

**INTER-AMERICAN COURT OF HUMAN RIGHTS
AMICI CURIAE BRIEF**

**In the case of
I.V.
Case No. 12.655
against the state of Bolivia**

Presented by

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TABLE OF CONTENTS

Interest of the Amici	3
Introduction	4
Statement of the Case	8
Argument	13
I. Sterilization without informed consent constitutes forced sterilization.....	13
II. Forced sterilization violates the right to be free from torture or cruel, inhuman or degrading treatment or punishment.....	15
A. Human rights bodies have emphasized the State’s obligation to address TCIDT violations in health care settings.....	16
B. Forced sterilization committed by a public official is a form of TCIDT because it causes severe physical, mental, and psychological suffering.....	18
i. Articles 5(1) and 5(2) prohibit violations of the right to physical and psychological integrity that range from CIDT to torture.....	19
a. CIDT is conduct that causes serious physical or mental pain, suffering, or humiliation to the victim.....	20
b. Torture is a fact-specific inquiry and requires a showing of severe physical or mental harm and purposeful state action.....	21
ii. The harm suffered by I.V. constitutes CIDT and may constitute torture.....	24
a. Physical/Mental Harm and Severity.....	24
1. Duration and Physical Effects.....	24
2. Mental and Psychological Effects.....	26
3. Sex, Age, and State of Health.....	29
b. Improper Purpose.....	30
1. Forced sterilization constitutes an improper “preventative measure” designed to obliterate an essential component of a woman’s personality and diminish her physical capacities by permanently ending her reproductive capacity without her consent.....	31
2. Forced sterilization constitutes discrimination on the basis of gender.....	33
3. Forced sterilization of poor, migrant women constitutes discrimination...35	
Conclusion	37

INTEREST OF THE AMICI

The Human Rights and Gender Justice Clinic (“HRGJ”) (formerly the International Women’s Human Rights Clinic) at the City University of New York (“CUNY”) School of Law is devoted to defending and implementing the rights of women under international law and ending all forms of discrimination. HRGJ is part of the nonprofit clinical program, Main Street Legal Services, Inc. at CUNY School of Law. Since its inception in 1992, HRGJ has given particular attention to the development of women’s and gender rights in the inter-American system. HRGJ directors participated in the first meeting of experts that drafted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belém do Pará”) and in the advisory group of the first Special Rapporteur on Women of the Inter-American Commission on Human Rights (“the Commission”). Experts from HRGJ have provided testimony to the Inter-American Court of Human Rights (“the Court”) for *González v. Mexico* (“Cotton Field”), *Herrera Monreal v. Mexico*, and *Ramos Monarrez v. The United Mexican States*, and have consulted with petitioners and their counsel in other cases before the Court as well.

Women Enabled International (WEI) advocates and educates for the human rights of all women and girls, with an emphasis on women and girls with disabilities. Through advocacy and education, WEI has increased international attention to issues such as violence against women, sexual and reproductive health and rights, access to justice, and their impact on women and girls with disabilities, to strengthen international and regional human rights standards. In their prior professional capacities, WEI’s legal experts have participated in the negotiation of the Convention on the Rights of Persons with Disabilities, provided testimony to the Commission on

the reproductive rights of women living with HIV, and represented petitioners in cases before the Commission.

INTRODUCTION

Forced and coerced sterilization occurs when a person is sterilized without her knowledge or in the absence of informed consent.¹ Though women worldwide voluntarily use sterilization as a form of birth control,² when forced, this irreversible³ procedure causes severe physical and mental harm to women. Forced sterilization is disproportionately perpetrated against those from stigmatized groups, such as women living with HIV, poor women, ethnic or national minorities, or women with disabilities, because some health care providers (“providers”) believe such women should not have children.⁴ These beliefs may be motivated by animus toward certain groups, stereotypes that they are generally unfit parents, or providers may think that for these women, having a child would not be a “good” decision.⁵ Providers may justify sterilizations on grounds of “medical necessity,” where they assume their own judgment is better than that of their patients and that they can therefore make life-altering medical decisions on their behalf.

¹ Open Society Foundations, *Against Her Will: Forced and Coerced Sterilization of Women Worldwide 2* (2011) [hereinafter *Against Her Will*]. Forced sterilization occurs when an individual is not given an opportunity to consent to the procedure. Coerced sterilization occurs when an individual is compelled to undergo sterilization as a result of financial or other incentives, misinformation, or intimidation, and therefore has not provided informed consent to the procedure. This brief uses the term “forced sterilization,” as the facts of the present case indicate that I.V. was forcibly sterilized. However, the arguments put forth apply equally to both forced and coerced sterilizations.

² Office of the High Commissioner on Human Rights (OHCHR), et al., *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement – OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO* 1 (2014).

³ Int’l Fed’n of Gynecology and Obstetrics (FIGO), *Female Contraceptive Sterilization*, 115 INT’L J. OF GYNECOLOGY AND OBSTETRICS 88, 88-89 (2011).

⁴ See, e.g., OHCHR, et al., *supra* note 2, at 3-8; Center for Reproductive Rights, *Reproductive Rights Violations as Torture and Cruel, Inhuman, or Degrading Treatment or Punishment: A Critical Human Rights Analysis* 19 (2010) [hereinafter *Reproductive Rights Violations as Torture*]; INT’L CMTY OF WOMEN LIVING WITH HIV/AIDS, THE FORCED AND COERCED STERILIZATION OF HIV POSITIVE WOMEN IN NAMIBIA 8-9 (2009); *Against Her Will, supra* note 1, at 3-6 (2011).

⁵ See, e.g., *Reproductive Rights Violations as Torture, supra* note 4, at 19; INT’L CMTY OF WOMEN LIVING WITH HIV/AIDS, *supra* note 4, at 8-9; *Against Her Will, supra* note 1, at 3-6.

In order to ensure that states recognize and address violations of women’s human rights, it is critical that human rights bodies fully integrate a gender perspective into the analysis of torture, cruel, inhuman, and degrading treatment (“TCIDT”)⁶ and address issues such as forced sterilization. As the U.N. Special Rapporteur on torture explained in his most recent report, “the torture and ill-treatment framework evolved largely in response to practices and situations that disproportionately affected men[, and thus] largely failed ... to account for the impact of entrenched discrimination, patriarchal, heteronormative and discriminatory power structures and socialized gender stereotypes.”⁷ Applying a gender-inclusive framework has brought much-needed attention to many egregious human rights violations that women experience.⁸ For example, in November 2012 this Court ruled that a prohibition on in-vitro fertilization (“IVF”) disproportionately interferes with women’s reproductive autonomy and constitutes a violation of mental integrity.⁹ Additionally, the European Court of Human Rights (“ECHR”) and the U.N. Special Rapporteur on Torture have determined that women who are forcibly sterilized are

⁶ Manfred Nowak, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶ 26, U.N. Doc. A/HRC/7/3 (Jan. 15, 2008).

⁷ Juan Mendez, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: gender perspectives on torture and other cruel, inhuman and degrading treatment or punishment*, ¶ 5, U.N. Doc. A/HRC/31/57 (Jan. 5, 2016) [hereinafter Report of the SR Torture 2016].

⁸ Human Rights Comm., *General Comment No. 28: Equality of rights between men and women (Art. 3)*, ¶ 11, 68th sess. (2000) in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (May 27, 2008) (referring to the forced sterilization of women as a breach of ICCPR article 7); *see also* Human Rights Comm., *Concluding Observations: Slovakia*, ¶ 12, U.N. Doc. CCPR/CO/78/SVK (2003); Human Rights Comm., *Concluding Observations: Japan*, ¶ 31, CCPR/C/79/Add.102 (1998); Human Rights Comm., *Concluding Observations: Peru*, ¶ 21, CCPR/CO/70/PER (2000).

⁹ *Murillo y Otros (“Fecundación In Vitro”) v. Costa Rica*, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶¶ 314, 326 (Nov. 28, 2012).

denied many basic human rights, including the right to be free from cruel, inhuman, and degrading treatment (“CIDT”) and in certain instances the right to be free from torture.¹⁰

Forced sterilization is perpetrated disproportionately against women and is a form of gender-based violence.¹¹ The inter-American system has been at the forefront of denouncing certain forms of gender-based violence as torture or CIDT¹² and affording victims recognition and redress as justice demands. This case provides an opportunity for the Court to continue to exercise leadership in addressing violations of the right to be free from gender-based violence and discrimination and to denounce the growing number of forced sterilizations occurring in stigmatized communities.

International human rights standards establish that forced sterilization’s physically invasive, permanent harm coupled with the lasting psychological effects of forced infertility comprise an injury so extensive that it amounts to cruel, inhuman, and degrading treatment, and arguably torture.¹³ The gravity of this violation, together with reports of the systemic practice of forced sterilization throughout the region,¹⁴ underscores the urgency of the Court recognizing

¹⁰ *V.C. v. Slovakia*, No. 18968/07, Eur. Ct. H.R. (Feb. 8, 2012); *I.G. and Others v. Slovakia*, No. 15966/04, Eur. Ct. H.R. (Nov. 13, 2012); Juan E. Méndez, Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Report to the Human Rights Council*, ¶ 48, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) [hereinafter Report of the SR Torture 2013]; Report of the SR Torture 2016, *supra* note 7, ¶ 45.

¹¹ OHCHR, et al., *supra* note 2, at 1.

¹² For example, it is acknowledged that the inter-American system was the first regional body to recognize that rape constitutes torture, and began a domino effect for many other regional and international bodies to echo this conclusion. See Association for the Prevention of Torture & Center for Justice and International Law, *Torture in International Law - A Guide to Jurisprudence* 3-4 (2008) [hereinafter Torture in International Law Guide] (referring to *Martín de Mejía v. Peru*, Case 10.970, Inter-Am. C.H.R., Rep. No. 5/96, OEA/Ser.L/V/II.91, doc. 7 (1996)). Similarly, the inter-American system boasts the first treaty devoted exclusively to eliminating gender-based violence through a human rights-based approach. Organization of American States, Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, 33 I.L.M. 1534 [hereinafter Convention of Belém do Pará].

¹³ See, e.g., Report of the SR Torture 2016, *supra* note 7, ¶ 45; Report of the SR Torture 2013, *supra* note 10, ¶¶ 45-48; *Against Her Will*, *supra* note 1, at 2; *Reproductive Rights Violations as Torture*, *supra* note 4, at 19.

