

## Inter-American Court of Human Rights

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Case of *I.V. v. Bolivia*  
No. 12.655

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*Amicus Curiae*  
Presented by

the  
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at  
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## TABLE OF CONTENTS

STATEMENT OF INTEREST .....	1
SUMMARY .....	2
I. FORCED STERILIZATION IS A WIDESPREAD, COMPLEX, AND AUTONOMOUS HUMAN RIGHTS VIOLATION THAT MUST BE ANALYZED AS A SINGLE TRANSVERSAL VIOLATION OF A CORE SET OF RIGHTS. ....	4
A. Forced Sterilization Is a Widespread Problem. ....	4
B. Forced Sterilization Causes Multiple Impacts on Women.....	8
C. International Human Rights Law Treats Forced Sterilization as a Violation of Multiple Human Rights.....	9
D. The Court Should Develop a New Conceptual Understanding of Forced Sterilization as a Single, Autonomous, and Complex Violation of a Core Set of Interrelated Human Rights. ....	13
II. FORCED STERILIZATION CONSTITUTES, AT A MINIMUM, A TRANSVERSAL VIOLATION OF THE RIGHTS TO DIGNITY, PRIVATE AND FAMILY LIFE, PERSONAL INTEGRITY AND HUMANE TREATMENT, FREEDOM OF EXPRESSION, PROTECTION OF THE FAMILY, AND TO BE FREE FROM DISCRIMINATION AND FROM ACTS OF VIOLENCE AGAINST WOMEN.....	16
A. Forced Sterilization Is a Violation of the Right to Dignity.....	17
1. Bolivia Has an Obligation to Respect the Right to Dignity.....	17
i. The right to respect for one’s dignity is protected by Article 11(1) of the American Convention on Human Rights. ....	17
ii. Article 4(e) of the Convention of Belém do Pará also protects the right to respect for one’s dignity. ....	18
iii. International human rights bodies recognize a right to dignity. ....	19
iv. The right to respect for one’s dignity is also protected by the Bolivian Constitution. ....	22
2. Forced Sterilization Violates a Woman’s Right to Dignity Under International Law. ....	23
i. Forced sterilization as an involuntary medical procedure that interferes with a woman’s reproductive choices is a violation of the right to dignity. ....	23
ii. Forced sterilization as an act of gender-based violence is a violation of the right to dignity.....	25
3. Forced Sterilization Involves a Particularly Extreme Denial of a Woman’s Right to Dignity. ....	27
i. Women are particularly vulnerable during childbirth. ....	28
ii. Forced sterilization irreversibly impacts reproductive choices. ....	30
B. Forced Sterilization Is a Violation of the Right to Personal Integrity and Humane Treatment. ....	32
C. Forced Sterilization Is a Violation of the Right to Freedom of Expression. ....	35
D. Forced Sterilization Is a Violation of the Right to Family and to Private Life.....	40

E. Forced Sterilization Is a Violation of the Right to Be Free from Acts of Violence Against Women. ....	43
1. States Have a Duty under Article 7(a) of the Convention of Belém do Pará to Refrain from Practicing Forced Sterilization and to Ensure that No State Authorities, Officials, Personnel, Agents, or Institutions (Including Public Hospitals) Practice Forced Sterilization. ....	43
2. Forced Sterilization Is a Discriminatory Act of Violence Against Women. ....	45
F. The Court Should Adopt a Conceptual Framework that Defines Forced Sterilization as a Single Transversal Violation of a Core Set of Human Rights. ....	47
III. AS A FORM OF REPARATION, THE COURT SHOULD ORDER BOLIVIA TO IMPLEMENT SPECIAL TRAINING MEASURES TO ENSURE STERILIZATION IS ONLY PERFORMED WITH THE REQUIRED FREE, PRIOR, AND INFORMED CONSENT.....	47
A. Bolivia Must Protect and Ensure Human Rights in the Medical Setting as a Necessary Safeguard Against the Practice of Forced Sterilization.....	48
B. Bolivia Must Put in Place Safeguards to Protect and Ensure the Right to Be Free from Forced Sterilization.....	50
C. The Court Should Order Bolivia to Implement Specialized Training Measures as an Essential Safeguard Against Forced Sterilization.....	51
1. Training is Essential to Safeguarding Human Rights in the Provision of Medical Care. ....	51
2. Training Is Particularly Important in Safeguarding Reproductive Rights. ....	53
3. Training Is Necessary to Prevent Forced Sterilization. ....	55
CONCLUSION .....	59

## STATEMENT OF INTEREST

1. The International Human Rights Clinic at Santa Clara University School of Law<sup>1</sup> (“the Clinic”) and the International Justice Resource Center<sup>2</sup> (“IJRC”) respectfully submit this *amicus curiae* brief in the case of *I.V. v. Bolivia* (No.12.655) before this Honorable Inter-American Court of Human Rights (“the Court”), on behalf of the undersigned persons and organizations, with the purpose of providing “reasoned arguments on the facts contained in the presentation of the case [and] legal considerations on the subject-matter of the proceeding,” pursuant to Article 2(3) of the Court’s Rules of Procedure and in conformity with Article 44 of the American Convention on Human Rights. The Court’s decision in this case is of the utmost importance because it involves an issue of first impression for the Court that will have an impact on how international human rights law addresses forced sterilizations. We invite the Court to seize this unique opportunity and develop a clear conceptual framework on forced sterilization as an autonomous and complex human rights violation of the rights to personal integrity, dignity, freedom of expression, private and family life, and to be free from discrimination and from acts of violence against women. Additionally, we encourage the Court to elaborate on training of medical personnel as a form of reparation and guarantee of non-repetition in the present case.

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<sup>1</sup> The Clinic offers law students the opportunity to gain professional experience by working on cases and projects in the area of international human rights law. The students work together with human rights organizations and experts, primarily in the United States and Latin America, through research, litigation, fact-finding, writing briefs, and advocacy.

<sup>2</sup> IJRC provides advocates, civil society organizations, and victims of human rights abuses with the information and resources they need to effectively use international legal protections to bring about justice and accountability for human rights violations. Through a unique Online Resource Hub, technical support, and trainings, IJRC strives to make human rights protections more accessible to individuals and communities around the world.

## SUMMARY

2. Sterilization is a contraceptive method that contravenes international human rights law when it is performed without the patient's prior, full, free, and informed consent. International and regional human rights bodies have described forced, coerced, or otherwise involuntary sterilization ("FS") in a number of ways, depending on the applicable source of law, but the implicit understanding is that FS is a complex violation of numerous human rights.

3. In this *amicus curiae* brief, we respectfully invite the Court to build upon this growing body of international human rights law and explicitly recognize a rights-based definition of FS as an autonomous complex human rights violation that constitutes a single transversal violation of the rights to dignity, private and family life, personal integrity and humane treatment, freedom of expression, protection of the family, and to be free from discrimination and from acts of violence against women. We also invite the Court to take this opportunity to highlight in its holistic analysis of FS the particular ways in which FS violates a woman's right to dignity, especially considering the Court's scarce jurisprudence on this aspect of Article 11(1) of the American Convention on Human Rights.<sup>3</sup> Additionally, as a form of reparation and guarantee of non-repetition in the present case, we respectfully suggest that the Court order Bolivia to implement special training measures to ensure sterilization is only performed in a manner that respects women's human rights.

4. The brief is structured as follows: First, in Section I, we will discuss how FS is a complex human rights violation that affects women around the world, causes serious

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<sup>3</sup> American Convention on Human Rights "Pact of San José, Costa Rica" (adopted 22 November 1969, entered into force 18 July 1978), 1144 UNTS 123, OASTS No. 36, OEA/Ser.L.V/II.82 doc.6 rev.1, art. 25 [hereinafter American Convention].

negative physical and psychological effects, and has severe social implications for the victims. Then, we will describe how various international and regional human rights bodies have addressed this widespread problem. We will also highlight how the current conceptualization of FS under international human rights law focuses on a list of separate and divisible human rights violations, rather than as a single complex violation. Then, we suggest that the Court develop a new conceptual understanding of this autonomous and complex human rights violation in a way that builds from existing international norms, comments, and decisions, and treats FS as a single transversal violation of a core set of interrelated human rights. In Section II, we apply our proposed approach to analyze how Bolivia violated I.V.'s rights to dignity, private and family life, personal integrity and humane treatment, freedom of expression, protection of the family, and to be free from discrimination and from acts of violence against women, recognized under articles 11(1) and (2), 5(1) and (2), 13(1), and 17(2) of the American Convention, in relation to Article 1(1) thereof, and in relation to Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belém do Pará").<sup>4</sup> Finally, before we summarize our main points in the conclusion, Section III suggests that Bolivia implement special training of medical personnel as a form of reparation and guarantee of non-repetition in the present case.

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<sup>4</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belém do Pará" (adopted 9 June 1994, entered into force 5 February 1995), 33 I.L.M. 1534 [hereinafter Convention of Belém do Pará].

**I. FORCED STERILIZATION IS A WIDESPREAD, COMPLEX, AND AUTONOMOUS HUMAN RIGHTS VIOLATION THAT MUST BE ANALYZED AS A SINGLE TRANSVERSAL VIOLATION OF A CORE SET OF RIGHTS.**

5. In light of the fact that this is the first time the Court will have the opportunity to address FS, in this section we will provide context concerning the practice of FS around the world, focusing on its multiple impacts on women. Then, we will describe how various international and regional human rights bodies have addressed this widespread problem as a violation of multiple human rights. We then suggest that the Court develop a new conceptual understanding of this autonomous and complex human rights violation in a way that builds from existing international law and treats FS as a single transversal violation of a core set of interrelated human rights.

**A. Forced Sterilization Is a Widespread Problem.**

6. Sterilization is a common medical intervention that permanently modifies an individual's sexual reproductive system to prevent procreation. When it is carried out without the individual's full, prior, and informed consent, the procedure constitutes a human rights violation.<sup>5</sup> The practice of FS exists in all regions of the world.

7. According to the World Health Organization, women all over the world are sterilized without their informed consent or even knowledge, while undergoing caesarean sections,

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<sup>5</sup> It should be noted that, contrary to the State's assertions at the hearing in this case, this understanding of FS already existed under international law in 2000, when I.V. was sterilized. By the year 2000, the concept of informed consent to medical procedures was established, including in the Committee on the Elimination of Discrimination against Women's General Recommendation 24 (of 1999), on which the European Court of Human Rights relied in *V.C. v. Slovakia* (regarding a sterilization also performed in 2000) to find that "generally recognized standards" required sterilization to be performed only with full, prior, and informed consent. See Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, UN Doc. A/54/38/Rev.1, 1999, para. 20; ECtHR, *V.C. v. Slovakia*, no. 18968/07, ECHR 2011, Judgment of 8 November 2011, para. 108. For further discussion of this point, see *infra* Section II.C, para. 69.



during labor or delivery, or when they are experiencing great pain and duress.<sup>6</sup> In Latin America, women living with HIV/AIDS<sup>7</sup> or who are members of vulnerable social groups, such as indigenous women,<sup>8</sup> appear to be targeted for FS. The Committee Against Torture has expressed concern about FS in Peru;<sup>9</sup> while FS has been addressed in Brazil by the Committee on Economic, Social and Cultural Rights (CESCR);<sup>10</sup> in Mexico by the Committee on the Elimination of Racial Discrimination (CERD);<sup>11</sup> in Argentina and Peru by the Committee on the Rights of Persons with Disabilities (CRPD);<sup>12</sup> and in Chile by the Committee on the Elimination of Discrimination against Women (“the CEDAW Committee”).<sup>13</sup> The Inter-American Commission on Human Rights (“the Commission”) has addressed this practice in Peru,<sup>14</sup> Bolivia,<sup>15</sup> and Chile.<sup>16</sup>

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<sup>6</sup> World Health Organization et al., *Eliminating Forced, Coercive and Otherwise Involuntary Sterilization: An Interagency Statement* (2014), 5.

<sup>7</sup> Tamil Kendall & Claire Albert, *Experiences of Coercion to Sterilize and Forced Sterilization among Women Living with HIV in Latin America*, 18 J. of the Int’l AIDS Soc’y 1 (2015).

<sup>8</sup> See, e.g., Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Mexico*, UN Doc. CERD/C/MEX/CO/15, 7 March 2006, para. 17; IACHR, Friendly Settlement Report No. 71/03, Petition 12.191, *María Mamérita Mestanza Chávez* (Peru), 22 October 2003.

<sup>9</sup> Committee Against Torture, *Conclusions and recommendations of the Committee Against Torture: Peru*, UN Doc. CAT/C/PER/CO/4, 25 July 2006, para. 23. See also Committee Against Torture, *Concluding observations on the combined fifth and sixth periodic reports of Peru, adopted by the Committee at its forty-ninth session (29 October - 23 November 2012)*, UN Doc. CAT/C/PER/CO/5-6, 21 January 2013, paras. 15, 19.

<sup>10</sup> See, e.g., Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Brazil*, UN Doc. E/C.12/1/Add.87, 23 May 2003, para. 27.

<sup>11</sup> See, e.g., *Concluding observations of the Committee on the Elimination of Racial Discrimination: Mexico*, supra note 8, para. 17.

<sup>12</sup> See, e.g., Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Argentina*, UN Doc. CRPD/C/ARG/CO/1, 27 September 2012, paras. 31-32; Committee on the Rights of Persons with Disabilities, *Concluding observations of the Committee on the Rights of Persons with Disabilities: Peru*, UN Doc. CRPD/C/PER/CO/1, 20 April 2012.

<sup>13</sup> See, e.g., Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Chile*, UN Doc. CEDAW/C/CHL/CO/5-6, 1-19 October 2012, paras. 34-35. See *Litigation Briefing Series: F.S. v. Chile, Forced Sterilization of H.I.V.-Positive Women*, Center for Reproductive Rights, <http://reproductiverights.org/en/lbs-fs-vs-chile> (last visited 4 May 2016), for information on FS of HIV-positive women in Chile.

<sup>14</sup> See, e.g., IACHR, Friendly Settlement Report No. 71/03, Petition 12.191, *María Mamérita Mestanza Chávez* (Peru), 22 October 2003. In the case of María Mamérita Mestanza, an indigenous peasant woman was pressured and harassed by a health center to have a tubal ligation, which was finally done without her being informed of the consequences and risks entailed in the intervention. Ms. Mestanza died a few days later, as a

8. This human rights violation has also taken place in Canada<sup>17</sup> and the United States, primarily as a result of State-sponsored eugenics programs intended to prevent prisoners and individuals perceived to have intellectual disabilities from reproducing from the early 1900s through the 1970s.<sup>18</sup> FS under such programs impacted women in multiple U.S. states, including California, Virginia, and North Carolina, and particularly targeted poor women and women who were members of excluded groups, such as Aboriginal<sup>19</sup> or Native American women,<sup>20</sup> Latina immigrant women,<sup>21</sup> and African American women.<sup>22</sup> California performed FS against female prisoners as recently as 2010,<sup>23</sup> though it banned the practice in 2014.<sup>24</sup>

9. In Europe, Roma women are also often victims of FS. CERD has expressed concern about FS in Slovakia<sup>25</sup> and the Czech Republic,<sup>26</sup> and the CEDAW Committee has addressed

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result of a postoperative infection that was not addressed by the health center even though she had asked for assistance on several occasions.

