REPORT NO. 72/14
CASE 12.655
MERITS
I.V.
BOLIVIA
AUGUST 15, 2014

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I. SUMMARY

1. On March 7, 2007, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition filed by the Ombudsman (*Defensor del Pueblo de la República de Bolivia*, hereinafter "the petitioner") on behalf of I.V. (hereinafter "the alleged victim"), alleging that the State of Bolivia (hereinafter "the State" or "the Bolivian State") is responsible internationally for having subjected I.V. to a sterilization procedure without her consent. The judicial authorities also denied her access to justice to a remedy for the alleged violations of her rights.

2. The petitioners state that the facts described constitute violations of rights protected by Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 17 (Rights of the Family), and 25 (Right to Judicial Protection), in conjunction with the general obligations established in Article 1.1 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") They also allege violation of Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, (hereinafter "Convention of Belém do Pará").

3. The petitioner maintains specifically that in 2000, the alleged victim was subjected in a public hospital to a surgical tubal ligation procedure without her informed consent, and therefore to sterilization without consent, as a result of which she suffered the permanent loss of her reproductive function. The petitioner argues furthermore that these acts have gone completely unpunished due to improper and unwarranted delays in the criminal proceedings and that I.V. is still suffering the physical and psychological consequences of the aforementioned procedure and of the alleged denial of justice.

4. For its part, the State argues that the sterilization procedure was carried out on I.V. because of the risk that another pregnancy would pose to her future life and that she consented orally to the procedure. It further argues that the alleged victim had access to appropriate judicial remedies to rule on possible legal liabilities.

5. On July 23, 2008, the IACHR examined the positions of the parties on the matter of admissibility and, without prejudging the merits of the case, decided to admit the claims set forth in the petition with respect to Articles 5.1, 8.1, 11.2, 13, 17, and 25 of the American Convention, in conjunction with the general obligations established in Article 1.1 of that instrument. It also admitted the claims regarding the alleged violation of Article 7 of the Convention of Belém do Pará and decided to continue analyzing the merits of the case. It also decided to publish Report No. 40/08, notify the parties thereof, and include it in its Annual Report.

6. In this report, after analyzing the claims and evidence adduced by both parties, the Commission concludes that Bolivia violated 5.1, 8.1, 11.2, 13, 17, and 25 of the American Convention, in conjunction with the general obligations established in Article 1.1 of that instrument, as well as Article 7 of the Convention of Belém do Pará.

[1] The IACHR withholds the identity of the alleged victim (hereinafter "I.V.") by virtue of an express request from the petitioner made on March 7, 2007.

II. PROCESSING SUBSEQUENT TO ADMISSIBILITY REPORT

7. On August 7, 2008, the Commission remitted Admissibility Report No.40/08 to the State and the petitioner. Pursuant to its Rules of Procedure, the Commission set a period of two months for the petitioner to submit additional observations on the merits. In addition, the Commission placed itself at the disposal of the parties should they be interested in reaching a friendly settlement.

8. On October 22, 2008, the Commission received a communication from the State with its observations on the exhaustion of domestic remedies and on the merits of the case. The State's observations were transmitted by the Commission to the petitioner on October 31, 2008, with a request for a reply within one month.

9. The Commission received the petitioner's comments on the State's report on January 5, 2009. In that communication, the petitioner conveyed his refusal to reach a friendly settlement. The Commission acknowledged receipt of the petitioner's observations on February 17, 2009 and granted another two months for submission of additional observations on the merits of the case, given that the information available indicated that no progress had been made toward a possible friendly settlement. It also transmitted the document containing the petitioner's observations to the State.

10. On May 26, 2009, the petitioners submitted additional observations on the merits of the matter. On May 29, 2009, the Commission acknowledged receipt of the petitioner's communication and forwarded it to the State, giving it two months to remit its observations. On August 19, 2009, the State asked the Commission for an extension of the deadline for the submission of its observations on the merits of the case. On September 3, 2009, the Commission granted a one-month extension and notified the parties thereof on September 4, 2009. On September 14, 2009, the State requested the IACHR for another extension to present its observations. On October 2, 2009, the Commission notified the State and the petitioner that the State had been granted an additional month to send in its observations.

11. On November 9, 2009, the Commission received a communication from the petitioner requesting that the Commission rule on the merits. That communication was forwarded to the State on January 6, 2010, with a request that it remit its observations within one month.

12. On January 15, 2010, the Commission received a communication from the State containing its observations on the merits and requesting additional time to submit detailed information and arguments on the merits. On April 22, 2010, the Commission forwarded the State's document to the petitioner, giving it one month to present observations regarding it.

13. On January 25, 2010, the Committee received a note from the State, dated January 15, 2010, stating that it had approached the other party with a view to reaching a friendly settlement but the petitioner had not taken up the offer.

14. On February 17, 2010, the Commission received an Amicus Curiae brief from the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM). That document was forwarded to the Parties on April 19, 2010.

15. On March 8, 2010, the Commission received a note from the State, dated January 26, 2010, containing additional information on the merits and informing the Commission that the petitioner had not responded to the State's offer to reach a friendly settlement.

16. The Commission acknowledged receipt of the petitioner's observations on June 15, 2010. On June 23, 2010, the Commission transmitted said observations to the State. On July 1, 2010, the Commission received a written communication from the petitioner, dated June 4, 2010, presenting observations.

17. On August 13 and 18, 2010, the Commission received additional information on the merits of the case, remitted by the State. On August 25, 2010, the Commission forwarded that information to the

petitioner, asking for observations within one month. The petitioner replied in a communication of September 20, 2010, which was conveyed to the State on October 1, 2010. On October 27, 2010, the Commission received a communication from the State reiterating its willingness to reach a friendly settlement. On November 29, 2012, the Commission received a communication from the alleged victim requesting that the Commission pronounce on the merits of the case. The Commission acknowledged receipt of this communication on December 13, 2013.

18. On February 28, 2013, the Commission received a communication from the alleged victim indicating her desire not to continue being represented by the Ombudsman's Office in the instant case and to assume her own defense of her case. The Commission acknowledged receipt of that communication on April 16, 2013. On April 18, 2013, the Commission received a communication from the petitioner asking for the case to be dealt with by the IACHR as soon as possible.

19. On May 28, 2013, the Commission asked the State and the alleged victim to transmit a copy of the principal exhibits in the judicial file on the case within one month. On June 20, 2013, the Commission received a communication from the State requesting an extension of the deadline for remitting the information requested. On June 25, 2013, the Commission received a request for an extension of that deadline from the alleged victim. The Commission granted both requests for extensions and notified the parties thereof on July 2, 2013. On August 8, 2013, the Commission received a communication from the State containing the requested exhibits from the judicial file. That communication was forwarded to the alleged victim on August 15, 2013.

20. On January 21, 2014, the Commission received a communication from the alleged victim announcing her decision to once again be represented by the Ombudsman's Office of Bolivia. On April 14, the Commission received a communication from the alleged victim requesting a pronouncement on the merits of the case.

21. On April 15, 2014, the Commission received a communication from the State detailing its efforts to enter into a dialogue with the petitioner regarding a possible friendly settlement agreement and asking the Commission to use its good offices to persuade the petitioner to resume talks.

22. On May 15, 2014, the Commission received a communication from the petitioner reiterating that the alleged victim had decided not to participate in proceedings aimed at reaching a friendly settlement and requesting that the IACHR rule on the merits. On july 4 and july 5, 2014, the Commission received two additional notes from the petitioner and the alleged victim reiterating their request for a pronouncement on the merits of the case. These three notes were forwarded to the State.

III. POSITIONS OF THE PARTIES

A. The Petitioner

23. The petitioner argues that I.V., a Peruvian national and a mother of three children, was subjected to a tubal ligation procedure without her consent on July 1, 2000, in a public hospital. They indicate that procedure resulted in I.V. permanently losing her ability to have children and in ongoing physical and psychological effects. He points out that I.V. and her partner were informed of said procedure after it had been performed. For the petitioner, a procedure of that importance is an intimate and personal decision, which should be free of arbitrary interference by the State through its medical personnel. The petitioner adds that these acts have gone unpunished to this day, due to unwarranted delays and irregularities that have been detrimental to the course of criminal proceedings.

24. Specifically, the petitioner maintains that, in the course of her third pregnancy, as of February 22, 2000, I.V. went for her pre-natal checkups to the Women's Hospital in La Paz. Her last checkup was on June 28, 2000, when the woman doctor who examined her told her to come back the following week, around July 3, so that they could plan a caesarian section, because during a previous checkup they had

discovered that her baby was in a transverse position. The petitioners add that on July 1, I.V.'s water broke, so that she went, with her partner and her daughter, to the emergency room at the Women's Hospital.

25. The petitioner indicates that I.V. arrived at the hospital at around 3:50 p.m. and that at about 7:00 p.m. Dr. Edgar Torrico Ameller appeared to tell her that he would perform the cesarean section, but that she had to wait a while longer. I.V. was taken to the operating theater at 8:45 p.m., where she was prepared for the operation and given an epidural anesthetic. The petitioner states that, during the operation, Dr. Torrico asked I.V. where she had had her first cesarean section and she replied that it had been in Lima, Peru. The doctor also asked her if she had had an infection before, to which she replied "No." According to the petitioners, those were the only two questions that the doctor asked I.V. during the operation. The birth took place at around 9:26 p.m. The petitioners also maintain that I.V.'s partner and her daughter stayed at the Hospital the whole time, until 00:15 a.m. on July 2, with the exception of two brief departures from the precincts prior to I.V.'s cesarean section.

26. The petitioner maintains that on the morning of July 2, during the doctor's visit, I.V. asked the third-year medical resident, Dr. Marco Vargas, about her cesarean section. The petitioner states that at that moment the doctor told her that they had tied her tubes and that she would not be able to have more children, so I.V. asked him why they had done that and whether her life or that of her daughter had been in danger during the cesarean. Answering her questions the doctor said no; they had discovered numerous adhesions and another pregnancy could be very risky for her. The petitioner points out that I.V.'s medical case history mentions this occurrence, because on July 3, 2000, resident Dr. Vargas made the following note on I.V. progress sheet: "3/07/2000, at 9:00 a.m. Yesterday the patient was told that the bilateral tubal ligation (*salpingoclasia*) had been performed out of medical necessity, which was accepted by the patient when she understood that with another pregnancy her life would be in danger. Dr. Vargas".

27. The petitioner states that I.V. was left very upset and that when her partner arrived at the Hospital and found out what had happened, he too was shaken by the news, so that he spoke to the resident doctor and asked him for an explanation in writing, to which the physician replied that, for that, he would have to present a written application with a layer's signature to the Director of the Women's Hospital. In light of that answer, I.V.'s partner went to the Permanent Assembly for Human Rights of Bolivia and that institution sent a note, dated July 4, asking the Hospital for a report on the sterilization procedure carried out on I.V.

28. In addition, the petitioner maintains that I.V. suffered pains and fever after her cesarean section. When she returned to the Hospital to have the stitches from the operation taken out, I.V. was seen by Dr. Vargas, to whom she reported that she was feeling pain in the area of the wound. The doctor did not consider that important. After several weeks of pain, I.V. went to a private physician, who ordered an ultrasound scan, the results of which gave rise to a diagnosis of acute endometritis and remains of the placenta in the uterus. As a result of this, according to the petition, I.V. was subjected to two curettage procedures and hospitalized in the Clínica Achumani, where she was hospitalized again, two weeks later, because of an abscess of the abdominal wall and bruising on the wound left by the cesarean section. The petitioner points out that, to this day, I.V. continues to suffer from the physical and psychological consequences of the sterilization to which she did not consent, and that she suffers from chronic adnexitis.

29. Based on these considerations, the petitioner maintains that the alleged victim was subjected to the surgical procedure involving the bilateral ligation of her Fallopian tubes without her prior and informed consent, as a result of which she suffered the permanent loss of her reproductive capacity. In support of those claims, the petitioner states that during I.V.'s prenatal checkups and while at the hospital on the day of the cesarean, she was not given any information regarding contraceptive methods, nor was she asked whether she consented to the ligation of her tubes. Nor was her partner informed or consulted about such matters. At the same time, the petitioner asserts that during the surgical procedure for the cesarean section, at no point was I.V. informed or consulted regarding her sterilization, contrary to claims made in two of the internal audits carried out regarding this case. With respect to this last matter, the petitioner maintains that even hypothetically assuming that I.V. was consulted about the sterilization procedure during the cesarean, her acceptance under such circumstances would not constitute informed consent.