¹⁴ See, e.g., HUMAN RIGHTS WATCH, A TEST OF INEQUALITY: DISCRIMINATION AGAINST WOMEN LIVING WITH HIV IN THE DOMINICAN REPUBLIC 39-41 (2004); Tamil Kendall, *Reproductive Rights Violations Reported by Mexican*

that forced sterilization amounts to CIDT. It is also important that the Court acknowledges—as the Special Rapporteur on Torture has—that the severity of the suffering caused by forced sterilization may amount to torture,¹⁵ particularly in instances like the present case where the sterilization is clearly driven by discrimination on prohibited grounds. In determining whether an act constitutes torture, the Special Rapporteur has emphasized the need for “gender-sensitive lens [to] guard[] against a tendency to regard violations against women ... as ill-treatment even where they would more appropriately be identified as torture.”¹⁶

In recognizing forced sterilization as CIDT or torture, the Court would be in line with numerous international bodies that have already made these pronouncements.¹⁷ In finding that Bolivia had violated I.V.’s article 5 rights in the instance case, the Commission emphasized “the deep anguish, helplessness and frustration suffered by I.V. as a consequence of her forced sterilization”¹⁸ and noted that “the violation of the right to personal integrity in this case is of a continuous nature, given that I.V. was absolutely and needlessly deprived of the present and future exercise of her reproductive rights.”¹⁹ Amici urge the Court to take this opportunity to

Women with HIV, 11 HEALTH AND HUM. RTS. IN PRACTICE 79, 84 (2009); Yakin Ertürk, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences: integration of the human rights of women and the gender perspective: violence against women: intersections of violence against women and HIV/AIDS*, ¶ 69, U.N. Doc. E/CN.4/2005/72 (Jan. 17, 2005) (documenting the practice of forced sterilization of women living with HIV in Venezuela); *Corte Constitucional de Colombia [Colombian Constitutional Court]* (2014), Sentencia T-740/14 (Acción de Tutela para Ordenar Practica de Procedimientos de Anticoncepcion Definitivos en Mujeres con Discapacidad Mental) (Oct. 3, 2014).

¹⁵ Report of the SR Torture 2013, *supra* note 10, ¶¶ 45-48.

¹⁶ Report of the SR Torture 2016, *supra* note 7, ¶ 8.

¹⁷ See e.g., *V.C. v. Slovakia*, No. 18968/07, Eur. Ct. H.R. (Feb. 8, 2012); *I.G. and Others v. Slovakia*, No. 15966/04, Eur. Ct. H.R. (Nov. 13, 2012); *N.B. v. Slovakia*, No. 29518/10, Eur. Ct. H.R. (June 12, 2012); Human Rights Comm., *General Comment No. 28*, *supra* note 8, ¶ 11; Report of the SR Torture 2013, *supra* note 10, ¶¶ 32, 45-48; Comm. Against Torture (CAT Comm.), *Concluding Observations: Peru*, ¶ 23, U.N.CAT/C/PER/CO/4 (2006); Comm. on the Elimination of Discrimination against Women (CEDAW Comm.), *General Recommendation No. 19: Violence against women*, ¶ 22, 11th Sess. (1992), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (May 27, 2008) (noting that forced sterilization violates women’s physical and mental health and reproductive autonomy).

¹⁸ *I.V. v. Bolivia*, Case 12.655, Inter-Am. C.H.R., Report No. 72/14, Merits Decision, ¶ 104 (Aug. 15, 2014).

¹⁹ *Id.* ¶ 103.

clearly denounce forced sterilization as torture or CIDT in violation of the American Convention's Article 5(2) protections.

In order to demonstrate the seriousness of this particular case as well as the connected international standards on CIDT and torture, this brief (1) establishes that the failure to satisfy international standards on informed consent for surgical sterilization amounts to forced sterilization; (2) discusses the growing recognition of TCIDT in the health care setting due to the particular vulnerability of patients and disproportionate power of health care providers; and (3) analyzes why forced sterilization constitutes CIDT and may rise to the level of torture under inter-American jurisprudence and prevailing international law standards.

STATEMENT OF THE CASE

I.V. is a Peruvian national and mother of three daughters.²⁰ According to the petitioner, she was detained by DINCOTE (Peru's Counter-Terrorism Directorate) for political activity at 18 years old when she was pregnant with her first child, and she was jailed for 10 months, during which time she was subjected to physical, psychological, and sexual assault.²¹ She gave birth to her first daughter while she was imprisoned, and was separated from her infant daughter for the first seven months of her daughter's life.²² A year and a half later, she was again imprisoned and tortured by DINCOTE over a period of three years.²³ Around this time, her partner and the father of her first daughter was killed in the Lurigancho prison.²⁴ In 1991, I.V. gave birth to a second

²⁰ *Id.* ¶ 23.

²¹ Derechos en Acción, *Escrito de solicitudes, argumentos y pruebas: Caso I.V. vs. Estado Plurinacional de Bolivia*, p. 7 (Sept. 8, 2015) [hereinafter Petitioner's Brief].

²² *Id.* at 7.

²³ *Id.*

²⁴ *Id.* at 8.

daughter with her new partner.²⁵ As a result of continued political persecution and insecurity, I.V. and her family fled to Bolivia and, in 1994, were granted refugee status there.²⁶

According to the petitioner, on February 22, 2000, I.V. was pregnant with her third child and began to go to the Women's Hospital in La Paz for pre-natal checkups. During these prenatal visits, there was no discussion of contraceptive methods or sterilization.²⁷ On June 28, 2000, a doctor told I.V. to come back to the hospital around July 3 to plan a cesarean section because the baby was in a transverse position.²⁸

When I.V.'s water broke on July 1, 2000 she went to the emergency room at Women's Hospital.²⁹ According to the petitioner, there was no discussion of contraceptives and she was not asked if she consented to a tubal ligation that day.³⁰ That evening, I.V. underwent a cesarean section. At the time, she was 35 years old. The surgical team included Dr. Torrico, the instructor surgeon and "second surgeon" and Dr. Vargas, the "first surgeon."³¹

During the operation, the doctors found multiple adhesions to I.V.'s uterus. Because of the adhesions and an incision made to the body of the womb, the doctors decided to perform a bilateral tubal ligation. The tubal ligation was performed without the written consent of I.V. or her partner and while I.V. was under epidural anesthesia.³² The state claims that I.V. was

²⁵ *Id.*

²⁶ *Id.*

²⁷ *I.V. v. Bolivia*, Case 12.655, Inter-Am. C.H.R., Report No. 72/14, Merits Decision, ¶ 29 (Aug. 15, 2014).

²⁸ *Id.* ¶ 24.

²⁹ *Id.*

³⁰ *Id.* ¶ 29.

³¹ *Id.* ¶ 61.

³² *Id.* ¶¶ 62-63.

informed of the tubal ligation during the surgery and orally consented.³³ I.V. asserts that she was not informed during the surgery and did not orally consent.³⁴

The record of the surgical procedure states that the decision to perform the tubal ligation was made “safeguard the future life of the mother who is notified thereof in the peri-operative period and gives her verbal consent.”³⁵ Three days after the surgery, Dr. Vargas noted in the patient’s record:

3/07/00. Yesterday the patient was told that the bilateral tubal ligation had been performed because of medical necessity, which was accepted by the patient as she understood that a future pregnancy posed a danger to her life. Dr. Vargas.³⁶

Bolivian Health Regulation MSPS 4-98 requires that informed consent for medical care or treatment follow an “informed choice” process. Informed choice “must be based on the client’s access to all necessary information and his/her full understanding. The process must result in a free and informed decision by the person as to whether he or she does not wish to receive the health care service and, if so, what method or procedures she or he chooses and will agree to undergo.”³⁷ The regulation further provides that “[w]hen a family planning method or procedure is to be provided, the provider has a responsibility to facilitate the informed choice process,”³⁸ and establishes specific content for an informed consent form by which patients must give their written consent acknowledging the counseling and information they received prior to consenting to the procedure.³⁹

³³ *Id.* ¶ 50.

³⁴ *Id.* ¶ 31.

³⁵ *Id.* ¶ 63.

³⁶ *Id.* ¶ 64.

³⁷ *Id.* ¶ 65.

³⁸ *Id.*

³⁹ *Id.* ¶ 66.

According to the petitioner, MSPS-98 further provides that “The BTL (Bilateral Tubal Ligation) procedure may be used provided that the patient has received appropriate guidance and that there is proof in the form of her signature or fingerprint on the Informed Consent document, which is to be included in the patient's case history.”⁴⁰ The petitioner also indicates that Article 37 of the the Code of Ethics and Medical Deontology of the Medical Association of Bolivia states that: “A person may only be sterilized in response to his or her express, voluntary and documented request for sterilization, or in the event of therapeutic necessity determined strictly by a medical board.”⁴¹

Both the petitioner and the State agree that, in the instant case, the decision for surgical sterilization was made during the cesarean section and that neither I.V. nor her partner provided written consent for the procedure,⁴² as required by these regulations.

Audits conducted by the hospital and the Medical Audit Departmental Committee found that the ligation had been performed to safeguard I.V.’s future health if she became pregnant again.⁴³ An audit conducted by the Medical Audit Decisions Committee concluded that sterilization was not medically warranted because there was no risk to I.V.’s life and that obtaining consent during a surgical procedure was unacceptable because the patient is under surgical stress and under anesthesia.⁴⁴

An administrative decision finding administrative liability against Dr. Torrico and ordering his dismissal and 2 criminal judgments against Dr. Torrico were set aside on appeal.⁴⁵

Although a second retrial of the criminal charges was ordered, after various delays, the trial court

⁴⁰ *Id.* ¶ 30.

⁴¹ *Id.* ¶ 30.

⁴² *Id.* ¶ 62.

⁴³ *Id.* ¶¶ 70-71.

⁴⁴ *Id.* ¶ 72.