<sup>15</sup> IACHR, Merits Report No. 72/14, Case 12.655, *I.V.* (Bolivia), 15 August 2014.

<sup>16</sup> See, e.g., IACHR, Admissibility Report No. 52/14, Petition 112-09, *F.S.* (Chile), 21 July 2014. In the case of *F.S.*, the Commission examined the admissibility of a petition filed by a rural woman living with HIV in which it was alleged that she was subjected to sterilization without her consent.

<sup>17</sup> Angus McLaren, *Our Own Master Race: Eugenics in Canada 1885–1945* (McClelland & Stewart, 1990).

<sup>18</sup> Phillip R. Reilly, *Involuntary Sterilization in the United States: A Surgical Solution*, 62 *The Q. Rev. of Biology* 153 (1987), available at <http://courses.washington.edu/intro2ds/Readings/Reilly-involuntary.pdf>.

<sup>19</sup> Karen Stote, *The Coercive Sterilization of Aboriginal Women in Canada*, 36 *Am. Indian Culture and Res. J.* 117 (2012), available at <http://www.uclajournals.org/doi/pdf/10.17953/aicr.36.3.7280728r6479j650>.

<sup>20</sup> Jane Lawrence, *The Indian Health Service and the Sterilization of Native American Women*, 24 *The Am. Indian Q.* 400 (2000), available at <https://muse.jhu.edu/article/200>.

<sup>21</sup> No Más Bebés (Public Broadcast System 2016), available at <http://www.pbs.org/independentlens/films/no-mas-bebes/>.

<sup>22</sup> See, e.g., *Relf v. Weinberger*, Southern Poverty Law Center, <https://www.splcenter.org/seeking-justice/case-docket/relf-v-weinberger> (last visited 4 May 2016).

<sup>23</sup> Corey G. Johnson, *Female inmates sterilized in California prisons without approval*, Center for Investigative Reporting (7 July 2013), <http://cironline.org/reports/female-inmates-sterilized-california-prisons-without-approval-4917>.

<sup>24</sup> See, e.g., Cal. Pen. Code § 3440 (2014); Hunter Schwarz, *Following reports of forced sterilization of female prison inmates, California passes ban*, *The Washington Post*, 26 Sept. 2014, <https://www.washingtonpost.com/blogs/govbeat/wp/2014/09/26/following-reports-of-forced-sterilization-of-female-prison-inmates-california-passes-ban/>.

<sup>25</sup> See, e.g., Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Slovak Republic*, UN Doc. CERD/C/SVK/CO/6-8, 2-3 March 2010, para. 18.

the issue in the Czech Republic<sup>27</sup> and Hungary.<sup>28</sup> The European Court of Human Rights (“European Court”) has issued judgments involving FS cases in Moldova,<sup>29</sup> Slovakia,<sup>30</sup> and the Czech Republic.<sup>31</sup> The CRPD has addressed FS in Spain,<sup>32</sup> and the Human Rights Committee is also addressing FS in Uzbekistan.<sup>33</sup>

10. FS continues to affect women in other parts of the world, as well. In Asia, the CRPD and the CESCR have expressed concern about FS in China, particularly with respect to women with disabilities<sup>34</sup> and women “belonging to ethnic minority groups [...]”<sup>35</sup> The CEDAW Committee has expressed concern over FS in Jordan<sup>36</sup> and Australia.<sup>37</sup> The practice is also prevalent in India<sup>38</sup> and Africa, particularly in Namibia<sup>39</sup> and Kenya,<sup>40</sup> and the CRPD Committee has addressed FS in Tunisia.<sup>41</sup>

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<sup>26</sup> See, e.g., Committee on the Elimination of Racial Discrimination, *Concluding Observations on the combined tenth and eleventh periodic reports of the Czech Republic*, UN Doc. CERD/C/CZE/CO/10-11, 24 August 2015, paras. 21-22.

<sup>27</sup> See, e.g., Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women on the third periodic report of the Czech Republic*, UN Doc. CEDAW/C/CZE/CO/3, 7-25 August 2006, paras. 23-24.

<sup>28</sup> See Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, Communication No. 4/2004, Views of 14 August 2006.

<sup>29</sup> See, e.g., ECtHR, *G.B. and R.B. v. Moldova*, no. 16761/09, Judgment of 18 December 2012.

<sup>30</sup> See, e.g., ECtHR, *V.C. v. Slovakia*, no. 18968/07, ECHR 2011, Judgment of 8 November 2011; ECtHR, *I.G. and Others v. Slovakia*, no. 15966/04, Judgment of 13 November 2012.

<sup>31</sup> See, e.g., ECtHR, *R.K. v. the Czech Republic* (dec.), no. 7883/08, 27 November 2012.

<sup>32</sup> See, e.g., Committee on the Rights of Persons with Disabilities, *Concluding observations of the Committee on the Rights of Persons with Disabilities: Spain*, UN Doc. CRPD/C/ESP/CO/1, 23 September 2011, paras. 37-38.

<sup>33</sup> See, e.g., International Federation for Human Rights and REDRESS, *Nobel Prize nominee and human rights defender Mutabar Tadjibayeva files key complaint against Uzbek government for forcible sterilisation and torture* (2013), <http://www.redress.org/downloads/PressreleaseMutabar-270213.pdf>.

<sup>34</sup> See, e.g., Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of China*, UN Doc. CRPD/C/CHN/CO/1, 27 September 2012, paras. 33-34, 48.

<sup>35</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations of the Committee on Economic, Social and Cultural Rights: People’s Republic of China (including Hong Kong and Macao)*, UN Doc. E/C.12/1/Add.107, 13 May 2005, para. 36.

<sup>36</sup> See, e.g., Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Jordan*, UN Doc. CEDAW/C/JOR/CO/5, 23 February 2012, paras. 45-46.

<sup>37</sup> See, e.g., Committee on the Elimination of Discrimination against Women, *Concluding observations of the Committee on the Elimination of Discrimination against Women: Australia*, UN Doc. CEDAW/C/AUL/CO/7, 20 July 2010, paras. 42-43.

<sup>38</sup> Open Society Foundations, *Against Her Will: Forced and Coerced Sterilization of Women Worldwide* (2011).

11. Women from vulnerable groups are also more susceptible to FS. For example, coercive and forced sterilization programs have particularly targeted women who are HIV positive, women living in poverty, women in minority groups like the Roma, indigenous women, and women and girls with physical and mental disabilities.<sup>42</sup>

### **B. Forced Sterilization Causes Multiple Impacts on Women.**

12. This widespread practice causes multiple negative effects on several aspects of women's lives, in addition to the obvious effect of depriving victims of the ability to have more children. Victims suffer serious physical, psychological, and social consequences as a result of FS.<sup>43</sup> Some victims of FS suffer physical and emotional trauma, discrimination, anxiety, depression, low self-esteem, and shame, and these effects sometimes lead to suicide.<sup>44</sup> According to the opinion of experts in this field, FS "completely changes women's lives, since it will prevent them from doing something that they might want to do in the future: have a baby. Also, it affects their relationships and desires, and they feel they are 'lesser women' since, according to doctors, they do not deserve to be mothers."<sup>45</sup> The European Court has similarly recognized "feelings of fear, anguish and inferiority," as well as community ostracism and marital difficulties, sometimes leading to divorce, as some of the effects of FS.<sup>46</sup>

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<sup>39</sup> Southern Africa Litigation Centre, *Namibia: High Court Finds Govt Coercively Sterilised HIV Positive Women*, AllAfrica.com, 30 July 2012, <http://allafrica.com/stories/201207301026.html>.

<sup>40</sup> Henry Kibira, *Kenya: Women Seek Justice Over Sterilisation*, AllAfrica.com, 23 August 2012, <http://allafrica.com/stories/201208240201.html>.

<sup>41</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations of the Committee on the Rights of Persons with Disabilities: Tunisia*, UN Doc. CRPD/C/TUN/CO/1, 15 April 2011, paras. 28-29.

<sup>42</sup> World Health Organization et al., *supra* note 6, at 2.

<sup>43</sup> *See infra* Section II.B.

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

<sup>45</sup> Skype Interview with Eugenia Lopez Uribe, Executive Director, Red Balance (18 Mar. 2016).

<sup>46</sup> ECtHR, *V.C. v. Slovakia*, no. 18968/07, ECHR 2011, Judgment of 8 November 2011, paras. 118-119.

13. In the following paragraphs, we will highlight how human rights bodies have addressed the widespread practice of FS using a human rights framework and suggest that the Court adopt a more holistic definition and analytical approach.

**C. International Human Rights Law Treats Forced Sterilization as a Violation of Multiple Human Rights.**

14. Despite its prevalence, the current conceptualization of FS under international human rights law provides an incomplete picture of this complex violation. The inconsistencies in the current conceptualization of FS are the result of treating it as a series of dispersed and unconnected human rights violations, disassociated from each other and analyzed as separable offenses.<sup>47</sup> Such variations in the definition of FS are the natural result of the necessary application of different normative frameworks by each international and regional body. Nevertheless, even taking such normative limitations into account, the Court has the opportunity to provide a new conceptualization of FS as a single, autonomous violation of a core group of human rights. A framework that recognizes the indivisibility and interrelatedness of the human rights violations associated with FS better reflects the complex nature of this violation and will assist other bodies tasked with analyzing cases of FS as a human rights violation.

15. From a human rights perspective, FS has been treated as an interference with reproductive rights, including the right to decide the number and spacing of children; as a violation of the right to health; as a violation of the right to privacy; as a denial of the right to receive information and make informed decisions about family life; as a discriminatory act of gender-based violence; as an attack on an individual's personal integrity; as an act of

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<sup>47</sup> In her testimony before the Court on May 2, 2016, the expert witness Christina Zampas explained that several human rights are affected in the context of FS and that international human rights law has defined and addressed FS with some degree of inconsistency.

torture or other cruel, inhuman, or degrading treatment; as a form of discrimination; and, as a violation of a woman's dignity.<sup>48</sup> In reality, FS is all of these combined.

16. The European Court has held, for example, that FS is a violation of the victim's rights to personal integrity, privacy and family life, and dignity,<sup>49</sup> and that it constitutes:

a major interference with a person's reproductive health status . . . [that] bears on manifold aspects of the individual's personal integrity including his or her physical and mental well-being and emotional, spiritual and family life[, . . . and is] incompatible with the requirement of respect for human freedom and dignity.<sup>50</sup>

17. United Nations (UN) human rights treaty bodies have come up with their own lists of human rights affected by FS, including the right to health, the right to information, the right to privacy, the right to found a family, and the right to be free from discrimination.<sup>51</sup> The CEDAW Committee has addressed FS as a form of violence against women<sup>52</sup> and a violation of the right to decide on the number and spacing of children,<sup>53</sup> the rights to access to information<sup>54</sup> and appropriate medical services,<sup>55</sup> the right to physical and mental integrity,<sup>56</sup> and the right to dignity.<sup>57</sup> The Human Rights Committee considers FS as a violation of the prohibition on torture, cruel, inhuman, or degrading treatment and the

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<sup>48</sup> World Health Organization et al., *supra* note 6, at 1 (summarizing how various international, regional, and national bodies have defined FS as a human rights violation).

<sup>49</sup> See *V.C. v. Slovakia*, Judgment of 8 November 2011; ECtHR, *I.G. and Others v. Slovakia*, no. 15966/04, Judgment of 13 November 2012.

<sup>50</sup> *V.C. v. Slovakia*, Judgment of 8 November 2011, paras. 106-107. See also *I.G. and Others v. Slovakia*, Judgment of 13 November 2012.

<sup>51</sup> World Health Organization et al., *supra* note 6, at 1.

<sup>52</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19: Violence against women*, UN Doc. A/47/38, 1992, para. 22.

<sup>53</sup> See Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, Communication No. 4/2004, Views of 14 August 2006, para. 11.4 (citing *General Recommendation No. 19: Violence against women*, *supra* note 52, para. 22) (finding violation of art. 16(1)(e) of CEDAW).

<sup>54</sup> See *id.* at para. 11.2 (citing Committee on the Elimination of Discrimination against Women, *General Recommendation No. 21: Equality in Marriage and Family Relations*, UN Doc. A/49/3, 1994, para. 22) (finding violation of art. 10(h) of CEDAW).

<sup>55</sup> See *id.* at para. 11.3 (finding violation of art. 12 of CEDAW).

<sup>56</sup> *General Recommendation No. 19: Violence against women*, *supra* note 52, para. 22.

<sup>57</sup> See Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, para. 11.3 (citing to *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, *supra* note 5, para. 22); *General Recommendation No. 19: Violence against women*, *supra* note 52, para. 22; *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, *supra* note 5, para. 22.

right to privacy and family life.<sup>58</sup> The CESCR has stated that FS of girls and women with disabilities is a violation of a State's obligation to protect the family.<sup>59</sup>

18. Other international authorities have also focused on different aspects of FS as a human rights violation. The UN Special Rapporteur on torture has established that FS constitutes torture and ill-treatment.<sup>60</sup> The UN Special Rapporteur on violence against women has stated that FS violates a woman's physical integrity and security and constitutes violence against women.<sup>61</sup> The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has addressed FS as a violation of the right to health.<sup>62</sup> Finally, the Rome Statute of the International Criminal Court categorizes FS as a war crime and a crime against humanity (provided other requirements are met).<sup>63</sup>

19. Similar conceptual variations of FS are also prevalent in Inter-American doctrine. In analyzing FS in the present case, the Commission found violations of some of the rights mentioned above, insofar as these are recognized under the American Convention and the Convention of Belém do Pará. Specifically, the Commission found FS to constitute violations of the right to personal integrity recognized in Article 5(1) of the American Convention (but

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<sup>58</sup> Human Rights Committee, *General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 29 March 2000, paras. 11, 20.

<sup>59</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 5: Persons with disabilities*, UN Doc. E/1995/22., 9 December 1994, para. 31. *See also Concluding observations of the Committee on Economic, Social and Cultural Rights: Brazil, supra* note 10, para. 27.

<sup>60</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, UN Doc. A/HRC/22/53, 1 February 2013, paras. 45-48, 71, 76-78, 80, 88. *See also Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, UN Doc. A/HRC/7/3, 15 January 2008, paras. 38, 39, 69.

<sup>61</sup> *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1997/44*, UN Doc. E/CN.4/1999/68/Add.4, 21 January 1999, para. 51 [hereinafter Coomaraswamy report].

<sup>62</sup> *Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc. A/66/254, 3 August 2011, para. 12.

<sup>63</sup> Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002), 2187 U.N.T.S. 90, arts. 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi).

not the right to be free from torture or cruel, inhumane, or degrading treatment under Article 5(2)), the right to access to information under Article 13 (which the Commission connected to reproductive health), the right to a private and family life under Article 11(2) (but not the right to dignity under Article 11(1)), and the right to form a family under Article 17(2) (which it analyzed jointly with the violation of Article 11(2)), most of which the Commission connected to the State's duty to guarantee rights without discrimination under Article 1(1).<sup>64</sup>

20. In this case, the Commission also found that the State violated its duty to refrain from any practice or act of violence against women and to act with due diligence to punish such acts, recognized in Article 7 (a), (b), (c), (f), and (g) of the Convention of Belém do Pará.<sup>65</sup> Nevertheless, in analyzing the violations of the rights recognized in Articles 11(2) and 17(2) of the American Convention, the Commission integrated a lengthy discussion of how FS is also a form of violence against women and gender-based discrimination.<sup>66</sup>

21. Rather than consider these various definitions of FS under international human rights law as mutually exclusive, we suggest that they reflect the complex nature and indivisibility of this autonomous human rights violation. As the Commission stated in its merits report, “[a]n international consensus exists that non-consensual sterilization constitutes a form of violence against women in which [...] a series of human rights are infringed.”<sup>67</sup> The Commission recognized that all these violations of the American Convention and of the Convention of Belém do Pará were essentially related, since the:

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<sup>64</sup> IACHR, Merits Report No. 72/14, Case 12.655, *I.V.* (Bolivia), 15 August 2014, para. 186.

