two of them died during the litigation.<sup>180</sup>

In 2018, a proposed class action was filed against the Government of British Columbia in relation to Indigenous women subjected to coerced sterilisations or abortions between 1974 and the present.<sup>181</sup>

### **Manitoba**

In 2019, two Indigenous women filed a proposed class action in relation to being sterilised against their will at Manitoba hospitals.<sup>182</sup>

### **Quebec**

A class action seeking compensatory and punitive damages is underway in relation to the involuntary sterilisation of Indigenous women in a small remote town in northern Quebec. The lawsuit is being brought against doctors who performed

sterilisations and a community health agency and a hospital which are accused 'of systemic prejudice against Atikamekw patients, which they say enabled the doctors to operate without first obtaining consent'.<sup>183</sup>

### **Saskatchewan**

In July 2017, the Saskatoon Health Region apologised publicly for past coerced sterilisations.<sup>184</sup> The apology followed an external review which revealed the widespread sterilisation of Indigenous women in Saskatchewan via tubal ligation.<sup>185</sup>

In 2017, 60 Indigenous women filed a class action law suit against the Saskatchewan government, provincial hospitals, several doctors, and national government for coerced sterilisation. Each plaintiff was claiming \$7 million CAD in damages.<sup>186</sup> Sterilisations took place over the preceding 30 years and involved coercion by medical staff:

The women allege their fallopian tubes were tied without their consent, or that they were pressured into undergoing the procedure by doctors and told that it was reversible. Some were pushed into signing consent forms while they were in active labour or on operating tables. These women were told that they 'could not leave until their tubes were tied, cut or cauterized,' or that 'they would not see their baby until they agreed'.<sup>187</sup>

Sterilisation in such circumstances is framed in the summary of claims as 'an abuse of power and an example of racial profiling. It suggests a violation of multiple charter rights, cruel treatment, sexual battery, negligence and misrepresentation'.<sup>188</sup> The class action is ongoing and recent media reports have identified one claimant feeling 'abandoned' by the lack of information and communication on the progress of the claim.<sup>189</sup>

#### **1.1.1 United States of America**

##### **California**

In 2003, Californian Governor Gray Davis made a public apology for California's eugenics sterilisation laws, describing it as 'a sad and regrettable chapter in the state's history'.<sup>190</sup> Three eugenics laws were introduced between 1909 and 1917, with the latter two laws expanding the scope of who could be lawfully sterilised.<sup>191</sup> The laws were 'significant largely for their overt language, effectively applying to anyone [...] deemed abnormal'.<sup>192</sup> They enabled sterilisation of institutionalised individuals with a 'mental disease which may have been inherited' and was 'likely to be transmitted to descendants'.<sup>193</sup> Around 20,000 people were sterilised prior to 1964, with around half of these being male and half female.<sup>194</sup> Individuals who were sterilised were 'disproportionately disabled, Black, Indigenous, Latinx, and Asian. Many were institutionalized primarily because they were poor'.<sup>195</sup>

Women in Californian state prisons who were also involuntarily sterilised, with 144 known cases between 2005 and 2013.<sup>196</sup> A state audit found women had been sterilised without adherence to required protocol and 'deficiencies in the informed

consent process' had occurred in 39 cases.<sup>197</sup> As a response, Senate Bill 1135 (Chapter 558 of the Statutes of 2014) was signed into law in 2014, prohibiting sterilisations in state prisons for birth control purposes. Activist organisations such as Back to Basics, 'an organization tackling social problems through community empowerment and education', were central to achieving compensation for women subjected to prison sterilisations.<sup>198</sup>

Following years of advocacy by California Latinas for Reproductive Justice and other groups,<sup>199</sup> in 2022 the Californian Government introduced the Forced or Involuntary Sterilization Compensation Program pursuant to ss 4514 & 5328 of the Californian Welfare and Institutions Code. The program provided compensation for individuals sterilised between 1909 and 1979 in specified disability institutional settings, and who were alive as of 1 July 2021.<sup>200</sup> The Program also applied to women who were sterilised while in state prisons<sup>201</sup> whose sterilisation 'was not medically necessary, it happened without demonstrated informed consent, or it was performed for the purposes of birth control.'<sup>202</sup>

The Forced or Involuntary Sterilization Compensation Program was open from 1 January 2022 to 31 December 2023 and was administered by the California Victim Compensation Board. There was \$4 million allocated for the program and individuals who qualified received an initial compensation payment of \$15,000. Senate Bill 143, signed by the Governor on September 13, 2023, provided for a second and final payment of \$20,000 which claimants would receive by 1 October 2024.<sup>203</sup> The Board has engaged in outreach to promote the Program, including providing information in both English and Spanish to nursing facilities, libraries, and other community organisations; and television, radio, print media, and online advertising.<sup>204</sup>

A large proportion of claims have been unsuccessful.<sup>205</sup> Of the 320 applications received in its first year of operation, the Board denied 103 and approved only 51,<sup>206</sup> with State officials noting challenges in verifying applications due to lost or destroyed documents.<sup>207</sup> Jennifer James, Associate Professor at the University of California, San Francisco, noted that not all people were aware they had been sterilised. This is problematic because 'California has reached out to notify people who may have been sterilized—but because so many of those people never knew what happened to them, that letter from the state may have been the first time they learned the truth.'<sup>208</sup> Moreover, the requirement to tell one's story places 'a considerable burden [...] on individuals who have been through a trauma at the hands of the state, [and] may not trust the state because of that, many of whom have limited literacy, and many of whom have limited access to technology.'<sup>209</sup> James notes that 'The program wasn't designed in a way that was centered on the fact that these are survivors of trauma [...] Even just the language being very legalistic: "You are denied; you can appeal." It sounds quite like the things that people might have faced when they went to trial and lost, and ended up in prison.'<sup>210</sup>

Many women have been denied compensation, including women who underwent surgery such as endometrial ablation surgery, which reduces the possibility of being able to conceive or carry a child to term but is not classified as sterilisation, as well as women who agreed to sterilisation or other surgeries but were not given other

options or sufficient information.<sup>211</sup> Applications have also been denied due to lack of documentation.<sup>212</sup> Some individuals have also not come forward due to shame.<sup>213</sup> The low compensation amount has also been criticised for failing to recognise the significant impacts of sterilisation.<sup>214</sup>

The Californian Government also designated \$1 million for 'markers or plaques at designated sites that acknowledge the wrongful sterilization of thousands of vulnerable people'.<sup>215</sup> In its 2022 annual report, the Board noted Department of State Hospitals (DSH), the Department of Developmental Services (DDS), and Department of Corrections and Rehabilitation (CDCR) had 'met with stakeholders and surveyed survivors and advocates to receive input on the design and placement of the markers' and 'will move forward with the procurement and installation of the markers in 2023'.<sup>216</sup>

Between 1968 and 1974, more than 200 women who delivered babies at Los Angeles (LA) County-USC Medical Center were involuntarily sterilised. Many of the women were from racialised minority groups including women who migrated from Mexico.<sup>217</sup> A 1978 class action lawsuit filed in 1976 by ten Mexican American women who had been sterilised at the hospital was unsuccessful because the 'sterilizations were the result of miscommunication and language barriers between the patients and the doctors'. However, an earlier stage of the litigation resulted in injunctive relief that resulted in the California Department of Health implementing 'new sterilization procedures, including bilingual informational materials that explained the process and consequences of sterilization'.<sup>218</sup>

In January 2023, Wendy Carrillo, a Democratic member of the California assembly who was involved in initial approval of the Forced or Involuntary Sterilization Compensation Program (discussed earlier), tried to have the Program extended to include individuals sterilised at the Los Angeles (LA) County-USC Medical Center.<sup>219</sup> However, this was not successful. In 2018, the LA County Board of Supervisors apologised for the sterilisations and announced the commissioning of a public artwork to serve as a reminder of the injustice and ensure it was not repeated. The artwork, by Phung Huynh and titled 'Sobrevivir' (Spanish for 'survive'), was unveiled in July 2022. Standing in the hospital's courtyard, it is 'made of steel to "convey the strength" of the survivors and features flowers representing fertility and offerings. It features prayers of the survivors and a set of hands symbolic of the Virgen de Guadalupe'.<sup>220</sup>

## **Indiana**

In 2007, the Indiana Health Commissioner Dr Judith Monroe apologised for the state's role in sterilisation under the 1907 Indiana Eugenics Law.<sup>221</sup> Approximately 2,500 people were sterilised between 1907 and 1974, with around half of these being male and half female.<sup>222</sup> The Law enabled individuals to be sterilised who were in institutions 'entrusted with the care of confirmed criminals, idiots, rapists and imbeciles' and whose 'procreation' was deemed 'inadvisable and [where] there is no probability of improvement of [their] mental condition'.<sup>223</sup> This was the first eugenics legislation to be enacted worldwide. The apology also acknowledged Indiana's role in the national eugenics movement.<sup>224</sup> The apology was accompanied by the



unveiling of a historic marker on the East Lawn of the Indiana State Library. The unveiling was done by the Commissioner and Jamie Renae Coleman, 'one of the last people in Indiana to be sterilized'.<sup>225</sup> Text on the marker states:

By late 1800s, Indiana authorities believed criminality, mental problems, and pauperism were hereditary. Various laws were enacted based on this belief. In 1907, Governor J. Frank Hanly approved first state eugenics law making sterilization mandatory for certain individuals in state custody. Sterilizations halted 1909 by Governor Thomas R. Marshall.