⁴⁵ *Id.* ¶¶ 74-75, 83.

granted Dr. Torrico's motion to dismiss because more than 6 years had elapsed since the first act of proceedings against him.⁴⁶

As result of the procedure, I.V. lost her ability to have to have children, putting an end to her lifelong dream of having a son.⁴⁷ According to the petitioner, I.V. has experienced extreme feelings of loss, humiliation, and pain as a result of the sterilization, and that she no longer feels like a "complete woman" as a result of her inability to bear more children.⁴⁸ Although I.V. has received some mental health counseling, she still feels as though "[t]he wound has not closed" and that she "cannot say that [she] has been able to move past what happened."⁴⁹ Mental health evaluations excerpted by the petitioners confirm that the degree of suffering I.V. feels as a result of her sterilization has not lessened over the course of seven years of mental health treatment, and notes that "for her, forced sterilization is an irreparable harm."⁵⁰ The impact of the sterilization on I.V. strained her relationship with her partner, and in 2002, they separated.⁵¹ Moreover, I.V. feels a sense of guilt that her long, and ongoing pursuit of justice for the harms that she has suffered has had a negative effect on her relationship with her daughters.⁵²

These facts, coupled with the applicable law, create a strong basis for the claim that I.V.'s forced sterilization violated her rights to physical and mental integrity and to be free from TCIDT under Articles 5(1) and 5(2) of the American Convention. Such a finding will help consolidate international standards integrating a gender perspective into the analysis of TCIDT.

⁴⁶ *Id.* ¶ 88.

⁴⁷ Petitioner's Brief, *supra* note 21, at 8.

⁴⁸ *Id.* at 8-9.

⁴⁹ *Id.* at 10.

⁵⁰ *Id.* at 13.

⁵¹ *Id.* at 8.

⁵² *Id.* at 11.

ARGUMENT

I. Sterilization without informed consent constitutes forced sterilization.

Forced sterilization occurs when a person is sterilized without her knowledge or is not given a chance to consent to the procedure. Forced sterilization is a major interference with a woman's reproductive health, bearing on many aspects of her personal integrity, including her physical and mental wellbeing and family life.⁵³ Both the European Court of Human Rights ("ECHR") and the Committee on the Elimination of Discrimination Against Women ("CEDAW Committee") have determined that without informed consent, a sterilization procedure constitutes forced sterilization and a grave violation of fundamental human rights.⁵⁴ The Commission has similarly expressed its belief that medical procedures performed on women without their informed consent may constitute a violation of Article 5 of the American Convention, including in the merits decision in the instant case.⁵⁵

Informed consent is an internationally recognized health care standard that the World Health Organization ("WHO"), the U.N. Office of the High Commissioner on Human Rights, the Council of Europe, and the International Federation of Gynecology and Obstetrics ("FIGO"), *inter alia*, uniformly regard as an essential component of any medical intervention.⁵⁶ Informed

⁵³ *A.S. v. Hungary*, CEDAW Comm. No. 4/2004, ¶¶ 11.3-11.5, U.N. Doc. CEDAW/C/36/D/4/2004 (2006).

⁵⁴ *Id.* ¶ 11.3; *V.C. v. Slovakia*, No. 18968/07, Eur. Ct. H.R. (Feb. 8, 2012); *I.G. and Others v. Slovakia*, No. 15966/04, Eur. Ct. H.R. (Nov. 13, 2012).

⁵⁵ *I.V. v. Bolivia*, Case 12.655, Inter-Am. C.H.R., Report No. 72/14, Merits Decision, ¶¶ 102-103 (Aug. 15, 2014); ORGANIZATION OF AMERICAN STATES, ACCESS TO MATERNAL HEALTH SERVICES FROM A HUMAN RIGHTS PERSPECTIVE, ¶ 39, OEA/Ser.L/V/II. Doc. 69 (2010).

⁵⁶ World Health Organization (WHO), *A Declaration on the Promotion of Patients' Rights in Europe*, ICP/HLE 121, Art. 3.1 (1994) [hereinafter WHO Decl.]; UN Office of the High Commissioner for Human Rights, Istanbul Protocol, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 63, U.N. Doc. HR/P/PT/8/Rev.1 (2004) ("an absolutely fundamental precept of modern medical ethics is that patients themselves are the best judge of their own interests."); Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, art. 5, *adopted* Apr. 4, 1997, Eur. T.S. No. 164 (*entered*

consent has three essential components: physician disclosure of the risks and benefits of, and alternatives to, the medical procedure; the patient's understanding of that disclosure; and voluntary patient choice. Informed consent is not a patient's mere assent to an intervention, but rather a process of communication⁵⁷ between a patient and her health care provider.⁵⁸ The health care provider has an affirmative duty⁵⁹ to provide relevant information to the patient in a mode and in a language that she understands, to her satisfaction.⁶⁰ Information required to ensure informed consent to sterilization should include the permanency of the procedure, availability of reversible contraceptive methods, and recognition that life circumstances may change, which could lead to regret about the decision later in life.⁶¹ Ethical standards warn against requesting consent when a patient is under the pressure or stress of a medical condition, such as during labor and the period immediately preceding or following delivery, or otherwise particularly vulnerable,⁶² as such conditions preclude voluntary patient choice. According to a U.N. interagency statement aimed at eliminating forced and involuntary sterilization, "[e]ven if a future pregnancy might endanger a person's life or health, there are alternative contraceptive

into force Dec. 1, 2009); FIGO, *Guidelines regarding informed consent*, in ETHICAL ISSUES IN OBSTET. & GYNEC. 13-14 (Oct. 2009).

⁵⁷ FIGO, *Guidelines regarding informed consent*, 101 INT'L J. OF GYNECOLOGY AND OBSTETRICS 219-220, 219 (2008); *See generally*, George P. Smith, *The Vagaries of Informed Consent*, 1 IND. HEALTH L. REV. 109 (2004).

⁵⁸ WHO Decl., *supra* note 57, at 15 (defining "health care providers" as "Physicians, nurses, dentists or other health professionals.").

⁵⁹ Inter-Am. C.H.R., *Access to information on Reproductive Health from a Human Rights Perspective*, ¶¶ 44-45, 49 OEA/Ser.L/V/II. Doc. 61 (2011); *see also* FIGO, *Guidelines regarding informed consent*, *supra* note 58, at 219 ("it is the ethical obligation of the physician to ensure her human right to self-determination is met by the process of communication that precedes any informed consent.").

⁶⁰ *See, e.g.*, Convention on Human Rights and Biomedicine, *supra* note 57, art. 5; Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, ¶ 59, U.N. Doc. A/64/272 (2009) (stating that health care providers are "critical actors" in facilitating women's access to information, particularly regarding family planning considerations).

⁶¹ FIGO, *Female Contraceptive Sterilization*, *supra* note 3, at 88. *See also*, OHCHR, et al., *supra* note 2, at 11.

⁶² FIGO, *Female Contraceptive Sterilization*, *supra* note 3, at 88. *See also*, *A.S. v. Hungary*, CEDAW Comm. No. 4/2004, ¶ 11.2, U.N. Doc. CEDAW/C/36/D/4/2004 (2006).

methods to ensure the individual concerned does not become pregnant immediately, and the individual concerned must be given the time and information needed to make an informed choice about sterilization,” emphasizing that “[s]terilization for prevention of future pregnancy cannot be justified on grounds of medical emergency.”⁶³

In the instant case, these standards for informed consent were not met,⁶⁴ and I.V.’s sterilization constitutes a forced sterilization.

II. Forced sterilization violates the right to be free from TCIDT.

The right to be free from TCIDT is a fundamental right that is guaranteed absolutely in international and regional human rights treaties.⁶⁵ All major human rights bodies consider the prohibition of torture to be a *jus cogens* norm,⁶⁶ and therefore peremptory and non-derogable.⁶⁷

⁶³ OHCHR, et al., *supra* note 2, at 9.

⁶⁴ *I.V. v. Bolivia*, Case 12.655, Inter-Am. C.H.R., Report No. 72/14, Merits Decision, ¶ 102 (Aug. 15, 2014).

⁶⁵ Universal Declaration of Human Rights, art. 5, G.A. Res. 217 (III), A, U.N. Doc A/RES/217(III) (Dec. 10, 1948) [hereinafter Universal Declaration]; International Covenant on Civil and Political Rights, art. 7, G.A. Res. 2200a (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter ICCPR]; Convention against Torture and Other Cruel, Inhuman and Degrading Treatment, *adopted* Dec. 10, 1984, arts. 2, 16, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984) (*entered into force* June 26, 1987) [hereinafter CAT]; Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, annex, art. 37, U.N. CAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990); [hereinafter CRC]; American Declaration of the Rights and Duties of Man, *adopted* May 2, 1948, O.A.S. Res. XXX (1949) *reprinted* in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9, art. 1 (2003); American Convention on Human Rights, art. 5, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention]; Convention of Belém do Pará, *supra* note 12; Inter-American Convention to Prevent and Punish Torture, *adopted* Dec. 9, 1985, art. 1, O.A.S.T.S. No. 67 (*entered into force* Feb. 28, 1987), *reprinted* in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003) [hereinafter Inter-American Torture Convention]; the European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3, *adopted* Nov. 4, 1950, 213 U.N.T.S. 222, Eur. T.S. No. 5 (*entered into force* Sept. 3, 1953) [hereinafter European Convention]; African Charter on Human and Peoples’ Rights, *adopted* June 27, 1981, art. 4, O.A.U. Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982) (*entered into force* Oct. 21, 1986) (The African Charter is the only treaty listed that does not expressly make the prohibitions on torture non-derogable.)

⁶⁶ *See, e.g., Urrutia v. Guatemala*, Inter-Am. Ct. H.R., (ser. C) No. 103, ¶ 92, (Nov. 27, 2003) (recognizing torture as *jus cogens*); *Al-Adsani v. the U.K.* [GC], No. 35763/97, Eur. Ct. H.R. 2001-XI (commenting on torture as *jus cogens*); *Prosecutor v. Furundzija*, Case. No. IT-95-17/1-T, ¶ 144, International Criminal Tribunal for the Former Yugoslavia, Judgment of Dec. 10, 1998) (noting that the prohibition of torture is a peremptory norm or *jus cogens*); *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (9th Cir. 1992) (U.S.) (holding the prohibition against official torture has attained status of *jus cogens*).