<sup>65</sup> *See id.* The Commission also found violations of Articles 8 and 25, but for the separate issue involving lack of access to justice.

<sup>66</sup> *See id.* at paras. 155-164.

<sup>67</sup> *Id.* at para. 156.



violation of [I.V.'s] right to personal integrity, is closely linked to the satisfaction of her right to access to information [...]. Also, it has specific implications and effects on the exercise of her rights to the protection of private and family life, and her right to live free from violence and discrimination.<sup>68</sup>

22. In keeping with the Commission's characterization of FS as a set of interconnected human rights violations, in the following paragraphs we invite the Court to explicitly state that FS is best characterized as its own autonomous and complex human rights violation.

**D. The Court Should Develop a New Conceptual Understanding of Forced Sterilization as a Single, Autonomous, and Complex Violation of a Core Set of Interrelated Human Rights.**

23. The preceding discussion suggests that current international human rights law offers various definitions of FS and that the Court has an opportunity to harmonize them by defining FS as an autonomous and complex violation of a core set of interrelated rights. Inevitably, some of these variations are due to the normative limitations applicable to each of the human rights bodies that have addressed FS. Each UN human rights treaty body, for example, is limited to analyzing FS through the lens of its specific convention.

24. Similar normative limitations apply to the Commission and the Court. In the Inter-American System, the specific prohibition of FS is not mentioned in any of the regional human rights treaties, and the right to health, for example, is not directly justiciable before the Court.<sup>69</sup> Therefore, in analyzing a case involving FS, the organs of the Inter-American System must necessarily interpret the existing normative framework creatively to address this complex human rights violation. Accordingly, the Commission has analyzed FS as a series of separate and distinct violations of several rights recognized under the American

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<sup>68</sup> *Id.* at para. 107.

<sup>69</sup> See Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" (adopted 17 November 1988, entered into force 16 November 1999), OAS Doc. OAS/Ser.L/V/I.4 rev. 13, arts. 10, 19 [hereinafter Protocol of San Salvador].

Convention (and the Convention of Belém do Pará), while at the same time recognizing that all those human rights violations are “closely linked.”

25. This is not the first time that the Inter-American System has struggled to analyze a complex human rights violation that does not fit neatly into any specific regional treaty. When complex violations not explicitly mentioned in the American Convention have come up before the Inter-American System - for example, in cases of forced disappearances and lack of access to justice - the Commission and the Court have been creative in finding ways to address them. The Court can therefore learn from its experience in this regard to overcome the same difficulties in analyzing FS under current Inter-American norms.

26. In its very first judgment in a contentious case, in 1989, the Court was required to apply existing standards to the complex human rights violation of forced disappearances.<sup>70</sup> The normative framework was deficient because, at the time, there was no treaty that specifically addressed forced disappearances, and the American Convention does not specifically prohibit it. The Inter-American Convention on the Forced Disappearance of Persons<sup>71</sup> was adopted in 1994 and entered into force in 1996 - seven years after the Court first addressed forced disappearances through the lens of the American Convention.

27. To resolve this normative gap, the Court conceived of forced disappearances as a complex yet single, autonomous violation of a core group of rights under the American Convention.<sup>72</sup> The Court’s conceptualization of forced disappearance as an autonomous

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<sup>70</sup> See, e.g., I/A Court H.R., *Velásquez-Rodríguez v. Honduras*. Merits. Judgment of 29 July 1988. Series C No. 4, paras. 150, 155.

<sup>71</sup> See Inter-American Convention on the Forced Disappearance of Persons (adopted 9 June 1994, entered into force 28 March 1996), OASTS No. 68, 33 I.L.M. 1429 (1994).

<sup>72</sup> The definition of this core group of rights fluctuated in the Court’s jurisprudence. Sometimes the Court added or removed rights from this core conceptualization (such as the right to juridical personality under Article 3 of the Convention), and sometimes the Court ignored its previous jurisprudence altogether and separated this supposedly indivisible core set of rights into fragmented and distinct components. See

violation was instrumental for the development of a more appropriate normative framework. This groundbreaking conceptual framework better served victims and ensured that such complex violations would be properly addressed and remedied despite the obvious normative gaps. By treating forced disappearance as a single simultaneous violation of a core set of rights under the American Convention, the Court provided a useful conceptual understanding of this complex human rights violation. In the present case, once again, the Court has a unique opportunity to assist in the development of international human rights law as it relates to FS as a complex and autonomous violation.

28. In light of the above, we suggest that the Court provide a clear conceptual definition of FS as a complex and autonomous human rights violation and apply a corresponding analytical framework under the American Convention in which FS constitutes a single transversal violation of the rights to dignity, private and family life, personal integrity and humane treatment, freedom of expression, protection of the family, and to be free from discrimination and from acts of violence against women, recognized under articles 11(1) and (2), 5(1) and (2), 13(1), and 17(2) of the American Convention, in relation to Article 1(1) thereof, and in relation to Article 7 of the Convention of Belém do Pará.<sup>73</sup>

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*generally* I/A Court H.R., *Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos*, No. 6 (2015); Francisco J. Rivera Juaristi, *La Competencia Ratione Temporis de la Corte Interamericana en Casos de Desapariciones Forzadas: Una Crítica del Caso Heliodoro Portugal Vs. Panamá*, in *Revista CEJIL: Debates sobre Derechos Humanos y el Sistema Interamericano* (2009), 20.

<sup>73</sup> Although we support the victim's and Commission's allegations of a violation of the right to access to justice under Articles 8 and 25 of the American Convention in the present case, we have not included these two articles in our suggested analytical framework for FS cases because not all FS cases will necessarily involve a violation of the right to access to justice.

**II. FORCED STERILIZATION CONSTITUTES, AT A MINIMUM, A TRANSVERSAL VIOLATION OF THE RIGHTS TO DIGNITY, PRIVATE AND FAMILY LIFE, PERSONAL INTEGRITY AND HUMANE TREATMENT, FREEDOM OF EXPRESSION, PROTECTION OF THE FAMILY, AND TO BE FREE FROM DISCRIMINATION AND FROM ACTS OF VIOLENCE AGAINST WOMEN.**

29. In this section, we will apply our proposed transversal analytical approach to FS in the context of the present case. We highlight that FS is a single autonomous and complex human rights violation, and that a discussion of its several components is simply due to the limitations of the existing normative framework. We remind the Court that its jurisprudence on forced disappearances follows a similar structure in that the Court analyzes the component human rights violations separately and that this structure is purely a reflection of the normative constraints of the American Convention in addressing such complex and autonomous violations. Each violation is essentially a part of the whole.

30. We begin our analysis with a discussion of how FS particularly affects the right to dignity because this case presents an opportunity for the Court to more thoroughly develop this issue in its jurisprudence. Then, we will discuss how FS affects the rights to personal integrity and humane treatment, freedom of expression, privacy and family life, and to be free from discrimination and from acts of violence against women. Although we do not expect the Court to conduct a separate analysis of the general obligation to respect, protect, and guarantee human rights without discrimination found in Article 1(1) of the American Convention, we invite the Court to integrate the principle of non-discrimination throughout its integral analysis of FS.<sup>74</sup>

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<sup>74</sup> See generally IACHR, Merits Report No. 72/14, Case 12.655, *I.V.* (Bolivia), 15 August 2014, paras. 130-132.

## **A. Forced Sterilization Is a Violation of the Right to Dignity.**

31. The right to dignity is enumerated and protected in regional human rights treaties and in the Constitution of Bolivia, and is further recognized by numerous international human rights bodies as a distinct right that States must actively uphold and protect. Forced sterilization is a violation of the human right to dignity under regional and universal human rights law because it constitutes an interference with a woman's sexual and reproductive autonomy and is an act of torture, inhumane treatment, and gender-based violence. Moreover, this practice may be considered a particularly extreme denial of a woman's dignity because of her vulnerability during childbirth and the long-lasting or permanent impact on her physical and psychological well-being and life choices. The following paragraphs first describe the right to dignity as a distinct right recognized under the American Convention, in the Convention of Belém do Pará, and by international human rights bodies, and then discuss the right to be free from FS as inherent in the right to dignity.

### **1. Bolivia Has an Obligation to Respect the Right to Dignity.**

- i. The right to respect for one's dignity is protected by Article 11(1) of the American Convention on Human Rights.*

32. The American Convention sets out the right to dignity as a distinct, stand-alone right in Article 11(1), which states, “[e]veryone has the right to have [...] his dignity recognized.”<sup>75</sup> Both the Commission and the Court have recognized the right to dignity as a separate and distinct right under Article 11(1) and have found violations or potential

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<sup>75</sup> American Convention on Human Rights, art. 11(1).

violations of the right.<sup>76</sup> However, the interpretation of this right is still limited and continuing to develop. Therefore, a thorough analysis of the nature and scope of the human right to dignity under Article 11(1) is needed. This is particularly true in the context of women's rights, in light of the jurisprudence and commentary from human rights bodies, including the Commission, that characterizes violence against women and violations of sexual and reproductive rights as attacks on a woman's dignity.<sup>77</sup>

ii. *Article 4(e) of the Convention of Belém do Pará also protects the right to respect for one's dignity.*

33. The Convention of Belém do Pará specifically sets out a right to dignity that all women are entitled to enjoy and that must be protected by States parties. Article 4(e) reads:

Every woman has the right to recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include [...]he right to have the inherent dignity of her person respected [...].<sup>78</sup>

34. The Commission has recognized that this particular right is implicated by acts of violence against women.<sup>79</sup>

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<sup>76</sup> See I/A Court H.R., *Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of 30 August 2010. Series C No. 215, paras. 129, 131 (finding a violation of the right to dignity under Article 11(1) as a distinct violation from those related to the rights to personal integrity and private life under Articles 5(2) and 11(2), respectively); IACHR, Admissibility Report No. 154/10, Petition 1462-07, *Linda Loaiza López Soto and Next of Kin* (Venezuela), 1 November 2010, para. 59 (finding that allegations of a violation of the right to dignity should be analyzed under Article 11(1) of the American Convention); IACHR, Merits Report No. 31/96, Case 10.526, *Dianna Ortiz* (Guatemala), 16 October 1996, paras. 116-17 (finding a violation of the right to dignity under Article 11(1) where State officials abducted and tortured the petitioner and later attacked her honor and reputation by spreading false stories that undermined her position as a Catholic nun). See also IACHR, Merits Report No. 5/96, Case 10.970, *Raquel Martín de Mejía* (Peru), 1 March 1996, at V(B)(3)(a) (stating that rape is an attack on one's dignity).

<sup>77</sup> See *infra* Section II.A.2.ii.

<sup>78</sup> Convention of Belém do Pará, art. 4(e).

<sup>79</sup> See IACHR, Merits Report No. 54/01, Case 12.051, *Maria da Penha Maia Fernandes* (Brazil), 16 April 2001, para. 58.

iii. *International human rights bodies recognize a right to dignity.*

35. Other international human rights instruments explicitly protect the right to dignity or have been interpreted to guarantee that right. While the American and African human rights instruments are unique in that they explicitly recognize a separate and distinct right to dignity, other bodies have recognized this fundamental right, even in the absence of a specific provision in the relevant treaties. The following paragraphs summarize how regional and universal bodies have interpreted the right to dignity, and later portions of this brief discuss how the right to dignity relates to FS.

36. The African Charter on Human and Peoples' Rights recognizes the right to dignity as an enumerated, distinct right. Pursuant to Article 5, "[e]very individual shall have the right to the respect of dignity inherent in a human being."<sup>80</sup> In reviewing a case concerning the institutionalization of mental health patients, the African Commission on Human and Peoples' Rights ("African Commission") found that "[h]uman dignity is an inherent basic right to which all human beings[...] are entitled to without discrimination," and held there was a violation of Article 5 because petitioners were denied "any form of dignity."<sup>81</sup> As in a separate case concerning a stateless individual, the African Commission appears to consider treatment that denies an individual's humanity or agency to constitute a violation of the right to dignity.<sup>82</sup>

37. Additionally, women's right to dignity is specifically protected by Article 3 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in

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<sup>80</sup>African (Banjul) Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986), 21 ILM 58, art. 5.

<sup>81</sup> ACommHPR, *Purohit and Moore v. Gambia*, Communication No. 241/01, Merits Decision, 33<sup>rd</sup> Ordinary Session (2003), para. 57.

<sup>82</sup> See ACommHPR, *John Modise v. Botswana*, Communication No. 97/93, Merits Decision, 27<sup>th</sup> Ordinary Session (2000), para. 92.

Africa (the Maputo Protocol).<sup>83</sup> Among human rights standards, this instrument lays out perhaps the most detailed understanding of a woman's right to dignity, as follows:

1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.
2. Every woman shall have the right to respect as a person and to the free development of her personality.
3. States Parties shall adopt and implement appropriate measures to prohibit any exploitation or degradation of women.
4. States Parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.

38. The African Commission has further stated that the right to sexual and reproductive health should be considered in the context of the right to dignity.<sup>84</sup>

39. The CEDAW Committee has explicitly recognized a distinct right to dignity that States parties are obligated to uphold and protect. Relying on its prior guidance concerning the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>85</sup> the Committee has characterized practices that may be coercive or degrading, such as trafficking in women and sex tourism, as incompatible with respect for women's dignity.<sup>86</sup> It has specifically stated in its opinion in *A.S. v. Hungary* that "State parties should not permit forms of coercion, such as non-consensual sterilization [...] that violate women's rights to informed consent and dignity."<sup>87</sup>

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<sup>83</sup> See Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa "Maputo Protocol" (adopted 11 July 2003, entered into force 25 November 2005), OAU Doc. CAB/LEG/66.6 (2000), reprinted in 1 Afr. Hum. Rts. L.J. 40, art. 3.

<sup>84</sup> See ACommHPR, *General Comment No. 2 on Article 14.1 (a), (b), (c), and (f) and Article 14.2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, 55<sup>th</sup> Ordinary Session (2014), para. 11 [hereinafter *General Comment No. 2*].

<sup>85</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981), 1249 U.N.T.S. 13.

<sup>86</sup> See *General Recommendation No. 19: Violence against women*, supra note 52, para. 14.

<sup>87</sup> Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, Communication No. 4/2004, Views of 14 August 2006, UN Doc. CEDAW/C/36/D/4/2004, para. 11.3 (quoting *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, supra note 5, para. 22).