30. In support of his arguments regarding informed consent, the petitioner cites a range of international standards[2] that, in recognition of their autonomy and self-determination, protect women's right to take free, voluntary and informed decisions with respect to health, Furthermore, the petitioner cites Bolivian Health Norm MSPS-98, which states 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"[3]. The petitioner further points out that Article 37 of 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."

31. Regarding the verbal authorization that I.V. is said to have granted during the cesarean section, the petitioner asserts that I.V. was neither informed nor consulted regarding the tube ligation. On this matter, the petitioner maintains that the statements made by the members of the surgical team, rendered in the course of medical audits and judicial proceedings, do not coincide and are not ultimately conclusive; apart from the fact that there is a contradiction in I.V.'s case history because, on the one hand, the operation records state that the performance of the bilateral tube ligation "is communicated" to the patient during the operation and that she gives her oral consent, while, on the other, the progress sheet for July 3, 2000 (two days after the cesarean section), there is a note signed by Dr. Vargas stating that the day before the patient had been told that the tube ligation was performed out of medical necessity and that she accepted it when she understood that with another pregnancy her life would be in danger. In the petitioner's opinion, if the alleged victim had been informed during the intervention, it would not have been necessary for the doctor to inform the patient the following day that her Fallopian tubes had been tied. Furthermore, regarding the reports that I.V.'s oral consent had been obtained for a tube ligation to be performed, the petitioner points out that both the audits that reached that conclusion were internal and in-house, therefore, not independent.

32. In addition, the petitioner maintains that even if she had been consulted during the operation about the tube ligation, it is not possible to consider that I.V. could have given her informed consent under such circumstances, when she was under anesthesia, surgical stress, and lying prostrate in the operating room.

33. Finally, the petitioner argues that there was no justification for carrying out the tube ligation, because the alleged risk to I.V.'s life would only be posed in the event of a possible future pregnancy, not at the time of the cesarean section. For that reason, the petitioner maintains that, since the intervention was not necessary to save the life or health of I.V. in the presence of an imminent danger, there was no justification for taking the decision to perform the tube ligation during the cesarean section.

34. The petitioner further argues that the sterilization to which the alleged victim was subjected impaired her physical, psychological and sexual health, because, as a result of the surgery, I.V. suffered a series of outcomes detrimental to her health. Physically, the petitioner cites the sterilization itself and its consequences of acute endometritis, remains of the placenta post cesarean section, abscess of the abdominal wall, and adnexitis. With respect to her sexual and reproductive health, the petitioner maintains that the principal consequence of the procedure to which I.V. was subjected, allegedly without her consent, is the permanent loss of her reproductive capacity. The petitioner notes, in this regard, that bilateral tube ligation is to be regarded as a method designed to achieve permanent sterilization.

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[2] The petitioner cites the World Health Organization's "Medical Eligibility Criteria for Contraceptive Use" (Third Edtion), 2005, p. 4; United Nations, Committee on the Elimination of Discrimination against Women, Communication 4/2004, A.S. vs. Hungary, CEDAW/C/36/D/4/2004, 29 August 2006; United Nations, Committee on the Elimination of Discrimination against Women, Concluding Observations of the Committee on the Elimination of Discrimination against Women: Peru, A/53/38/Rev.1, 8 July1998, United Nations, Concluding Observations of the Human Rights Committee: Peru, CCPR/CO/70/PER, November 15, 2000, paragraph 21.

[3] As cited by the petitioner: Norma Boliviana de Salud (Bolivian Health Standard) MSPS-98: *Anticoncepción Quirúrgica Voluntaria* [Voluntary Surgical Contraception], Volume 1, *Oclusión Tubárica Bilateral en Riesgo Reproductivo* [Bilateral Tube Ligation in cases of Reproductive Risk], approved by the Ministry of Health through Ministerial Resolution No. 517, November 17, 1998.

35. Finally, the petitioner argues that the sterilization to which I.V. was subjected violated her autonomy and her freedom to decide whether or not she wanted to undergo the procedure and end her reproductive capacity

36. The petitioner points out that, as a result of I.V.'s sterilization and the subsequent request for information filed by I.V. with the hospital, three medical audits were conducted between August 2000 and March 2001. The petitioner states that the first audit was conducted by the Medical Audit Committee of the Women's Hospital and concluded that I.V. had consciously given authorization for the tube ligation, verbally, during the cesarean section. The second audit, which was carried out by the Departmental Health Medical Audit Committee, concluded that the ligation had been performed preventively to preserve the mother's future wellbeing.

37. Finally, the third audit, conducted by the Medical Audit Decisions Committee, reached the following conclusions: (1) that no justification had existed for carrying out the bilateral tube ligation, because the presence of multiple adhesions did not pose a risk to the patient's life; (ii) that there had been no written consent signed by the patient prior to the operation and that in no way was it acceptable to take the opinion of the patient during the surgical or peri-operative procedure, when the patient is under surgical stress and anesthesia, albeit local; and (3) that Dr. Vargas had referred to "communicating" to the patient during the peri-operative period of the tube ligation and yet he had stated, in his progress note dated July 3, that the day before he had "communicated" to the patient that bilateral tube ligation had been performed out of medical necessity (*por indicación médica*). Regarding this last audit, the petitioner points out that the Medical Audit Decisions Committee is an independent Committee, comprised of a multidisciplinary team external to the Women's Hospital.

38. The petitioner also indicates that the Ethics Tribunal of the La Paz Departmental Medical Association issued a report on the case entitled "Complaint by Patient Ms. [I.V.]," which states in its conclusions that the bilateral tube ligation had to be decided during the surgical procedure itself, because, prior to the cesarean section, the conditions or surgical circumstances that could have pointed to the medical need for it were unknown. The report also notes that there were statements by different sources agreeing that the patient had given oral authorization for the procedure to be performed.

39. The petitioner indicates that, in addition to the above, in-house administrative proceedings were conducted against Dr. Vargas and Dr. Torrico, which ended in a resolution, dated July 25, 2012, by the Legal Advice Unit of the La Paz Departmental Health Service, which established administrative liability in the case of Dr. Torrico and ordered his dismissal from the Health Service, while it acquitted Dr. Vargas of responsibility. That resolution was appealed by Dr. Torrico. As a result of that appeal, another Administrative Resolution was passed ordering dismissal of the case against Dr. Torrico for lack of evidence against him.

40. At the same time, the petitioner points out that on August 31, 2002, the Public Prosecution Office (*Ministerio Público*) filed criminal charges against Dr. Torrico for causing severe bodily harm (*lesiones gravísimas*) and on November 18, 2002, the Second Trial Court of La Paz issued resolution 86/2002, unanimously sentencing Dr. Torrico to three years in prison for committing the crime of inflicting severe bodily harm. That judgment was appealed and, on February 12, 2003, the Third Criminal Division of the High Court of Justice of La Paz ordered the complete annulment of the judgment that had been appealed and ordered the case to be tried by another Trial Court. On March 14, 2003, the case was referred to the First Trial Court of La Paz. Subsequently, according to the petitioner, there were a series of delaying tactics that prevented a new trial from being held, including the referral of the proceedings to two different courts, with the case finally ending up in the Court of Copacabana.

41. The Copacabana court sentenced Dr. Torrico for committing the offense of negligent bodily harm (*lesión culposa*) and fined him Bs. 64,000 on August 13, 2004. According to the petitioner, this judgment considered that the bilateral tube ligation had been performed without the informed consent of the patient and that there had been no justification for that procedure. That decision was appealed by Dr. Torrico and the appeal was heard by the Second Criminal Division of the High Court of Justice of La Paz, which, on October 22, 2004, annulled the sentence against which the appeal had been lodged and ordered the case to be heard by

another Court. On February 24, 2005, the case was returned to the Copacabana Court and the proceedings were once again referred to several courts until they finally ended up with the Fourth Trial Court of La Paz on April 10, 2006.

42. On April 27, 2005, Dr. Torrico presented an incident motion under Article 133 of the Bolivian Code of Criminal Procedure requesting the *extinción de la acción penal*[4] given that more than three years had elapsed since the start of proceedings. On June 1, 2006, the Court issued Resolution 13/06, in which it accepted the motion to dismiss and ordered the case to be shelved. This resolution, according to the petitioner, states that the delays in the proceedings reflect the inefficiency of the judicial personnel responsible for notifications and the actions of the judicial authorities that proceeded to suspend hearings and refer the case from one jurisdiction to another. The resolution in question was appealed by I.V. and by the public prosecutor assigned to the case. On August 23, 2006, the First Criminal Division of the Superior Court of Justice of La Paz rejected both appeals. The petitioner states that I.V. was notified of this last resolution, the definitive ruling in the proceedings, on September 13, 2006.

43. The petitioner argues that the proceedings against Dr. Torrico should have provided an appropriate and effective judicial remedy for determining the truth of the facts denounced by the alleged victim and to establish, if applicable, the liability of the physician for the commission of an offense, which in fact did not occur because of deficiencies in the administration of justice. In this regard, the petitioner maintains that I.V,'s right to judicial protection was violated by the State and that this was recognized and stated in the two judicial resolutions that terminated the criminal proceedings against Dr. Torrico regarding the sterilization of I.V.: resolution 13/06 of the Fourth Trial Court of La Paz, declaring that the motion to dismiss had been substantiated and ordering the case to be shelved, and resolution 514/2006 of the First Criminal Division of the Superior Court of Justice of La Paz, which rejected the appeals against resolution 13/06. The petitioner points out that both judicial resolutions establish that the delays in the criminal proceedings were attributable to the bodies responsible for administering justice, so that shortcomings in the Judiciary had been responsible for depriving I.V. of judicial protection.

44. The petitioner asserts that all these circumstances have caused great anguish in I.V. That anguish was exacerbated by her having to repeat the description of what she went through on numerous occasions in connection with the medical audits, the administrative proceedings, and three criminal trials conducted regarding her complaint. The petitioner maintains that I.V. has been seeking justice since 2002, to no avail, and that this has induced a sense of impotence and frustration.

45. In light of all the above, the petitioners request that the State be declared responsible, to the detriment of I.V., for violations of the rights to humane treatment, judicial guarantees, privacy, freedom of thought and expression, rights of the family, and the right to judicial protection, established in Articles 5, 8, 11, 13, 17, and 25 of the American Convention. They also maintain that the State has violated Article 7 of the Convention of Belém do Pará to the detriment of I.V.

B. Position of the State

46. The State maintains that on July 1, 2000, I.V. underwent an emergency cesarean section in the Women's Hospital. The State argues that according to the information provided in the case history, I.V. was admitted to the Hospital with a diagnosis of preterm rupture of the amniotic sac before labor began and a fetus in transversal position, as a result of which she was subjected to a cesarean section. The State asserts that during the operation multiple adhesions became apparent and because of that Dr. Edgar Torrico had informed I.V. about the risk that would be posed to her life by a future pregnancy and it was for that reason that he had suggested performing the bilateral tube ligation. The State maintains that, after she was informed of those risks, I.V. decided to give her verbal consent to the tube ligation procedure, despite which the doctors had looked for her partner to obtain his written consent, but had not found him at the hospital.

[4] Note of the Executive Secretariat: the *extinción de la acción penal* (literally translated, extinction of the criminal action) in Bolivia refers to a motion to dismiss under article 133 of the Code of Criminal Procedure, which states that a criminal trial shall have a maximum duration of three years. After that period, the judge shall dismiss the case on the grounds of expiration of the legal action.

47. The State points out that the bilateral tube ligation performed on I.V. had not been planned, given the urgent nature of her medical condition, and that the patient's oral consent to their going ahead with the procedure as a result of complications ascertained during the cesarean section had been clearly pronounced, so that the medical team had acted diligently to safeguard the lives of the patient and her daughter.