While the prohibition of CIDT has not been universally embraced as a *jus cogens* norm, the Court has found that the right to be free from CIDT—a right distinct from freedom from torture—has reached such a fundamental status.⁶⁸

By ratifying the several inter-American human rights treaties that strictly prohibit TCIDT, Bolivia is obligated to respect and ensure the right to humane treatment and the rights to physical, mental, and moral integrity,⁶⁹ and to take steps to prevent and punish torture and ill treatment.⁷⁰ Both the American Convention and the Inter-American Convention to Prevent and Punish Torture require states to respect and ensure the right to be free from torture and CIDT.⁷¹

This section begins with a discussion of the growing recognition that TCIDT can occur in the health care setting. It then sets forth the applicable standards for TCIDT in the inter-American system and discusses why I.V.’s forced sterilization constitutes CIDT and may rise to the level of torture.

A. Human rights bodies have emphasized the State’s obligation to address TCIDT violations in health care settings.

Regional and international human rights bodies recognize that TCIDT can occur in non-detention contexts, such as hospitals and psychiatric institutions.⁷² The Court has found

⁶⁷ See Vienna Convention on the Law of Treaties, art. 53, *adopted* May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (*entered into force* Jan. 27, 1980).

⁶⁸ See *Cantoral-Benavides v. Peru*, Inter-Am. Ct. H.R., (ser. C) No. 69, ¶ 95, (Aug. 18, 2000) (regardless of whether an act constitutes torture or cruel, inhuman or degrading treatment or both, “it must be clearly understood that... they are strictly prohibited under international human rights law.”); *Berenson-Mejía v. Peru*, Inter-Am. Ct. H.R., (ser. C) No. 119, ¶ 100 (Nov. 25, 2004) (stating that “torture and cruel, inhuman or degrading punishment or treatment are strictly prohibited by international human rights law. The prohibition of torture and cruel, inhuman or degrading punishment or treatment is absolute and non-derogable, even under the most difficult circumstances....”).

⁶⁹ American Convention, *supra* note 66, art. 5(1).

⁷⁰ Inter-American Torture Convention, *supra* note 66, arts. 1, 7.

⁷¹ American Convention, *supra* note 66, arts. 1, 5; Inter-American Torture Convention, *supra* note 66, art. 6 (“The States Parties shall take effective measures to prevent and punish torture”); art. 7 (noting that States Parties shall take measures to prevent “cruel, inhuman or degrading treatment or punishment”).

⁷² *Ximenes-Lopes v. Brazil*, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 89 (July 4, 2006); *A, B and C v. Ireland [GC]*, No. 25579/05, Eur. Ct. H.R. (2010); *A.S. v. Hungary*, CEDAW Comm. No. 4/2004, U.N. Doc. CEDAW/C/36/D/4/2004

violations of Articles 5(1) and 5(2) in health care settings where health care providers failed to exercise the care necessary to safeguard a patient’s right to humane treatment.⁷³ Where human rights abuses occur in state-run health care facilities, the State is responsible for the rights violations.⁷⁴ In addition, since health is a public interest, it is the duty of the State to affirmatively ensure that the right to physical and mental integrity is not violated when individuals are undergoing medical treatment or when a person is seeking or in need of medical care.⁷⁵ In a 2013 report, the Special Rapporteur on Torture stressed the importance of “examining abuses in health care settings from a torture-protection framework [in order] to solidify the understanding of these violations and to highlight the positive obligation that states have to prevent, prosecute, and redress such violations.”⁷⁶ Thus, the State’s obligations to respect and ensure the right to be free from TCIDT extend to health care settings, and the State is responsible for such violations that occur in this context.

The Court recognizes that the health care setting exposes patients to potential violations of fundamental rights—and gives rise to specific state obligations to respect and ensure these rights—because of the particularly vulnerable condition of a person seeking or being administered medical treatment.⁷⁷ Indeed, all those who are subjected to TCIDT in either prisons

(2006); *K.L. v. Peru*, Human Rights Comm. No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); *I.G. and Others v. Slovakia*, No. 15966/04, Eur. Ct. H.R. (Nov. 13, 2012), *V.C. v. Slovakia*, No. 18968107, Eur. Ct. H.R. (2011).

⁷³ See *Ximenes-Lopes v. Brazil*, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 150 (July 4, 2006).

⁷⁴ See, e.g., *I.V. v. Bolivia*, Case 12.655, Inter-Am. C.H.R., Report No. 72/14, Merits Decision, ¶ 171 (“[I]t has been proven that the human rights violations that have been substantiated were perpetrated directly by physicians working in a State hospital. Therefore, they may be regarded as government officials.”).

⁷⁵ *Ximenes-Lopes v. Brazil*, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 89 (July 4, 2006); See also *De La Cruz-Flores v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 115, ¶ 131 (Nov. 18, 2004) (holding that the lack of adequate medical attention violated the victim’s right to respect for her personal dignity under Article 5). See also, *Alyne v. Brazil*, CEDAW Comm. No. 17/2008, ¶ 7.5, U.N. Doc. CEDAW/C/49/D/17/2008 (2011) (noting that “the State always maintains a duty to regulate and monitor private health-care institutions”).

⁷⁶ Report of the SR Torture 2013, *supra* note 10, ¶ 82.

⁷⁷ *Ximenes-Lopes v. Brazil*, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 103 (July 4, 2006).

or hospitals experience an imbalance of power—whether between prisoner and prison guard or patient and provider—that renders them uniquely vulnerable to the abuses those in control may wield against them.

The Court has explicitly warned about the potential for TCIDT of patients in health care settings, stating that “the staff in charge of the care of the patients exercise a strong control or dominance over the persons in their custody.”⁷⁸ Hospitalized persons are inevitably in a vulnerable condition because there is an intrinsic imbalance of power between a hospitalized patient and the persons in control of administering their medical care.⁷⁹ According to the Court, “any person who is in a vulnerable condition is entitled to special protection, which must be provided by the States if they are to comply with their general duties to respect and guarantee human rights.”⁸⁰ Thus, to fulfill its obligations, a state must not only refrain from violating patients’ rights, it must also adopt positive measures that are tailored to the specific protection needs of a hospitalized person, taking into account both her personal medical condition and the institution she is in.⁸¹

As a patient in a public hospital at the time of her forced sterilization, I.V. was exceptionally vulnerable to TCIDT. Bolivia had an affirmative obligation to protect her from such abuses and any violations of her human rights committed at the state hospital constituted state action.

B. Forced sterilization committed by a public official is a form of TCIDT because it causes severe physical, mental, and psychological suffering.

Article 5(2) of the American Convention provides that every person has the right to be

⁷⁸ *Id.* ¶ 107.

⁷⁹ *Id.*

⁸⁰ *Id.* ¶ 103.

⁸¹ *Id.*

free from TCIDT.⁸² Jurisprudence from the Court further establishes the inter-American system's commitment to ensuring that all people are treated humanely and that their human dignity is respected.⁸³ The Special Rapporteur on Torture has recognized forced sterilization as an act of violence and a form of social control that constitutes CIDT and in certain circumstances constitutes torture.⁸⁴ By permanently ending a woman's reproductive capacity, causing infertility, and imposing a serious and lasting physical change without her consent, forced sterilization causes the severe mental and physical harm⁸⁵ that amounts to CIDT or torture.

i. Articles 5(1) and 5(2) prohibit violations of the right to physical and psychological integrity that range from CIDT to torture.

The Court has recognized that all individuals have a right to physical and psychological integrity and that treatment violating personal integrity can range from cruel, inhuman or degrading treatment to torture.⁸⁶ Allegations of torture and CIDT require an assessment of the physical or mental pain that a victim suffered to first determine if it rises to the level of a rights violation and then to determine whether the violation is severe enough to constitute torture.⁸⁷ Torture also requires an improper purpose.⁸⁸ Torture and CIDT are defined through jurisprudence from the Court and the Commission, which is informed by TCIDT analyses by

⁸² American Convention, *supra* note 66, art. 5(2).

⁸³ See, e.g., *Baldeon-Garcia v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 147, ¶ 118 (Apr. 6, 2006).

⁸⁴ Report of the SR Torture 2013, *supra* note 10, ¶ 48.

⁸⁵ *V.C. v. Slovakia*, No. 18968/07, Eur. Ct. H.R. (Feb. 8, 2012); CEDAW Comm., *General Recommendation No. 19*, *supra* note 17, ¶ 22.

⁸⁶ *Loayza-Tamayo v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 22, ¶ 57 (Sept. 17, 1997).

⁸⁷ See Human Rights Comm., *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7)*, ¶ 2, 44th Sess. (1992) in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (May 27, 2008); *Caesar v. Trinidad and Tobago*, Inter-Am. Ct. H.R. (ser. C) No. 123, ¶ 67 (Mar. 11, 2005); *Ireland v. United Kingdom*, Eur. Ct. H.R., ¶¶ 162-163, (Jan. 18, 1978).

⁸⁸ Inter-American Torture Convention, *supra* note 66, art. 2.; *Gómez-Paquiyaury Brothers v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶¶ 115-116 (July 8, 2004); *Bámaca-Velásquez v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶¶ 156-58, (Nov. 25, 2000); *Cantoral-Benavides v. Peru*, Inter-Am. Ct. H.R., (ser. C) No. 69, ¶¶ 97-98, (Aug. 18, 2000).

human rights treaty monitoring bodies, international tribunals, and other regional courts.⁸⁹

a. CIDT is conduct that causes serious physical or mental pain, suffering, or humiliation to the victim.

In *Caesar v. Trinidad & Tobago*, the Court defined cruel or inhuman treatment as “an intentional act or omission that ... causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity.”⁹⁰ The ECHR has repeatedly held that forced sterilization violates the right to be free from torture or cruel and inhuman treatment under Article 3 of the European Convention on Human Rights.⁹¹ In reaching its decisions, the ECHR found that sterilization without informed consent is incompatible with human freedom and dignity⁹² and that the physical and mental harm imposed by forced sterilization constituted ill-treatment.⁹³

In determining whether treatment has risen to the level of an Article 3 violation, the ECHR considers a non-exhaustive list of objective factors, such as the duration and the physical and mental effects of the conduct, and subjective factors, such as the victim’s age, sex, and state

⁸⁹ See e.g., *Miguel Castro-Castro Prison v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 160, ¶¶ 303, 310, 311 (Nov. 25, 2006) (referring to the jurisprudence of the CEDAW Comm., the International Criminal Tribunal for Rwanda, the ECHR, as well as the text of the Convention of Belém do Pará, in finding that a violation of Article 5 of the American Convention had occurred); *Tibi v. Ecuador*, Inter-Am. Ct. H.R., (ser. C), No. 114, ¶ 144 (Sept. 7, 2004) (looking beyond the inter-American system and demonstrating attentiveness to the wording of other international instruments and developing trends in international case law).