Indiana Supreme Court ruled 1907 law unconstitutional 1921, citing denial of due process under Fourteenth Amendment. 1927 law reinstated sterilization, adding court appeals. Approximately 2,500 total in state custody were sterilized. Governor Otis R. Bowen approved repeal of all sterilization laws 1974; by 1977, related restrictive marriage laws repealed.<sup>226</sup>

To coincide with the apology, the Indiana State Library held an exhibition 'Fit to Breed? The History and Legacy of Indiana Eugenics, 1907-2007'. The purpose of the exhibition was 'to denote and contextualize a significant slice of history in an effort to cultivate mindfulness of the past, awareness of the present, and knowledge for the future'.<sup>227</sup>

### **North Carolina**

In 2002, North Carolina Governor Mike Easley apologised for North Carolina's role in sterilisation from 1929 to 1974.<sup>228</sup> The Eugenics Board of North Carolina was in operation from 1933 to 1974 and enabled the sterilisation of an estimated 7,600 people, 85% of whom were women.<sup>229</sup> The sterilisation program often used coercion and flawed intelligence testing, but by the 1960s it targeted primarily young black women.<sup>230</sup>

Also in 2002, the Governor charged a committee with exploring the history of the State's eugenics program, 'ensuring that it was never repeated, and making recommendations on how to assist program survivors'.<sup>231</sup> The report recommended health care and educational benefits for survivors and public education.<sup>232</sup> In 2008, a House Select Committee on Compensation for Victims of the Eugenics Sterilization Program was established to study a compensation proposal.<sup>233</sup> The Committee recommended access to monetary compensation of \$20,000, mental health counselling, a historical marker, educational materials, oral history collection, and ethics training module to educate government employees on ethics and human rights.<sup>234</sup> In 2010, Governor Beverly Perdue created the North Carolina Justice for Sterilization Victims Foundation to help identify victims.<sup>235</sup> The Foundation 'functions as a clearinghouse to assist victims of the former NC Eugenics Board program and thereby serves as the primary point of contact for victims, potential victims and the general public who are seeking guidance about North Carolina's former sterilization laws and program'.<sup>236</sup> There was some progress on the public education and memorialisation in three respects. A commemorative marker on a street in Raleigh (the capital city of North Carolina) states: 'Eugenics Board: State action led to the sterilization by choice or coercion of over 7,600 people, 1933–

1973'.<sup>237</sup> North Carolina's eugenics history 'was incorporated in high school curricula'. A travelling exhibit on North Carolina's eugenics history was launched in 2007 but 'was later stored in the basement of a state office when funding declined'.<sup>238</sup>

In 2011, the Governor's Task Force to Determine the Method of Compensation for Victims of North Carolina's Eugenics Board was created and tasked with recommending possible methods or forms of compensation and evaluating recommendations from previous relevant commissions.<sup>239</sup> The Final Report of the Task Force recommended lump sum financial damages of \$50,000 and mental health services to each living victim, and funding for public education in the form of 'a traveling N.C. Eugenics Exhibit, permanent exhibit memorializing all Eugenics Board program victims and an ongoing oral history project that will tell the full story of eugenics in North Carolina'.<sup>240</sup> The public education component 'is aimed at educating future generations about the horrors associated with North Carolina's eugenics past in an effort to prevent future horrors and abuses'.<sup>241</sup>

In 2013, the North Carolina state government established a compensation scheme for monetary payments to victim-survivors of Eugenics Board sterilisation.<sup>242</sup> Individuals had to apply by 30 June 2014.<sup>243</sup> The legislation provided for capped liability at \$10 million USD, which meant that 'no matter how many people are ultimately able to satisfy the requirements for compensation, the [total] liability will never go above that amount. Thus, the more people who are deemed eligible the smaller the payout to each claimant'.<sup>244</sup> The Act establishing the compensation scheme limited liability of the state to compensation paid under the scheme.<sup>245</sup> First payments ended up being approximately \$20,000 each, with second payments of \$15,000.<sup>246</sup>

Less than '800 claims were filed by the deadline and only 220 of those had been approved as of January 2015'.<sup>247</sup> A common reason given for many applicants' ineligibility was that not all sterilisations in North Carolina during the relevant time period occurred through the Eugenics Board, as 'the Eugenics Board wasn't the only body performing sterilizations. Judges and social service workers at the county level were citing state law in the name of eugenics as well'.<sup>248</sup> Some of these individuals also did not have documentation of their sterilisations.<sup>249</sup> Moreover, some heirs of eugenics victims challenged the requirement for a 'living victim'.<sup>250</sup> The focus on government as wrongdoer also left a problematic ineligibility gap for people whose sterilisation occurred beyond the state, for example in cases where doctors acted independently.<sup>251</sup> Absence of a comprehensive study to construct a full story of how sterilisation operated is notable in limiting shared knowledge to prevent these injustices being repeated.<sup>252</sup> Sarah Brightman et al. criticise the lack of 'victim-centredness' of the program thus:

The state shifted towards victim-centredness with some initiatives but more generally, the state placed sterilization victims at the margins during critical stages of the reparation discussions. At several key points, the needs and preferences of victims tended to be overlooked because the state utilized a top-down approach which tended to deny moral agency to victims. We suggest that the lengthy reparation process and its final outcome may have

worked to create further distrust as well as additional layers of trauma for victims.<sup>253</sup>

They also argue the approach to defining victims was problematic:

Despite multiple strategies designed to reach victims and encourage them to engage with the Foundation established by the state, few victims appeared to do so. Relatedly, the process of verifying victims reflected the power of the state and overlooked the meaning of victimhood from the perspective of the victims. The state established criteria for victimhood and determined that 'living victims' of sterilization included only those individuals whom the state had verified from its historical records.<sup>254</sup>

Brightman et al. also identify power imbalances in development of the program, such as victims and their families not having time and travel reimbursed and there being no victims on the panel itself.<sup>255</sup> They ultimately conclude the program 'failed to fully deliver a reparative process characterized by victim-centredness'.<sup>256</sup>

The Office of Justice for Sterilization Victims was purposed with planning and implementing an outreach program 'to attempt to notify individuals who may be possible qualified recipients' and which could, at the request of a claimant or their lawyer, assist an individual to determine whether they qualify for compensation and assist with the application process.<sup>257</sup>

### **Oregon**

In 2002, Oregon's Governor John Kitzhaber made a public apology for people sterilised under the State's eugenics legislation.<sup>258</sup> The apology followed more than a year of lobbying by advocacy organisations 'including those representing people with developmental disabilities and mental illnesses'.<sup>259</sup> The eugenics legislation 'permitted the sterilization of persons, male or female, who are feeble-minded, insane, epileptic, habitual criminals, moral degenerates and sexual perverts, who are, or who are likely to become, a menace to society'.<sup>260</sup> Approximately 2,300 people were sterilised between 1923 and 1983, 65% of whom were women.<sup>261</sup>

### **South Carolina**

In 2003, the South Carolina Governor Jim Hodges made a public apology for individuals sterilised under the Sexual Sterilization Law that operated between 1935 and 1985.<sup>262</sup> The legislation allowed sterilisation of an individual in a mental health or penal institution 'who is afflicted with any hereditary form of insanity that is recurrent, idiocy, imbecility, feeble-minded[ness] or epilepsy' where that individual 'would be the probable parent of socially inadequate offspring' and 'the welfare of such inmate and of society will be promoted by such sterilization'.<sup>263</sup> Approximately 277 people were sterilised between 1938 and 1963 and around 92% were women.<sup>264</sup>

### **Vermont**

In 2021, the Vermont Government passed a resolution apologising 'to Vermonters, their families and descendants who were harmed by state-sanctioned eugenics

policies and practices that led to sterilizations'.<sup>265</sup> Sterilisation required two physicians to attest that the person was an 'idiot, imbecile, feeble-minded or insane' person who was 'likely to beget similarly afflicted children', that 'both the patient and society would benefit from the sterilization', and that 'the operation posed no significant mental or physical risk for the patient'.<sup>266</sup> The law targeted people 'residing in state institutions', but also 'applied to residents of the state also, not just those institutionalized'.<sup>267</sup> Of 253 sterilisations performed in Vermont, around two thirds were on women.<sup>268</sup>