48. In the State's view, the particular circumstances surrounding I.V.'s surgical procedure, and which justified tube ligation were as follows: (1) I.V.'s reproductive risk factors, such as her 35 years of age, her obstetric care history, and her having presented at the hospital with pre-term rupture of the amniotic sac, without labor; (2) contingent circumstances during the surgical procedure, the emergency cesarean section, the long time it took (1 hour and 30 minutes) because of the adhesions encountered and treated during surgery; and (3) the fact that I.V. was conscious during the surgical procedure, as shown by her interaction with the physician in charge. Regarding this last point, the State asserts that during the entire procedure I.V. stayed awake, because the local anesthetic and the surgical procedure do not alter judgment or mental competence to receive correct information and thus decide whether or not to give verbal consent to the performance of a tube ligation. The State points out that epidural anesthesia does not inhibit the mental alertness of a patient undergoing a cesarean section, an assertion that in its opinion is supported by two medical reports.[5]

49. Regarding the medical audits conducted in connection with the tube ligation performed on I.V., the State indicates that, during the proceedings before the Medical Audit Committee of the Women's Hospital, statements were taken from the medical team performing the cesarean section on the alleged victim. According to the State, those statements show agreement on three points: (1) the information provided by Dr. Torrico to I.V. regarding the complications and the threat that would be posed to her life by another pregnancy, and the suggestion that a bilateral ligation was advisable; (2) the oral authorization given by I.V. to Dr. Torrico to carry out that procedure; and (3) that an effort had been made to find I.V.'s partner so that he could authorize the procedure and that he had not been found at the Hospital. The State also underscores the fact that said audit had concluded that I.V. had granted verbal authorization for the surgical procedure, as confirmed and testified by the members of the surgical team. The second audit, conducted by the Departmental Health Medical Audit Committee, confirmed the previous report and the report issued by the Medical Association's Professional Ethics Tribunal pointed to the existence of statements agreeing that the patient had verbally assented to the bilateral tube ligation procedure.

50. In addition, the State considers it pertinent to evaluate I.V.'s case history and medical records. In this regard, the State indicates that the surgical notes on the cesarean section performed on I.V. expressly mention that "it was decided, because of the presence of multiple adhesions, to use incision of the body to perform a Pomeroy bilateral tubal ligation to safeguard the future life of the mother, who was told of this in the peri-operational period and gave her oral consent. The tubal ligation was then performed with difficulty because of the adhesions." Furthermore, regarding the need to perform the bilateral tubal ligation, the State indicates that the cesarean section performed on I.V. consisted of a cut in the uterus itself, and not in the lower segment. That incision, together with the presence of multiple adhesions, would during a future pregnancy place the health and life of the mother in danger, particularly because the incision in the body of the uterus, for a second time and in a different direction, could lead to rupture of the uterus with internal bleeding, which would inevitably result in the death of the fetus and of the mother, according to the report filed by the Women's Hospital on March 30, 2000.

51. The State further maintains that the fundamental principles of the practice of medicine in Bolivia were followed and I.V.'s right to be appropriately and promptly informed so as to take free and voluntary decisions had been fully respected and that had resulted in her decision to allow bilateral tubal ligation to be performed. Accordingly, the State asserts that Dr. Edgar Torrico acted prophylactically (preventively), pursuant to his obligation to protect I.V.'s health, and making sure of her complete recovery

[5] State document, dated November 29, 2007, Annex: Certification by the Bolivian Society of Anesthesiology, Resuscitation, and Pain; and State document, dated October 2, 2008, Annex, Certification of May 30, 2008, issued by the Head of the Anesthesiology Department of the Women's Hospital.

and rehabilitation after the cesarean section had been performed, making ideal use of the technical means at his disposal. It also maintains that if he had omitted to inform I.V. and to suggest performing tubal ligation, the doctor would have made himself liable to the corresponding disciplinary sanctions.

52. The State affirms, moreover, that, because of the complications that arose during the operation, the cesarean section lasted longer than usual, leaving sufficient time to inform I.V. of the complications that another pregnancy would bring and of the tubal ligation procedure.

53. At the same time, the State maintains that in the instant case the informed consent requirement was met because it consists of the ability of the patient to take a reasoned decision. Its validity does not depend on the manner in which consent is granted. The State also asserts that the argument that I.V. was under surgical stress and, consequently, unable to understand the tubal ligation procedure, is an abstract argument, because the petitioner provides no proof that I.V. was unable to understand the procedure carried out on her. According to the State, consent granted in writing only constitutes one piece of evidence of said consent. That means that the non-existence of a document containing authorization in writing to proceed with tubal ligation does not imply the absence of informed consent. According to the State, pursuant to international standards, informed consent is construed to mean that the person knows what is involved or is given appropriate information by the physician and has the free will to decide. Accordingly, there is no specific standard invalidating oral consent if there has been prior information and the free will of the patient to allow the performance of a given surgical procedure.

54. With respect to the above, the State maintains that I.V. was in a position to understand the need for the tubal ligation procedure. I.V. had only been given a local anesthetic, which did not affect her awareness, and at that point she was given appropriate information and consulted about the procedure in her own language and in accordance with the circumstances in which she found herself. The State also argues that the conversations that, according to the petitioner, the patient had with the doctor during the operation point to the alleged victim's understanding and lucidity during the cesarean section, so that there were no grounds for alleging that she was incapable of understanding the information given to her during that surgical procedure. The State adds that the patient was not in fact under surgical stress, because her pulse rate, blood pressure and temperature were all within normal ranges, as her case history shows, and there were no irregularities that would denote such surgical stress that she would not have been able to understand the conversation she had with Dr. Torrico regarding her medical history and the complications noticed during the surgical procedure.

55. On another issue, the State points out that Article 22 of the Code of Medical Ethics in force in Bolivia establishes that a person may only be sterilized at his or her express, voluntary, and documented request, or for therapeutic reasons rigorously ascertained by a medical board. In this case, according to the State, there is evidence that the expression of the patient's free will was not documented in writing because the circumstances ruled that out, given that the tubal ligation had not been planned but rather was performed because of complications that were discovered during the surgical procedure and which led the doctor to consult the patient regarding the need to proceed to tubal ligation in order to avoid complications in the event of a future pregnancy. The State also maintains that the purpose of a medical board is to issue a specialist opinion with respect to the patient's health and that in the procedure performed on I.V. Dr. Torrico and Dr. Vargas were well enough versed in the specialty to issue a professional opinion informing the patient of the high risk that would be associated with a future pregnancy.

56. Regarding the above, the State points out that the petitioner had incorrectly interpreted Articles 19 and 23 of the Code of Medical Ethics, because said articles refer to a prior procedure, not to a medical circumstance arising in the peri-operative period due to the dilemma posed for the patient's bodily integrity, health, and future life. Article 23 of that Code refers, in the State's view, to the sterilization of a person at his or her express, voluntary, and documented request and to the possibility of its being carried out for therapeutic reasons determined by a medical board, but at no point does that rule negate the validity of oral consent.

57. The State also denies that, in the instant case, the patient's right to information was violated, because said right was exercised by the alleged victim when her health situation was explained to her and she was informed of the need for the tubal ligation procedure.

58. As for the sequels allegedly felt by I.V, as a result of the surgical procedure she underwent in the Women's Hospital on July 1, 2003, the State maintains that if I.V. had had acute endometriosis she would have had such symptoms as abdominal swelling or strains, abnormal vaginal bleeding, discomfort while defecating, a temperature of 38°C to 40°C, general discomfort, and pain in her pelvis or lower abdomen. If that had happened, the State claims, the physicians at the Women's Hospital would not have released her. According to the case history, however, I.V.'s vital signs were stable on the day she was released from hospital.

59. As for the permanent nature of bilateral tubal ligation, the State points out that, as a public institution, the Women's Hospital performs procedure to reverse tubal ligation, at the request of a patient. According to data submitted by the State, bilateral tubal ligation can be reversed in up to 70% of cases. On this, the State points out that none of the steps taken by the petitioner indicate I.V.'s intention to request a reversal of her bilateral tubal ligation, even though the Women's Hospital had reported successful instances of reversal at the hospital, although, being 36 years old, the patient faced natural age-related limitations.

IV. PROVEN FACTS

60. Below, pursuant to Article 43.1 of its Rules of Procedure[6], the Commission will examine the facts alleged by the parties and the evidence produced during the processing of the instant case.

1. The surgical tube ligation procedure performed on I.V.

61. On July 1, 2000, I.V., a 35-year-old woman in her third pregnancy was admitted to the Women's Hospital in La Paz and underwent a cesarean section.[7] I.V. had previously had a cesarean section and the fetus was in the transversal position.[8] Taking part in that procedure as part of the surgical team were Dr. Torrico, as the instructor surgeon and second surgeon; Dr. Vargas as first surgeon; Dr. Mercado, as the anesthesiologist; and an instrumentalist, whose name does not figure in the operation records.[9] Also present during the procedure were R. Arnez Rojas, assistant second year resident; R. Arteaga, first-year resident; and M. Modesta Ticona, operation room assistant.[10]

62. During the cesarean section surgical procedure, complications arose consisting of multiple adhesions in the lower segment of the uterus.[11] During the same operation I.V. underwent the Pomeroy type

[6] Article 43(1) of the Commission's Rules of Procedure provides as follows: "The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge".

[7] Appendix 1. Minutes of the Medical Audit of the surgery performed on [I.V.], attached to the State's written communication of November 29, 2007; Appendix 2. Final Conclusions of the medical audit conducted by the Medical Audit Departmental Committee, of March 9, 2001. Appendix 3 to the initial petition; Appendix 3. Minutes of the Medical Audit Decisions Committee, of March 13, 2001. Appendix 4 to the initial petition.

[8] Appendix 1. Minutes of the Medical Audit of the surgery performed on [I.V.], attached to the State's written communication of November 29, 2007; Appendix 2. Final Conclusions of the medical audit conducted by the Medical Audit Departmental Committee, of March 9, 2001. Appendix 3 to the initial petition; Appendix 3. Minutes of the Medical Audit Decisions Committee, of March 13, 2001. Appendix 4 to the initial petition.

[9] Appendix 3. Minutes of the Medical Audit Decisions Committee, of March 13, 2001. Appendix 4 to the initial petition.

[10] Appendix 4. Report of the Audit Committee on the case of patient I.V., of August 22, 2000. Appendix 2 to the initial petition.

[11] Appendix 4. Report of the Audit Committee on the case of patient I.V., of August 22, 2000. Appendix 2 to the initial petition; Appendix 2. Final conclusions of the medical audit by the Medical Audit Departmental Committee, of March 9, 2001. Appendix 3 to the initial petition; Appendix 5. Medical audit of the surgery performed on Ms. I.V. , by the Medical Audit Committee of the La Paz Hospital. Appendix to the State document of November 29, 2007; Appendix 6. Report of the Audit Committee on the case of patient I.V., of August 22, 2000. Appendix to the State document of November 29, 2007; Appendix 7. Final conclusions of the medical audit by the Medical Audit

of bilateral tubal ligation[12], also known as the tying of the Fallopian tubes. Both surgical procedures were performed when the patient was under epidural anesthesia.[13] The parties agree that the decision to perform that procedure was taken during surgery, without the written consent of I.V. or her partner.

63. The record of the surgical procedure contains the following information:

> "1) Patient lying on her back under anesthesia.[...] 4) medium infra-umbilical incision as far as the cavity, 5) multiple adhesions visible between the parietal visceral peritoneum (illegible) and intestines, making it difficult to see the lower segment of the uterus (illegible). A hysterectomy is performed along the body's longitudinal axis because it is not possible to do it in the lower segment, [...7.] Surgical delivery, [...], 10, due to the presence of the aforementioned multiple adhesions, [illegible] is performed in insufficient parietal peritoneum, it is decided, because of the multiple adhesions and the incision in the body of the womb to perform a Pomeroy bilateral tubal ligation to safeguard the future life of the mother, who is notified thereof in the peri-operative period and she gives her verbal consent. The tubal ligation is performed with difficulty because of the adhesions [...]"[14].

64. Three days after the surgery, Dr. Vargas made the following annotation on the patient's progress 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"[15].