⁹⁰ *Caesar v. Trinidad and Tobago*, Inter-Am. Ct. H.R. (ser. C) No. 123, ¶ 68 (Mar. 11, 2005) (quoting the International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Delalic et al. (Celebici case), Case No. IT-96-21-T, Judgment of Nov. 16, 1998, ¶ 552).

⁹¹ *V.C. v. Slovakia*, No. 18968/07, Eur. Ct. H.R. (Feb. 8, 2012); *I.G. and Others v. Slovakia*, No. 15966/04, Eur. Ct. H.R. (Nov. 13, 2012); *N.B. v. Slovakia*, No. 29518/10, Eur. Ct. H.R. (June 12, 2012).

⁹² *N.B. v. Slovakia*, No. 29518/10, Eur. Ct. H.R. ¶¶ 73, 78 (June 12, 2012).

⁹³ See e.g. *V.C. v. Slovakia*, No. 189681/07, Eur. Ct. H.R. ¶¶ 116, 118-119 (noting both that sterilization constitutes a major interference with physical integrity and reproductive capability and that coerced sterilization arouses feelings of fear, anguish, inferiority and lasting suffering.); *N.B. v. Slovakia*, No. 29518/10, Eur. Ct. H.R. ¶¶ 77, 80 (June 12, 2012).

of health.⁹⁴ Citing precedent from the ECHR, the Inter-American Court has recognized that psychological and moral suffering alone in the absence of physical injuries can constitute inhuman or degrading treatment.⁹⁵ In *I.G.*, a forced sterilization case, the ECHR emphasized that the mental harm that an individual subjectively feels from undergoing a forced sterilization may be enough on its own to constitute CIDT. *I.G.* considered the case of an applicant who underwent a hysterectomy shortly after forced sterilization. In finding that the applicant's Article 3 rights were violated, the ECHR emphasized that CIDT is established by degrading treatment that "humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority; *it may suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others.*"⁹⁶

b. Torture is a fact-specific inquiry and requires a showing of severe physical or mental harm and purposeful state action.

Both the Court and the Commission refer to the definition of torture under Article 2 of the Inter-American Convention to Prevent and Punish Torture in order to establish the scope of torture under the American Convention.⁹⁷ Article 2 states:

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the

⁹⁴ AISLING READY, COUNCIL OF EUROPE, THE PROHIBITION OF TORTURE: A GUIDE TO THE IMPLEMENTATION OF ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 10 (Human Rights Handbook, No. 6, 2003) [hereinafter ECHR Guide]; *Ireland v. U.K.*, No. 25, Eur. Ct. H.R. (ser. A) (Jan. 18, 1978). See *Gómez-Paquiyaui Brothers v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 113 (July 8, 2004) (noting that the ECHR looks at these factors to determine whether the gravity of acts constitute CIDT or torture).

⁹⁵ *Loayza-Tamayo v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 22, ¶ 57 (Sept. 17, 1997).

⁹⁶ *I.G. and Others v. Slovakia*, No. 15966/04, Eur. Ct. H.R. ¶ 121 (Nov. 13, 2012) (emphasis added).

⁹⁷ See *Tibi v. Ecuador*, Inter-Am. Ct. H.R., (ser. C) No. 114, ¶ 145 (Sept. 7, 2004); *Gómez-Paquiyaui Brothers v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 105 (July 8, 2004); *Martín de Mejía v. Peru*, Case 10.970, Report No. 5/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.91 doc. 7 (1996).

personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.⁹⁸

The Court has also relied on Article 1 of the Convention Against Torture (CAT) in interpreting what constitutes torture.⁹⁹

In addition to the CIDT requirement of (i) an intentional action (ii) resulting in physical or mental harm, a finding of torture requires a petitioner to prove two additional distinct elements: that state action was undertaken (iii) for a purpose and (iv) resulted in severe harm.¹⁰⁰

The purpose requirement is discussed below in section II.B.ii.b. The primary distinction between torture and CIDT in the inter-American system is the severity of treatment;¹⁰¹ torture is essentially a more brutal and intense form of CIDT.¹⁰² The Court employs a sliding scale rule that includes severe forms of torture at one end, and “cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects,” on the other end.¹⁰³

Human rights bodies and commentators have acknowledged that torture does not fit any

⁹⁸Inter-American Torture Convention, *supra* note 66, art. 2.

⁹⁹ *Urrutia v. Guatemala*, Inter-Am. Ct. H.R., (ser. C) No. 103, ¶ 90, (Nov. 27, 2003); *Bámaca-Velásquez v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶ 156, (Nov. 25, 2000); *Cantoral-Benavides v. Peru*, Inter-Am. Ct. H.R., (ser. C) No. 69, ¶ 97 (Aug. 18, 2000). *See also* CAT, *supra* note 66, art. 1.

¹⁰⁰ Relying in part on the definition of torture in the U.N. Convention against Torture, the Court has established that an act of torture must: (1) be an intentional act; (2) cause severe physical or mental pain to a victim; and (3) be perpetrated for some purpose. *Gómez-Paquiyaqui Brothers v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶¶ 115-116 (July 8, 2004); *Bámaca Velásquez v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶¶ 156-158 (Nov. 25, 2000); *Cantoral-Benavides v. Peru*, Inter-Am. Ct. H.R., (ser. C) No. 69, ¶ 97-98, (Aug. 18, 2000). The Commission has also required that the perpetrator of torture be a state actor that may create an additional element to the torture rule in the inter-American system. *Lizardo Cabrera v. Dominican Republic*, Case 10-832, Inter-Am. C.H.R., Report No. 35/96, OEA/Ser.L/V/II.95, doc. 7 rev. ¶ 81 (1997); *Martín de Mejía v. Perú*, Case 10.970, Inter-Am. C.H.R., Report No. 5/96, OEA/Ser.L/V/II.91 doc. 7 (Mar. 1, 1996). *See also*, U.N. Voluntary Fund for Victims of Torture, *Interpretation of Torture in Light of the Practice of and Jurisprudence of International Bodies* 3 (Mar. 3, 2011) [hereinafter UNFVT].

¹⁰¹ Diego Rodríguez-Pinzón & Claudia Martin, *The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System: A Handbook for Victims and Their Advocates* 107 (2006).

¹⁰² *See, Loayza-Tamayo v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 22, ¶ 57 (Sept. 17, 1997). In *Loayza*, the Court concluded that torture and CIDT are separated by the severity of treatment. The Court relied on the ECHR, which interpreted the scope of Article 3 of the European Convention in *Ireland v. U.K.*

¹⁰³ *Loayza-Tamayo v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 22, ¶ 57 (Sept. 17, 1997).

single model and is typically a fact-intensive finding.¹⁰⁴ This living definition of torture allows international bodies the freedom and flexibility to classify new acts as torture that were not recognized or conceived of as torture when it initially became a *jus cogens* norm.¹⁰⁵ Additionally, this means that acts that were formerly classified as CIDT may now, in some cases, be classified as torture.¹⁰⁶ Related to this, the flexibility of the definition of torture also allows international bodies to consider the circumstances under which acts occur, such that an act may constitute torture in some circumstances, but not in others.¹⁰⁷

Human rights bodies and experts have increasingly recognized that some specific harms only experienced by women and girls constitute TCIDT and have serious consequences for their lives.¹⁰⁸ Given the inter-American system's jurisprudence on the right to be free from TCIDT, as well as its respect for other regional and international human rights case law, the Court should rule that forced sterilization is categorically a form of CIDT that may amount to torture in certain

¹⁰⁴ UNFVT, *supra* note 101, at 2; *see* CAT Comm., *General Comment No. 2: Implementation of article 2 by States parties*, ¶¶ 3, 10, U.N. Doc. CAT/C/GC/2 (2008) (in explaining how CIDT may be identified, the Committee recognizes that there is no complete definition of it); *see also* *Loayza-Tamayo v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 22, ¶ 57 (Sept. 17, 1997) (explaining that there is no definitive way to violate Article 5 of the American Convention). The preponderance of guides to analyze torture in different international and regional systems also evidences the fact that the definition of torture has been and is being interpreted differently by different international bodies, although the jurisprudence reveals a high level of harmony regarding the application of baseline standards. *See generally*, Association for the Prevention of Torture & Center for Justice and International Law, *Torture in International Law—A Guide to Jurisprudence* (2008) [hereinafter APT Guide]; ECHR Guide, *supra* note 95; Rodríguez-Pinzón & Martín, *supra* note 102.

¹⁰⁵ UNFVT, *supra* note 101, at 3; APT Guide, *supra* note 105, at 3; *see also* *Cantoral-Benavides v. Peru*, Inter-Am. Ct. H.R., (ser. C) No. 69, ¶ 99 (Aug. 18, 2000) (“[C]ertain acts that were classified in the past as inhuman or degrading treatment, but not as torture, may be classified differently in the future, that is, as torture, since the growing demand for the protection of fundamental rights and freedoms must be accompanied by a more vigorous response in dealing with infractions of the basic values of democratic societies.”).

¹⁰⁶ UNFVT, *supra* note 101, at 8; *Cantoral-Benavides v. Peru*, Inter-Am. Ct. H.R., (ser. C) No. 69, ¶ 99 (Aug. 18, 2000).

¹⁰⁷ *See, e.g., Lizardo Cabrera v. Dominican Republic*, Case 10.832, Inter-Am. C.H.R., Report No. 35/96, OEA/Ser.L/V/II.98 doc. 6 rev. ¶¶ 82-83 (1997) (holding that torture requires an analysis of the facts and circumstances subjective to the victim in each case).

¹⁰⁸ *See, e.g.,* CAT Comm., *Concluding Observations: Chile*, ¶ 7(m), U.N. Doc. CAT/C/CR/32/5 (2004); CAT Comm., *Concluding Observations: El Salvador*, ¶ 23, U.N. Doc. CAT/C/SLV/CO/2 (2009); CAT Comm., *Concluding Observations: Peru*, ¶ 23, U.N. Doc. CAT/C/PER/CO/4 (2006); *See also* Report of the SR Torture 2013, *supra* note 10, ¶¶ 37-39 (noting that violence against pregnant women and denial of reproductive rights can constitute torture or CIDT in certain circumstances).

instances.

ii. The harm suffered by I.V. constitutes CIDT and may constitute torture.