40. The European Court has acknowledged a “requirement of respect for human [...] dignity.”<sup>88</sup> That tribunal’s recognition of a State obligation to respect dignity is in keeping with the court’s interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights”)<sup>89</sup> as one intended to protect human dignity. The court has asserted that “the very essence of the Convention is respect for human dignity.”<sup>90</sup>

41. The European Court treats respect for one’s dignity as a broad right that overlaps with and implicates other rights. If a disregard for human dignity is sufficiently severe, the court will find a violation of Article 3, the right to humane treatment.<sup>91</sup> Where personal autonomy is restricted, undermining respect for human dignity, the European Court may find a violation of Article 8, the right to respect for private life.<sup>92</sup> In this manner, the court and the erstwhile European Commission of Human Rights have found that a variety of actions – implicating different textual rights of the European Convention on Human Rights – may infringe the right to dignity, meaning that this right is broader than and distinct from articles 3 and 8. Similar to the African Commission, they have discussed respect for dignity

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<sup>88</sup> ECtHR, *N.B. v. Slovakia*, no. 29518/10, Judgment of 12 June 2012, para. 73; ECtHR, *I.G. and Others v. Slovakia*, no. 15966/04, Judgment of 13 November 2012, para. 118. See also ECtHR, *V.C. v. Slovakia*, no. 18968/07, ECHR 2011, Judgment of 8 November 2011, para. 105.

<sup>89</sup> See Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953), 213 UNTS 221.

<sup>90</sup> *V.C. v. Slovakia*, Judgment of 8 November 2011, para. 105; *N.B. v. Slovakia*, Judgment of 12 June 2012, para. 73; *I.G. and Others v. Slovakia*, Judgment of 13 November 2012, para. 118. See also ECtHR, *Bouyid v. Belgium* [GC], no. 23380/09, ECHR 2015, Judgment of 28 September 2015, para. 102; ECtHR, *Moldovan and Others v. Romania (No. 2)*, nos. 41138/98 and 64320/01, ECHR 2005, Judgment of 12 July 2005, para. 113.

<sup>91</sup> See, e.g., *N.B. v. Slovakia*, Judgment of 12 June 2012, paras. 73, 80 (holding that FS is “incompatible with the requirement of respect for human freedom and dignity” and in this case, has “attained the threshold of severity required to bring it within the scope of Article 3”).

<sup>92</sup> See, e.g., ECtHR, *Evans v. United Kingdom* [GC], no. 6339/05, ECHR 2007, Judgment of 10 April 2007, para. 89 (finding legislation on IVF treatment did not violate Article 8 because human dignity and free will were respected in the act); ECtHR, *Goodwin v. United Kingdom* [GC], no. 28957/95, ECHR 2002, Judgment of 11 July 2002, para. 90 (linking respect for human dignity with personal autonomy, which is “an important principle underlying the interpretation” of Article 8, the right to privacy).

in the context of treatment that is discriminatory, diminishes individuals' humanity, or restricts their autonomy.<sup>93</sup>

42. The European Court of Justice (ECJ) has also analyzed “the fundamental right to human dignity.”<sup>94</sup> In an opinion involving the issue of patents for biological material, the ECJ stated it has a duty “to ensure that the fundamental right to human dignity[...] is observed” and discussed the right to dignity as a principle, that, in essence, protects the humanity and personhood of human beings.<sup>95</sup>

*iv. The right to respect for one's dignity is also protected by the Bolivian Constitution.*

43. Like many other national constitutions,<sup>96</sup> the Constitution of Bolivia recognizes an individual right to dignity and obligates public authorities to respect and ensure the enjoyment of this right. Article 21(2) specifically grants the right to dignity to Bolivian citizens, stating, “Bolivians have the following rights: [... t]o privacy, intimacy, honor, their

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<sup>93</sup> *Moldovan and Others v. Romania (No. 2)*, Judgment of 12 July 2005, para. 113 (“[T]he Court finds that the applicants’ living conditions and the racial discrimination to which they have been publicly subjected by the way in which their grievances were dealt with by the various authorities, constitute an interference with their human dignity which, in the special circumstances of this case, amounted to “degrading treatment” within the meaning of Article 3 of the Convention.”); ECtHR, *Pretty v. United Kingdom*, no. 2346/02, ECHR 2002, Judgment of 29 April 2002, para. 65 (connecting respect for dignity with quality of life and autonomy as components of the right to privacy under Article 8). *See also* ECommHR, *East African Asians v. United Kingdom*, App. nos. 4403/70-4419/70, 4422/70, 4423/70, 4434/70, 4443/70, 4476/70-4478/70, 4486/70, 4501/70 and 4526/70-4530/70, 14 December 1973, para. 189 (“The term ‘degrading treatment’ in this context indicates that the general purpose of the provision is to prevent interferences with the dignity of man of a particularly serious nature.”).

<sup>94</sup> European Court of Justice, *Netherlands v. Parliament and Council*, Case C-377/98, Judgment of the Court, 9 October 2001, para. 70.

<sup>95</sup> *See id.* at paras. 70-71, 77-78.

<sup>96</sup> *See, e.g.*, Azərbaycan Respublikasının Konstitusiyası [Constitution] art. 46. (Azer.); Constitución Política de la República de Chile art. 1; Constitución de la República de El Salvador arts. 4 and 10; Grundgesetz für die Bundesrepublik Deutschland 1949 [Constitution] art. 1 (F.R.G.); Magyar Közlöny [Constitution] art. 2 (Hung.); 대한민국 헌법 [Constitution] art. 10 (S. Korea); Constitution of the Federal Republic of Nigeria art. 34.; Constitution of the Republic of Seychelles art. 16.; Constitution of the Republic of South Africa, 1996 art. 10; Bundesverfassung der Schweizerischen Eidgenossenschaft [Constitution] art. 7 (Switz.); Rasima ya Katiba ya Jamhuri ya Muungano wa Tanzania ya mwaka 2013 [Draft Constitution] art. 22(2); КОСНИТУЦІЯ УКРАЇНИ [Constitution] art. 28 (Ukr.).

self image, and dignity.”<sup>97</sup> Article 9(2) requires the Bolivian government to “guarantee the[...] equal dignity of individuals, nations, peoples, and communities.”<sup>98</sup> Article 22 requires the Bolivian government “to respect and protect” the right to dignity.<sup>99</sup> Accordingly, Bolivia has both an international and a domestic obligation to respect the right to dignity under the American Convention and the Convention of Belém do Pará and under its own Constitution. Therefore, Bolivia must protect against FS, which constitutes a violation of the right to dignity as described in the following paragraphs.

2. Forced Sterilization Violates a Woman’s Right to Dignity Under International Law.

44. Human rights courts and monitoring bodies have examined the compatibility of FS with the right to dignity through various lenses, depending largely on the instrument available to them or the scope of their mandate. Similarly, where such bodies have not specifically addressed this practice, they have provided definitions and guidance that strongly support a reading of the right to dignity that includes a right to be free from FS. Whether analyzed as an interference with reproductive rights, a medical procedure performed without consent, or an act of gender-based violence, FS is incompatible with the human right to dignity.

- i. Forced sterilization as an involuntary medical procedure that interferes with a woman's reproductive choices is a violation of the right to dignity.*

45. International human rights law recognizes that the performance of a medical procedure without the patient’s informed consent constitutes a violation of the right to

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<sup>97</sup> Constitución Política del Estado art. 21(2) (Bol.)

<sup>98</sup> *Id.* at art. 9(2).

<sup>99</sup> *Id.* at art. 22.

dignity.<sup>100</sup> Interference with a woman's ability to make decisions about her own reproductive health is also understood to contravene this right.<sup>101</sup>

46. In interpreting Article 14, on health and reproductive rights, in the Maputo Protocol, the African Commission on Human and Peoples' Rights has stated that the right to dignity includes the "freedom to make personal decisions without interference from the State or non-State actors."<sup>102</sup> Additionally, the African Commission has stated that the guarantee of women's sexual and reproductive rights must be interpreted in conjunction with the right to dignity.<sup>103</sup> The African Commission's language is in keeping with guidance issued by the World Health Organization and other UN agencies, which have jointly stated that "respect for dignity [... includes] providing that person with the opportunity to make autonomous reproductive choices."<sup>104</sup>

47. Forced sterilization, in particular, is both a medical procedure performed without consent and an interference with a woman's reproductive choices and, therefore, violates the right to dignity.<sup>105</sup> The CEDAW Committee has explained that health services must be performed in a way that ensures informed consent and respects the right to dignity, and

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<sup>100</sup> See Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Approach of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on the rights of persons institutionalized and medically treated without informed consent*, UN Doc. CAT/OP/27/2, 16-20 November 2015, para. 12 ("Informed consent is fundamental to respecting an individual's autonomy, self-determination and human dignity."); *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc. A/64/272, 10 August 2009, para. 18 ("Guaranteeing informed consent is a fundamental feature of respecting an individual's autonomy, self-determination and human dignity.").

<sup>101</sup> See Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, Communication No. 4/2004, Views of 14 August 2006, UN Doc. CEDAW/C/36/D/4/2004, para. 11.3 (holding that non-consensual sterilization violates a woman's right to dignity); *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, *supra* note 5, para. 22; *General Comment No. 2*, *supra* note 84, paras. 11, 24.

<sup>102</sup> *General Comment No. 2*, *supra* note 84, para. 24.

<sup>103</sup> See, e.g., *General Comment No. 2*, *supra* note 84, para. 11.

<sup>104</sup> World Health Organization et al., *supra* note 6, at 9.

<sup>105</sup> See, e.g., Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, para. 11.3.

that FS contravenes these principles.<sup>106</sup> In its General Comment No. 24 concerning women’s right to health, the Committee asserted, “State parties should not permit forms of coercion, such as non-consensual sterilization[...] that violate women’s rights to informed consent and dignity.”<sup>107</sup> The Committee found Hungary to be in violation of its obligations under CEDAW when it failed to ensure that a sterilization was performed with the patient’s informed consent.<sup>108</sup>

48. Similarly, in several cases on FS, the European Court has stated that FS is “incompatible with the requirement of respect for human freedom and dignity.”<sup>109</sup>

*ii. Forced sterilization as an act of gender-based violence is a violation of the right to dignity.*

49. This Court has explained that violence against women is a particularly serious violation of human rights and, echoing the Convention of Belém do Pará, “a manifestation of the historically unequal power relations between women and men’ that ‘pervades every sector of society regardless of class, race, or ethnic group, income, culture, level of education, age or religion, and strikes at [the] very foundation [of society].”<sup>110</sup> It obstructs women’s “individual and social development and their full and equal participation in all walks of life,”<sup>111</sup> and, therefore, “violence against women is an offense against human dignity.”<sup>112</sup>

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<sup>106</sup> See, e.g., *id.* at para. 11.3.

<sup>107</sup> *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, *supra* note 5, para. 22.

<sup>108</sup> See, e.g., Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, para. 11.3.

<sup>109</sup> ECtHR, *N.B. v. Slovakia*, no. 29518/10, Judgment of 12 June 2012, para. 73; ECtHR, *V.C. v. Slovakia*, no. 18968/07, ECHR 2011, Judgment of 8 November 2011, para. 107; ECtHR, *I.G. and Others v. Slovakia*, no. 15966/04, Judgment of 13 November 2012, para. 118.

<sup>110</sup> I/A Court H.R., *Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of 30 August 2010. Series C No. 215, para. 118 (quoting Convention of Belém do Pará, Preamble).

<sup>111</sup> Convention of Belém do Pará, Preamble.

<sup>112</sup> Convention of Belém do Pará, Preamble.

50. Sexual and gender-based violence against women violates the right to dignity. In cases of rape and of forced nudity of female prisoners in the presence of armed male guards, both characterized as acts of gender-based violence, the Inter-American Court has held that the State violated the petitioners' right to dignity.<sup>113</sup> Violence against women, the Court found in *Fernández Ortega et al. v. Mexico*, is "an offence against human dignity."<sup>114</sup> In holding there was a violation of the right to dignity under Article 11(1) due to the sexual violence perpetrated against the petitioner, the Court found that "the rape of Mrs. Ortega[...] annulled her right to decide freely with whom to have intimate relations, causing her to lose total control over those most personal and intimate decisions, and over her basic bodily functions."<sup>115</sup>

51. The Inter-American Commission's doctrine has also recognized that sexual violence against women is a violation of the right to dignity.<sup>116</sup> In the case of *Raquel Martín de Mejía*, the Commission determined that sexual abuse is "a deliberate outrage to [the petitioner's] dignity."<sup>117</sup> The Commission quoted the UN Special Rapporteur on torture, who stated, "A particularly despicable assault on human dignity is rape."<sup>118</sup> Similarly, the Commission found Guatemala responsible for a violation of the right to dignity under Article 11(1), in

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<sup>113</sup> See, e.g., I/A Court H.R., *Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of 25 November 2006. Series C No. 160, para. 308 ("Said acts of sexual violence directly endangered the dignity of those women"); *Fernández Ortega et al. v. Mexico*. Judgment of 30 August 2010, paras. 118, 131.

<sup>114</sup> *Fernández Ortega et al. v. Mexico*. Judgment of 30 August 2010, para. 118 (quoting the Preamble of the Convention of Belém do Pará).

<sup>115</sup> *Id.* at para. 129.

<sup>116</sup> See, e.g., IACHR, Merits Report No. 31/96, Case 10.526, *Dianna Ortiz* (Guatemala), 16 October 1996, paras. 53, 116; IACHR, Merits Report No. 5/96, Case 10.970, *Raquel Martín de Mejía* (Peru), 1 March 1996, at V(B)(3)(a); IACHR, Admissibility Report No. 154/10, Petition 1462-07, *Linda Loaiza López Soto and Next of Kin* (Venezuela), 1 November 2010, para. 59 (finding that allegations that the State blamed the petitioner for sexual violence she suffered should be analyzed under Article 11(1) as a possible violation on the petitioner's right to dignity).

<sup>117</sup> *Raquel Martín de Mejía* (Peru), 1 March 1996.

<sup>118</sup> *Report of the Special Rapporteur, Mr. P. Kooijmans, pursuant to Commission on Human Rights resolution 1992/32*, UN Doc. E/CN.4/1993/26, 15 December 1992, para. 580, quoted in *Raquel Martín de Mejía* (Peru), 1 March 1996, at V(B)(3)(a).

part, because State agents had subjected the petitioner to torture that likely included sexual violence.<sup>119</sup>

52. As will be described further in this brief,<sup>120</sup> the Inter-American doctrine and other human rights bodies and experts have recognized FS as an act of gender-based violence. The Commission has explicitly stated that FS procedures and the physical and psychological effects of those procedures “are examples of forms of violence against women.”<sup>121</sup> The new Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence recognizes that FS must be prohibited in order to eliminate violence against women,<sup>122</sup> and the UN Special Rapporteur on violence against women, in likening FS to a battery on a woman, has stated that “forced sterilization constitutes violence against women.”<sup>123</sup> As an act of gender-based violence, FS violates the right to dignity and, as the following paragraphs will describe in detail, it is a particularly extreme violation of this right.

### 3. Forced Sterilization Involves a Particularly Extreme Denial of a Woman's Right to Dignity.

53. Forced sterilization constitutes a particularly grave denial of the right to respect for one’s dignity. Women are vulnerable in the context of receiving sexual and reproductive health services, and particularly while pregnant and in labor, which is when FS typically occurs. Moreover, FS irreversibly impacts a woman’s reproductive choices and has lifelong consequences for her health and private life.

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<sup>119</sup> See, e.g., *Dianna Ortiz* (Guatemala), 16 October 1996, paras. 53, 116.

<sup>120</sup> See *infra* Section II.E.

<sup>121</sup> IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, OEA/Ser.L/V/II, 22 November 2011, para. 66.