2. Bolivian regulations regarding informed choice and consent

65. Bolivian Health Regulation MSPS 4-98 defines informed choice and consent as follows:

> "INFORMED CHOICE
>
> Informed choice refers to the process in which a person takes a health care decision. It must be based on the client's access to all the 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 or does not wish to receive the health care service and, if so, what method or procedure she or he chooses and will agree to undergo.
> When a family planning method or procedure is to be provided, the provider has a responsibility to facilitate the informed choice process.
>
> INFORMED CONSENT
> Informed consent refers to the act by which a person agrees to receive medical care or treatment, following an informed choice process."[16]

66. In addition, Regulation MSPS 4-98 establishes the contents of the informed consent form to be signed by patients opting for voluntary tubal ligation:

Departmental Committee, of March 9, 2001. Appendix to the State document of November 29, 2007; Appendix 8. Records of the operation transcribed by the Women's Hospital. Appendix to the State document of November 29, 2007.

[12] Appendix 8. Records of the operation transcribed by the Women's Hospital. Appendix to the State document of November 29, 2007.

[13] Appendix 8. Records of the operation transcribed by the Women's Hospital. Appendix to the State document of November 29, 2007.

[14] Appendix 8. Records of the operation transcribed by the Women's Hospital. Appendix to the State document of November 29, 2007.

[15] Appendix 9. Progress sheet. Copy certified by the Women's Hospital. Appendix 1 to the initial petition.

[16] Appendix 10. Ministry of Health and Social Security, National Mother and Child Care Unit. Bolivian Health Regulation MSPS 4-98, Voluntary Surgical Contraception, Volume 1. Bilateral tubal ligation due to reproductive risk, p.17 Appendix 10 to the Srtate document of January 26, 2010.

"I....., being of legal age, by law hereby request in a free, informed, and voluntary manner that a tubal ligation be performed on me, and I am aware of the following:
1. I am aware that health establishments offer temporary family planning methods that can be provided to me. I have received precise information on each of those methods, including their benefits and limitations.
2. I had the opportunity to ask specific questions about tubal ligation and was appropriately informed, with all my questions answered satisfactorily and I understand that it is a definitive method of surgical contraception, which I accept of my own free will.
3. I am aware that, like all surgical procedures, this one entails risks, of which I have been informed.
4. I am aware that this method is definitive. However, I was told that there is a very small chance that it might fail and that I could become pregnant.
[…]
6. I was fully and clearly informed of the possible discomforts proper to this surgical procedure.
[…]"[17].

3. Physical effects of the surgical procedure on I.V.

67. As for the facts of the case following the surgical procedure, between August and September 2000 I.V. was diagnosed with remains of the placenta in the endometrial cavity, acute endometritis and abscess in the abdominal wall as shown in two gynecological intravaginal ultrasound scan reports, a laboratory findings report, and a medical certificate signed by Dr. Carlos Pérez Guzmán.[18]

68. Furthermore, I.V. was diagnosed with atrophic endometritis in March 2002, as shown by a radiology report issued by the Hospital de Clínicas.[19] In May of that same year she had an ultrasound scan which led to a diagnoses of slight bilateral, predominantly right-side, adnexitis.[20] Subsequently, after an ultrasound scan conducted in September 2003, she was diagnosed with bilateral, predominantly right-side adnexal swelling[21], and in March 2004 another ultrasound scan led to a diagnosis of adnexitis on the right side.[22]

4. Medical audits and administrative proceedings with respect to the alleged facts

69. It transpires from the presentations of the parties that, at the request of I.V. and her partner, the Permanent Assembly of Human Rights of Bolivia, the Coordinator for Women's Affairs, the Ombudsman, and the Ministry of Health, three medical audits were conducted regarding the bilateral tubal ligation performed on I.V., a pronouncement was made by the Ethics Tribunal of the La Paz Departmental Medical Association, and administrative proceedings were brought against two of the physicians participating in the surgery.

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[17] Appendix 10. Ministry of Health and Social Security, National Mother and Child Care Unit. Bolivian Health Regulation MSPS 4-98, Voluntary Surgical Contraception, Volume 1. Bilateral tubal ligation due to reproductive risk, p. 25. Appendix 10 to the State document of January 26, 2010.

[18] Appendix 11. Gynecological intravaginal ultrasound scan report signed by Dr. Virginia Calderón Q., of the Imaging Center, (Centro de Imágenes) La Paz, dated August 14, 2000. Appendix 47 to the initial petition; Appendix 12. Pathology and Cytology Laboratory Report No. 371/00, signed by Dr. Wilge Panozo Meneces, dated August 17, 2000. Appendix 47 to the initial petition; Appendix 13. Gynecological Transvaginal Ultrasound Scan Report signed by Dr. Virginia Calderón, dated August 23, 2000. Appendix 48 to the initial petition; Appendix 14. Medical Certificate signed by Dr. Carlos Pérez Guzmán, Clínica Achumani S.R.L., dated September 3, 2000. Appendix 46 to the initial petition.

[19] Appendix 15. Radiology Report signed by Dr. Martha Aguirre de Delgado, Hospital de Clínicas, regarding a request for a hysterosalpingogram (HSG) test, the findings of which are dated March 25, 2002. Appendix 50 to the initial petition.

[20] Appendix 16. Ultrasound scan report signed by Dr. R. Ferrufino R., Hospital Juan XXIII, May 2, 2002. Appendix 51 to the initial petition.

[21] Appendix 17. Gynecological ultrasound scan report signed by Dr. Sandra Caro V., Hospital Arco Iris, September 16, 2003/ Appendix 52 to the initial petition.

[22] Appendix 18. Gynecological ultrasound report signed by Dr. W. Canazas, March 24, 2004. Appendix 53 to the initial petition.

70. The first audit was carried out by the Audit Committee of the Women's Hospital, which issued a report on August 22, 2000, concluding that I.V. had verbally authorized the tube ligation while she was undergoing a cesarean section. The final report stated specifically that:

> "It is confirmed that the surgeon operating, Dr. Edgar Torrico, because of complications during the procedure performed on Ms. [I.V.], when multiple omentum and intestinal adhesions were found in the lower segment of the uterus which prevented access through the normal channel, and having taken the decision to perform a cesarean incision in the body of the womb due to the aforementioned complications (adhesions), the surgeon at that point decides to consult the patient, who was conscious (epidural anesthesia) regarding a bilateral tubal ligation, because of the risk to her life if she became pregnant again. The conscious mother gives the corresponding authorization for that procedure; said reply is confirmed and testified to by resident doctor Rodrigo Arnez and the person responsible for preparing the operating room María Modesta Ticona……. A request was also made to find the husband to give his authorization, but he could not be found"[23].

71. The second audit was conducted by the Medical Audit Departmental Committee, which issued a report dated March 9, 2001. The conclusions of this report state:

> "1) The (cesarean section) surgery is fully supported given the existence of a previous cesarean section and abnormal (transversal) presentation.
> 2). During the surgical procedure multiple adhesions were found in the abdominal cavity, making it necessary to perform a corporal histerotomy to extract the fetus.
> 3)- The bilateral tubal ligation procedure was performed prophylactically and to safeguard the mother's future wellbeing.
> 4)- This Committee fully supports the report prepared by the Women's Hospital Medical Audit Committee"[24].

72. The third audit was conducted by the Medical Audit Decisions Committee, which issued a report entitled "Medical Audit to determine the reasons and circumstances under which a tubal ligation was performed during a cesarean section operation," dated March 15, 2001. The conclusions of said report establish that errors were made in drawing up the case history, in the progress sheets, and in the Hospital's records and state, furthermore, that the sterilization of I.V. was not medically warranted and obtaining consent during a surgical procedure was unacceptable.

> "[…]
> 3.- As regards the bilateral tubal ligation, we consider that carrying out that surgical procedure is not fully justified, because the existence of multiple adhesions does not constitute a risk to the life of the patient and, in addition, since adhesiolysis was performed during the surgical procedure, the problem was apparently being resolved.
> 4.- In addition, corporal longitudinal histerotomy in no way justifies peri-operative performance of tubal ligation. Standards in Force for Maternal-Child Care, p. 202.
> 5.- There was no written and signed pre-operation consent for said surgery: Bilateral Tubal Ligation. In no way is it acceptable to take the opinion of the patient during the surgical or transoperative procedure, because the patient is under surgical stress and under anesthesia, even though the latter is local.
> 6.- Dr. Vargas had referred to "communicating" to the patient during the peri-operative period of the tubal ligation and yet he had stated, in his progress note dated July 3, that the day before he had "communicated" to the patient that the bilateral tube ligation had been performed out of medical necessity.
> […]"[25].

[23] Appendix 4. Report of the Audit Committee on the case of patient [I.V.], August 22, 2000. Appendix 2 to the initial petition.

[24] Appendix 2. Final conclusions of the medical audit performed by the Departmental Medical Audit Committee, of March 9, 2001. Appendix 3 to the initial petition.

[25] Appendix 3. Minutes of the Medical Audit Decisions Committee of March 13, 2001. Appendix 4 to the initial petition.

73. In addition, the Ethics Tribunal of the La Paz Departmental Medical Association issued a report on I.V.'s case, in response to notes sent to the La Paz Departmental Medical Association by the Minister of Health and Social Security and the Ombudsman's Departmental Director of Complaints. That report, dated October 5, 2001, reached the following conclusion regarding relevant aspects of the case:

> "[…]
> 6. The bilateral tubal ligation decision had to be taken during the surgical procedure because, prior to the cesarean section, the conditions or contingencies that could indicate the need for it were unknown.
> 7. That conclusion explains why there was no specific document giving written informed consent.
> 8. Several people made statements asserting that the patient gave her oral authorization for the bilateral tubal ligation procedure"[26].

74. On May 17, 2002, the Legal Advice Unit of the La Paz Department Health Service brought administrative proceedings against Dr. Edgar Torrico and Dr. Marco Vargas. On July 25, 2002, the Final Resolution of the administrative proceedings was issued, which established administrative liability in the case of Dr. Torrico and ordered his dismissal from the Health Service, while it acquitted Dr. Vargas of responsibility.[27] As a result of an appeal by Dr. Torrico against that resolution, another administrative resolution was passed on March 10, 2003, setting aside the declaration of administrative liability and dismissal of Dr. Torrico and ordering dismissal of the proceedings,[28] based on, inter alia, the following:

> "1. [In the] BOLIVIAN HEALTH REGULATION [...] the goal is to diminish mortality due to HIGH RISK factors and, by medical decision, a TUBAL LIGATION may be performed in serious cases.
> 2. That, according to statements [...] there is evidence that Ms. [I.V.] gave her consent to the tubal ligation procedure.
> 3. That [...] the Medical Audit Committee of the Women's Hospital establishes that Ms. [I.V.] was conscious because she had been given epidural anesthesia [...] and that she authorized her surgical procedure, as confirmed and testified to by the medical team [...].
> 4. [...] The Medical Audit Departmental Committee fully supports the report issued by the Women's Hospital [...]
> […]"

5. Criminal Proceedings

75. I.V. filed her complaint with the National Public Prosecution Office (*Ministerio Público de la Nación*)[29], and on August 31, 2002, the MP instituted criminal proceedings against Dr. Edgar Torrico for committing the offense of severe bodily harm to the detriment of I.V., basing its accusation on the fact that the bilateral tubal ligation on I.V. had been performed arbitrarily and without abiding by legal procedures in force.[30] The criminal proceedings were filed with the Second Trial Court of La Paz, which, on October 1, 2002, issued an order to initiate a trial.[31] The trial ended with a judgment on November 18, 2002, sentencing Dr. Torrico, as the perpetrator of the offense of severe bodily harm, to three years in prison. According to the grounds cited in that decision, the judgment reflected the consideration that there was no medical justification for performing the tubal ligation, that the statement to the effect that the patient had given her

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[26] Appendix 19. Report of the Ethics Tribunal of the La Paz Departmental Medical Association / Case of the complaint filed by patient Ms. [I.V.], of October 5, 2001. Appendix 5 to the initial petition.

[27] Appendix 20. Final Resolution N°020/2002 in the in-house administrative proceedings against Dr. Edgar Torrico and Dr. Marco Vargas Terrazas, staff member of the La Paz Departmental Health Service, issued by the Legal Advice Unit of the La Paz Departmental Health Service on July 25, 2002. Appendix 6 to the initial petition.

[28] Appendix 21. Administrative Resolution (unnumbered), issued by the he Legal Advice Unit of the La Paz Departmental Health Service on March 10, 2003. Appendix 7 to the initial petition.