Here, an analysis of the factors that courts assess to find CIDT—(1) intentional action and (2) physical or mental harm—and the additional factors required for torture—(3) severity of harm and (4) improper purpose—supports the conclusion that I.V.’s forced sterilization amounted to CIDT and arguably rises to the level of torture. To the extent that state action or acquiescence may be required, the requirement is satisfied in cases like that of I.V. where rights violations occur in state-run health care institutions.¹⁰⁹ Accordingly, this section examines the severity of physical and mental harm suffered by I.V. and the improper purpose behind the government’s actions.

a. Physical/Mental Harm & Severity

As detailed above, the Court measures severity of the physical and mental harm to determine if it rises to the level of an Article 5 violation and then to determine if it is severe enough to constitute torture by looking at the context of each situation, specifically using the following four elements: 1) duration of the act; 2) physical effects of the act; 3) mental effects of the act, and 4) the sex, age, and state of health of the victim.¹¹⁰

1. Duration and Physical Effects

Though the duration of the sterilization procedure is relatively short—and, here, it

¹⁰⁹ See, e.g., *I.V. v. Bolivia*, Case 12.655, Inter-Am. C.H.R., Report No. 72/14, Merits Decision, ¶ 171 (“[I]t has been proven that the human rights violations that have been substantiated were perpetrated directly by physicians working in a State hospital. Therefore, they may be regarded as government officials.”).

¹¹⁰ *Gómez-Paquiyaury Brothers v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 113 (July 8, 2004); UNFVT, *supra* note 101, at 7; *I.G. and Others v. Slovakia*, No. 15966/04, Eur. Ct. H.R., ¶ 121 (Nov. 13, 2012), *V.C. v. Slovakia*, No. 189681/07, Eur. Ct. H.R. (Feb. 8, 2012).

occurred while I.V. was under anesthesia¹¹¹—the physical and mental effects of undesired fertility loss, particularly in societies that prize motherhood, can be life-long.¹¹² Sterilization causes a permanent physical harm by altering the functioning of reproductive organs,¹¹³ and results in the loss of the ability to conceive a biologically related child and to experience pregnancy and childbirth.¹¹⁴ The physical effects of pregnancy are easily seen and felt by everyone around an individual, and these physical aspects of pregnancy can be an important part of the experience of having a child.¹¹⁵

Forced sterilization permanently disables reproductive capacity and is tantamount to the constructive removal of organs that provide reproductive capacity. The ECHR has found that permanent harm—such as harm to or removal of organs—violates Article 3.¹¹⁶ For example, in the case of *Virabyan v. Armenia*, Virabyan’s testicle was damaged after an incident of police brutality and it had to be surgically amputated.¹¹⁷ The court took into account that this mistreatment by the authorities had “lasting consequences for his health,” including the permanent loss of his left testicle.¹¹⁸ The Court further found that this harm was inflicted intentionally in order to punish or humiliate the applicant, and held that, “having regard to the

¹¹¹ I.V. v. Bolivia, Case 12.655, Inter-Am. C.H.R., Report No. 72/14, Merits Decision, ¶ 25.

¹¹² *Against Her Will*, *supra* note 1, at 2.

¹¹³ FIGO, *Female Contraceptive Sterilization*, *supra* note 3, at 88.

¹¹⁴ *Id.*

¹¹⁵ Lori B. Andrews & Lisa Douglass, *Alternative Reproduction*, 65 S. CAL. L.REV. 623, 629 (1991) (People who are unable to birth a biological child “experience feelings of anxiety, guilt, depression, anger, denial and isolation [People suffering from infertility] describe it as ‘the most upsetting experience in their lives.’”).

¹¹⁶ See, e.g., *Ianoş v. Romania*, No. 8258/05, Eur. Ct. H.R. (Oct. 12, 2011) (beating by a police officer resulted in harm to and subsequent removal of applicant’s spleen, violating article 3); *Necdet Bulut v. Turkey*, No. 77092/01, Eur. Ct. H.R. (Nov. 20, 2007) (noting that although a single gunshot wound to applicant’s non-vital organ during arrest did not cause lasting physical damage, it “must have led to severe pain and suffering, particularly when account is taken of his young age [16] at the time of events,” violating article 3.); *Muta v. Ukraine*, No. 37246/06, Eur. Ct. H.R. (July 31, 2012) (applicant was subjected to grievous bodily harm, including the loss of sight in one eye, falling under the scope of article 3).

¹¹⁷ *Virabyan v. Armenia*, No. 40094/05, Eur. Ct. H.R. (Oct. 2, 2012).

¹¹⁸ *Id.*

nature, degree, and purpose of the ill-treatment, the Court finds that it may be characterized as an act of torture.”¹¹⁹

Here, I.V. suffered a permanent physical harm that clearly violates Article 5. I.V. was forcibly deprived of her ability to naturally conceive a child. I.V.’s harm, like that in *Virabyan*, was a permanent deprivation of functioning reproductive organs that had lasting consequences for her health, including the permanent loss of reproductive capacity. Thus, the physical effects of the harm to I.V. are exceptionally severe.

2. Mental and Psychological Effects

The permanent physical harm of forced sterilization also causes lasting mental and psychological harm. The loss of the ability to conceive, carry, and give birth to a biologically related child can deprive a woman and her partner of the familial closeness that can result from a wanted pregnancy.¹²⁰ The mental and psychological suffering of women who have been forcibly sterilized is similar to the suffering of victims in cases where human rights bodies have found torture—such as *Mejia v. Peru*, where Raquel Mejia reported that a sexual assault by the armed forces caused her “physical and mental pain and suffering[,] ... fear of suffering public ostracism,” and humiliation.¹²¹ The Commission ruled that the abuses committed against Mejia constituted torture and a violation of Article 5.¹²²

The Court has further recognized that state interference with reproductive autonomy—for

¹¹⁹ *Id.*

¹²⁰ *See, e.g.* Keith Alan Byers, *Infertility and In Vitro Fertilization*, 18 J. LEGAL MED. 265, 270-73 (1997) (describing the deeply painful and emotional experience couples undergo when faced with the inability to have a biological child).

¹²¹ *Martín de Mejía v. Perú*, Case 10.970, Inter-Am. C.H.R., Report No. 5/96, OEA/Ser.L/V/II.91 doc. 7 (Mar. 1, 1996).

¹²² *Id.*

instance, state restrictions on access to reproductive technology that precludes a woman from being able to carry and give birth to biologically related children—carries significant mental and psychological harm, such that it violates the right to mental integrity.¹²³ While the Court has noted that the role of a woman in society should not be defined only by her reproductive capacity, in *Murillo v. Costa Rica* the Court also recognized that some women define their femininity through their ability to bear children, and the mental and psychological suffering of an infertile woman who wants to become pregnant is exacerbated when she is denied access to a medical procedure that would enable her to do so.¹²⁴ The Court’s holding in this case established that the denial of the opportunity to make informed choices concerning health care, and particularly concerning the ability to conceive and bear children, causes mental suffering in contravention of Article 5 of the American Convention.¹²⁵

In addition to the mental and psychological harms brought on by forced infertility, sterilization without consent can carry a number of collateral mental and psychological harms. The Open Society Foundations has documented that the after-effects of forced sterilization can include depression, “social isolation, family discord or abandonment, fear of medical professionals, and lifelong grief.”¹²⁶ In the case of *V.C. v. Slovakia*, the ECHR recognized the harmful after-effects of forced sterilization, including community ostracism and familial difficulties, in finding a violation of the Article 3 right to be free from torture or cruel, inhuman or degrading treatment in the European Convention on Human Rights.¹²⁷

¹²³ *Murillo y Otros (“Fecundación In Vitro”) v. Costa Rica*, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶ 317 (Nov. 28, 2012).

¹²⁴ *Id.* ¶ 296.

¹²⁵ *Id.* ¶ 317.

¹²⁶ *Against Her Will*, *supra* note 1, at 2.

¹²⁷ *V.C. v. Slovakia*, No. 18968/07, Eur. Ct. H.R., ¶¶ 118-119 (Feb. 8, 2012).

Here, the petitioner’s brief states that I.V. was “very upset” when she learned that the doctors had sterilized her, and that her partner was “shaken” when she informed him what had happened.¹²⁸ According to the petitioner’s brief, I.V. continues to suffer extreme feelings of loss, humiliation, and pain as a result of the sterilization, and that she no longer feels like “a complete woman” as a result of her inability to bear more children.¹²⁹ In describing the pain she felt as a result of the sterilization, I.V. has said:

The wound has not healed, they have crippled my right to be a mother again because never again in my life can I become a mother. The pain continues. I can’t tell you that I have moved past it. Whenever I remember what they did to me, I still feel pain. ... In all honesty, I feel ashamed that I am sterilized, I feel like less of a woman because of the fact that I cannot have any more children.¹³⁰

A mental health evaluation of I.V. excerpted in the petitioner’s brief confirms that “the forced sterilization placed Ms. [I.V.] in a completely devalued role, that has had consequences that have affected her life in multiple ways, one of which is that she has seen something that she holds fundamental eliminated from her personal, family, and social life, the ability to be a mother when she decides.”¹³¹ This mental health evaluation further states that “for [I.V.,] forced sterilization is an irreparable harm” and confirms that her suffering does not seem to have lessened over seven years of mental health treatment.¹³²

Moreover, the feelings of anxiety, resentment, and injustice that I.V. feels as a result of her forced sterilization have had a deleterious effect on her personal relationships. In 2002, she

¹²⁸ I.V. v. Bolivia, Case 12.655, Inter-Am. C.H.R., Report No. 72/14, Merits Decision, ¶ 27.

¹²⁹ Petitioner’s Brief, *supra* note 21, at 8-9.

¹³⁰ *Id.* at 10.

¹³¹ *Id.* at 12.

¹³² *Id.* at 13.

and her partner separated.¹³³ I.V. also feels that the sterilization has harmed her relationship with her daughters; she feels guilty that she has not been more present in their lives because she has been so consumed by her pursuit of justice.¹³⁴ I.V.’s mental health evaluation notes that the rage and resentment that she felt at her situation “displaced her family environment: family, children, partner, generating in her family life a dysfunctional dynamic.”¹³⁵ Thus, the mental effects of the harm to I.V. are severe.