In 2022, the Vermont General Assembly passed legislation to create a truth and reconciliation commission on institutional, structural, and systemic discrimination.<sup>269</sup> The Commission is 'examin[ing] and begin[nin]g the process of dismantling institutional, structural, and systemic discrimination in Vermont, both past and present, that has been caused or permitted by State laws and policies', as well as establishing a public record of that discrimination and 'identify[ing] potential actions that can be taken by the State to repair the damage' caused by that discrimination and 'prevent the recurrence of such discrimination in the future'.<sup>270</sup> The Commission is focusing on experiences of specific marginalised populations and communities in Vermont, including 'individuals with a physical, psychiatric, or mental condition or disability' and their families.<sup>271</sup> By June 2026, the Commission will produce a final report with recommendations for eliminating ongoing instances of institutional, structural, and systemic discrimination and addressing harm caused by that discrimination.<sup>272</sup> Marginalised populations and communities have been consulted in the design of the Commission<sup>273</sup> and a series of committees represent the specified marginalised populations and communities.<sup>274</sup>

## **Virginia**

In 2002, Virginia's Governor Mark Warner apologised to individuals sterilised under the 1924 Virginia Eugenic Sterilization Act.<sup>275</sup> The apology coincided with the 75<sup>th</sup> anniversary of the US Supreme Court decision of *Buck v Bell* which upheld the legislation.<sup>276</sup> It was the first apology by a US state governor for state-authorized sterilisation.<sup>277</sup> The sterilisation legislation provided 'individuals confined to state institutions afflicted with hereditary forms of insanity that are recurrent, idiocy, imbecility, feeble-mindedness or epilepsy could be sterilized'.<sup>278</sup> Around 7300 people were sterilised between 1924 and 1979; 65% of them women.<sup>279</sup>

In 2015, an Appropriation Act was passed to provide compensation to people who were sterilised under the 1924 Virginia Eugenic Sterilization Act. The Virginia Victims of Eugenic Sterilization Compensation Program provides compensation to people who were involuntarily sterilised pursuant to the 1924 Virginia Eugenic Sterilization Act. In order to be eligible, individuals must also have been alive as of February 1, 2015 and sterilised while a patient at either Eastern State Hospital, Western State Hospital, Central State Hospital, Southwestern State Hospital, or the Central Virginia Training Center (formerly known as the State Colony for Epileptics and Feeble-Minded; now closed).<sup>280</sup> The original amount of compensation proposed was \$50,000, but was reduced to a \$25,000 payment due to fiscal conservatives.<sup>281</sup> The application process involves a written form and attached relevant documentation verifying identity and the sterilisation procedure.<sup>282</sup> The program is

administered by the Virginia Department of Behavioural Health and Development Services.

## 4.5 South and Central America

### 1.1.2 Peru

Two hundred and seventy-two thousand and twenty eight women were sterilised between 1995 and 2001 as part of then-president Alberto Fujimori's National Program for Reproductive Health and Family Planning (PNSRPF).<sup>283</sup> In July 2002, the Peruvian Health Minister Fernando Carbone apologised for sterilisation of Indigenous women in Peru. The apology followed publication of a report detailing the Ministry's role in the forced sterilisation program.<sup>284</sup>

Subsequent to the apology the government has taken steps towards reparations. In 2015, President Pedro Pablo Kuczynski's government created the Registry of Victims of Forced Sterilizations (REVIESFO), which assists with investigating claims and channelling requests for free legal assistance, psychological support, and integrated healthcare.<sup>285</sup> Then, in February 2021, President Sagasti's government announced an amendment to the 2005 Integral Reparations Plan (PIR). The PIR provides the framework for reparations for victims of the armed conflict between 1980 and 2000. The amendment expands who constitutes a victim and individual beneficiary of economic reparations from a narrow focus on individuals subjected to acts of sexual assault to victims of 'sexual violence in the broadest sense'. This reform will allow incorporation of people who were affected by forced sterilisation.<sup>286</sup> This was significant because:

The sterilization campaign against a majority of Indigenous women took place during the internal armed conflict period of Peru. Nevertheless, due to their unique victim identity of neither being a state agent nor a subversive leftist group—who were the central actors of the armed conflict—Indigenous victims of coercive sterilizations were excluded in truth-seeking, reparations programs from the Integral Plan of Reparations, and criminal accountability efforts.<sup>287</sup>

The amendment to extend reparations to involuntary sterilisation has been criticised on numerous grounds. It links access to reparations to registration with REVIESFO and not everyone who has been sterilised is registered with them due to the need for identity and medical documentation.<sup>288</sup> Further, despite the legislative reform, victims were having their claims for reparations for sterilisation denied, thus revealing 'differences between legislative requirements and the actual practice or implementation of the law'.<sup>289</sup> Moreover, Peru's approach has been criticised for not recognising the colonial context and broader networks of harm resulting from sterilisation.<sup>290</sup>

In addition to government initiatives, there are also community-led symbolic reparations. The Quipu Project is 'a virtual space of memory that holds audio-recorded testimonies of 135 victims and victims' families of forced sterilization'.<sup>291</sup> However, forms of digital memorialisation such as Quipu have been identified as difficult for Indigenous women to participate in.<sup>292</sup> There has also been temporary

physical memorialisation initiatives, including short term rallies or exhibitions.<sup>293</sup> Absence of a permanent space of memory in relation to sterilisation is seen as a further layer of injustice compounding the lack of compensation.<sup>294</sup>

## 4.6 Non-government entities and eugenics

Some non-government entities have also recognised and apologised for their involvement in eugenics.

### 4.6.1 Charities, philanthropic organisations and churches

In 2020, Eric D. Isaacs, President of the Carnegie Institution for Science (USA) – a scientific research funding body – issued a ‘Statement on Eugenics Research’. Isaacs expressed his ‘sincere and profound apologies for this organization’s past involvement in [the] horrific pseudoscientific activities of eugenics research.’<sup>295</sup> He apologised for the Institution’s

previous willingness to empower researchers who sought to pervert scientific inquiry to justify their own racist and ableist prejudices. Our support of eugenics made us complicit in driving decades of brutal and unconscionable actions by governments in the United States and around the world.<sup>296</sup>

Isaacs expressed a commitment to take ‘real, substantive steps to dismantle the racism of our past and work together toward a more just, principled, and intellectually-honest future’.<sup>297</sup>

In 2020, Planned Parenthood North Central States (USA) released a statement on ‘denouncing problematic portions of the organization’s history with founder Margaret Sanger’. The statement specifically denounces ‘her ideology that certain people – specifically people of color, people with low incomes, and people with disabilities – should be prevented from having children’. The statement commits to ‘reexamining how we talk about Sanger in all of our materials and spaces and will be revamping how we present our history in all its forms. We are dedicated to working through the many layers of the issue so we can improve our services’.<sup>298</sup>

In 2022, MSI Australia (formerly Marie Stopes Australia) issued an apology to ‘First Nations people subjected to forced contraception, abortion and sterilisation related to institutional and systemic racism in Australia since invasion’.<sup>299</sup> In delivering the apology, Managing Director of MSI Australia, Jamal Hakim, stated:

As we move forward in a new era of healthcare, we need to acknowledge the wrongs of the past.

We are part of a sector that has benefitted from reproductive coercion and reproductive violence.

Forced and coerced sexual and reproductive procedures, including contraception, abortion and sterilisation have inflicted profound grief, suffering and loss.

We apologise for these reproductive injustices.

We apologise for especially for forced sexual and reproductive procedures on Aboriginal and Torres Strait Islander people with disability, and those who are LGBTQIA+.

For the pain, suffering, and hurt experienced by Aboriginal and Torres Strait Islander people, their families, and communities, we say sorry.

We must acknowledge the trauma that has been caused and prevent further re-traumatisation.

We commit to a future where the injustice of the past never, never happen again.

We must enable self-determination for all, to make decision over our own sexual and reproductive lives. This is one step of many to build community and create systemic change.

While we cannot undo the events of the past, we can embrace new solutions to enduring inquiries.