<sup>122</sup> See Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence “Istanbul Convention” (adopted 7 April 2011, entered into force 1 August 2014) C.E.T.S. 210, para. 39(b) (prohibiting the practice of FS) [hereinafter *Istanbul Convention*].

<sup>123</sup> Coomaraswamy report, *supra* note 61, para. 51.

*i. Women are particularly vulnerable during childbirth.*

54. During childbirth, a woman is particularly vulnerable for a variety of reasons, making sterilizations carried out without informed consent an especially grave violation of her right to dignity.<sup>124</sup> When assessing the severity of an interference with human dignity, the European Court has recognized that the vulnerability of the victim – as determined by his or her status, including sex, age, and state of health – is an appropriate consideration.<sup>125</sup> Likewise, the UN Special Rapporteur on torture has incorporated the concept of vulnerability into his analysis of what constitutes torture and cruel, inhuman, or degrading treatment.<sup>126</sup>

55. Women, especially in the realm of sexual and reproductive health, have traditionally been subjected to exclusion or discrimination.<sup>127</sup> Several international instruments expressly reference the discrimination and inequality that women face with respect to maternal health. Article 10(2) of the International Covenant on Economic, Social, and Cultural Rights calls upon States parties to provide special protection to mothers during a

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<sup>124</sup> See ECtHR, *N.B. v. Slovakia*, no. 29518/10, Judgment of 12 June 2012, para. 73; ECtHR, *I.G. and Others v. Slovakia*, no. 15966/04, Judgment of 13 November 2012.

<sup>125</sup> See ECtHR, *Bouyid v. Belgium* [GC], no. 23380/09, ECHR 2015, Judgment of 28 September 2015, para. 78; (concurring opinion of Judges Gaetano, Lemmens, and Mahoney), para. 8; ECtHR, *Elci and Others v. Turkey*, nos. 23145/93 and 25091/94, Judgment of 13 November 2003, para. 633; ECtHR, *Ireland v. The United Kingdom*, no. 5310/71, Judgment of 18 January 1978, para. 162.

<sup>126</sup> See *Report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, U.N. Doc. E/CN.4/2006/6/Add.4, 23 December 2005, para. 40 (“[T]he overriding factor at the core of the prohibition of CIDT [cruel, inhuman and degrading treatment] is the concept of powerlessness of the victim.”).

<sup>127</sup> IACHR, Merits Report No. 72/14, Case 12.655, *I.V.* (Bolivia), para. 98 (citing *Access to Information on Reproductive Health from a Human Rights Perspective*, *supra* note 121). See also IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, OEA/Ser.L/V/II. Doc. 69, 7 June 2010.



reasonable period before and after childbirth;<sup>128</sup> within the Inter-American System, the Protocol of San Salvador imposes an obligation on States to provide the same.<sup>129</sup>

56. Given the intrusive and personal nature of sexual and reproductive health treatment, as well as the difficult decisions involved therein, women face sex-specific vulnerabilities. The European Court has recognized this in the context of childbirth, prenatal care, and gynecological exams.<sup>130</sup> In addition, Article 9 of the Convention of Belém do Pará establishes that States shall take special account of women's vulnerability while pregnant.<sup>131</sup>

57. Women are often made more vulnerable in childbirth as a result of the physical and mental stress of labor, pain, undergoing surgical procedures, and sedation, leaving them completely under the doctors' control and medically unable to exert their agency.<sup>132</sup> Indeed, as the Inter-American Commission indicated in its merits report concerning this case, "it has been recognized internationally that conditions such as surgical stress not only can affect a patient's understanding of the risks and consequences of a specific medical procedure but can also make him or her more vulnerable to undue influences."<sup>133</sup>

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<sup>128</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976), 993 UNTS 3, art. 10(2).

<sup>129</sup> Protocol of San Salvador, art. 15.

<sup>130</sup> See, e.g., ECtHR, *Konovalova v. Russia*, no.37873/04, Judgment of 21 November 2014; ECtHR, *R.R. v. Poland*, no. 27617/04, ECHR 2011, Judgment of 26 May 2011, para. 140; ECtHR, *Juhnke v. Turkey*, no. 52515/99, Judgment of 13 May 2008.

<sup>131</sup> Convention of Belém do Pará, art. 9.

<sup>132</sup> See *Konovalova v. Russia*, Judgment of 21 November 2014, para. 47 ("[T]he Court would note that the applicant learned of the presence of medical students during the birth the day before, between two sessions of drug-induced sleep, when she had already been for some time in a state of extreme stress and fatigue on account of her prolonged contractions. It is unclear whether the applicant was given any choice regarding the participation of students on this occasion and whether, in the circumstances, she was at all capable of making an intelligible informed decision.")

<sup>133</sup> IACHR, Merits Report No. 72/14, Case 12.655, *I.V.* (Bolivia), 15 August 2014, para. 122 (citing Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, Communication No. 4/2004, Views of 14 August 2006, UN Doc. CEDAW/C/36/D/4/2004, para. 11.2); World Health Organization et al., *supra* note 6, at 14.

58. In this regard, the European Court has stated, “For the Court, such a way of proceeding, by removing one of the important capacities of the applicant and making her formally agree to such a serious medical procedure while she was in labour, when her cognitive abilities were affected by medication, and then wrongfully indicating that the procedure was indispensable for preserving her life, violated the applicant’s physical integrity and was *grossly disrespectful* of her human dignity.”<sup>134</sup>

*ii. Forced sterilization irreversibly impacts reproductive choices.*

59. Sterilization is a serious medical procedure recognized to be permanent and life altering.<sup>135</sup> The irreversible nature of sterilization, along with its long lasting physical and psychological effects, inarguably makes it amongst the most severe violations of a woman’s right to dignity. Forced sterilization robs victims of their ability to bear children and, concomitantly, of their ability to make family planning decisions and develop their own personal relationships.<sup>136</sup>

60. In *Artavia Murillo v. Costa Rica*, the Court explained the connection between individuals’ private decisions concerning whether or how to start a family and their dignity as human beings. Finding that the prohibition on in vitro fertilization violated the human rights of couples unable to conceive naturally, the Inter-American Court held:

The protection of private life encompasses a series of factors associated with the dignity of the individual, including, for example, the ability to develop his or her own

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<sup>134</sup> ECtHR, *N.B. v. Slovakia*, no. 29518/10, Judgment of 12 June 2012, para. 77 (emphasis added).

<sup>135</sup> The World Health Organization and the International Federation of Obstetrics and Gynecology make clear that patients who may undergo sterilization must be advised that the procedure is intended to be permanent. World Health Organization, *Medical Eligibility Criteria for Contraceptive Use* (3<sup>rd</sup> ed. 2004), 8 [hereinafter World Health Organization, *Medical Eligibility*]; FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women’s Health, *Ethical Issues in Obstetrics and Gynecology* (2012), para. 6 [hereinafter FIGO].

<sup>136</sup> Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, paras. 2.4, 3.8, 11.4.

personality and aspirations, to determine his or her own identity and to define his or her own personal relationships.<sup>137</sup>

61. Moreover, the removal of a woman's ability to reproduce seriously disrupts her physical well-being and damages her physical integrity and bodily autonomy.<sup>138</sup> For these reasons, the CEDAW Committee has expressly defined the need for, and proper methods of obtaining, informed consent in the context of reproductive health, stating that "acceptable services" are those that respect dignity and consent.<sup>139</sup>

62. The FS procedure performed on I.V. constituted a particularly severe denial of her right to dignity. Doctors sterilized I.V. while she lay on her back under epidural anesthesia during a cesarean section; medical records indicate that I.V. may have been asked to give her verbal consent in the "peri-operative" period in this highly vulnerable state, without the time or conditions necessary for her to be adequately informed of and consider the risks, effects, and alternatives to the procedure. Unable, and not given the opportunity, to provide informed consent, I.V. was subjected to a medical procedure that, by definition, interfered with her reproductive choices and constituted an act of violence against women, both of which amount to a violation of the right to dignity. Furthermore, because of the vulnerable state she was in as a woman in labor, the irreversibility and permanence of this procedure, and the intimacy of its consequences, the violation of I.V.'s right to dignity was of a particularly severe nature. Accordingly, the Court should find that Bolivia violated Article 11(1) of the American Convention, in connection with articles 1(1), 5(1) and (2), 13(1), and 17(2) of that instrument.

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<sup>137</sup> I/A Court H.R., "*In Vitro Fertilization*" (*Artavia Murillo et al*) v. *Costa Rica*, Preliminary Objections, Merits, Reparations and Costs. Judgment of 28 November 2012. Series C No. 257, para. 143.

<sup>138</sup> See Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, paras. 2.4, 7.7.

<sup>139</sup> *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, *supra* note 5, para. 22.

## **B. Forced Sterilization Is a Violation of the Right to Personal Integrity and Humane Treatment.**

63. An analysis of FS must necessarily consider the right to personal integrity and humane treatment. In this portion of the brief, we will review how various international and regional bodies have conceptualized FS as a violation of the rights to physical, mental, and moral integrity, while others have gone a step further to consider FS a form of torture or at least cruel, inhuman, or degrading treatment. In its merits reports in this case, for example, the Commission found a violation of the right to personal integrity under Article 5(1) of the American Convention but did not discuss FS as a violation of Article 5(2). We support the proposition that FS, in the context of the American Convention, is a violation of the right to personal integrity under Article 5(1) and that it is additionally cruel and inhuman or degrading treatment that may also constitute torture under Article 5(2), and we invite the Court to read the *amicus curiae* brief submitted in this case by the Human Rights and Gender Justice Clinic at CUNY School of Law and Women Enabled International for more detailed arguments.

64. Under Article 5(1) of the American Convention “every person has the right to have his physical, mental, and moral integrity respected [...].”<sup>140</sup> According to the Commission, FS may cause serious physical and emotional consequences.<sup>141</sup> The CEDAW Committee has similarly recognized that involuntary sterilization harms women physically and mentally.<sup>142</sup>

65. Victims of FS suffer severe health and psychological harm, which can arise out of social expectations regarding female fertility, the trauma of the unwanted invasive

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<sup>140</sup> American Convention, art. 5.

<sup>141</sup> IACHR, Merits Report No. 72/14, Case 12.655, *I.V.* (Bolivia), 15 August 2014, paras. 180-181.

<sup>142</sup> *General Recommendation No. 19: Violence against women*, *supra* note 52, para. 22 (“Compulsory sterilization or abortion adversely affects women’s physical and mental health[...].”).

procedure, and the strain of the resulting health problems.<sup>143</sup> This harm takes a toll on their mental health, as well as on their personal relationships. For example, Roma women sterilized without their informed consent who brought cases before the European Court experienced diminished status due to their infertility, ostracization, and divorce, leading to depression and anguish.<sup>144</sup> FS victims also show signs of post-traumatic stress disorder.<sup>145</sup>

66. According to Article 5(2) of the American Convention, “no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.”<sup>146</sup> Although the Commission did not specifically find or analyze a violation of Article 5(2) in the present case, it nevertheless stated that “performing a surgical procedure without the required consent may constitute a violation of the right to humane treatment.”<sup>147</sup> There is also significant support for the view that FS amounts to cruel, inhuman, or degrading treatment.<sup>148</sup> For example, the UN Human Rights Committee views the prohibition of

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<sup>143</sup> See *I.V. (Bolivia)*, 15 August 2014, paras. 67-68. Similarly, the first applicant in *G.B. and R.B. v. Moldova* suffered from early menopause at only thirty-two years old, as well as astheno-depressive syndrome, osteoporosis, and asthenic neurosis after being subjected to sterilization without her consent. ECtHR, *G.B. and R.B. v. Moldova*, no. 16761/09, Judgment of 18 December 2012, paras. 7-9.

<sup>144</sup> See ECtHR, *N.B. v. Slovakia*, no. 29518/10, Judgment of 12 June 2012, para. 80; ECtHR, *V.C. v. Slovakia*, no. 18968/07, ECHR 2011, Judgment of 8 November 2011, para. 118. See also Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, Communication No. 4/2004, Views of 14 August 2006, UN Doc. CEDAW/C/36/D/4/2004, para. 2.4; ECtHR, *I.G. and Others v. Slovakia*, no. 15966/04, Judgment of 13 November 2012, para. 160.

<sup>145</sup> *G.B. and R.B. v. Moldova*, Judgment of 18 December 2012, para. 11.

<sup>146</sup> American Convention, art. 5.

<sup>147</sup> *I.V. (Bolivia)*, 15 August 2014, para. 99.

<sup>148</sup> See Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, para. 11.4 (finding FS affects women in particular as it negatively harms their health and eliminates their ability to give birth); *General Recommendation No. 19: Violence against women*, *supra* note 52, paras. 22, 24(m) (finding that FS “adversely affects women’s physical and mental health,” and is, therefore, discriminatory in its effect on women and that States parties have a duty to “ensure measures are taken to prevent coercion in regard to fertility and reproduction”); *Access to Maternal Health Services from a Human Rights Perspective*, *supra* note 127, para. 76 (“The IACHR also believes that the lack of affirmative measures to guarantee . . . maternal health . . . may constitute a violation of the obligations arising from the principles of equality and non-discrimination that permeate the inter-American system.”); Commission on the Status of Women, *The Elimination and Prevention of All Forms of Violence against Women and Girls: Agreed Conclusions*, 57th Session (2013), para. 34(aaa) (“Condemn and take action to prevent violence against women and girls in health-care settings, including . . . forced medical procedures, or those conducted without informed consent, and which may be irreversible, such as . . . forced sterilization.”).

inhuman and degrading treatment as requiring States to ensure that sterilization procedures are performed with informed consent.<sup>149</sup> Similarly, the Special Rapporteur on torture has recognized that “[f]orced sterilization is an act of violence, a form of social control, and a violation of the right to be free from torture and other cruel, inhuman, or degrading treatment or punishment.”<sup>150</sup> The Committee Against Torture has also addressed involuntary sterilization as a problem falling within its mandate.<sup>151</sup>

67. Here, Bolivia violated I.V.’s personal integrity and right to humane treatment by sterilizing her through an invasive and irreversible medical procedure to which she did not consent. After undergoing the bilateral tubal ligation, I.V. was diagnosed with atrophic endometritis, an abscess in her abdominal wall, and bilateral adnexitis.<sup>152</sup> The involuntary procedure harmed I.V. physically and mentally. She felt anguish, helplessness, and frustration.<sup>153</sup> During the hearing before the Court, I.V. indicated that her lifelong dream was to have a son, and she described the pain she continues to feel 16 years after the State took that dream from her. Ultimately, she suffered an act of violence that constitutes, at the very least, cruel and degrading treatment.

68. In light of the above, the Court should find that Bolivia violated the rights to personal integrity and humane treatment recognized in articles 5(1) and 5(2) of the

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<sup>149</sup> See *General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, *supra* note 58, para. 11 (finding that to ensure the right to humane treatment, States must report on FS) and para. 20 (discussing the ways in which restrictions on sterilization procedures can lead to inequality of women and men and possibly violate the right to humane treatment).

<sup>150</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, UN Doc. A/HRC/22/53, 11 February 2013, para. 48.

<sup>151</sup> See, e.g., Committee Against Torture, *Concluding observations on the third periodic report of Slovakia*, UN Doc. CAT/C/SVK/CO/3, 10 August 2015, para. 12.