[29] Appendix 22. Accusation Case N° PTJ894/2002 (Public Prosecution Service, District Prosecutor's Office, La Paz - Bolivia). Appendix 8 to the initial petition.

[30] Appendix 22. Accusation Case N° PTJ894/2002 (Public Prosecution Service, District Prosecutor's Office, La Paz - Bolivia). Appendix 8 to the initial petition.

[31] Appendix 23. Order to open trial proceedings, Resolution N° 071/2002 of October 1, 2002. Appendix 9 to the initial petition.

verbal authorization for that procedure were contradictory, and that , even if said authorization had been granted, it would not be legally valid:

> "It has been amply established that there is no rational or medical justification for performing the bilateral tubal ligation, given that the multiple adhesions and corporal incision did not constitute an immediate and imminent risk to the patient's life. The possibility of a complication for the patient's health would have occurred in the event of another pregnancy, in other words, from a legal standpoint, what is at stake is a pending hypothetical condition, that may or may not come about, particularly since, with birth control counseling, the couple may never have had to deal with another pregnancy by using other contraceptive methods or it might have ultimately decided to opt for tubal ligations, but WITH PRIOR INFORMED CONSENT.
> [...]
> Throughout the trial, an attempt was made to demonstrate that the patient consented verbally to the bilateral tubal ligation procedure during the peri-operative period. However, this Tribunal is convinced that in that respect there are several contradictions[.]
> [...]
> This Tribunal fully establishes that even if the patient had given her verbal consent during the surgical procedure, IT WOULD NOT BE LEGALLY VALID, particularly since the patient was under surgical stress and under anesthesia and therefore did not possess appropriate mental or volitional faculties to authorize or consent to a surgical procedure involving the loss of her reproductive capacity. Finally, this Tribunal argues that for this kind of surgery verbal authorizations are not valid. Rather there must INFORMED CONSENT IN WRITING AND WITH COUNSELING OF BOTH PARTNERS BY THE PHYSICIAN, as established by medical regulations in Bolivia and internationally"[32].

76. The aforementioned judgment was appealed by Dr. Torrico. Said appeal was resolved by a judgment handed down on February 12, 2003, by the Third Criminal Division of the Superior Court of the Judicial District of La Paz, which completely annulled the judgment that had been appealed and ordered that the case be re-tired by another Trial Court [33], because the Court considered that the appealed judgment had been pronounced with irremediable defects involving the failure to respect or violation of rights and guarantees upheld in the Constitution, in international conventions and treaties in force, and in the Code of Criminal Procedure, especially infringements of the right to admissibility of evidence (*libertad probatoria*) to the detriment of the defense, and defects in applying criminal law.

77. The case ended up in the First Trial Court of the Judicial District of La Paz on March 14, 2003.[34] On April 22 of that same year, the Court issued a resolution setting aside the drawing of lots and constitution of the Court with citizen judges that had taken place that month, established a date and time for Oral Hearings, for the public hearing to choose citizen judges by lot, and for the hearing to constitute the Court.[35]

78. On May 9, the Presiding Judge and a Technical Judge recused themselves from hearing the case[36], and remitted the file on the proceedings to the Third Trial Court of La Paz[37], which sent the case back to the original court on May 12, due to procedural deficiencies.[38]

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[32] Appendix 24. Resolution N° 086/2002 of the Second Trial Court of La Paz, November18, 2002. Appendix 10 to the initial petition.

[33] Appendix 25. Resolution N° 21/003 of the Third Criminal Division of the Superior Court of the Judicial District of La Paz of February 12, 2003. Appendix11 to the initial petition.

[34] Appendix 26. Placement of the case with the First Trial Court of the Judicial District of La Paz, March 14, 2003. Appendix 12 to the initial petition.

[35] Appendix 27. Resolution N° 19/2003 of the First Trial Court of the Judicial District of La Paz , substantiated ruling of April 22, 2003. Appendix 13 to the initial petition

[36] Appendix 28. Document presented by Dr. José Luis Rivero Aliaga, Presiding Judge of the First Trial Court, to the Technical Judge of the same court, dated May 9, 2003. Appendix 14 to the initial petition: Appendix 29. Document presented by Dr. Raúl Gastón Huaylla Rivera, Technical Judge of the First Trial Court, in case FIS N° 894, dated May 9, 2003. Appendix 15 to the initial petition.

[37] Appendix 30. Remanding of Case Caso FIS N° 894 to the Third Trial Court (TS-1. N° 92/2003), dated May 9, 2003. Appendix 16 to the initial petition.

79. The file was subsequently remanded to the Trial Court on duty in the city of El Alto on May 28[39], where the case was placed on May 31 and dates set for the oral hearings and for the public hearing to choose citizens by lot.[40]

80. On July 15, a special public hearing was held to constitute the Court. At that hearing, it was reported that none of the citizens specially chosen by lot had been notified because they had not been located at their registered addresses. That being so, the Court decided to refer the case to the nearest bench, namely that corresponding to the town of Achacachi.[41]

81. On February 16, 2004, a special public hearing to constitute a court was heard before the Trial Court of Achacachi, which decided that since the hearing had been held without a court being able to be formed with citizen judges, the proceedings would be remitted to the nearest bench, corresponding to Copacabana.[42] The case was remanded to that Court on February 19.[43]

82. The Trial Court of Copacabana handed down its judgment on the case on August 13, 2004, declaring Dr. Edgar Torrico guilty of negligent bodily harm (*lesión culposa*) and sentencing him to a fine of sixty-four thousand Bolivianos.[44] In its grounds for that judgment, the Court pronounced on the matter of consent to perform a bilateral tubal ligation on I.V., as follows:

> "The statements by the victim and the performing physician contradict one another. The witnesses are members of the surgical team, so that that they are eye-witnesses, providing direct evidence. The verbatim texts on informed consent differ from one another and, when compared with the record on the case history progress sheet, convince us that there was no verbal authorization by the patient to perform the additional surgical procedure of bilateral tubal ligation"[45].

83. Dr. Torrico appealed the aforementioned judgment and that appeal was resolved by the Second Criminal Division of the Superior Court of Justice of La Paz in a judgment handed down on October 22, 2004, which totally annulled the judgment against which the appeal had been lodged and a ordered a retrial by another Court, basing its decision on the consideration that the appealed judgment had not fully complied with legal provisions regulating formal requirements and the substantiation of the judgment.[46]

84. I.V. filed an extraordinary appeal to a court of cassation against the aforementioned resolution, which was declared inadmissible by the First Criminal Division of the Superior Court of Justice of

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[38] Appendix 31. Resolution of the Third Trial Court of May 12, 2003, returning the case to the original court. Appendix 17 to the initial petition.

[39] Appendix 32. Remanding of the original court records to the Trial Court on duty in the city of El Alto (TS.1 Official Letter No. 105/03), of May 28, 2003. Appendix 18 to the initial petition.

[40] Appendix 33. Resolution of the Second Trial Court of El Alto of May 31, 2003. Appendix 19 to the initial petition.

[41] Appendix 34. Minutes of the special public hearing to constitute a court of the Second Trial Court of El Alto, of July 15, 2003. Appendix 20 to the initial petition.

[42] Appendix 35. Minutes of the special public hearing to constitute a court of the Trial Court of Achacachi, of February 16, 2004 and referral to the Trial Court of Achacachi, on February 19, 2004. Appendix 21 to the initial petition.

[43] Appendix 35. Minutes of the special public hearing to constitute a court of the Trial Court of Achacachi, of February 16, 2004 and referral to the Trial Court of Achacachi, on February 19, 2004. Appendix 21 to the initial petition.

[44] Appendix 36. Resolution No. 32/2004 of the Trial Court of Copacabana, of August 13, 2004. Appendix 22 to the initial petition.

[45] Appendix 36. Resolution No. 32/2004 of the Trial Court of Copacabana, of August 13, 2004. Appendix 22 to the initial petition.

[46] Appendix 37. Resolution N° 265/2004 of the Second Criminal Division of the Superior Court of La Paz of October 22, 2004 Appendix 23 to the initial petition.

La Paz.[47] The Court returned the case to the Trial Court of Copacabana on February 24, 2005[48], which referred the proceedings to the Trial Court of Sica Sica on May 16[49], where the case was placed on August 3.[50]

85. On August 10, I.V. filed a brief with the Second Criminal Division of the Superior Court of La Paz requesting referral of the proceedings to the city of La Paz[51], given that it was very burdensome for the parties and for the Public Prosecution Service to conduct proceedings in a jurisdiction so far from the place where the alleged offense had been committed and so far from the place where the parties were domiciled.[52] On August 23, I.V. filed a complaint with the District Prosecutor against the Prosecutor in charge of her case, pointing out that for the latest trial she had had to defray the costs of transporting the forensic physicians and witnesses to Copacabana, which had involved a heavy financial outlay. She also indicated that the Prosecutor had not bothered to take the steps needed to prevent postponement of the new criminal trial and she asked for a new Prosecutor to be put in charge of the case.[53] That request was reiterated on Tuesday, September 6, 2005.[54]

86. On September 23, Dr. Torrico asked the Trial Court of Sica Sica to suspend the oral proceedings hearing scheduled for October 3.[55] That request was accepted by the Court, which set October 12 as the new date for the hearing.[56] On January 20, 2006, the Trial Court of Aroma Province in the jurisdiction of Sica Sica declared that it lacked legal competence to continue hearing the case and ordered that it be referred to the Superior Court of Justice of the District of La Paz, for the latter to consider remanding to the competent Trial Court of the city of La Paz.[57] On February 10, the Court resolved to remand the proceedings to the Fourth Trial Court of La Paz[58], a step that was taken on March 16.[59]

87. On March 20, the Fourth Trial Court of La Paz returned the case to the Superior Court for the latter to correct a procedural defect.[60] On April 10, the same Court set aside its decision of March 20 and took on the case.[61]

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[47] Appendix 38. Supreme Judicial Decree (*Auto Supremo*) of the First Criminal Division of the Supreme Court of Justice of La Paz, of February 1, 2006. Appendix 24 to the initial petition.

[48] Appendix 39. Return of the court records to the Trial Court of Copacabana, on February 24, 2005. Appendix 25 to the initial petition.

[49] Appendix 40. Remanding of the original court records to the Trial Court of Sica Sica, May 16, 2005. Appendix 26 to the initial petition.

[50] Appendix 41. Resolution of the Trial Court of Sica Sica of August 3, 2005. Appendix 27 to the initial petition.

[51] Appendix 42. Document filed with the Second Criminal Division of the Superior District Court, requesting the transfer of proceedings to the city of La Paz, dated August 9, 2005. Appendix 28 to the initial petition.

[52] The Commission received no information as to the outcome of this request.

[53] Appendix 43. Letter dated August 23, 2005 from Ms. I.V. to the Senior District Prosecutor, regarding complaint against Dr. Mercedes Solís Parada for neglect of my case and asking for the appointment of another prosecutor. Appendix 29 to the initial petition.

[54] Appendix 44. Letter dated September 6, 2005 from Ms. I.V. to the District Prosecutor. Appendix 30 to the initial petition.

[55] Appendix 45. Document submitted by Edgar Torrico Ameller to the Trial Court of Sica Sica on September 23, 2005. Appendix 31 to the initial petition.

[56] Appendix 46. Resolution of the Trial Court of Sica Sica on September 27, 2005. Appendix 32 to the initial petition.

[57] Appendix 47. Resolution No. 03/2006 of the Trial Court of Aroma Province in the jurisdiction of Sica Sica, dated January 20, 2006. Appendix33 to the initial petition.

[58] Appendix 48. Resolution No. 36/2006 of the Second Criminal Division of the Superior Court of the District of La Paz, dated February 10, 2006. Appendix 34 to the initial petition.

[59] Appendix 49. Remittance of the original court records to the Fourth Trial Court, March 16, 2006 Appendix 35 to the initial petition.

[60] Appendix 50. Resolution of the Fourth Trial Court of La Paz, March 20, 2006. Appendix 36 to the initial petition.

[61] Appendix 51. Resolution of the Fourth Trial Court of La Paz, Monday, April 10, 2006. Appendix 37 to the initial petition.