3. Sex, Age, and State of Health

The final part of the severity analysis is the consideration of subjective factors that may influence the impact of the state act or omission on the victim, including his or her sex, age, and state of health.¹³⁶

Forced sterilization has a profound and disproportionate impact on women. Tubal ligation causes permanent infertility.¹³⁷ The Court has acknowledged that this effect of forced sterilization—that is, infertility—disproportionately impacts women. In *Murillo v. Costa Rica*, the Court noted WHO findings that “femininity is often defined by motherhood,”¹³⁸ such that women are often blamed for infertility and may face serious consequences of infertility, including a heightened risk of violence, partner abandonment, and social ostracism.¹³⁹ As the Court recognized in *Murillo*, while these gender stereotypes conflict with human rights standards, it is important to “recognize[] and define[] them in order to describe the disproportionate impact” that the effects

¹³³ *Id.* at 8.

¹³⁴ *Id.* at 11.

¹³⁵ *Id.*, at 12.

¹³⁶ *Gómez-Paquiyaauri Brothers v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 113 (July 8, 2004); UNFVT, *supra* note 101, at 7; *I.G. and Others v. Slovakia*, No. 15966/04, Eur. Ct. H.R., ¶ 121 (Nov. 13, 2012), *V.C. v. Slovakia*, No. 189681/07, Eur. Ct. H.R. (Feb. 8, 2012).

¹³⁷ See, e.g., WHO, FAMILY PLANNING: A GLOBAL HANDBOOK FOR PROVIDERS 181 (2011).

¹³⁸ *Murillo y Otros (“Fecundación In Vitro”) v. Costa Rica*, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶ 296 (Nov. 28, 2012).

¹³⁹ *Id.* ¶¶ 295-296.

that infertility, and correspondingly forced sterilization, have on women.¹⁴⁰ The ECHR has further noted that the subjective experience of the mental harm should be taken into consideration in determining violations of the right to be free from TCIDT.¹⁴¹ I.V. was 35 years old when she was sterilized. She was still of reproductive age,¹⁴² and dreamed of having a son.¹⁴³ In this particular case, I.V.'s joy at giving birth turned traumatic when she learned that she had been sterilized and would not be able to become pregnant again.¹⁴⁴

Further, I.V.'s mental health status as a torture survivor and political refugee must be taken into account as a subjective factor relevant to the mental and psychological harm that her forced sterilization caused. On two separate occasions in her youth, I.V. was detained by DINCOTE in Peru and subjected to physical, psychological and sexual abuse, once for a period of 10 months and subsequently for a period of 3 years.¹⁴⁵ I.V. gave birth to her oldest daughter in prison and was separated from her for the first seven months of her daughter's life until I.V. was released from prison.¹⁴⁶ I.V.'s partner at the time, and the father of her daughter, was killed in Lurigancho prison.¹⁴⁷ Although not caused by the Bolivian state, these prior traumatic experiences and their impact on I.V.'s mental health exacerbated the mental and psychological harm she experienced when she was forcibly sterilized.

b. Improper Purpose

In addition to requiring severe physical or mental pain or suffering, in order to establish

¹⁴⁰ *Id.* ¶ 302.

¹⁴¹ *I.G. and Others v. Slovakia*, No. 15966/04, Eur. Ct. H.R., ¶ 121 (Nov. 13, 2012)

¹⁴² The WHO defines women of reproductive age as all women between the ages of 15 and 49. *See, e.g.*, WHO, REPRODUCTIVE HEALTH INDICATORS: GUIDELINES FOR THEIR GENERATION, INTERPRETATION AND ANALYSIS FOR GLOBAL MONITORING 9 (2006).

¹⁴³ Petitioner's Brief, *supra* note 21, at 8.

¹⁴⁴ *I.V. v. Bolivia*, Case 12.655, Inter-Am. C.H.R., Report No. 72/14, Merits Decision, ¶¶ 27, 104.

¹⁴⁵ Petitioner's Brief, *supra* note 21, at 7-8.

¹⁴⁶ *Id.* at 7.

¹⁴⁷ *Id.* at 8.

torture, the inter-American system requires that the act or actions complained of be undertaken for purposes of criminal investigation, intimidation, punishment, preventative measures, penalty or “for any other purpose.”¹⁴⁸ Acts like forced sterilization satisfy the improper purpose requirement because they are “intended to obliterate the personality of the victim or to diminish his physical or mental capacities.”¹⁴⁹ The ECHR,¹⁵⁰ the Committee Against Torture, and the Special Rapporteur on Torture require that the purpose behind the act or acts be improper.¹⁵¹ Although there is no exhaustive enumerated list of improper purposes that satisfies the torture requirement,¹⁵² the Convention against Torture explicitly states that discrimination constitutes an improper purpose.¹⁵³ Here, the forced sterilization of I.V. satisfies the purpose requirement because it was undertaken with the intent to prevent future pregnancies and diminish her physical capabilities to reproduce and because it constitutes both gender-based discrimination and discrimination based on economic and migrant status.

1. Forced sterilization constitutes an improper “preventative measure” designed to obliterate an essential component of a woman’s personality and diminish her physical capacities by permanently ending her reproductive capacity without her consent.

Forced sterilization of women can stem from a desire to control a particular poor or marginalized population or paternalistic and stereotypical beliefs that particular women will be

¹⁴⁸ Inter-American Torture Convention, *supra* note 66, art. 2. *See, e.g., Gómez-Paquiyaury Brothers v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶¶ 115-16 (July 8, 2004); *Bámaca-Velásquez v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 70, ¶¶ 156-58, (Nov. 25, 2000); *Cantoral-Benavides v. Peru*, Inter-Am. Ct. H.R., (ser. C) No. 69, ¶¶ 97-98, (Aug. 18, 2000).

¹⁴⁹ Inter-American Torture Convention, *supra* note 66, art. 2.

¹⁵⁰ *See İlhan v. Turkey* [GC], no. 22277/93, Eur. Ct. H.R. 2000-VII. *See also Salman v. Turkey* [GC], No. 21986/93, Eur. Ct. H.R. 2000-VII; *Akkoç v. Turkey*, Nos. 22947/93 and 22948/93, Eur. Ct. H.R. 2000-X; *Bati and Others v. Turkey*, Nos. 33097/96 and 57834/00, Eur. Ct. H.R. 2004-IV.

¹⁵¹ UNFVT, *supra* note 101, at 4 (citing MANFRED NOWAK & ELIZABETH MCARTHUR, UN CONVENTION AGAINST TORTURE, A COMMENTARY 75 (2008)).

¹⁵² *Id.*

¹⁵³ CAT, *supra* note 66, art. 1.

unfit mothers or are incapable of making their own health decisions and life choices.¹⁵⁴ The express and sole reason for female sterilization is “to end a woman’s ability to become pregnant.”¹⁵⁵ As such, forced sterilization constitutes an improper “preventative measure” designed to prevent their future parenthood.¹⁵⁶ The Special Rapporteur on Torture has explained that “[f]orced sterilization is an act of violence and a form of social control, and violates a person’s right to be free from torture and ill-treatment,” and emphasizes that informed consent for a sterilization procedure “can never be excused on the basis of medical necessity or emergency...”¹⁵⁷ Indeed, although it occurs in the health care setting, forced sterilization constitutes precisely the type of purposeful state action designed to obliterate the personality of the victim and diminish her physical capacity that the prohibition on torture is designed to address.

The Court has recognized that “motherhood is an essential part of the free development of a woman’s personality” and that a crucial component of this is “the decision of whether or not to become a mother ... in the genetic or biological sense.”¹⁵⁸ By sterilizing I.V. without her consent, the state took away her reproductive capacity and ability to decide whether or not to become a biological parent. The sterilization irrevocably deprived her of the autonomy to pursue motherhood as a part of her personality. Forced sterilization also intentionally took away her physical capability to reproduce. The State’s intentional obliteration of I.V.’s personality and diminishment of her physical capabilities as a preventative measure satisfies the purpose

¹⁵⁴ See, e.g., *Against Her Will*, *supra* note 1, at 5.

¹⁵⁵ WHO, *Female Sterilization: What health workers need to know: What is female sterilization?* (1999).

¹⁵⁶ Inter-American Torture Convention, *supra* note 66, art. 2 (“torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted ... as a preventive measure....”).

¹⁵⁷ Report of the SR Torture 2016, *supra* note 10, ¶ 45.

¹⁵⁸ *Murillo y Otros (“Fecundación In Vitro”) v. Costa Rica*, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶ 143 (Nov. 28, 2012).

requirement for torture in the inter-American system.¹⁵⁹

2. Forced sterilization constitutes discrimination on the basis of gender.

The U.N. Special Rapporteur on Torture has stated that the improper purpose prong is always fulfilled in instances of gender-based violence, which are “inherently discriminatory,”¹⁶⁰ and has classified forced sterilization as a gender-based violation of the right to be free from TCIDT.¹⁶¹ The U.N. Special Rapporteur on Violence against Women has noted that forced sterilization constitutes a violation of physical integrity and is a form of gender-based violence.¹⁶² The Beijing Platform for Action similarly affirms that forced sterilization constitutes violence against women.¹⁶³

In the *Cotton Field* case, the Court recognized that violence against women is closely related to gender-based discrimination.¹⁶⁴ In its decision, the Court highlighted that the CEDAW Committee defines gender-based violence as inherently discriminatory when it is either directed against a woman because she is a woman or when it disproportionately affects women.¹⁶⁵ Similarly, under the Convention of Belém do Pará, gender-based violence is defined as, “any act or conduct, based on gender, which causes death or physical, sexual, or psychological harm or

¹⁵⁹ Inter-American Torture Convention, *supra* note 66, art. 2.

¹⁶⁰ Report of the SR Torture 2013, *supra* note 10, ¶ 37. *See, also*, Report of the SR Torture 2016, *supra* note 7, at ¶ 8 (“Los elementos del propósito y la intención de la definición de tortura se reúnen siempre que un acto está motivado por el género o se ha cometido contra determinadas personas en razón de su sexo ...”).

¹⁶¹ Report of the SR Torture 2013, *supra* note 10, ¶ 48.

¹⁶² Radhika Coomaraswamy, Special Rapporteur on Violence against Women, its Causes and Consequences, *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences: Policies and practices that impact women’s reproductive rights and contribute to, cause or constitute violence against women*, ¶ 51, U.N. Doc. E/CN.4/1999/68/Add.4 (1999).