<sup>152</sup> See, e.g., IACHR, Merits Report No. 72/14, Case 12.655, *I.V. (Bolivia)*, 15 August 2014, paras. 67-68.

<sup>153</sup> See *id.* at para. 104.

American Convention, in connection with articles 1(1), 11(1) and (2), 13(1), and 17(2) of the American Convention.

### C. Forced Sterilization Is a Violation of the Right to Freedom of Expression.

69. Perhaps the most essential element of FS is the victim's lack of consent to be sterilized.<sup>154</sup> The concept of informed consent in the context of medical procedures was well developed under international human rights law since at least the 1990s, well before I.V.'s forced sterilization.<sup>155</sup> In a case regarding a sterilization performed in the year 2000 (the same year I.V. was sterilized), the European Court of Human Rights found that "generally recognized standards" at that time required sterilization to be performed only with informed consent<sup>156</sup> and that the victim's written consent to sterilization did not meet

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<sup>154</sup> See Istanbul Convention, art. 39 (defining FS as "performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.") See Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, Communication No. 4/2004, Views of 14 August 2006, UN Doc. CEDAW/C/36/D/4/2004, paras. 11.4 - 11.5; World Health Organization et al., *supra* note 6. See also Committee on Economic, Social and Cultural Rights, *General Comment No. 22: Right to Sexual and Reproductive Health*, UN Doc. E/C.12/GC/22, 24 March 2016, para. 57

<sup>155</sup> In any case, this Court's jurisdiction extends to all cases concerning the interpretation and application of the American Convention on Human Rights as it relates to States parties, even if those cases address a particular set of novel facts. American Convention, art. 62(3).

<sup>156</sup> ECtHR, *V.C. v. Slovakia*, no. 18968/07, ECHR 2011, Judgment of 8 November 2011, para. 108 (citing *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, *supra* note 5). See also *General Recommendation No. 21: Equality in Marriage and Family Relations*, *supra* note 54, paras. 21-22 (indicating that States must provide women with information about contraceptive and other family planning measures, especially in the context of forced sterilizations); Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4, 11 August 2000, para. 8 (stating that "the right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation."); UN Population Fund, *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994*, UN Doc. A/CONF.171/13/Rev.1, 1995, para. 7.12 (explaining that "the principle of informed choice" is one that is "essential to the long-term success of family-planning programmes," and noting that "any form of coercion has no part to play."); FIGO, *supra* note 135, at 15, para. 5 (setting forth criteria for informed consent and emphasizing that "informed consent is not a signature but a process of communication and interaction."); Robert A. Hatcher et al., *The Essentials of Contraceptive Technology* (1997), 9-12 (emphasizing that "the decision about female sterilization belongs to the woman herself" and cannot be made for her by her husband, a health care provider, a family member, or anyone else); Human Rights Committee, *Concluding observations by the Human Rights Committee: Peru*, UN Doc. CCPR/CO/70/PER, 15 November 2000, para. 21 (noting with concern reports of forced sterilization and

these standards when sought by medical professionals immediately prior to performing a caesarean section.<sup>157</sup> The failure to ensure free, prior, and informed consent<sup>158</sup> in the context of medical procedures in general, and of sterilizations in particular, can be conceived as a violation of the right to access to information, in connection with several other human rights.

70. Under the American Convention, Article 13(1) recognizes that “everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds [...]”<sup>159</sup>

71. The right to access to information is essential for the exercise of other human rights,<sup>160</sup> particularly in the context of health and reproductive rights. The Commission has stated that “access to information on sexual and reproductive health involves a series of rights such as the right to freedom of expression, to personal integrity, to the protection of the family, to privacy, and to be free from violence and discrimination.”<sup>161</sup> The CEDAW Committee has also highlighted the connection between the right to information and other human rights in the context of health and reproductive matters, including FS.<sup>162</sup> Similarly, the CESCR has stated that “[t]he right to health is closely related to and dependent upon the

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recommending that Peru “must take the necessary measures to ensure that persons who undergo surgical contraception procedures are fully informed and give their consent freely.”)

<sup>157</sup> *V.C. v. Slovakia*, Judgment of 8 November 2011, paras. 111-112.

<sup>158</sup> This concept is variably referred to as “full and informed consent,” “prior, free and informed consent,” or “informed consent.” These terms are generally used interchangeably and refer to the requirements that the patient be previously and meaningfully informed about a medical procedure and its risks, and voluntarily agree to the procedure without any coercion or inducement.

<sup>159</sup> American Convention, art. 13(1).

<sup>160</sup> IACHR, *Annual Report on the Inter-American Commission on Human Rights 2008: Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, OEA/Ser.L/V/II.134 Doc. 5, 25 February 2009, para. 147.

<sup>161</sup> *Access to Information on Reproductive Health from a Human Rights Perspective*, *supra* note 121. See also IACHR, *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, OEA/Ser.L/V/II.132 Doc. 14 rev. 1, 19 July 2008, para. 97.

<sup>162</sup> See Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, Communication No. 4/2004, Views of 14 August 2006, UN Doc. CEDAW/C/36/D/4/2004, para. 11.3.



realization of other human rights [...],” including the right to access to information.<sup>163</sup> It has further emphasized that “[t]he realization of women’s right to health requires the removal of all barriers interfering with [...access to] information, including in the area of sexual and reproductive health.”<sup>164</sup>

72. In the context of health and reproductive matters, Inter-American jurisprudence explains that the right to access to information is particularly important so that persons can make informed decisions and give free and informed consent on matters affecting their body, health, and family planning.<sup>165</sup> Specifically, the Commission has stated,

[I]nformation and education enable women to make decisions at all levels, in all aspects of their lives, especially in the area of health, sexuality, and reproduction. Specifically in the area of maternal health, the IACHR has emphasized that protecting women's right to integrity under conditions of equality is achieved by providing information and education on the subject so that women will make free, well-founded, and responsible decisions regarding reproduction, including family planning.<sup>166</sup>

The CESCR has similarly asserted that governments violate their obligation to respect the right to sexual and reproductive health when they “[interfere] with an individual’s freedom to control his or her own body and ability to make free, informed and responsible decisions in this regard.”<sup>167</sup>

73. In general, the Commission has identified that the process of informed consent under international human rights law must include the following three closely related elements:

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<sup>163</sup> *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, *supra* note 156, para. 3.

<sup>164</sup> *Id.* at para. 21.

<sup>165</sup> See *Access to Information on Reproductive Health from a Human Rights Perspective*, *supra* note 121, paras. 43, 48; *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, *supra* note 161, para. 97. See also *General Recommendation No. 21: Equality in Marriage and Family Relations*, *supra* note 54, paras. 21-22; Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, para. 11.3.

<sup>166</sup> *Access to Information on Reproductive Health from a Human Rights Perspective*, *supra* note 121, para. 29.

<sup>167</sup> *General Comment No. 22: Right to Sexual and Reproductive Health*, *supra* note 154, para. 56.

- i) inform the patient of the nature of the procedure, treatment options, and reasonable alternatives, including the potential risks and benefits of the proposed procedures;
- ii) take account of individual's needs and ensure that the person understands the information provided; and
- iii) ensure that the consent provided is free and voluntary.<sup>168</sup>

The Commission has further explained that “[g]iven the power imbalance that is typical of the relationship between health professionals and their patients, [...] the time and manner in which the information is provided can unduly influence the patient's decision to accept or refuse the proposed treatment.”<sup>169</sup>

74. This general obligation to ensure informed consent is of greater importance in the context of FS, in light of the permanent and irreversible consequences of sterilization, especially as it pertains to particularly vulnerable groups that have traditionally been more susceptible to discrimination.<sup>170</sup> This failure to obtain free, prior, and informed consent for purposes of sterilization procedures can occur in several contexts,<sup>171</sup> including when women go into medical facilities for other purposes and are asked for consent to be sterilized during labor or surgery; when women are informed about the sterilization only after the procedure has taken place or not at all; when medical personnel fail to communicate information about the procedure in a woman's primary language; or when

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<sup>168</sup> IACHR, Merits Report No. 72/14, Case 12.655, *I.V. (Bolivia)*, 15 August 2014, paras. 119-122 (citing *Access to Information on Reproductive Health from a Human Rights Perspective*, *supra* note 121, para. 44.). In the words of the Subcommittee on the Prevention of Torture, “[i]nformed consent is a decision made voluntarily on the basis of comprehensible and sufficient information regarding potential effects and side effects of treatment and the likely results of refraining from treatment. Informed consent is fundamental to respecting an individual's autonomy, self-determination and human dignity.” *Approach of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on the rights of persons institutionalized and medically treated without informed consent*, *supra* note 100, para. 12.

<sup>169</sup> *I.V. (Bolivia)*, 15 August 2014, para. 122.

<sup>170</sup> See generally, *Access to Information on Reproductive Health from a Human Rights Perspective*, *supra* note 121, para. 53; World Health Organization et al., *supra* note 6, at 1. See also *I.V. (Bolivia)*, 15 August 2014, paras. 130-132.

<sup>171</sup> Open Society Foundations, *supra* note 38.

medical personnel fail to read relevant documents to women who are illiterate.<sup>172</sup> Medical professionals may also fail to provide women with accurate information regarding the nature, irreversibility, and necessity of the procedure. As the World Health Organization (WHO) explains, “[i]n many cases, women are not informed of the permanency of the procedure, or of alternative methods of contraception. [...] Alternatively, information is presented in overly complex formats, for example using unfamiliar medical terminology, or there is misinformation [...]”<sup>173</sup>

75. Consequently, the WHO has indicated that the following information must be given to and understood by patients in order to provide informed consent for sterilization:

- (i) Temporary contraceptives are available to the client;
- (ii) Voluntary sterilization is a surgical procedure;
- (iii) There are certain risks of the procedure as well as benefits. (Both risks and benefits must be explained in a way that the client can understand.);
- (iv) If successful, the procedure will prevent the client from ever having any more children;
- (v) The procedure is considered permanent and probably cannot be reversed; and
- (vi) The client can decide against the procedure at any time before it takes place (without losing rights to other medical, health, or other services or benefits).<sup>174</sup>

76. Here, medical personnel failed to follow any type of protocol aimed at obtaining I.V.’s informed consent before sterilizing her.<sup>175</sup> I.V. was never fully informed about the nature, potential risks, or benefits of the procedure, and the hospital did not take steps to ensure that she understood that the procedure would permanently deprive her of her reproductive rights, nor did the hospital explain alternative contraceptive methods I.V.

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<sup>172</sup> The Advocates for Human Rights, *Forced/Coerced Sterilization*, [http://www.stopvaw.org/forced\\_coerced\\_sterilization](http://www.stopvaw.org/forced_coerced_sterilization) (last visited May 2, 2016).

<sup>173</sup> World Health Organization et al., *supra* note 6, at 5.

<sup>174</sup> Johns Hopkins Bloomberg School of Public Health/Center for Communication Programs & World Health Organization, *Family Planning: A Global Handbook for Providers* (2011), 173. *See also* World Health Organization, *Medical Eligibility*, *supra* note 135, at 105; World Health Organization et al., *supra* note 6, at 11. The International Federation of Gynecology and Obstetrics has also developed a guideline of how and when sterilization can be lawfully performed. *See* FIGO, *supra* note 135, at para. 11.

<sup>175</sup> *See I.V. (Bolivia)*, 15 August 2014, paras. 137-146.

could have used to protect her life. The timing of the procedure - right after I.V. gave birth and while under the influence of an epidural - suggests that it was the hospital who paternalistically decided it was best to sterilize I.V., without adequately ensuring her consent and despite the lack of an immediate risk to I.V.'s life.<sup>176</sup> I.V. was therefore unable to exercise her right to access to information in order to make an informed decision concerning her body, personal integrity, family life, dignity, and her health.

77. In light of the above, the Court should find that Bolivia violated I.V.'s right to access to freedom of expression recognized in Article 13(1) of the American Convention, in relation to articles 1(1), 11(1) and (2), 5(1) and (2), and 17(2) of the American Convention

**D. Forced Sterilization Is a Violation of the Right to Family and to Private Life.**

78. The rights to protection of the family and to raise a family are also part of the core group of rights affected by FS because this irreversible medical procedure impacts the ability of women to decide on the number of their family group. In the context of the American Convention, this translates into a violation of the rights recognized under articles 11(2) and 17(1) and (2).

79. The American Convention recognizes the central role of the family and family life in a person's existence and in society in general. Article 11(2) states, "No one may be the object of arbitrary or abusive interference with his private life [and] his family [...]" Article 17(1) recognizes that "[t]he family is the natural and fundamental group unit of society and

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<sup>176</sup> In his testimony before the Court on May 2, 2016, Dr. Torrico acknowledged that this invasive procedure was not intended to address any immediate life-threatening risks to I.V.'s life, but rather to prevent possible complications in a future pregnancy.

is entitled to protection by society and the state,” while Article 17(2) recognizes the right “to raise a family.”<sup>177</sup>

80. Regarding the interrelatedness of articles 11(2) and 17(1) of the American Convention, the Court held in *Atala Riffo and Daughters v. Chile* that “every person’s right to protection against arbitrary or unlawful interference with his or her family is implicitly a part of the right to protection of the family,” and that “Article 11(2) of the American Convention is closely linked to the right to protection of the family and to live in a family, recognized in Article 17 of the Convention.”<sup>178</sup> Additionally, in case against Bolivia, the Court established that “the State is obliged [...] to promote [...] the development and enhancement of the family unit.”<sup>179</sup> Accordingly, the Court has clarified that “States have positive obligations in favor of effective respect for family life.”<sup>180</sup> Considering that the decision to have children is an expression of the right to private and family life,<sup>181</sup> the Court has held that a State violates a woman’s right to reproductive autonomy when it restricts the means by which she can exercise the right to control her fertility.<sup>182</sup>

81. The right to found a family is also recognized in different international human rights instruments,<sup>183</sup> and several international and regional bodies have interpreted this right to encompass the right to reproductive autonomy. The UN Human Rights Committee has

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<sup>177</sup> American Convention, arts. 11 and 17.

<sup>178</sup> I/A Court H.R., *Atala Riffo and Daughters v. Chile*. Merits, Reparations and Costs. Judgment of 24 February 2012. Series C No. 239, para. 169.

<sup>179</sup> I/A Court H.R., *Pacheco Tineo Family v. Bolivia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 25 November 2013. Series C No. 272, para. 226.

<sup>180</sup> I/A Court H.R., *Norín Catrimán et al. v. Chile*. Merits, Reparations and Costs. Judgment of 24 May 2014. Series C No. 279, para. 404.

<sup>181</sup> I/A Court H.R., *Case of the “In vitro fertilization” (Artavia Murillo et al.) v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 28 November 2012. Series C No. 257, para. 142.

<sup>182</sup> *Id.* at para. 272.

<sup>183</sup> *See, e.g.*, Universal Declaration of Human Rights (adopted 10 December 1948), UNGA Res. 217 A(III) (UDHR), art. 16(1),(3) (“the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171, art. 23(2).

indicated that the possibility of procreating is part of the right to found a family.<sup>184</sup> The right to reproductive autonomy is also recognized in Article 16(e) of CEDAW, according to which women enjoy the right “to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means that enable them to exercise these rights.”<sup>185</sup> The CEDAW Committee has stated that FS infringes this right to reproductive autonomy.<sup>186</sup> Taking away a person’s fertility by performing an irreversible medical procedure usurps the individual’s right to determine how many children to have and when to have those children.