88. Dr. Torrico's defense filed a motion to dismiss under on Article 133 of the Code of Criminal Procedure (*extinción de la acción penal*), because more than six years had elapsed since the first act in the proceedings against him. That was resolved in a resolution on June 1, 2006 of the Fourth Trial Court of La Paz, which declared the motion founded and ordered the case to be dismissed.[62] Said resolution pointed out that the bodies responsible for administering justice had caused the delays and considered:

> "That in the documents of the case there has quite clearly been procrastination associated with, in the first place, the ineffectiveness, of the officials responsible for delivering correct notifications for the constitution of a court jury, and, on the other hand, with jurisdictional bodies that, for trivial reasons, have proceeded to suspend hearings and shift the case from one jurisdiction to another [...]. The bodies responsible for administering justice have played with the law in such a way as to seriously impair correct administration of justice"[63].

89. The aforementioned resolution was appealed by the Public Prosecution Service and by I.V.. Pronouncing on that appeal in a resolution of August 23, 2006, the First Criminal Division of the Superior Court of La Paz declared the questions raised by the appellants inadmissible and confirmed the resolution they had challenged.[64] That judgment reiterates that the delays in the proceedings were attributable to the courts and states:

> "A review of the court records shows that the delay is attributable to the Court hearing the case, because it twice incurred annulment of proceedings due to procedural deficiencies"[65].

6. The nature of the surgical sterilization procedure to which I.V. was subjected

90. The parties agree that a surgical procedure known as *bilateral tubal ligation* (also referred to as tying of the Fallopian tubes) was performed on I.V. According to the World Health Organization (hereinafter "WHO"), tubal ligation, tubectomy, or tying of the Fallopian tubes is a method of female sterilization in which the Fallopian tubes are blocked or cut for contraceptive purposes.[66]

91. According to WHO, female sterilization is designed to be permanent and generally cannot be reversed. Regarding the aforementioned procedure, it has established that:

> "Surgery aimed at reverting sterilization is successful only with some women - those who have enough Fallopian tube left. Even for those women, reversal frequently does not lead to pregnancy. The procedure is difficult and expensive and it is difficult to find providers capable of performing that type of surgery. When pregnancy does occur following reversal, the risk of it being ectopic is greater than usual. Therefore, sterilization should be considered irreversible"[67].

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[62] Appendix 52. Resolution 13/06 of the Fourth Trial Court of La Paz of June 1, 2006. Appendix 38 to the initial petition.

[63] Appendix 52. Resolution 13/06 of the Fourth Trial Court of La Paz of June 1, 2006. Appendix 38 to the initial petition.

[64] Appendix 53. Resolution No. 514/06 of the First Criminal Division of the Superior Court of the District of La Paz, dated August 23, 2006. Appendix 39 to the initial petition.

[65] Appendix 53. Resolution No. 514/06 of the First Criminal Division of the Superior Court of the District of La Paz, dated August 23, 2006. Appendix 39 to the initial petition.

[66] WHO, Family Planning, Fact Sheet No. 351, May 2013, posted at:http://www.who.int/mediacentre/factsheets/fs351/es/

[67] World Health Organization Department of Reproductive Health and Research (WHO/RHR) and Johns Hopkins Bloomberg School of Public Health/Center for Communication Programs (CCP), Knowledge for Health Project. *Family Planning: A Global Handbook for Providers.* Baltimore and Geneva: CCP and WHO, 2011., p 181. Posted at: https://www.fphandbook.org/sites/default/files/hb_spanish_2012.pdf [English: http://www.who.int/reproductivehealth/publications/family_planning/9780978856304/en/]

92. For its part, WHO has highlighted the importance of all users being informed of the permanent nature of the sterilization and of the availability of alternative contraceptive methods, given the irreversible nature of this procedure.[68]

93. In relation to the above, the WHO, in conjunction with various agencies of the United Nations, have emphasized the permanent nature of the sterilization procedure and have shown that sterilization for prevention of future pregnancy cannot be justified on grounds of medical emergency, which would permit departure from the general principle of informed consent.[69]

94. According to these principles, the IACHR considers it proven that the procedure of tying the fallopian tubes as performed in I.V. is, in its essence and as a general rule, permanent and irreversible, and that it is not an emergency medical procedure.

V. ANALYSIS OF THE LAW

A. Background definitions and preliminary considerations

95. The analysis the Commission presents in this section has the objective of determining whether the surgical procedure practiced on I.V., in a public hospital, and the conditions in which the same was performed, were consistent with the applicable international human rights standards and the obligations of the State of Bolivia in this regard. In the context of this analysis, the Commission considers it a proven fact that the surgical intervention that is the subject of this case was a non-emergency procedure and its consequences were permanent in nature.

96. The Commission considers that this analysis involves a close review of several dispositions of the American Convention linked to the reproductive health of women, their right to be informed about the effects, risks and consequences of any surgical sterilization before it is performed, their voluntary election of the medical procedures to which they are submitted, and their autonomous and free decision over the available methods to determine the number and spacing of their children. This analysis must also consider whether the alleged victim had an adequate access to judicial protection and guarantees. In the same fashion, the Commission deems important to examine the allegations at issue in light of the general obligation of the State to respect and guarantee human rights free from discrimination.

B. The right to personal integrity (article 5.1[70] of the American Convention) in relation to Article 1.1 of the American Convention

97. The Commission has established that the right to personal integrity is a very broad concept, the scope of which includes women's maternal health.[71] Protection of women's right to personal integrity in the area of maternal health entails for the States the obligation to guarantee that they have access on an equal footing to the health care services they require for particular necessities relating to pregnancy and post-natal care, as well as other services, as well as to information regarding maternity and reproductive matters throughout their lives.[72] In this context, guaranteeing the right to personal integrity has implications for women's equality, autonomy, privacy, and dignity.[73]

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[68] WHO, Medical Eligibility Criteria for Contraceptive Use, 4th edition, 2009, p. 105, Available at http://www.who.int/reproductivehealth/publications/family_planning/9789241563888/en/index.html

[69] OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF y WHO, Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement, WHO, 2014, p. 9. Disponible en: http://www.who.int/reproductivehealth/publications/gender_rights/eliminating-forced-sterilization/en/

[70] Article 5.1 of the Convention stipulates: "Every person has the right to have his physical, mental, and moral integrity respected".

[71] IACHR, Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010, paragraphs 1-22.

[72] IACHR, Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010, paragraph 3.

[73] IACHR, Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010, paragraph 4.

98. Regarding these principles, the Commission has maintained that one of the principal means of guaranteeing women's right to personal integrity is the provision of appropriate and prompt maternal health services.[74] These include the right reproductive health care services and proper access to the information needed to make free, autonomous, and informed decisions in that area.[75] Indeed, as discussed in more detail in the following section of the report, access to information and informed consent with regard to healthcare services are esential tools for the full enjoyment of the right to personal integrity of women, specially regarding sexual and reproductive rights. Specifically, the Commission has established that:

> "[P]protecting women's right to personal integrity under conditions of equality is achieved in the area of maternal health through the provision of information and education on the subject so that women will adopt free, well-founded, and responsible decisions regarding reproduction, including family planning"[76].

99. Accordingly, the IACHR has considered that performing a surgical procedure without the required informed consent may constitute a violation of the right to humane treatment, established in Article 5 of the American Convention.[77] The Committee on the Elimination of Discrimination against Women (CEDAW) has also stated that compulsory and uninformed sterilization adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children.[78] The European Court has pointed out that compliance with the State's positive obligation to secure for their citizens their right to effective respect for their physical and psychological integrity may necessitate, in turn, the adoption of regulations concerning access to information about an individual's health.[79]

100. The IACHR has also acknowledged the existence of a link between the scope of Article 5.1 of the American Convention and the non-discrimination principle of Article 1.1 of the American Convention. The IACHR has highlighted that many women in the Americas suffer damages to their right to personal integrity in the context of their access to health services and procedures that are exclusively needed by women because of their sex, their biological differences and their reproductive capacities.[80] Accordingly, the IACHR has stated that States have an obligation to take positive steps to ensure the accessibility, availability, acceptability and quality of maternal health services, as a part of its obligations under the principle of equality and non-discrimination.[81] As correlative principle, the Inter-American Court has also stated that it is necessary to consider the health rights of women from the perspective of women's interests and needs, "in view of the distinctive features and factors that differentiate women from men, namely: (a) biological factors […], such as […] their reproductive function"[82]. It follows from these principles that the lack of full respect of women's right to personal integrity in the reproductive sphere, in turn, may violate their right to live free from all forms of discrimination under article 1.1 of the American Convention.

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[74] IACHR, Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010, paragraph 2.

[75] On this, see: European Court of Human Rights, Case of R.R. v. Poland, Application No. 27617/04, May 26, 2011.

[76] IACHR, Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010, paragraph 92.

[77] IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, Tuesday, November 22, 2011, paragraph 61

[78] United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, paragraph 22.

[79] European Court of Human Rights, R.R. v. Poland, Application 27617/04, May 26, 2011, paragraph 188; Also, see IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, paragraph 61. For a different treatment of related issues, see: United Nations, Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, February 1, 2013, paragraphs 32, 46 and 48.

[80] IACHR, Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010, paragraph 53.

[81] IACHR, Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010, paragraph 76.

[82] I/A Court H.R., Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary objections, merits, reparations and costs), Judgment of November 28, 2012, Series C No. 257, paragraph 300.

101. Likewise, the right to personal integrity and the non-discrimination principle are closely linked to the right of women to be free from all forms of violence. Accordingly, the IACHR has stated that "violence against women and the social discrimination promoting and validating it are serious human rights problems with negative repercussions for women and society at large. They constitute an obstacle to the recognition and enjoyment of all their human rights and threaten their physical, psychological and moral integrity"[83].

102. The IACHR considers it proven that I.V. was subjected to a tubal ligation surgical procedure on July 1st, 2000. As a result of that procedure, I.V. suffered the permanent loss of her reproductive capacity. There is no evidence in the record before the Commission that IV consented to this procedure or that the procedure was needed because of a medical emergency. From the proven facts it follows that the surgical procedure was practiced without I.V. being given the necessary information for her to make an autonomous and free decision on the future use of available methods to decide the number and spacing of her children, as will be discussed in detail in the next section.

103. On the basis of the above considerations, the IACHR believes that the surgical procedure under examination was not an adequate and timely maternal health service provided to I.V. and that it breached her physical and psychological integrity. Also, 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.[84]

104. Also, the IACHR underscores the deep anguish, helplessness and frustration suffered by I.V. as a consequence of her forced sterilization. Feelings that were intensified by the lack of access to justice to obtain an adequate and effective remedy for the violation of her sexual and reproductive rights. The unconsented surgical procedure constituted in this case not only a form of discrimination against I.V., but also a form of violence and an arbitrary interference in an intimate sphere of her private and family life, as will be discussed later in this report.

105. In this regard, the IACHR considers particularly relevant to address the State's allegation that I.V. has not expressed her intention to seek a tubal ligation reversal, despite having been informed by the Women's Hospital of successful experiences of that procedure in the medical center at issue. In this regard, the IACHR clarifies that a victim of a forced sterilization is never required to undergo a tubal ligation reversal procedure. The performance of a tubal ligation procedure is not a relevant factor to assess whether a violation of the rights to personal integrity and other reproductive rights has taken place.

106. The Commission concludes that, in performing a surgical sterilization on I.V. without her consent, the State of Bolivia violated her rights to personal integrity, contravening Article 5.1 of the American Convention, in conjunction with the obligations to respect rights set forth in Article 1.1 of that same instrument.

107. As previously mentioned, performing surgery or rendering invasive medical treatment without the requisite consent of the patient can constitute the violation of several of his or her human rights.[85] In the instant case, the Commission considers that the performance of a surgical sterilization

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[83] IACHR, Violence and Discrimination against Women in the Armed Conflict in Colombia, OEA/Ser/L/V/II. 124/Doc.67, October 18, 2006, paragraph 11.

[84] "[R]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents." United Nations, Report of the International Conference on Population and Development, Cairo, September 5-13, 1994, A/CONF.171/13, October 18, 1994, paragraph 7.3.