A future where all people can achieve bodily autonomy.<sup>300</sup>

In 2016, the United Methodist Church (USA) apologised for its role in supporting eugenics:

The United Methodist General Conference formally apologizes for Methodist leaders and Methodist bodies who in the past supported eugenics as sound science and sound theology. We lament the ways eugenics was used to justify the sterilization of persons deemed less worthy. We lament that Methodist support of eugenics policies was used to keep persons of different races from marrying and forming legally recognized families. We are especially grieved that the politics of eugenics led to the extermination of millions of people by the Nazi government and continues today as “ethnic cleansing” around the world. We urge United Methodist annual conferences to educate their members about eugenics and advocate for ethical uses of science.<sup>301</sup>

#### 4.6.2 Cultural Institutions

In September 2021, the American Museum of Natural History (USA) issued a ‘statement on eugenics’ to acknowledge its role in advancing eugenics in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. This statement coincided with the centenary of the Second International Eugenics Congress that was held at the museum. The statement acknowledges that ‘The pseudo-science of eugenics and the ways that it has been applied against vulnerable populations are antithetical to the values, mission, and ongoing work of this Museum’; it also ‘welcomes the opportunity to acknowledge, confront, and apologize for its role in the eugenics movement’.<sup>302</sup>

### 4.6.3 Professional Associations

Genetics and psychology professional associations have apologised for their involvement in eugenics.

In 2012, coinciding with the 65<sup>th</sup> anniversary of the Nuremberg Doctors' Trial, the German Medical Association 'made a long overdue apology for its participation in human rights violations and atrocities under the Nazi regime', which included sterilisation.<sup>303</sup> The apology follows a history of denial and disassociation in the German medical profession.<sup>304</sup> Moreover, prior to the apology 'the medical profession has generally failed to provide recognition and support for victims'.<sup>305</sup>

In 2023, the American Society for Human Genetics apologised for its role in eugenics, stating that it 'affirmatively seeks to reckon with, and sincerely apologizes for, its involvement in and silence on the misuse of human genetics research to justify and contribute to injustices in all forms'.<sup>306</sup> The Society apologised for 'participation of some ASHG founders, past presidents, and other leaders in promoting eugenic ideals that harmed people of minoritized groups' and for 'ASHG's reticence and silence at times when it could have publicly refuted the misuse of genetics to feed discrimination and racism'.<sup>307</sup> The society acknowledged 'genetics has been used to advance systemic harms against people of many marginalized communities, including those based on "race" and ancestry, religious affiliation, indigenous ancestry, LGBTQ+ identities, and ability'.<sup>308</sup> The apology followed a report detailing the Society's role in eugenics.<sup>309</sup>

In October 2021, the American Psychological Association adopted a resolution to apologise to people of colour for APA's role in 'promoting, perpetuating, and failing to challenge racism, racial discrimination and human hierarchy' in America.<sup>310</sup> The resolution recognises APA 'was established by White male leadership, many of whom contributed to scientific inquiry and methods that perpetuated systemic racial oppression, including promoting the ideas of early 20<sup>th</sup> century eugenics'. It specifically recognises eugenics was used to support sterilisation. It also recognises 'eugenicists focused on the measurement of intelligence, health, and capability, concepts which were adopted by the field of psychology and used systemically to create the ideology of White supremacy and harm communities of color'.<sup>311</sup>

### 4.6.4 Universities

In January 2021, University College London made a public apology for its involvement in the 'development, propagation and legitimisation of eugenics'.<sup>312</sup> The apology followed a 2020 report from an independent Inquiry into the History of Eugenics which was commissioned by UCL.<sup>313</sup> In the apology, UCL states it

acknowledges with deep regret that it played a fundamental role in the development, propagation and legitimisation of eugenics. [...] The legacies and consequences of eugenics still cause direct harm through the racism, antisemitism, ableism and other harmful stereotyping that they feed. These continue to impact on people's lives directly, driving discrimination and denying opportunity, access and representation. [...] UCL pledges to continue



to confront its history of eugenics and ongoing legacies openly and critically, and to ensure that UCL staff and students are enabled to do the same.<sup>314</sup>

Also following the report, UCL established the 'Eugenics Legacy Education Project'. This project aims to engage students and staff in learning about and addressing eugenics and its consequences.<sup>315</sup>

In 2019, the University of Vermont issued a statement apologising for the suffering caused by its part in the Eugenics Survey of Vermont (1925-1936). The statement recognises this as an 'unethical and regrettable part of our legacy' which 'contributed to the stereotyping, persecution, and in some cases, state-sponsored sterilization of members of certain groups (Sanctioned by law in the State of Vermont in 1931)'.<sup>316</sup> The statement proposes 'accessible educational initiatives' as a strategy for 'com[ing] to terms with the past and learn[ing] from these tragic lessons'.<sup>317</sup>

A 2020 exhibition called 'Into the Light: Living Histories of Oppression and Education in Ontario', held at the Guelph Civic Museum in Canada, explored 'local histories and ongoing legacies' of eugenics, in a context where the Macdonald Institute and the Ontario Agricultural College in Guelph had a leading role in eugenics research and pedagogy.<sup>318</sup> The exhibition and related online resources situate lived experiences of institutions at intersections of ableism, racism and settler colonialism.<sup>319</sup>

There are also transnational research projects on eugenics. Confront Eugenics is an online platform for anti-eugenic activities.<sup>320</sup> It includes online versions of museum exhibitions on eugenics, including 'We are Not Alone', an exhibition which opened in 2022 at the Royal College of Psychiatrists in September 2022. The exhibition 'reviews with critical openness the impact of eugenics across time and space. It reveals how eugenics has influenced programmes of human betterment in different national and international contexts since the 1880s'.<sup>321</sup> 'From Small Beginnings' is an international program 'bring[ing] together a global group of scholars, educators, artists, activists and community representatives to focus on how eugenics has been used and misused over the past century' and to 'critically assess how the intellectual inertia of eugenic habits of mind continue to globally influence political, social and medical ideas, in addition to practices and policies'.<sup>322</sup>

## **5. Individual and collective redress of forced child removal and adoption: A global survey**

This section provides an overview of key examples of initiatives worldwide for individual and collective redress for forced removal and adoption of children. Discussion is limited to initiatives focused on redressing the specific injustice to mothers, noting there are also initiatives directed towards redressing injustice to children who have been removed.

## 5.1 Europe

### 5.1.1 Belgium

In 2015 Flanders government and parliament made an official apology to victims of forced adoptions between the 1950s and 1980s.<sup>323</sup>

### 5.1.2 Republic of Ireland

The Irish government operates a redress scheme for survivors of Magdalene Laundries. Justice for Magdalene's Research explains these institutions as follows:

From the foundation of the Irish Free State in 1922 until 1996, at least 10,000 (see below) girls and women were imprisoned, forced to carry out unpaid labour and subjected to severe psychological and physical maltreatment in Ireland's Magdalene Institutions. These were carceral, punitive institutions that ran, commercial and for-profit businesses primarily laundries and needlework. After 1922, the Magdalene Laundries were operated by four religious orders (The Sisters of Mercy, The Sisters of Our Lady of Charity, the Sisters of Charity, and the Good Shepherd Sisters) in ten different locations around Ireland [...]. The last Magdalene Laundry ceased operating on 25<sup>th</sup> October, 1996. The women and girls who suffered in the Magdalene Laundries included those who were perceived to be 'promiscuous', unmarried mothers, the daughters of unmarried mothers, those who were considered a burden on their families or the State, those who had been sexually abused, or had grown up in the care of the Church and State. Confined for decades on end – and isolated from their families and society at large – many of these women became institutionalised over time and therefore became utterly dependent on the relevant convents and unfit to re-enter society unaided.<sup>324</sup>

In February 2013, the Inter-departmental Committee to Establish the Facts of State Involvement with the Magdalene Laundries published its final report ('McAleese Report').<sup>325</sup> In May 2013, the United Nations Rapporteur for Follow-up on Concluding Observations of the Committee Against Torture criticised the McAleese Report, stating: 'while the inquiry conducted by the McAleese Committee had a broad mandate "to establish the facts of State involvement with the Magdalene laundries," it lacked many elements of a prompt, independent and thorough investigation'.<sup>326</sup> Following the McAleese Report, Taoiseach Enda Kenny made an apology to Magdalene survivors<sup>327</sup> and requested Justice John Quirke to devise a redress scheme.<sup>328</sup> Justice Quirke's report recommended survivors have access to financial and health support, and a Dedicated Unit for ongoing support and assistance which would be charged with a range of duties including acquisition and maintenance of a 'any garden, museum or other form of memorial'.<sup>329</sup>

Subsequently, the Irish Government established the Magdalen Restorative Justice Ex-Gratia Scheme.<sup>330</sup> Survivors and advocates criticised administration of the Magdalen Scheme, including its failure to provide assistance and advocacy to women requiring decisionmaking support.<sup>331</sup> The Scheme was then subject to a 2017 Ombudsman report that found 'a scheme intended to bring healing and

reconciliation has, for some, served instead to cause further distress. This needs to be put right.<sup>332</sup>