82. Here, I.V. was subject to a surgical procedure, without her consent, that permanently and irreversibly impacted her ability to decide the number and spacing of her children.<sup>187</sup> This unlawful interference in her private and family life resulted in a breach of the State’s duty to protect her family and reproductive autonomy.

83. Based on the above, the Court should declare that Bolivia violated the rights to protection of the family and to raise a family, recognized in articles 11(2), and 17(1) and (2) of the American Convention, in connection with articles 1(1), 11(1), 5(1) and (2), and 13(1) of the American Convention.

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<sup>184</sup> Human Rights Committee, *General Comment No. 19: Protection of the Family, the Right to Marriage and Equality of the Spouses (Article 23)*, UN Doc. HRI/GEN/1/Rev.1, 27 July 1990, para. 5.

<sup>185</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 16(e). Because Bolivia ratified CEDAW on June 8, 1990, we invite the Court to interpret articles 11(2), 17(1) and 17(2) of the American Convention in light of this CEDAW provision, pursuant to Article 29 of the American Convention on Human Rights.

<sup>186</sup> *General Recommendation No. 19: Violence against women*, *supra* note 52, para. 22.

<sup>187</sup> See IACHR, Merits Report No. 72/14, Case 12.655, *I.V. (Bolivia)*, 15 August 2014, para. 102.

### **E. Forced Sterilization Is a Violation of the Right to Be Free from Acts of Violence Against Women.**

84. FS is a violation of all the rights mentioned in the preceding analysis, but it is also a discriminatory act of gender-based violence. Forced sterilization affects women disproportionately and is often applied as a direct form of discrimination against women.<sup>188</sup> In the following paragraphs, we will describe FS as a discriminatory act of violence against women that, in States that have ratified it,<sup>189</sup> contravenes at least Article 7(a) of the Convention of Belém do Pará. For States that have not ratified the Convention of Belém do Pará, we suggest that the Court nonetheless address how FS disproportionately affects women and constitutes a form of violence against women, but that it do so as part of the joint analysis of the rights under the American Convention described in the preceding paragraphs.

1. States Have a Duty under Article 7(a) of the Convention of Belém do Pará to Refrain from Practicing Forced Sterilization and to Ensure that No State Authorities, Officials, Personnel, Agents, or Institutions (Including Public Hospitals) Practice Forced Sterilization.

85. Article 1 of the Convention of Belém do Pará defines violence against women generally as “any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”<sup>190</sup> The Inter-American Commission has explicitly stated that FS procedures and the physical and psychological effects of those procedures “are examples of forms of violence against

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<sup>188</sup> World Health Organization et al., *supra* note 6, at 3.

<sup>189</sup> Bolivia ratified the Convention of Belém do Pará on October 26, 1994. Organization of American States, Convention of Belém do Pará, Signatures and Current Status of Ratifications, *available at* <http://www.oas.org/juridico/english/sigs/a-61.html>.

<sup>190</sup> Convention of Belém do Pará, art. 1.

women.”<sup>191</sup> UN human rights experts, including the Special Rapporteur on violence against women, have also elaborated on FS as an act of violence against women. In a 1999 report on reproductive health and violence against women, the Special Rapporteur wrote, “Essentially involving the battery of a woman – violating her physical integrity and security – forced sterilization constitutes violence against women.”<sup>192</sup>

86. Article 7 of the Convention of Belém do Pará also creates complementary and immediate obligations for State Parties to “pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence.”<sup>193</sup> More specifically, Article 7 requires States parties to:

- a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation;
- b) apply due diligence to prevent, investigate and impose penalties for violence against women;
- c) include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary;
- d) adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;
- e) take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices which sustain the persistence and tolerance of violence against women;
- f) establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures;
- g) establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and
- h) adopt such legislative or other measures as may be necessary to give effect to this Convention.<sup>194</sup>

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<sup>191</sup> *Access to Maternal Health Services from a Human Rights Perspective*, *supra* note 127, para. 75.

<sup>192</sup> Coomaraswamy report, *supra* note 61, para. 51.

<sup>193</sup> Convention of Belém do Pará, art. 7.

<sup>194</sup> *Id.*



87. Although the Commission found violations of Article 7(a), (b), (c), (f), and (g) of the Convention of Belém do Pará in the present case (and we support the Commission's findings), we will not address Article 7(b), (c), (f) and (g) in this brief, as these latter provisions relate to issues that may not be applicable to every case of FS. Instead, we suggest that, in any FS case involving a State party to the Convention of Belém do Pará, the Court analyze FS as, at least, a violation of the duties under Article 7(a) to refrain from practicing FS and to ensure that no State authorities, officials, personnel, agents, and institutions (including public hospitals) practice FS.

## 2. Forced Sterilization Is a Discriminatory Act of Violence Against Women.

88. In addition to being an act of violence against women, FS is also a form of discrimination against women. While FS affects both men and women, women and girls continue to be disproportionately impacted.<sup>195</sup> The WHO notes that “historically, women have been disproportionately subjected to forced, coercive and otherwise involuntary sterilization, especially in connection to coercive population policies.”<sup>196</sup>

89. The Convention of Belém do Pará expressly recognizes the relationship between gender violence and discrimination by indicating that a woman's right to a life free of violence includes the “right of women to be free from all forms of discrimination.”<sup>197</sup> In the context of FS, the Commission has similarly declared that “when a family-planning program ceases to be voluntary [...], it poses a danger of violence and direct discrimination against

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<sup>195</sup> World Health Organization et al., *supra* note 6.

<sup>196</sup> *Id.*

<sup>197</sup> Convention of Belém do Pará, art. 6.

women.”<sup>198</sup> Similarly, the Court, citing the CEDAW Committee, pointed out that discrimination against women includes gender-based violence, “that is, violence that is directed against a woman because she is a woman or that affects women disproportionately,” and that “it includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts [or] coercion [...]”<sup>199</sup> Several UN bodies have also characterized coercive or FS as a form of discrimination and violence against women,<sup>200</sup> including the CEDAW Committee.<sup>201</sup>

90. Here, Bolivia violated I.V.’s right to be free from discriminatory acts of violence against women when the State’s institution, the public hospital, sterilized her without her consent<sup>202</sup> and paternalistically tried to obtain her husband’s “authorization,”<sup>203</sup> as if a woman needs her husband’s permission to make decisions affecting her body. The procedure has caused I.V. several medical complications, including physical, emotional, and psychological pain and anguish, and serves as a constant reminder of the violation of her body.<sup>204</sup>

91. In light of the above, the Court should rule that Bolivia violated I.V.’s right to be free from discriminatory acts of violence against women, recognized in Article 7(a) of the Convention of Belém do Pará.

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<sup>198</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, 2 June 2000, Chapter 7, para. 26. See also IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser/L/V/II. 124/Doc. 67, 18 October 2006, para. 28.

<sup>199</sup> I/A Court H.R. *Miguel Castro-Castro Prison v. Peru*. Merits, Reparations, and Costs. Judgment of 25 November 2006. Series C No. 160, para. 303.

<sup>200</sup> World Health Organization et al., *supra* note 6.

<sup>201</sup> *General Recommendation No. 19: Violence against women*, *supra* note 52, para. 22 (In analyzing the applicability of Article 16 of CEDAW to violence and discrimination against women, the Committee noted that “Compulsory sterilization or abortion adversely affects women’s physical and mental health[...].”).

<sup>202</sup> IACHR, Merits Report No. 72/14, Case 12.655, *I.V.* (Bolivia), 15 August 2014, paras. 184-185.

<sup>203</sup> *Id.* at para. 70.

<sup>204</sup> See *id.* at paras. 67-68, 104.

**F. The Court Should Adopt a Conceptual Framework that Defines Forced Sterilization as a Single Transversal Violation of a Core Set of Human Rights.**

92. As developed in the preceding paragraphs, we suggest that the Court provide a clear conceptual definition of FS as a complex and autonomous human rights violation and apply a corresponding analytical framework under the American Convention in which FS constitutes a single transversal violation of the rights to dignity, private and family life, personal integrity and humane treatment, freedom of expression, protection of the family, and to be free from discrimination and from acts of violence against women, recognized under articles 11(1) and (2), 5(1) and (2), 13(1), and 17(2) of the American Convention, in relation to Article 1(1) thereof, and in relation to Article 7 of the Convention of Belém do Pará.

**III. AS A FORM OF REPARATION, THE COURT SHOULD ORDER BOLIVIA TO IMPLEMENT SPECIAL TRAINING MEASURES TO ENSURE STERILIZATION IS ONLY PERFORMED WITH THE REQUIRED FREE, PRIOR, AND INFORMED CONSENT.**

93. The Court should order Bolivia to ensure that medical personnel receive specialized training related to informed consent and the human rights of women, as a form of reparation and a safeguard against future such violations. As discussed below, Bolivia is required to take measures to prevent human rights violations in the health care setting, including in the area of sexual and reproductive health. The Court and other human rights bodies have recognized the implementation of training as an important measure to protect human rights, and to guarantee the non-repetition of documented violations, in the context of medical care. Such training is considered particularly necessary for protecting women's

reproductive rights and health and for preventing FS.<sup>205</sup> The Court should order training, including education on human rights and effective communication with vulnerable groups, to ensure that free, prior, and informed consent is given before every sterilization procedure.

**A. Bolivia Must Protect and Ensure Human Rights in the Medical Setting as a Necessary Safeguard Against the Practice of Forced Sterilization.**

94. This Court has made clear that the State is required to implement every appropriate measure to prevent human rights violations.<sup>206</sup> The necessary measures are “all those[...] of a legal, political, administrative and cultural nature that ensure the safeguard of human rights”<sup>207</sup> and which are “sufficient and effective.”<sup>208</sup>

95. In the medical setting, the Court “considers that the States must regulate and supervise all activities related to the health care given to the individuals” within their jurisdiction to ensure enjoyment of human rights and prevent abuses.<sup>209</sup> The aim of States’ obligatory regulation of the provision of health care should be to establish and ensure adherence to standards of quality that minimize the risk of violations of human rights.<sup>210</sup> Similarly, governments must ensure that public health policies and programs are appropriately implemented and meet quality standards.<sup>211</sup> The baseline by which human rights bodies assess governments’ supervision of health care is whether it is “designed to

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<sup>205</sup> Indeed, in her testimony before the Court on May 2, 2016, the expert witness Christina Zampas explained that training is a “very important aspect” of remedies to address FS.

<sup>206</sup> I/A Court H.R., *Case of “Cotton Field” (González et al. ) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of 16 November 2009. Series C No. 205.

<sup>207</sup> *Id.* at para. 252.

<sup>208</sup> *Id.* at para. 279.

<sup>209</sup> I/A Court H.R., *Ximenes-Lopes v. Brazil*. Merits, Reparations and Costs. Judgment of 4 July 2006. Series C No. 149, para. 89.

<sup>210</sup> I/A Court H.R., *Suarez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of 21 May 2013. Series C No. 261, para. 132.

<sup>211</sup> See *Ximenes-Lopes v. Brazil*. Judgment of 4 July 2006, para. 99.

ensure the principles of availability, accessibility, acceptability, and quality of the medical services.”<sup>212</sup>

96. These concepts have specific meaning in the realm of sexual and reproductive health.<sup>213</sup> In its most recent general comment, the CESCR has identified States’ particular obligations in the provision or supervision of medical care related to sexual and reproductive rights.<sup>214</sup> To be considered adequately available, facilities, providers, and medicines should be sufficient in number and appropriately geographically dispersed such that they “provide the population with the fullest possible range of sexual and reproductive health care.”<sup>215</sup> Sexual and reproductive health care must be physically and economically accessible, as well as transparent in the sense that individuals can freely seek and receive information about sexual and reproductive health generally and about their own medical concerns – and that this information is understandable and meaningful to them.<sup>216</sup> To be acceptable, reproductive and sexual health services must be culturally and demographically sensitive.<sup>217</sup> Good quality health care in the sexual and reproductive health sector is “evidence-based and scientifically and medically appropriate and up-to-date” and administered by “trained and skilled healthcare personnel.”<sup>218</sup>

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<sup>212</sup> *Suarez Peralta v. Ecuador*. Judgment of 21 May 2013, para. 152. See also *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, *supra* note 156, para. 12.

<sup>213</sup> *General Comment No. 22: Right to Sexual and Reproductive Health*, *supra* note 154, para. 11 *et seq.*; *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, *supra* note 156, para. 12.

<sup>214</sup> *General Comment No. 22: Right to Sexual and Reproductive Health*, *supra* note 154.

<sup>215</sup> *Id.* at paras. 12-14.

<sup>216</sup> *Id.* at paras. 15-19.

<sup>217</sup> *Id.* at para. 20.

<sup>218</sup> *Id.* at para. 21.

**B. Bolivia Must Put in Place Safeguards to Protect and Ensure the Right to Be Free from Forced Sterilization.**

97. As a form of reparation, we suggest that the Court order Bolivia to put in place, *inter alia*, legal and administrative safeguards to ensure that neither State nor non-State actors perform sterilizations that contravene international human rights standards. States' particular obligations to regulate and supervise the provision of medical care,<sup>219</sup> discussed above, also apply in the context of sterilization procedures. Medical personnel are directly responsible for providing the relevant information to patients, obtaining their explicit consent to a particular procedure, and ensuring and verifying that consent is given freely and fully.<sup>220</sup> States bear the larger obligation of using their regulatory and monitoring powers to "prohibit and take measures to prevent [...] forced sterilization"<sup>221</sup> by ensuring that medical personnel fulfill their responsibilities in this regard.<sup>222</sup>

98. In the words of the UN Commission on the Status of Women, States should "[p]romote and protect the human rights of all women including their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence."<sup>223</sup> It has similarly urged governments to "take action to prevent violence against women and girls in healthcare settings, including [...] forced medical procedures, or those conducted without informed consent, and which may be irreversible, such as [...] forced sterilization."<sup>224</sup> In this

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<sup>219</sup> See *supra* Section III.A.

<sup>220</sup> See *supra* Sections II.C, III.A.

<sup>221</sup> See *General Comment No. 22: Right to Sexual and Reproductive Health*, *supra* note 154, para. 59.

<sup>222</sup> See *General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, *supra* note 58, para. 11; Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, Communication No. 4/2004, Views of 14 August 2006, UN Doc. CEDAW/C/36/D/4/2004, para. 11.5 (recommending Hungary monitor healthcare facilities to safeguard against FS procedures).

<sup>223</sup> Commission on the Status of Women, *supra* note 148, para. 34(B)(nn).

<sup>224</sup> *Id.* at para. 34(B)(aaa).

regard, the CEDAW Committee’s specific recommendation to Hungary, as a measure of non-repetition in a case of FS, was to “[m]onitor public and private health centres, including hospitals and clinics, which perform sterilization procedures so as to ensure that fully informed consent is being given by the patient before any sterilization procedure is carried out, with appropriate sanctions in place in the event of a breach.”<sup>225</sup>

**C. The Court Should Order Bolivia to Implement Specialized Training Measures as an Essential Safeguard Against Forced Sterilization.**

**1. Training is Essential to Safeguarding Human Rights in the Provision of Medical Care.**

99. This Court, like other human rights courts and monitoring bodies, recognizes the importance of ordering a State to implement training procedures for particular personnel as a guarantee of non-repetition.<sup>226</sup> In order to ensure States’ fulfillment of their duties under the American Convention, the Court has ordered special training of public officials and of others responsible for administering public goods like health care.<sup>227</sup> Furthermore, the Court has endorsed the CESCR’s understanding that, in order to guarantee quality care, medical personnel must be adequately trained.<sup>228</sup> Accordingly, the State must carry out its

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<sup>225</sup> Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, para. 11.5.