[85] IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, paras. 61 & 66. Ee also, IACHR, Report No 71/03, Petition 12.191, *María Mamérita Mestanza Chávez*, Peru, Friendly Settlement, October 10, 2003, para. 14; IACHR, *Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010*, para. 39. Similarly, at the international level,

procedure without I.V.'s informed consent, in violation of her right to personal integrity, is closely linked to the satisfaction of her right to access to information, in terms of Artcle 13 of the American Convention, the scope of which will be examined in the following section of this report. 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, as discussed later in this report.

C. The right to access to information (Article 13.1[86] of the American Convention), in relation to Article 1.1 of the American Convention

108. The right to access to information is a fundamental right protected by Article 13 of the American Convention.[87] The Inter-American Court has held that, by expressly stipulating the rights to "seek" and "receive" information, Article 13 of the Convention "protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention."[88]

109. The Inter-American Commission has found that the right to access to information includes the "positive obligation of the State to provide its citizens with access to the information in its possession, and the corresponding right of individuals to access the information held by the State."[89] However, the right to access to information is not limited to the duty to provide the information requested by a private individual. Among other obligations, this right entails the obligation of the State to provide information under its control on its own initiative when it is a condition for the exercise of other rights. This is without prejudice to exceptional limits previously established by law in accordance with the principles of proportionality and necessity.[90]

110. Indeed, when the exercise of the fundamental rights of individuals depends on their having relevant information, the State must provide it in a timely, accessible, complete, and reliable manner. In this regard, the Inter-American system has recognized that the right to access to information is not just a critical tool to ensure the transparency of the workings of the State and the administration of government, but is also an essential instrument for the exercise of other human rights.[91]

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see: United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 24: Women and Health*, paras. 22 & 31; United Nations, *Report of the Special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/64/272, 10 August 2009, para. 19.

[86]Article 13.1 of the American Convention establishes that "The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions."

[87]I/A Court H.R., *Case of Claude Reyes et al. v. Chile.* Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 77; IACHR. *The Inter-American Legal Framework regarding the Right to Access to Information*, Office of the Special Rapporteur for Freedom of Expression, December 30, 2009, paras. 1-3.

[88]I/A Court H.R., *Case of Claude Reyes et al. v. Chile.* Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, para. 77.

[89]IACHR. 2008 Annual Report. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, paras. 140 & 142. Additionally, Article 4 of the IACHR's Declaration of Principles on Freedom of Expression (2000) establishes that "Access to information […] is a fundamental right of every individual," that "States have the obligation to guarantee the full exercise of this right." See also: IACHR. Study of the Office of the Special Rapporteur for Freedom of Expression on the Right to Access to Information (2007); IACHR. 2005 Annual Report. Volume II: Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: Report on access to information in the hemisphere; IACHR. 2003 Annual Report. Volume III: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV: Report on access to information in the hemisphere; IACHR. Report on Terrorism and Human Rights (2002), paras. 281-288; IACHR. 2001 Annual Report. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Volume II. Chapter III: Report on Action with respect to *Habeas Data* and the Right of Access to Information in the Hemisphere.

[90]IACHR. 2008 Annual Report. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression.

[91]IACHR. 2008 Annual Report. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American Legal Framework of the Right to Freedom of Expression, para. 147. In addition, Article 9 of the Inter-American Democratic Charter provides that "The promotion and protection of human rights of indigenous peoples […] contribute to strengthening democracy and citizen participation."

111. In the instant case, the petitioner asserts that the alleged victim was subjected, without having given prior informed consent, to the surgical procedure of bilateral salpingo-oophorectomy or fallopian tubal ligation, immediately after having undergone a cesarean section. As a result of this procedure, I.V. permanently lost her ability to reproduce.

112. The State, for its part, alleges that the procedures were consistent with those provided in the fundamental principles of the practice of medicine in Bolivia and that I.V.'s right to receive adequate and timely information to make free and voluntary decisions was fully respected. In this regard, the State asserted that the treating physician acted preventively, in compliance with his duty to protect I.V.'s health. In addition, the State indicated that I.V. was awake during the entire cesarean procedure, given that the anesthesia and the surgical procedure do not alter the judgment or the mental competence to be able to receive accurate information and, therefore, make a decision regarding verbal consent for a bilateral salpingo-oophorectomy to be performed.

113. It is incumbent upon the IACHR to determine whether the tubal ligation procedure performed at a public hospital whereby I.V. permanently lost her ability to reproduce was a violation of her right to access to information, recognized in Article 13 of the American Convention. To do so, it is necessary to establish whether the right to access to information protects a patient's right to receive –in advance and on the authorities' own initiative—information relevant to his or her preferences in the provision of healthcare services.

114. To resolve the issue presented, the Commission will address the standards developed on the subject of access to information in the healthcare context, particularly the role of informed consent in the respect for and protection of patients' rights. Next, it will examine the aspects of the right to access to information and informed consent required in medical procedures pertaining to the sexual and reproductive health of women. It will then apply these rules to the specific case at hand.

1. The right to access to information for the selection of healthcare services

115. The IACHR has recognized that the right to access to information is essential to the protection of the rights to personal integrity, autonomy and the right to health of individuals. In particular, it has recognized that the right to access to information is crucial in order for individuals to be able to be in a position to make free and well-founded decisions regarding private aspects of their health, bodies, and autonomy, including decisions regarding medical procedures or treatments.[92] It has recognized that access to information is an indispensable element in the rights-based administration of medical treatment. In this regard, it has made specific reference to informed consent as an ethical principle of respect for the autonomy of individuals, which requires that they understand the different treatment options available to them and are involved in their own healthcare.[93]

116. The international community has recognized informed consent[94] as an active and ongoing process that seeks to ensure that no treatment is performed without the agreement of the patient and without his or her having been duly informed of its effects, risks, and consequences.[95] The European

[92]IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011; IACHR. *Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights*, July 19, 2008, indicators on the right to health, p. 48.

[93]IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, para. 43.

[94] The term "informed consent" is the most commonly used term. However, there are some who maintain that the term can be misinterpreted and that it should be replaced by the term "informed choice." This is because the decision to withhold consent is essential to the integrated concept of voluntary or voluntarily granted consent. See, B.M. Dickens, R.J Cook, *Dimensions of informed consent to treatment, Ethical and legal issues in reproductive health*, International Journal of Gynecology & Obstetrics 85 (2004), pp. 309-314.

[95] United Nations, Report of the Special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, presented in accordance with Resolution 6/29 of the Human Rights Council, A/64/272 of 10 August 2009; United Nations, Committee on the Elimination of Discrimination against Women, Communication No. 4/2004, *Case of A.S. v. Hungary*, 29 August 2006, CEDAW/C/36/D/4/2004, para. 11.3. For example, the Amsterdam Declaration on the Promotion of Patients' Rights, provides that: "Patients have the right to be fully informed about their health status, including the medical facts about

Convention on Human Rights and Biomedicine[96] also refers to this matter in Article 5, establishing that: "An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks".

117. Similarly, the Special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, indicated that, "Informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making, and assigning associated duties and obligations to health-care providers"[97].

118. The IACHR has followed along the same lines, and has specified that informed consent is an appropriate process for the disclosure of all the information necessary for a patient to be able to freely make the decision to grant (or withhold) his or her consent to medical treatment or surgery. This process seeks to ensure that the human rights of individuals are fully respected in matters concerning health, and that they can make truly free choices.[98]

119. A systematic interpretation of the case law and scholarly opinion on the subject makes clear that a process of informed consent must include the following three elements, which are closely related to one another: 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.[99] Compliance with this process includes taking legislative, political, and administrative measures, and it extends to doctors, health professionals, and social workers, in both public and private hospitals, as well as other health institutions and detention centers.

120. In relation to the first element of the informed consent process – providing information on the nature of the procedure, treatment options, and reasonable alternatives, including the potential risks and benefits of the proposed procedures – the Commission has indicated that the information provided to the patient must be timely, complete, accessible, reliable, and proactive.[100] In order for the information to be complete, it is incumbent upon the health professionals to obtain and disclose all relevant information of the highest quality regarding diagnosis, proposed treatment and its effects, risks, and alternatives. In order to be accessible, it must be provided under adequate conditions and in a language and manner that is culturally acceptable to the person consenting,[101] which includes the use of translation and interpretation services. However, it is not sufficient for the information to be complete and accessible; the information must also be reliable. In other words, it must be based on scientific evidence of the highest quality that provides certainty and not on the personal preferences of the health professional. Accordingly, the IACHR has stressed that "the obstruction of access to information or the provision of inadequate or erroneous information contravenes the

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their condition; about the proposed medical procedures, together with the potential risks and benefits of each procedure; about alternatives to the proposed procedures, including the effect of non-treatment; and about the diagnosis, prognosis and progress of treatment." CITA ICP/HLE 121 (1994).

[96] Council of Europe, 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, opened for signature on 4 April 1997 in Oviedo, Spain, entered into force on 1 December 1999.

[97] United Nations, Report of the Special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, presented in accordance with Resolution 6/29 of the Human Rights Council, A/64/272 of 10 August 2009, para. 9;

[98] IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, para. 42

[99] IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, para. 44.

[100] IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, para. 45.

[101] United Nations, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, presented in accordance with Resolution 6/29 of the Human Rights Council, A/64/272 of 10 August 2009, para. 23.

right to access to information"[102]. Finally, the information must be provided in a timely and proactive manner—that is, prior to the performance of the procedure and without the need for a direct request for it.

121. With respect to the second element of informed consent – taking account of individual's needs and ensuring that the person understands the information provided – the IACHR observes that medical professionals have an important duty to ensure that the patient understands the information they provide, in order for the patient to make a truly informed decision about the proposed procedure and/or treatment. In this regard, particular attention must be paid to the needs and condition of the patient, as well as the methods that are used to provide the information.

122. Regarding the third element of informed consent – ensuring that the consent provided is free and voluntary – the Commission holds that in order for it to be effective, consent must be granted through a process that is free from any duress or manipulation. Given the power imbalance that is typical of the relationship between health professionals and their patients, it has been recognized that the time and manner in which the information is provided can unduly influence the patient's decision to accept or refuse the proposed treatment. For example, when the matter concerns an elective procedure that can be done at any time, the doctor should offer the information far enough in advance for the patient to be able to weigh his or her decision freely. In this regard, 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.[103] The Commission acknowledges that although consent can be given verbally or in writing, for purposes of safeguarding the rights involved, the State should take measures to make it possible for consent to be established in writing.[104]

123. The greater the consequences of the decision to be adopted, the more rigorous the controls for ensuring the patient's free and informed consent.[105] In that regard, as explained below, the process of informed consent takes on a larger scope and special content in those cases of an intrusive or irreversible medical procedure that has no therapeutic purpose, and when the surgical patient belongs to a population group that has traditionally been subject to exclusion or discrimination, as is the case of women, and in particular, in the realm of sexual and reproductive health.[106]

2. Informed consent in sexual and reproductive matters

124. The IACHR has maintained that informed consent is an essential requirement for the respect and guarantee of women's right to health, including their sexual and reproductive health. This right includes the State's obligation to provide complete, accessible, timely, reliable information on this subject proactively,[107] with the aim of ensuring that women are in a position to make free and reasoned decisions on private aspects of their personhood and life plan.[108]

125. The relevance of informed consent as it relates to sexual and reproductive health has also been acknowledged in the United Nations human rights system. Indeed, the CEDAW Committee has held that healthcare services are acceptable only if they are provided ensuring that the woman has given her prior consent with full knowledge of the facts, that her dignity is respected, that her privacy is ensured, and that

[102]IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, para. 85.

[103]United Nations, Committee on the Elimination of Discrimination against Women, Communication No. 4/2004, *Case of A.S. v. Hungary*, 29 August 2006, CEDAW/C/36/D/4/2004, para. 11.2; OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF & WHO, *Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement*, WHO, 2014, p. 14. Available at: http://www.who.int/reproductivehealth/publications/gender_rights/eliminating-forced-sterilization/en/

[104]IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, para. 72.

[105]IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, para 72.

[106] IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011.

[107]IACHR, Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010.