The Irish government has also introduced redress for survivors of Mother and Baby Homes. These were 'institutions where unmarried women were sent to have their babies, often arriving destitute having been denied support by the child's father, and even their own family, simply for falling pregnant outside marriage'.<sup>333</sup> The Irish government commenced a major investigation into these institutions following discovery of hundreds of babies in unmarked graves near a Mother and Baby Home in Tuam.<sup>334</sup> In January 2021 the Mother and Baby Home Commission of Investigation released its report.<sup>335</sup> In March 2024, the Mother and Baby Institutions Payment Scheme opened.<sup>336</sup> The Mother and Baby Scheme consists of three payments: a general payment, a work-related payment, and health supports.<sup>337</sup> A woman is eligible for a general payment if she was in one of the specified institutions for at least one night', as a mother, for reasons relating to [her] pregnancy, or the birth or care of [her] child'.<sup>338</sup> A woman is eligible for a work-related payment if she was in one of the specified institutions for 90 days for same reasons as for a general payment.<sup>339</sup> Amount of general and work-related payments depend on time spent in an institution.<sup>340</sup> A woman is eligible for health supports if she spent 180 days or more in one of the specified institutions. Health supports consist of an enhanced medical card or, for people living outside Ireland, a health support payment of €3,000.<sup>341</sup>

In March 2022 the Irish Government 'approved high-level proposals for a National Centre for Research and Remembrance, to be located on the site of the former Magdalen Laundry on Sean McDermott Street in Dublin' to 'stand as a site of conscience to honour equally all those who were resident in Industrial Schools, Magdalen Laundries, Mother and Baby and County Home Institutions, Reformatories, and related institutions'.<sup>342</sup> The Irish Government has stated that: 'The National Centre campus will also make a valuable contribution to the social and economic development of Dublin's North East Inner City, through the provision of social housing units, further and higher educational facilities, and facilities for family and parenting supports'.<sup>343</sup>

### 5.1.3 Scotland

On 22 March 2023, the first minister, Nicola Sturgeon, apologised for the Scottish government's role in forced adoptions.<sup>344</sup>

### 5.1.4 Wales

On 25 April 2023, the Deputy Minister for Social Services, Julie Morgan, apologised on behalf of the Welsh Government for its role in forced adoption during 1950s through to 1970s.<sup>345</sup>

## 5.2 Oceania

### 5.2.1 Australia

On 13 February 2008, the Prime Minister, Kevin Rudd gave a National Apology for the Stolen Generations, stating:

That today we honour the Indigenous peoples of this land, the oldest continuing cultures in human history.

We reflect on their past mistreatment.

We reflect in particular on the mistreatment of those who were Stolen Generations—this blemished chapter in our nation’s history.

The time has now come for the nation to turn a new page in Australia’s history by righting the wrongs of the past and so moving forward with confidence to the future.

We apologise for the laws and policies of successive Parliaments and governments that have inflicted profound grief, suffering and loss on these our fellow Australians.

We apologise especially for the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country.

For the pain, suffering and hurt of these Stolen Generations, their descendants and for their families left behind, we say sorry.

To the mothers and the fathers, the brothers and the sisters, for the breaking up of families and communities, we say sorry.

And for the indignity and degradation thus inflicted on a proud people and a proud culture, we say sorry.<sup>346</sup>

On 21 March 2013 the Prime Minister of Australia gave an ‘unreserved apology’ to people affected by forced adoption. The Prime Minister, Julia Gillard, stated the Parliament ‘takes responsibility and apologises for the policies and practices that forced the separation of mothers from their babies, which created a lifelong legacy of pain and suffering’. She also stated:

We deplore the shameful practices that denied you, the mothers, your fundamental rights and responsibilities to love and care for your children. You were not legally or socially acknowledged as their mothers. And you were yourselves deprived of care and support.

To you, the mothers who were betrayed by a system that gave you no choice and subjected you to manipulation, mistreatment and malpractice, we apologise.

We say sorry to you, the mothers who were denied knowledge of your rights, which meant you could not provide informed consent. You were given false assurances. You were forced to endure the coercion and brutality of practices that were unethical, dishonest and in many cases illegal.

We know you have suffered enduring effects from these practices forced upon you by others. For the loss, the grief, the disempowerment, the stigmatisation and the guilt, we say sorry. [...]

To redress the shameful mistakes of the past, we are committed to ensuring that all those affected get the help they need, including access to specialist counselling services and support, the ability to find the truth in freely available records and assistance in reconnecting with lost family.

We resolve, as a nation, to do all in our power to make sure these practices are never repeated. In facing future challenges, we will remember the lessons of family separation. Our focus will be on protecting the fundamental rights of children and on the importance of the child's right to know and be cared for by his or her parents.<sup>347</sup>

In February 2024 the Victorian Government opened the Historical Forced Adoptions Redress Scheme.<sup>348</sup> The Scheme forms part of the government's response to the Inquiry Into Responses to Historical Forced Adoption in Victoria.<sup>349</sup> The Scheme applies to Mothers who were forcibly separated from their newborn babies prior to 1990, and who gave birth in Victoria or were a Victorian resident who gave birth interstate. The Scheme provides access to a one-off financial payment of \$30,000 AUD, counselling and psychological support, and apology processes.<sup>350</sup>

### 5.3 Churches

In 2011 the Australian Catholic Church apologised for removal of babies from mothers and forced adoption through its hospitals and women's homes.<sup>351</sup>

In 2015 the Belgian Bishops Conference apologised to victims of forced adoption in light of the role of the Belgian Catholic Church in selling around 30,000 children after having removed them non-consensually from their mothers.<sup>352</sup>

In 2016 the head of the Catholic church in England and Wales apologised to women for pressuring them to hand over their babies for adoption during the 1950s to 1970s.<sup>353</sup>

On 2021 Mother's Day the United Church of Canada apologised for 'participation in the separation of mothers from their children', recognising their 'role in pressured, coerced, or forced adoptions created a legacy of pain and suffering' and they 'helped create a culture of shame'. The Church committed:

- to examine and challenge all beliefs that promote the shaming of any person;

- to change our language and practices to better honour the dignity and worth of each human being;
- to support and celebrate all families that create safety, love, and opportunity for their members;
- to uphold the values of truth and to openness and encourage healing and reconciliation for everyone affected by adoption.<sup>354</sup>

On 2022 Mother’s Day, the Archdiocese of Vancouver apologised for their ‘participation in the separation of mothers and fathers from their children’, noting their ‘role in any pressured and coerced adoptions created a legacy of pain and suffering’ and they ‘contributed to a culture of shame, guilt and secrecy, which often led to pain and isolation’. It detailed steps it had taken ‘[i]n the hope for true healing’ including ‘training for Catholic counsellors, social workers and psychologists to increase their awareness of the complex issues related to adoption, reunion and healing’, awareness raising ‘about the suffering of mothers and adoptees through a series of articles and publications’ through the diocese’s media, and ‘[i]ncluded, for the first time, mothers who lost their children to forced adoption’ in the Archbishop’s Mother’s Day Blessing message and video. It also committed to promote the apology through its media and its parishes, offer trauma informed counselling support to mothers, and continued training of counsellors, social workers, priests, Church staff and other support positions in the Diocese.<sup>355</sup>

## **6. Key issues with design and operation of redress initiatives**

This section presents key issues with the design and operation of individual and collective redress initiatives, drawing on themes emerging from the analysis of national and supranational redress initiatives in Sections 3-5. Particular attention is paid to issues relevant to an Australian context (e.g., lack of eugenics legislation, settler colonial context), development of advocacy strategy (e.g., cross movement organising and situating redress in a broader structural context), and situating redress in a disability human rights framework (e.g., accessibility, equal access to justice). Exploration of these issues then provides a foundation for the recommendations in Section 7. Section 6.1 considers issues related to the focus and scope of redress initiatives. Section 6.2 discusses issues about procedural dimensions of redress initiatives. Section 6.3 presents issues relevant to individual and wider outcomes achieved by redress initiatives.

As analysis in this section demonstrates, none of the surveyed schemes offers an ideal model for adoption in Australia. Indeed, the greatest insights to be taken from these schemes relate not to best practice but to the complexities and limitations of current approaches to redressing reproductive violence. Thus, analysis underscores importance of careful and thoughtful development of redress that responds to specific experiences and needs of women with disability, is designed and led by women with disability and sits within a disability human rights framework.

## 6.1 Focus and scope of redress

### 6.1.1 Lack of recognition of injustice

This Briefing Paper only discussed initiatives to redress reproductive violence. There are many more examples of reproductive violence that remains *unredressed* despite longstanding demands by survivors and their allies. In such an Australian and international climate, unfortunately we cannot take for granted there is shared understanding of the existence of reproductive violence, let alone commitment to deliver redress shared by governments, charities, churches and other entities with social power, and broader communities.