¹⁶³ United Nations, *The Beijing Declaration and the Platform for Action*: Report of the Fourth World Conference on Women, ¶ 115, A/CONF.177/20/Rev.1. (1995).

¹⁶⁴ *González et al. (“Cotton Field”) v. Mexico*, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 61 (Nov. 16, 2009).

¹⁶⁵ *Id.* ¶ 395.

suffering to women, whether in the public or the private sphere.”¹⁶⁶ As discussed above and as available data demonstrates, the violence of forced sterilization—and the resulting infertility—disproportionately affects women,¹⁶⁷ putting it squarely within CEDAW’s definition of inherently discriminatory gender-based violence. Additionally, in *A.S. v. Hungary*, the CEDAW Committee found involuntary sterilization to be inherently discriminatory under Article 16, paragraph 1(e) of CEDAW.¹⁶⁸

Further, by robbing women of the ability to make decisions about their own bodies, forced sterilization reflects discriminatory gender stereotypes that women are unable to make their own reproductive health decisions. The U.N. Human Rights Committee has recognized that interference with women’s ability to make decisions about sterilization can violate women’s right to make personal decisions on the basis of equality with men,¹⁶⁹ and the CEDAW Committee has emphasized that medical services must be delivered in a manner that ensures a woman’s fully informed consent.¹⁷⁰

In this case, the Commission found signs that the medical team was influenced by gender stereotypes and the “notion that medical personnel are empowered to take better decisions than the woman concerned regarding control over reproduction.”¹⁷¹ The U.N. Special Rapporteur on Torture has emphasized that discrimination satisfies the improper purpose requirement and that

¹⁶⁶ Convention of Belém do Pará, *supra* note 12, art. 1.

¹⁶⁷ See, *supra* § (II)(B)(ii)(a)(3) (Sex, Age, and State of Health). See also, Hailey Flynn, Open Society Foundations, *Forced Sterilization is Torture* (Apr. 27, 2012); Radhika Coomaraswamy, *supra* note 163, ¶ 51.

¹⁶⁸ *A.S. v. Hungary*, CEDAW Comm. No. 4/2004, ¶ 11.2, U.N. Doc. CEDAW/C/36/D/4/2004 (2006).

¹⁶⁹ HRC, *General Comment No. 28*, *supra* note 8, ¶ 20.

¹⁷⁰ CEDAW, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, A/54/38/Rev.1, chap. 1, ¶ 22.

¹⁷¹ *I.V. v. Bolivia*, Case 12.655, Inter-Am. C.H.R., Report No. 72/14, Merits Decision, ¶ 162.

discriminatory medical treatment cannot be justified because it is “well-intended.”¹⁷² Indeed, even if the medical staff viewed sterilization as the best medical choice for I.V., they did not have the right to make the decision for her.¹⁷³

As found by numerous international bodies, forced sterilization constitutes violence against women and gender-based discrimination. Thus, the ‘purpose’ prong for finding an act to be torture is also satisfied because of the gender discrimination inherent in the State’s actions.

3. Forced sterilization of poor, migrant women constitutes discrimination.

It is widely recognized that forced sterilization disproportionately affects women who are already marginalized in their societies.¹⁷⁴ Numerous reports have documented the forced sterilization of women across the Americas and around the world due to their racial or ethnic identity,¹⁷⁵ because they are living with HIV,¹⁷⁶ due to disability,¹⁷⁷ or on the basis of poverty.¹⁷⁸

¹⁷² Report of the SR Torture 2013, *supra* note 10, ¶ 20.

¹⁷³ See *V.C. v. Slovakia*, No. 18968/07, Eur. Ct. H.R., ¶ 118 (Feb. 8, 2012) (noting that “although there was no indication that the medical staff acted with the intention of ill-treating the applicant, they nevertheless acted with gross disregard to her right to autonomy and choice as a patient”); *I.G. and Others v. Slovakia*, No. 15966/04, Eur. Ct. H.R., ¶ 122 (Nov. 13, 2012) (finding that the “fact that the doctors had considered the procedure necessary because the . . . applicant’s life and health would be seriously threatened in the event of a further pregnancy” was not a justification for forced sterilization).

¹⁷⁴ *Against Her Will*, *supra* note 1, at 3-6; OHCHR, et al., *supra* note 2, at 2; Human Rights Watch, *Sterilization of Women and Girls with Disabilities* 1-2, (2011) (hereinafter *Sterilization of Women and Girls with Disabilities*); Report of the SR Torture 2013, *supra* note 10, at ¶ 48; Namibian Women’s Health Network et al., *At the Hospital There Are No Human Rights*, 27 (2012); FIGO *Female Contraceptive Sterilization*, *supra* note 3, at 88; *Reproductive Rights Violations as Torture*, *supra* note 4, at 19.

¹⁷⁵ See e.g., AMNESTY INTERNATIONAL, *THE STATE AS A CATALYST FOR VIOLENCE AGAINST WOMEN: VIOLENCE AGAINST WOMEN AND TORTURE OR OTHER ILL-TREATMENT IN THE CONTEXT OF SEXUAL AND REPRODUCTIVE HEALTH IN LATIN AMERICA AND THE CARIBBEAN* 25-27 (2016) (discussing the history of forced sterilization of poor, indigenous women in Peru); Center for Reproductive Rights and Centre for Civil and Human Rights, *BODY AND SOUL: FORCED AND COERCIVE STERILIZATION AND OTHER ASSAULTS ON ROMA REPRODUCTIVE FREEDOM IN SLOVAKIA* (2003).

¹⁷⁶ *Against Her Will*, *supra* note 1, at 5 (citing FRANCISCO VIDAL AND MARINA CARRASCO, *MUJERES CHILENAS VIENDO CON VIH/SIDA: DERECHOS SEXUALES REPRODUCTIVOS?* (2004)); CENTER FOR REPRODUCTIVE RIGHTS AND VIVO POSITIVO, *DIGNITY DENIED: VIOLATIONS OF THE RIGHTS OF HIV-POSITIVE WOMEN IN CHILEAN HEALTH FACILITIES* 24, 26-29 (2012); AMNESTY INTERNATIONAL, *supra* note 176, at 28.

¹⁷⁷ *Against Her Will*, *supra* note 1, at 6; *Sterilization of Women and Girls with Disabilities*, *supra* note 175, 1-2; *Corte Constitucional de Colombia [Colombian Constitutional Court]* (2014), Sentencia T-740/14 (Acción de Tutela para

This Court has recognized that migrants are particularly vulnerable to human rights violations because of the “absence or difference of power with regard to non-migrants (nationals or residents).”¹⁷⁹ In this case, the Commission found that “women migrants of scarce resources are in a special situation of vulnerability, being often forced to seek public medical services that may not be suitable to meet their needs due to the limitation of care options available to them.”¹⁸⁰ In particular, the CEDAW Committee has noted that migrant women often suffer inequalities in access to health care, including reproductive health services and discrimination in relation to pregnancy and access to justice.¹⁸¹

Discrimination against Peruvians migrants in Bolivia is well-documented.¹⁸² The petitioner alleges that since I.V. and her family have lived in Bolivia as Peruvian refugees they have suffered discrimination as a result of xenophobia, their economic status, and their status as Peruvian refugees.¹⁸³ These discriminatory attitudes were reflected in the health care that I.V. and other migrant and marginalized women received.

According to the petitioner, the Women’s Hospital in La Paz typically sees indigent patients, many of whom are indigenous, lack education, and may not speak Spanish well. As a result, medical teams are accustomed to making medical decisions on behalf of their patients.¹⁸⁴ In Bolivia, refugees have different identity cards, so the hospital staff was aware that I.V. was a

Ordenar Practica de Procedimientos de Anticoncepcion Definitivos en Mujeres con Discapacidad Mental) (Oct. 3, 2014).

¹⁷⁸ *Against Her Will*, *supra* note 1, at 4.

¹⁷⁹ I/A Court H.R., Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No.18, ¶112.

¹⁸⁰ *I.V. v. Bolivia*, Case 12.655, Inter-Am. C.H.R., Report No. 72/14, Merits Decision, ¶ 161.

¹⁸¹ CEDAW, *General Recommendation No. 26 on women migrant workers*, CEDAW/c/2009/WP.1/R, ¶¶ 17-18, 21 (December 5, 2008).

¹⁸² *See, e.g.*, U.N. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Concluding Observations (Bolivia)*, CMW/C/BOL/CO/1 (May 2008), ¶ 21 (expressing concern about discrimination and stigmatization of Peruvian migrants and members of their families);

¹⁸³ Petitioner’s Brief, *supra* note 21, at 9.

¹⁸⁴ *Id.* at 55.

refugee.¹⁸⁵ Because of I.V.’s status as a poor, migrant woman, the medical staff assumed that they could make the decision to sterilize her without her knowledge or consent with impunity.¹⁸⁶

Due to increased recognition of the discrimination and vulnerability that migrant women face in healthcare settings and the disproportionate affect of sterilization on women in marginalized communities, the Court should—as a leader in the human rights field and as a protector and promoter of justice—set a strong precedent that warns states the world over that forced sterilization constitutes a grave human rights violation. Amici urge the Court to make such a finding specific to the forced sterilization of indigent, migrant women.

While a finding of discrimination based on either gender or migrant status alone would be sufficient to show that the act of forcibly sterilizing I.V. was done with an improper purpose, the way in which these identities intersect results in particular discrimination and harm to I.V. Amici urge the Court to consider the way in which intersecting identities place certain individuals at a heightened risk for egregious human rights violations.

CONCLUSION

Forced sterilization is cruel, inhuman, and degrading treatment, and in certain instances amounts to torture, particularly where the reason for the sterilization is inherently discriminatory. Forced sterilization constitutes violence against women and is an egregious human rights violation, especially where the victim belongs to a stigmatized group, such as poor migrant women. Based on the standards outlined above as well as the facts in this case, the forced sterilization of I.V. constitutes cruel, inhuman, and degrading treatment, violates her physical and

¹⁸⁵ *Id.* at 59.

¹⁸⁶ *Id.* at 55-56.

mental integrity, and arguably amounts to torture. The Court should thus find Bolivia in violation of Articles 5(1) and 5(2) of the American Convention and establish clear precedent that forced sterilization of women constitutes a grave violation of human rights.

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