<sup>226</sup> See, e.g., I/A Court H.R., *Mendoza et. al. v. Argentina*. Preliminary Objections, Merits, and Reparations. Judgment of 14 May 2013. Series C No. 260, para. 337.

<sup>227</sup> See, e.g., *id.* at para. 337; I/A Court H.R., *Case of “Cotton Field” (González et al. ) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of 16 November 2009. Series C No. 205, paras. 541-42; I/A Court H.R. *Miguel Castro-Castro Prison v. Peru*. Merits, Reparations, and Costs. Judgment of 25 November 2006. Series C No. 160, para. 452.

<sup>228</sup> I/A Court H.R., *Suarez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of 21 May 2013. Series C No. 261, para. 152 (citing *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, *supra* note 156, para. 12). See also I/A Court H.R., *Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 1 September 2015. Series C No. 298, para. 173.

inspection and supervision duties to verify that doctors, nurses, and other health care providers receive appropriate training.<sup>229</sup>

100. In the medical context, training of personnel is vital to guaranteeing health care services that respect patients' human rights, including their right to exercise informed consent.<sup>230</sup> Pursuant to the jurisprudence of this Court, a lack of appropriate training may give rise to, or permit, violations of rights protected by the American Convention.<sup>231</sup> Consequently, the Court has directed States to implement training and educational courses for physicians and other medical staff.<sup>232</sup> Where the State is responsible for a prior human rights violation in the provision of medical care, training is an important guarantee of non-repetition.<sup>233</sup>

101. The training mandated by human rights bodies goes beyond basic requirements for obtaining a medical license or degree; it includes education on human rights and effective communication with vulnerable groups, in part to secure individuals' right to make informed and voluntary decisions regarding medical care. For example, the CESCR has recognized a State obligation "[t]o provide appropriate training for health personnel, including education on health and human rights."<sup>234</sup> The UN Special Rapporteur on the right to health has repeatedly stressed that "[a]ll bodies responsible for the training of

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<sup>229</sup> *Suarez Peralta v. Ecuador*. Judgment of 21 May 2013, para. 152. See also *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, *supra* note 156, paras. 35, 36.

<sup>230</sup> See, e.g., *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, *supra* note 156, paras. 34-36.

<sup>231</sup> See I/A Court H.R., *Ximenes-Lopes v. Brazil*. Merits, Reparations and Costs. Judgment of 4 July 2006. Series C No. 149, para. 120 (noting the context of violence against patients in a psychiatric institution "since employees were not commonly trained to work with" the patient population).

<sup>232</sup> See *id.* at para. 250. See also *id.* at para. 207; I/A Court H.R., *Alban-Cornejo et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of 22 November 2007. Series C No. 171, para. 164.

<sup>233</sup> See, e.g., I/A Court H.R. *Mendoza et. al. v. Argentina*. Preliminary Objections, Merits, and Reparations. Judgment of 14 May 2013. Series C No. 260, para. 337.

<sup>234</sup> *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, *supra* note 156, para. 44(e).



health professionals should integrate human rights education and training at all professional levels.”<sup>235</sup>

102. The training ordered by the Court may similarly include instruction on best practices, the human rights of specific groups of patients, and international human rights standards relevant to the particular context.<sup>236</sup> For example, in *Ximenes Lopes v. Brazil*, the Court directed the State to “continue developing a training and education program for physicians, psychiatrists, psychologists, nurses, auxiliary nurses and all other persons working in Mental Health Care institutions, particularly on the principles that must govern the treatment to be afforded to persons who suffer from a mental disability, pursuant to the international guidelines governing the subject and those set forth in [the Court’s] judgment.”<sup>237</sup>

## 2. Training Is Particularly Important in Safeguarding Reproductive Rights.

103. States’ duty to ensure quality health care,<sup>238</sup> including by mandating specific training, is particularly relevant in the context of women’s reproductive health and rights. Accordingly, the CESCR has defined quality sexual and reproductive health care as that provided, *inter alia*, by “trained and skilled healthcare personnel.”<sup>239</sup> These experts have identified a State obligation to “ensure that health care providers are adequately trained on

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<sup>235</sup> Human Rights Council, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council,”* UN Doc. A/HRC/4/28, 17 January 2007, para. 52.

<sup>236</sup> I/A Court H.R., *Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 1 September 2015. Series C No. 298, para. 386. *See also Alban-Cornejo et al. v. Ecuador*. Judgment of 22 November 2007, para. 176.

<sup>237</sup> *Ximenes-Lopes v. Brazil*. Judgment of 4 July 2006, para. 250.

<sup>238</sup> *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, *supra* note 156, paras. 35, 36.

<sup>239</sup> *Id.* at para. 21.

the provision of quality and respectful sexual and reproductive health services”<sup>240</sup> and have recommended that States “[e]nsure that the training curricula of health workers includes comprehensive, mandatory, gender-sensitive courses on women’s health and human rights, in particular gender-based violence.”<sup>241</sup> Similarly, the Member States of the UN Commission on the Status of Women have urged all governments to address rights violations in the medical setting, including by “[a]dopt[ing] and fund[ing] policy reforms and programmes, and support[ing] education, to sensitize, train and strengthen the capacity of [...] professionals [...] working in [...] health” as a means of reducing violence against women.<sup>242</sup>

104. Such training is essential to women’s exercise of informed consent to any procedure impacting sexual or reproductive health. In this regard, the CESCR has stated, “Women have the right to be fully informed, *by properly trained personnel*, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives.”<sup>243</sup> Indeed, the Committee has defined “reproductive health” as “the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right of access to appropriate health-care services [...]”<sup>244</sup> It has further emphasized that “[t]he realization of women’s right to health

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<sup>240</sup> *General Comment No. 22: Right to Sexual and Reproductive Health*, *supra* note 154, para. 46 (emphasis added).

<sup>241</sup> *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, *supra* note 5, para. 31(f).

<sup>242</sup> Commission on the Status of Women, *supra* note 148, para. 34(A)(w). These Agreed Conclusions explicitly recognized FS as a form of violence against women. *See id.* at para. 34(B)(aaa).

<sup>243</sup> *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, *supra* note 5, para. 20 (emphasis added).

<sup>244</sup> *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, *supra* note 156, para. 14, n. 12.

requires the removal of all barriers interfering with [...access to] information, including in the area of sexual and reproductive health.”<sup>245</sup>

105. Regional human rights bodies have also emphasized an obligation to carry out training intended to secure respect for women’s human rights related to sexual and reproductive health. The Inter-American Commission has asserted, “States have the obligation to train their professionals to inform women regarding their health, including information on aspects related to reproductive health.”<sup>246</sup> The African Commission on Human and Peoples’ Rights has urged States to “provide training for healthcare workers on, amongst others, non-discrimination, confidentiality, respect for dignity, autonomy and informed consent in the context of sexual and reproductive health services for women.”<sup>247</sup>

### 3. Training Is Necessary to Prevent Forced Sterilization.

106. Forced sterilization is not a problem of the past;<sup>248</sup> it will, in all likelihood, continue until respect for women’s human rights is institutionalized in the health care sector. Indeed, UN AIDS has recently documented instances of involuntary sterilization in Bolivia and explicitly recommended that Bolivian health workers receive training on ethics and human rights, particularly in relation to their treatment of pregnant women, as a means of eliminating this extremely harmful practice.<sup>249</sup> The doctrine and guidance of international

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<sup>245</sup> *Id.* at para. 21.

<sup>246</sup> *Access to Information on Reproductive Health from a Human Rights Perspective*, *supra* note 121, para. 41.

<sup>247</sup> ACommHPR, *General Comment on Article 14.1 (d), (e) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*, 52nd Ordinary Session (2012), para. 41. *See also id.* at para. 54; *General Comment No. 2*, *supra* note 84, para. 58.

<sup>248</sup> *See supra* Section I.A. *See also, e.g.*, Open Society Foundations, *supra* note 38.

<sup>249</sup> ONUSIDA et al., “Yo, Tú, Nosotras”: *Huellas de la violencia y el sida en la corporeidad e identidad de las mujeres viviendo con VIH, las trabajadoras sexuales y las mujeres trans de tres ciudades de Bolivia* (2013), 149.

human rights courts and expert bodies support and emphasize the need for such training, as discussed below.

107. On a practical level, eliminating FS depends on the knowledge and sensitivity of medical personnel providing the relevant care, and on their adherence to appropriate procedures for obtaining informed consent. Doctors, nurses, and other health care providers are *the* guardians of every woman's right not to be subjected to involuntary sterilization. If they do not unequivocally recognize patients' rights in this regard or if they fail to guarantee that whenever a sterilization is performed it is with the woman's prior, free, and informed consent, the right to be free from FS is meaningless and unprotected. While doctors may be well intentioned or may believe they have a woman's consent, if their conversation with the patient is overly technical, misleading, or rushed, the procedure may not conform to international human rights standards.<sup>250</sup> Medical personnel must be trained or otherwise educated in these concepts and protocols in order to appropriately implement them.

108. Human rights bodies specifically recognize the important role of training on obtaining informed consent in preventing FS. The Inter-American Commission on Human Rights noted and approved Peru's commitment to "[c]ontinuously conduct training courses for health personnel" and "[a]dopt the necessary administrative measures so that the rules established for ensuring respect for the right of informed consent are scrupulously followed by health personnel" in order to ensure that sterilization procedures meet international human rights standards.<sup>251</sup>

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<sup>250</sup> World Health Organization et al., *supra* note 6, at 5.

<sup>251</sup> IACHR, Friendly Settlement Report No. 71/03, Petition 12.191, *María Mamérita Mestanza Chávez* (Peru), 22 October 2003, paras. 14, 18.

109. The CEDAW Committee has recommended education and monitoring on informed consent as safeguards against FS in response to an individual complaint. It urged Hungary to “[t]ake further measures to ensure that [women’s reproductive rights, including the right to be free from FS are] known and adhered to by all relevant personnel in public and private health centres” and to “[m]onitor public and private health centres, including hospitals and clinics, which perform sterilization procedures so as to ensure that fully informed consent is being given by the patient” in advance of any procedure.<sup>252</sup>

110. In their review of States’ implementation of specific human rights treaties, UN human rights treaty bodies have urged States to implement training to prevent FS. For example, the Committee Against Torture has observed, “Medical personnel who have conducted sterilizations without free, full and informed consent should be held criminally liable, prosecuted and punished. They should also be trained on appropriate means of obtaining free and informed consent from women undergoing sterilization [...]”<sup>253</sup> CERD has encouraged a State to provide “special training for all medical staff on how to obtain informed consent before carrying out sterilizations.”<sup>254</sup>

111. A number of UN agencies have jointly recommended that States train health care providers “regarding the principles of voluntary sterilization, with special attention to the

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<sup>252</sup> Committee on the Elimination of Discrimination against Women, *A.S. v. Hungary*, Communication No. 4/2004, Views of 14 August 2006, UN Doc. CEDAW/C/36/D/4/2004, para. 11.5(II).

<sup>253</sup> *Concluding observations on the third periodic report of Slovakia*, *supra* note 151, para. 12. See also Committee Against Torture, *Concluding observations of the Committee Against Torture: Czech Republic*, UN Doc. CAT/C/CZE/CO/4-5, 13 July 2012, para. 12.

<sup>254</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the ninth to the tenth periodic reports of Slovakia*, UN Doc. CERD/C/SVK/CO/9-10, 28 February 2013, para. 13. See also Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Czech Republic*, UN Doc. CERD/C/CZE/CO/7, 11 April 2007, para. 14 (“The Committee urges the State party to establish clear and compulsory criteria for the informed consent of women prior to sterilization and ensure that criteria and procedures to be followed are well known to practitioners and the public.”).

content and meaning of full, free and informed consent.”<sup>255</sup> Additionally, these experts suggest that governments train healthcare professionals “to ensure that they do not hold prejudicial or discriminatory attitudes towards people from disadvantaged groups, and that they can communicate effectively with them.”<sup>256</sup>

112. Among four recommendations concerning FS made to its Member States, the Council of Europe’s Parliamentary Assembly urged governments to “work towards eliminating prejudice, stereotypes, ignorance and paternalistic attitudes which have a negative influence on the capacity of medical providers to provide evidence-based health care respectful of free and informed consent to vulnerable people, including through awareness raising and human rights education.”<sup>257</sup>

113. Human rights bodies’ explicit support for, and encouragement of, training courses for medical personnel as a means of ensuring respect for women’s reproductive autonomy and right to be free from FS highlight an obvious gap in the protection of human rights. In the absence of specific training for medical personnel on the requirement of obtaining informed consent in sterilization procedures, and more generally on the reproductive and human rights of women, women’s right to be free from FS is inadequately protected. The case of *I.V.* presents the Court with a valuable opportunity to advance and institutionalize respect for health care principles recognized in international human rights law, including respect for individuals’ dignity and informed consent, so that they may benefit individuals and families throughout Bolivia. Accordingly, as a safeguard against FS, the Court should order Bolivia to implement rights-based training programs for medical professionals on FS,

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<sup>255</sup> World Health Organization et al., *supra* note 6, at 15.

<sup>256</sup> *Id.*

<sup>257</sup> Council of Europe Parliamentary Assembly, Resolution 1945 (2013), *Putting an End to Coerced Sterilisations and Castrations*, 26 June 2013, para. 7.4.

informed consent, sexual and reproductive health, the right to receive information, and communication with vulnerable groups.

## **CONCLUSION**

114. The involuntary and permanent sterilization of I.V. is both tragic and representative of a practice that remains all too common in the Americas and around the world. Her case presents the Inter-American Court of Human Rights with a unique and important opportunity to build from international jurisprudence and provide a unified conceptualization of FS as a single complex human rights violation that affects multiple rights recognized under the American Convention and, for those States that have ratified it, the Convention of Belém do Pará. While numerous human rights bodies have confirmed that FS constitutes a violation of the rights to personal integrity, dignity, freedom of expression, private and family life, and to be free from discrimination and from acts of violence against women, a legal analysis limited to separate examination of these violations paints an incomplete picture of the consequences of FS in women's enjoyment of human rights. A more holistic framework would allow the Court and its counterparts to represent this reality and meaningfully consider the interdependence of these rights in the context of FS.

115. Further, we encourage the Court to elaborate on its understanding of the meaning of the right to dignity, in the context of FS, in recognition of this right's specific protection in national constitutions, Inter-American instruments, and international human rights bodies' doctrine. The right to respect for one's dignity, which is central to the purpose of international human rights protections, has been infrequently discussed by the Court and

Commission. However, international human rights law makes clear that FS should be considered a violation of this right.

116. Finally, we ask the Court to concretely advance the elimination of FS in Bolivia, and in the region, by recognizing the State's obligation to ensure that medical personnel are appropriately trained on obtaining informed consent and respecting women's human rights in the health care setting and by ordering Bolivia to carry out such training as a form of reparation in this case. Such training has been recognized as an important safeguard of fundamental rights in the context of medical care, reproductive rights, and preventing FS.