Thus, much foundational work on human rights and reproductive justice still needs to be done in order to build momentum towards even recognising reproductive violence as human rights issues and women with disability as human rights subjects worthy of redress. Redress initiatives must be underpinned by education about reproductive violence against women with disability. This education should engage government, charities, churches and other entities with social power, and broader communities, and surface and challenge ableism, sexism and other dynamics of oppression that likely contribute to denial of injustice.<sup>356</sup> Education should also extend to consciousness raising with women with disability in order to develop their awareness of reproductive violence and their right to justice and redress, due to deep entrenchment in law and society of normalisation and denial of reproductive violence.

### 6.1.1 Absence of human rights framing

Redress must have an explicit human rights framing throughout its design, governance, processes, and outcomes. None of the redress initiatives had an explicit human rights framing, including in relation to: framing injustice being redressed as human rights violations, explicit human rights rationale for redress, inclusive and participatory processes for design and governance of redress, inclusive and accessible processes for redress, forms of redress reflecting the full range of reparations in the Van Boven Principles, and forms of redress specifically directed towards advancing autonomy, self-determination and equality for people with disability. None of the redress initiatives were framed in the CRPD, even initiatives redressing reproductive violence against women with disability. Absence of human rights framing is a significant and concerning thread running through existing initiatives which underscores importance of centring human rights in future redress initiatives.

### 6.1.2 Diverse forms of reproductive violence

Diverse forms of reproductive violence must be covered by redress initiatives. Focus in the initiatives surveyed in Sections 4 and 5 demonstrates more government action in response to involuntary sterilisation rather than other forms of reproductive violence including involuntary menstrual suppression, abortion, and removal and adoption of children. This focus suggests problematic hierarchies of harm and recognition of harm. It might also be indicative of ongoing prevalence of these less-recognised forms of violence in contemporary law and practice.

However, these different forms of reproductive violence are interconnected, including through some forms of reproductive violence being used in response to law reform to restrict other forms (e.g., involuntary long acting reversible contraception being used in lieu of involuntary sterilisation). Thus, a redress response that covers all forms is necessary. This is particularly important in the aftermath of the Disability Royal Commission. Although there was a recommendation in relation to 'non-therapeutic' sterilisation, the Final Report was silent as to 'therapeutic' sterilisation and other reproductive rights violations.

### 6.1.3 Broader context of reproductive violence

Addressing broader contexts in which reproductive violence is perpetrated must also form part of redress initiatives.

A key dimension to consider is broader structural contexts of institutionalisation, segregation and deprivation. Historically, involuntary sterilisation often took place in institutional settings. In a contemporary context reproductive violence still takes place in institutional and segregated settings such as group homes. In these settings reproductive violence might be but one form or layer of violence, where women with disability might also experience physical and sexual violence, neglect, economic exploitation, and epistemic violence. Moreover, the broader context of institutionalisation and segregation might also have contributed to women being socio-economically and politically disadvantaged.

However, reproductive violence also takes place in settings that are considered 'mainstream', 'community' and 'inclusive' settings and in the family home. Yet, these latter settings might not be acknowledged as sites of reproductive violence because they are juxtaposed to institutionalisation, segregation and exclusion. Here the relational context of reproductive violence is also important. Czech Republic's redress initiative has been criticised for overlooking the familial, community, and more diffuse social impacts of sterilisation, such as impacts on partners who want to have children or impacts on children removed from mothers with disability. Whereas commentary on the North Carolina redress initiative observed the importance of considering role of family members and medical professionals in facilitating sterilisation outside of legal frameworks and outside of institutional settings.

The temporal context of reproductive violence is necessary to consider. Many redress initiatives discussed in Sections 4 and 5 have applied only to specific time periods (e.g., early and mid-20<sup>th</sup> century) or, even more narrowly, to specific laws that applied to specific time periods (e.g., specific pieces of eugenics legislation). This is problematic given reproductive violence continues to be perpetrated in contemporary Australian society, including pursuant to laws that are considered positive and inclusive policy developments.

Failure to consider structural, relational and temporal contexts of reproductive violence can result in failure to recognise and respond to the full scope of harm and even enable reproductive violence to continue.



#### 6.1.4 Eugenics and intersectionality

An intersectional approach to redress initiatives must be taken. In the contemporary context, international human rights law, domestic anti-discrimination laws, and government systems and policies often artificially separate out and silo identity categories. But identities are rarely singular, distinct, and disconnected; rather, individuals – and particularly minoritised and disadvantaged people – possess multiple identities relating to their experiences of social, cultural, and structural harm and injustice. Historically, the way in which eugenics functioned as a theory, policy, and practice clearly demonstrates this. It shows how multiple dimensions of individuals' identities were inseparable. This is because those subjected to state-sanctioned subjugation through eugenics were grouped together under the category of 'unfitness', and in terms of contemporary identity categories this concept of 'unfitness' is at intersection of multiple categories such as disability, class, race and culture (and specific stigmatised statuses or behaviours such as drug use, sex work, criminal offending). Moreover, discourses of disability were central to justifying the targeting of other marginalised groups for sterilisation, such as in California in relation to sterilisation of racialised and Indigenous people.

There is a risk that contemporary demands for redress, when made by reference to single identity communities, can lose sight of historical and contemporary complexity of oppression and lead to marginalising certain impacted groups. It is problematic to overlook ways in which identities and oppression continue to be intersectional because it can cause us to overlook particular experiences of multiple marginalisation or inadvertently enable hierarchies that position certain groups as more deserving of redress than others. We might also fail to see places where reproductive violence continues, for instance where it occurs not under disability-specific laws nor in disability-specific spaces (e.g., 'mainstream' settings such as out of home care and prisons). It might also overlook critique of some 'justifications' for reproductive violence, particularly when many forced practices are done under the guise of health management.

#### 6.1.5 Settler colonialism

Redress initiatives must be grounded in the interconnectedness of reproductive violence against women with disability to eugenics and settler colonialism and in turn initiatives must be situated within a decolonial framework that is led by First Nations people with disability. Profoundly deaf Worimi scholar Scott Avery, along with other critical disability studies scholars, argues logics of fitness have been central to settler colonial, colonial, and imperial nation-building and to the dispossession, violation, and genocide of disabled First Nations people.<sup>357</sup> There is a risk that redress initiatives might focus on disability-specific injustices and fail to consider their intersections with settler colonialism in terms of how harm is understood and how that harm is then recognised and redressed.<sup>358</sup> Indeed, in criticising the failure of the Peruvian redress initiative to situate sterilisation in its colonial context, Julieta Chaparro-Buitrago argues for a 'decolonial reproductive framework'<sup>359</sup> that surfaces the 'dense network of experiences that connect the loss of fertility, loss of strength, and social and emotional turmoil'.<sup>360</sup> Relatedly, redress

initiatives must be undertaken in a culturally safe manner and with leadership of First Nations people and their organisations.<sup>361</sup>

#### **6.1.6 Ambivalence towards ableism**

Redress initiatives must explicitly recognise and dismantle ableism. Ableist cultural logic positions people with disability as undesirable, unfit, and a burden on society, and thus as legitimate subjects of discrimination and violation. This logic is persistent and identifiable in all contemporary societies and drives the need for ongoing activist efforts. However, the heavy focus in eugenics sterilisation redress initiatives on eugenics (rather than also connecting this to ableism and other forms of oppression) as the logic for harms against people with disability and framing this as a pseudo-science then historicises the discriminatory cultural ideas in a manner that separates and distances it from contemporary ableism and other forms of oppression which circulate in science and law. In a similar vein, this concern was raised in the context of the Swedish transgender redress initiative which was criticised for not acknowledging the cultural assumptions underpinning the sterilisation law, e.g., that trans people were unfit for reproduction.

There is a risk is that sterilisation redress will not engage with the ableism underpinning reproductive violence. Kathrin Braun has described this using the term 'injuries of normality': referring to 'systematic harm inflicted on people categorized as abnormal, deviant, deficient or inferior with respect to norms and standards of health, fitness, functionality, productivity and usefulness'.<sup>362</sup> This leaves intact the biopolitical rationality that positions disabled people as unfit and violable. This rationality is often considered 'normal rather than wrong', which enables harms against people with disability to escape recognition or remedy. The low social value of groups marked as abnormal thereby provides an enduring 'biopolitical' rationality that continues to shape contemporary systems.<sup>363</sup> In short, if a redress initiative does not explicitly name and grapple with cultural ideas of ableism and other forms of oppression, those will continue to inform contemporary law and practice and in turn enable further reproductive violence.

#### **6.1.7 Historicising reproductive violence**

Redress initiatives must extend to contemporary practices of reproductive violence, and avoid historicising reproductive violence. The focus in eugenics sterilisation redress initiatives on early and mid-20<sup>th</sup> century suggests reproductive violence is a thing of the past associated with outdated ideas, in contrast to a more progressive present, and thus further entrenching rather than alleviating perpetration of reproductive violence. This historicising is also facilitated by redress initiatives being linked to specific reformed legislation, thus hiding connections across laws over time.

#### **6.1.8 Hierarchies of victims**

Redress initiatives must be attentive to hierarchies between people with disability in order to ensure all people's experiences of reproductive violence are recognised and redressed. Discourses of the 'ideal victim'<sup>364</sup> can marginalise disabled people who are

Indigenous, racialised, poor, use drugs, or are criminalised. As discussed earlier, historically, eugenics legislation did not apply only to people with disability, but rather to people that were positioned as unfit and a burden on society. It is important to ensure comprehensive understanding of who is targeted for reproductive violence, and these same individuals are prioritised in redress initiatives.

### 6.1.9 Imprecision of what is 'wrong'

All of the concerns raised in earlier sub-sections coalesce to underscore the importance of redress initiatives having certainty around what precisely is the wrong being recognised and redressed. The apologies for sterilisation in Section 4 demonstrate the wrong is often identified as scientifically-baseless eugenics or association of eugenics with the Holocaust, rather than additionally a genuine concern with ableism and the denial of equality and self-determination to people with disability which continue to be live social justice issues in the present. There is a risk that redress initiatives – particularly collective redress initiatives such as apologies – bypass disability rights issues and fail to address social, cultural, systemic, and structural problems at the heart of reproductive violence. For example, the Supreme Court of Namibia's decision to award damages to HIV-positive women who were sterilised has been criticised because it was founded upon sexist beliefs and paternalistic assumptions about women's irrationality during childbirth (see section 4.1.2). This type of framing of redress does little to address the structural inequality and injustice that underpinned this woman's subjection to sexual and reproductive violence.

## 6.2 Processes of redress

### 6.2.1 Co-Design

Co-design is vital throughout all stages of redress initiatives including development, operation, and evaluation. A common issue arising in schemes is the absence of involvement of victims and impacted communities in designing initiatives (such as Japan, North Carolina), despite the strong role of victims and impacted communities in activism leading to such initiatives.<sup>365</sup> The result can be arbitrary outcomes such as monetary payments that reflect a government's political and economic circumstances rather than a considered approach to recognising harm and its impact on the impacted community (e.g., North Carolina capped total compensation available to all claimants, Virginia halved compensation amount for each claimant than what was proposed). In contrast, positive experiences of victim involvement have been observed in relation to the redress initiative for transgender people in Sweden.

While beyond the scope of this Briefing Paper, which has focused on what lessons can be learned from existing redress initiatives, future empirical research with women with disability exploring their perspectives on redress is necessary.<sup>366</sup>

### **6.2.2 Accessibility and safety**

Accessible, inclusive and safe processes are vital. In relation to the majority of redress initiatives surveyed, there was no publicly available and official information on accessibility or information available to victims in alternative accessible formats such as Easy Read and Braille. It was also unclear how people with disability's diverse modes of communication were supported, noting people with disability can be marginalised or silenced when their communication does not fit normative ideas of verbal language.<sup>367</sup> Moreover, redress initiatives that require internet to apply or are framed in legalistic language will also be inaccessible to some victims, as was observed in the context of the Californian redress scheme. Japan's redress initiative was criticised for its lack of accessibility and Norway's and Sweden's initiatives for difficulty in accessing. There were also inconsistent practices in relation to outreach to victims, including to individuals in institutional settings. Some redress initiatives were criticised for failing to reach out to victims (e.g., Japan). Slow processing was also identified as an accessibility issue for older victims, with proposals for expedited or priority processes for older victims (e.g., Czech Republic).

Relatedly, the majority of redress initiatives surveyed did not provide publicly available and official information to victims on psychological and cultural safety of redress processes. Instead, some redress schemes involved harmful practices such as delay in processing applications (e.g., Czech Republic) and scheme representatives directly contacting victims who previously were not aware they had been involuntarily sterilised, to inform them of their possible eligibility for the scheme (e.g., California). Commentary on a number of schemes also noted stigma, shame, and distress as barriers to victims applying for redress (e.g., Norway, Sweden, California). North Carolina's scheme was criticised for not being victim-centred.

### **6.2.3 Proof, evidence and records**

Redress initiative processes must not be burdensome on victims in terms of providing 'proof' or evidence of the reproductive violence they experienced. Some schemes have been criticised for placing a heavy burden of proof on victims (e.g., Czech Republic). The associated issue of access to evidence and records is also significant. Some schemes have been criticised for relying on medical or institutional documentation of sterilisation (e.g., Czech Republic). This is a problem in an Australian context because many victims' sterilisation was never properly documented; for others, even where documentation exists, logistical difficulties and cost barriers present difficulties with accessing these documents. Beyond practical barriers, there are also issues around the psychological and cultural safety of accessing such documents, along with the problems associated with relying on documentation that is imbued with ableism, sexism, and racism. Some schemes did show some positive developments in this regard, for instance with jurisdictions that gave government agencies the responsibility to find records (e.g., Peru, Sweden).

### **6.2.4 Broad and diverse participation in redress**

Redress initiatives must encapsulate broad and diverse groups of perpetrators.

The majority of redress initiatives surveyed focus on government participation in reproductive violence, notably its role in regulating and funding this violence. This is essential, given centrality of laws and public funding to this violence. However, some compensation schemes do not attribute accountability to the government: for example, Japan's compensation scheme has been criticised for not identifying the state as the main perpetrator. Similarly, some official apologies have been criticised for failing to recognise government accountability or the systemic nature of the violence (e.g., Czech Republic).

Concentrating accountability in governments can also contribute to obscuring or erasing accountability of others that enabled or enacted reproductive violence against women with disability. This spans organisations and institutions such as charities, churches, and universities; as well as individuals such as legal and health professionals and public and private guardians. For example, North Carolina's scheme was criticised for excluding judges and social workers at the county level. Sections 4.6 and 5.4 provide examples of redress initiatives involving non-government entities (charities, professionals, and churches); however, these are generally characterised by public statements and information sharing rather than compensation or apologies to specific victims.<sup>368</sup>

Concentrating all accountability in governments can also result in a didactic process of redress that leaves no space for community engagement, including exploring the wider implication of families and communities in reproductive violence and providing opportunities for public education.<sup>369</sup> In particular, families occupy a complex position in reproductive violence. Some families are the recipients of redress, including if the victim has died (North Carolina's scheme was criticised for only applying to living victims) or if another individual has also been impacted by the violence (e.g., the child who was removed). There are intergenerational impacts of reproductive violence – these being particularly apparent in Indigenous contexts such as in relation to child removal – that are rarely recognised in the initiatives surveyed in Sections 4 and 5 (although the Mother and Baby Home redress initiatives does apply to babies as well as mothers). On the other hand, families (particularly parents of victims) might have been involved in institutionalisation preceding sterilisation and/or in consenting to sterilisation in institutional or community/familial settings. They may also have obtained sterilisation outside of legal frameworks (North Carolina's scheme was criticised for failing to include compensation beyond legal frameworks). For families, there is likely a variety of perspectives in terms of recognition, guilt, and grief over their involvement in sterilisation. Research on families and disability indicates importance of exploring these complexities.<sup>370</sup>

### 6.2.5 Truth of reproductive violence

An official account of reproductive violence against women with disability in Australia must form part of redress initiatives. In contrast to many of the jurisdictions surveyed in Section 4, Australian jurisdictions did not enact eugenics sterilisation legislation of the kind prevalent in USA (although Australian jurisdictions did have other eugenics laws, policies and practices)<sup>371</sup> and thus does not have the same written record of decision making in this area.<sup>372</sup> For instance, although the

eugenics history of North America is well-known internationally, there is no similar narrative of Australia's past. Without an available archive on sterilisation procedures and a public account of these practices, this presents challenges for individual and societal redress in Australia. An official account of sterilisation and other reproductive violence against women with disability is necessary in order to raise official and public awareness of this problem. Deepening government understandings of the role of law, policy, and practice in this violence is also necessary to address its persistence in the present and to assist victims to understand what happened to them and to gain access to related archival materials. Redress initiatives that do not include these dimensions have been criticised because they can enable governments (or other entities such as churches in the context of Irish Magdalene Laundries and Mother and Baby Homes) to avoid full recognition and ownership of the past. Even redress initiatives in some jurisdictions that did include official accounts have been criticised due to the biased nature of those accounts. For example, Japan's compensation scheme was criticised for not including an official account of Disabled People's Organisations, which could then prevent recurrence. Sweden's official account has also been criticised for its disconnection to the compensation scheme. Thus, opportunities for truth-telling by victims and impacted communities will be central to such official accounts. Potentially positive examples include Denmark, Norway, and Vermont.

### **6.3 Outcomes of redress**

#### **6.3.1 Limitations of compensation**

Analysis indicates the importance of compensation reflecting – as much as is practically feasible – the severity and scope of the impact of reproductive violence.

Monetary reparations such as compensation can provide material recognition of loss and at a symbolic level give 'victims a chance to reclaim their dignity and their history'.<sup>373</sup> However, 'at the heart of reparations is the paradoxical search to repair the irreparable'. In particular, payment can be viewed as states imposing finality that prevents further discussion and ongoing redress of harms, '[m]oney can never remedy nonmonetary loss', and money can trivialise harms.<sup>374</sup> This is compounded when the amounts provided are minimal or tied to government's financial and political imperatives rather than intended to reflect the severity of harm and its impacts on victims. This was discussed in Section 4 in relation to Japan, Slovak Republic, Sweden, and Switzerland.

#### **6.3.2 Diverse forms of redress**

Diverse forms of redress that extend beyond compensation are essential.

Redress initiatives must include forms of redress that together recognise full impacts of injustice. It is argued that reparations should not simply restore an individual to their prior, often impoverished, position; but should improve their victim's standard of living and enhance their future prospects within a broader context of transforming the structural conditions that enabled the harm.<sup>375</sup> Indeed, if redress is delivered in a human rights framework, this must also extend to realisation

of human rights including autonomy, self-determination, equality and independent living. This is not apparent in the redress initiatives.

Redress schemes present diverse examples of memorialisation and public education initiatives. These range from historical markers (Indiana, North Carolina), school curriculum materials (Denmark), museum exhibitions (Alberta, Indiana), digital memorialisation (Peru), and artworks (California). These reflect varying levels of victim involvement in the initiatives, and thus differing relevance and connection to victims' experiences and circumstances. For example, the Quipu project in Peru has been criticised for being difficult for Indigenous women to participate in. Similarly, depending on their site, historical markers may not be accessible for people with disability.<sup>376</sup>

### 6.3.3 Connection to prevention

Redress initiatives must connect redress for past harm to preventing future harm. Although this is a defining dynamic of reparations, it is often lost in reproductive violence redress initiatives that focus on repealed laws of a bygone era. While eugenics legislation might no longer be in favour, many jurisdictions continue to regulate sterilisation through guardianship/conservatorship laws. Reproductive violence can also occur through different strategies (e.g., long acting reversible contraceptives instead of sterilisation) or different rationales (e.g., inclusion or protection instead of unfitness).<sup>377</sup> Moreover, many of the broader circumstances that sustained sterilisation such as institutionalisation and segregation continue.

Many redress schemes demonstrate a lack of commitment to preventing further reproductive violence. For example, although repealing the relevant eugenics sterilisation law prevents further sterilisation under that law, there is often no clarity around or commitment to prohibiting all future sterilisation. For example, Japan's government report on eugenics laws was criticised for lacking proposals for prevention.

### 6.3.4 Ambivalence on accountability

Analysis highlights the importance of establishing a clear connection between redress initiatives and accountability. A common theme in critiques of redress initiatives was the lack of government accountability recognised through redress, including through the legal status of a compensation payment as *ex gratia* (Sweden) or solidarity aid (Switzerland) or the wording of a public apology. For example, Alaattinoğlu observes a tension in Nordic nations between redress and accountability. Sweden's framing of its payments as *ex gratia* circumvents state accountability: 'an emerging, increasingly complex and strained, national compensation tradition in the face of developing notions of rights and responsibility, expanding the notion of *ex gratia* while simultaneously avoiding questions of public liability.'<sup>378</sup> Moreover, avoiding truth-telling such as establishing a comprehensive historical account or providing opportunities for public information as discussed in Section 6.2.5 also contributes to lack of government accountability.

### 6.3.5 Access to courts

Analysis highlights the importance of addressing barriers to accessing remedies through courts. Some redress initiatives delivering monetary payments were established specifically in response to difficulties victims experienced with accessing justice through courts, notably related to expense and limitation periods. Redress schemes might be seen as more efficient because they offer simpler and cheaper processes. However, monetary payments have been criticised for being lower than court remedies (e.g., Japan) or being dictated by government's financial or political interests rather than the significance of harm. Monetary payments can also limit liability and thus prevent future litigation (e.g., North Carolina). Moreover, redress initiatives – as an alternative to courts – might contribute to neglecting problems with court systems and legal doctrine that have limited their use by victims, and thus further entrenching unequal access to justice.<sup>379</sup> This is of particular concern where a redress initiative is time-limited and thus only a temporary alternative to remedies through courts. Moreover, in some jurisdictions, litigation through courts remains the primary pathway to redress (e.g., Canada, Kenya, and Namibia).

## 7. Conclusion: Recommendations for moving forward

WWDA has consistently called on Australian governments to redress reproductive violence against women with disability, most recently in the aftermath of the DRC calling for a 'national redress and reparations scheme, co-designed with people with disability through their representative organisations [...] to respond to individual, structural and collective injustice that facilitate violence, abuse, neglect and exploitation of people with disability'. This scheme 'would provide a broad range of remedies, such as compensation, truth-telling, individual and collective apologies, rehabilitation, and commitments to legal and policy reform' and 'would also enable the community, governments and service and legal systems to confront, acknowledge and take responsibility for the harm caused and to begin the process of healing and providing justice'.<sup>380</sup>

In contributing to furthering WWDA's calls for redress, this Briefing Paper has explored the design and practice of national and supranational (i.e., regional and international) initiatives for individual and collective redress for reproductive violence. It has done so with the goal of identifying insights (good and bad) that can contribute to redressing reproductive violence, on the assumption redress initiatives will be designed and led by women with disability. Section 7 draws on this exploration to provide a non-exhaustive list of key dimensions that can inform a future advocacy and research framework for redressing reproductive violence against women with disability.

### Knowledge building

1. Document diverse forms of reproductive violence against women with disability in Australia.



2. Document Australian law and policy on reproductive violence against women with disability and eugenics more broadly.
3. Document the roles of Australian government departments and bureaucrats; health, social care, and legal professionals; and charities in reproductive violence against women with disability and eugenics more broadly.
4. Document connections between reproductive violence experienced by women with disability in Australia and other injustices, including segregation and institutionalisation.
5. Document the impacts of reproductive violence against women with disability in Australia, including on diverse communities of women with disability and in different institutional settings.
6. Explore and map intergenerational, parental, and familial dynamics of reproductive violence against women with disability in Australia.

### **Cross-movement organising**

7. Reach out to and develop relationships with organisations representing diverse marginalised groups in Australia in order to explore ways to work together on redressing reproductive violence.
8. Reach out to and develop relationships with organisations representing First Nations people in Australia in order to explore ways to support their advocacy priorities, and work together on redressing reproductive violence.
9. Collaborate across movements to explore recognition and redress of historical and contemporary connections between diverse marginalised communities in Australia targeted for reproductive violence.
10. Collaborate across movements to explore recognition and redress of connections between reproductive violence in Australia and ableism, sexism, racism, nativism, settler colonialism, and other dynamics of oppression.
11. Collaborate across movements to explore relationships between redressing reproductive violence in Australia and abolitionism, segregation and deinstitutionalisation.

### **Disability leadership in design of redress**

12. Develop a strategy for women with disability to lead design of individual and collective redress of reproductive violence against women with disability in Australia, across all phases including development, operation, and evaluation.
13. Develop with women with disability in Australia who have experienced reproductive violence – including diverse communities of women with disability – a framework of what redress means to them and what forms redress should take.

14. Consider whether and how to involve families of victims in the design of redress of reproductive violence against women with disability in Australia, particularly where those victims are no longer alive.

### **Accessibility**

15. Develop an access, inclusion, and safety strategy for all phases of redress of reproductive violence against women with disability in Australia, including development, operation, and evaluation.
16. Develop a strategy for transforming justice systems to facilitate safe, equal, accessible, and inclusive access to justice for the redress of reproductive violence against women with disability in Australia.

### **Accountability**

17. Engage with all levels of government, charities, professional associations, and unions in Australia to ensure redress includes processes of accountability.
18. Explore connections between specialised redress initiatives and access to remedies through Australian justice systems.

### **Prevention and transformation**

19. Explore connections between redress and current laws related to reproductive violence.
20. Explore situating the redress of reproductive violence against women with disability in Australia within an abolitionist, deinstitutionalisation and anti-segregation framework.
21. Explore the role of redress in facilitating broader self-determination, equality, and autonomy of women with disability in Australia.

## Women With Disabilities Australia (WWDA)

 [wwwda.org.au](http://wwwda.org.au)  +51 438 535 123  PO Box 407, Lenah Valley, 7008 TASMANIA

WWDA has Special Consultative Status with the Economic and Social Council of the United States



# Endnotes

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