[108]IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, para. 25.

account is taken of her needs and perspectives. On this matter, the Committee has asserted that women must be fully informed by trained personnel of the benefits, consequences, and adverse effects of any medical procedure proposed with respect to her sexual and reproductive health, as well as the available options, prior to its being rendered. This duty includes offering information on available family planning methods, and the coverage, risks, and side effects of each one of them.[109] In this regard, the CEDAW establishes that the States must guarantee to women, under conditions of equality, "access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning."[110]

126. In addition, the IACHR has affirmed that the right to access to information covers the type of information that women should have in order to make decisions affecting their reproductive health, such as the ability to determine the number and spacing of their children, and to freely choose the methods necessary for such purposes.[111] This right extends to sterilization surgeries and to the conduct of medical personnel during such procedures.[112]

127. Sterilization is a contraceptive and family planning method that should be available, accessible, acceptable, of good quality, and free from discrimination, coercion and violence. Given that it is a procedure that has major consequences on the reproductive health of an individual, the controls to ensure that the person's consent is informed, free, and voluntary must be especially strict.[113]

128. Accordingly, WHO has established that in order to provide informed consent for sterilization, the patient must understand the following six points:

> (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)."[114]

129. Along the same lines, the International Federation of Gynecology and Obstetrics (FIGO) has recommended that "All information must be provided in language, both spoken and written, that the women understand, and in an accessible format such as sign language, Braille and plain, non-technical language appropriate to the individual woman's needs. The physician performing sterilization has the responsibility of ensuring that the patient has been properly counseled regarding the risks and benefits of the procedure and its alternatives."[115] It has similarly stated that "consent to sterilization should not be requested when women

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[109]IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, para. 48.

[110]See, CEDAW, Article 10(h).

[111]In this respect, Article 16 of the CEDAW establishes: "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: … e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights." See also: United Nations, Committee on the Elimination of Discrimination against Women, *General Recommendation No. 21: Equality in Marriage and Family Relations*, paras. 21-22; United Nations, *Report on the International Conference on Population and Development*, Cairo, 5-13 September 1994, A/CONF.171/13, 18 October 1994, para. 7.2; & United Nations*, Report of the Fourth World Conference on Women,* Beijing, 4-15 September 1995, Annex II: Beijing Platform for Action, para. 95.

[112]IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, para. 61

[113]OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF & WHO, *Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement*, WHO, 2014, p. 1. Available at: http://www.who.int/reproductivehealth/publications/gender_rights/eliminating-forced-sterilization/en/

[114]Reproductive Health and Research Department of the World Health Organization (OMS/RHR) and the Johns Hopkins Bloomberg School of Public Health/Center for Communication Programs (CCP), Knowledge for Health Project. *Family Planning: A Global Handbook for Providers*. Baltimore & Geneva: CCP & OMS, 2011., p 173. Available at: https://www.fphandbook.org/sites/default/files/hb_english_2012.pdf

[115]FIGO, *Female Contraceptive Sterilization*. Executive Board Meeting, June 2011.

may be vulnerable, such as when requesting termination of pregnancy, going into labor or in the aftermath of delivery."[116]

130. These obligations arise from an acknowledgment of the limitations that women often face in obtaining the necessary information to exercise the rights pertaining to their sexual and reproductive health, especially those women that face a higher risk to suffer human rights violations due to the intersection of various forms of discrimination based on other related grounds, such as race, ethnicity, age, sexual orientation, social status, and others.[117] As the IACHR has noted, one of the structural factors hindering women's access to sexual and reproductive health services—and therefore to information on the subject—are the gender stereotypes that persist in the health sector.

131. In this regard, the IACHR has stated that "laws, policies or practices that require women to have third party authorization in order to obtain medical care and that allow forms of coercion such as sterilization of women without their consent perpetuate stereotypes that see women as vulnerable and unable to make autonomous decisions regarding their own health."[118] These gender stereotypes come from individual and collective preconceptions about women's social roles and capacities, which are institutionalized through laws, public policies, judgments, and practices. Moreover, the persistence of gender stereotypes in health services results in women being denied certain abilities – such as the capacity to autonomously make decisions concerning their health – or in the imposition of certain burdens – such as the requirement to have third party authorization in order to obtain medical care. This all results in the unequal and discriminatory treatment of women, and constitutes an impediment to the full exercise of their reproductive autonomy.

132. Moreover, gender stereotypes are particularly detrimental to women at an increased risk to human rights violations on the basis of their race, social status, and age, among other factors. In this regard, the Commission has addressed the link between discrimination and maternal health, noting that "a disproportionally high number of poor, indigenous, and/or afro-descendent women, most of who live in rural areas, are the women who most often do not fully enjoy their human rights with respect to maternal health. This is because these groups of women suffer from the conjunction of multiple forms of discrimination limiting their access to these services. Discrimination based on sex, gender, race, ethnicity, poverty, or other factors, is in turn considered a social determinant of health"[119]. The CEDAW Committee has also recognized that the discrimination of women based on sex and gender is inextricably linked with other factors that affect their treatment, such as their race, ethnicity, religion or belief, health, status, age, class, caste, sexual orientation and gender identity.[120]

133. Finally, the Constitutional Court of Colombia has also referred to the relationship between access to information and the reproductive rights of women in Judgment T-627-12, by recognizing that "when dealing with reproductive rights, [information] becomes vital, especially in the case of women. There are two reasons for this. The first is that […] this category of rights basically grants the power to freely decide on different aspects of reproduction and, without information on the available options and ways to make use of them, it is impossible to do so. The second reason is that one of the mechanisms for perpetuating the historical discrimination experienced by women has been, and continues to be, precisely, to deny or hinder access to accurate and impartial information on this subject with the objective of denying them control over these types of decisions."[121]

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[116]FIGO, *Female Contraceptive Sterilization*. Executive Board Meeting, June 2011.

[117]IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, para. 53.

[118] IACHR, Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010, para. 38.

[119] IACHR, Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010, para. 11.

[120] United Nations, Committee on the Elimination of Discrimination against Women, Views, Communication No. 17/2008, 10 august 2011, U.N. doc. CEDAW/C/49/D/17/2008, para. 7.7. See also, United Nations, Committee on the Elimination of Discrimination Against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, U.N. Doc. CEDAW/C/GC/28, para. 18

[121]Constitutional Court of Colombia. Judgment T-627-12 of August 12, 2012.

3. Analysis of the instant case

134. It follows from the facts proven in this case that I.V. was subjected to sterilization surgery at a public hospital in Bolivia. The IACHR must determine whether that procedure was performed with the informed consent of the alleged victim, in accordance with the standards discussed *supra*.

135. The Commission must examine: (i) whether the alleged victim had complete, accessible, reliable, timely, and proactive information on the nature of the procedure, treatment options, and reasonable alternatives, including the potential risks and benefits of the proposed procedures; (ii) whether the medical staff in charge took account of the alleged victim's needs and made certain that she understood the information provided; and (iii) whether consent was provided was freely and voluntarily.

136. As previously explained, a tubal ligation is a permanent and irreversible contraceptive method. These types of procedures must have especially strict controls to ensure that the patient's consent is free and informed. This means that, at a minimum, the process of informed consent must occur prior to the surgical procedure and must be evidenced in writing.

137. The State has acknowledged that its laws on this subject require the health provider to facilitate a process of informed choice for the practice of tubal ligation and specify the content of the form that must be signed by the patients who provide their consent (*supra* paras. 65-66). Notwithstanding the above, the State argues that, because I.V.'s tubal ligation was not scheduled but was instead performed "based on complications observed during the surgery," it would have been sufficient in this case to "tell" I.V. about the decision of the medical personnel to sterilize her during the cesarean and to obtain her verbal consent at that time. In the opinion of the IACHR, even if the medical personnel had proceeded in this manner, their actions would not be consistent with a strict application of the informed consent process.

138. Indeed, the State has neither argued nor proven that the medical team provided I.V. with timely, complete, accessible, reliable, and proactive information about the nature of the procedure and treatment options. The IACHR observes there is no record that the alleged victim received complete information about the status of her health and the nature of the clinical diagnosis based on which the tubal ligation procedure was recommended. Nor is there any record that the medical personnel in charge provided her with a detailed description of the nature, risks, and consequences of the procedure, making it very clear that it entailed the permanent loss of reproductive functions. Furthermore, there is no record of the patient having been counseled on the alternative treatments to protect her life in the event of a future pregnancy, such as the use of contraceptive methods with non-permanent effects. In any case, it is unlikely that that the medical personnel were able to provide the necessary information in a complete, accessible, and reliable manner during the time that could have reasonably transpired between the birth and the performance of the sterilization procedure.

139. The IACHR additionally observes that I.V. has said that she did not receive any type of information about the procedure. Furthermore, none of the medical team's statements makes reference to an informed consent process. The IACHR observes that the case notes from the surgery state only that the patient was "told" of the decision to perform the tubal ligation in view of the "complications found" during the operation and for purposes of protecting her life in the event of a future pregnancy.[122]

140. Additionally, the time and conditions under which the decision was apparently made to perform this procedure, are not, in principle, appropriate in order to ensure that the patient was able to sufficiently comprehend the procedure that was going to be performed and its consequences, and to truly give her consent freely. On this point, the Commission observes that I.V. arrived at the hospital during her third pregnancy with birth complications due to which she underwent a cesarean. At the time of the tubal ligation procedure, her baby had just been born and I.V. was under epidural anesthesia and reasonably in a

[122]See IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, para.

state of surgical stress.[123] In the opinion of the IACHR, it is inexcusable for a medical team to suggest performing a procedure of this nature under such circumstances. As it has been affirmed by the International Federation of Gynecology and Obstetrics (FIGO), consent to sterilization should not be requested "during labor or in the aftermath of delivery."[124]

141. Although the Commission has acknowledged that there may be exceptional situations under which informed consent would not apply, such as those surrounding certain clinical emergencies,[125] it bears repeating that WHO and FIGO have stated that sterilization for the prevention of a future pregnancy is not an emergency procedure, and cannot be justified on grounds of medical emergency, which would permit departure from the general principle of informed consent.[126] Even if a future pregnancy might endanger a person's life or health, there are alternative contraceptive 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.[127]

142. It has been recognized that, in view of the fact that tubal ligation is not an emergency procedure, "the needs of each woman must be accommodated, including being given the time and support she needs, while not under pressure, in pain, or dependent on medical care, to consider the explanation she has received of what permanent sterilization entails and to make her choice known."[128]

143. As it has been proven, there was no medical emergency in the instant case that required the performance of a tubal ligation to save I.V.'s life during her surgery. On the contrary, it was an elective procedure that could have been done at any other time. Therefore, nothing justifies the fact that the patient did not receive timely and accessible information about contraceptive methods—that is, with sufficient anticipation and in a condition in which she could better exercise her autonomy. The medical personnel never asserted that the procedure was necessary to protect the patient's life at that time. As such, one of the audits conducted by the Medical Audit Decisions Committee (*supra* para. 72) concluded that "[…] there is no adequate justification for such surgical action, given that the existence of multiple adhesions does not constitute a risk to the patient's life."

144. This leads to the conclusion that even if I.V. was given information verbally, in the terms indicated by the State, that process failed to meet the requirements and conditions necessary for I.V. to be able to provide her informed consent. In addition, there was no current or immediate risk to I.V.'s life that would provide an exception to the granting of express consent.

145. The Commission underscores that the provision of information is part of the obligation of the States to provide the appropriate health services that women require because of their sex, biology, and reproductive capacity. In that context, the failure to ensure informed consent replicates the existing inequalities between men and women and the gender stereotypes that adversely affect women's freedom and autonomy to make reasoned decisions about their health and life plans. The State has an immediate obligation to address these inequalities by preventing all non-consensual sterilization like the case examined herein.

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[123]See IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011.

[124]FIGO, *Female Contraceptive Sterilization*. Executive Board Meeting, June 2011.

[125]IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, para. 74.

[126]OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF & WHO, *Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement*, WHO, 2014, p. 9. Available at: http://www.who.int/reproductivehealth/publications/gender_rights/eliminating-forced-sterilization/en/

[127]OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF & WHO, *Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement*, WHO, 2014, p. 9. Available at: http://www.who.int/reproductivehealth/publications/gender_rights/eliminating-forced-sterilization/en/

[128]FIGO, *Female Contraceptive Sterilization*. Executive Board Meeting, June 2011.

146. In view of the above considerations, the Commission observes that in the instant case the standard of informed consent necessary to fully guarantee I.V.'s right to access to information on reproductive health was not met. Accordingly, the IACHR concludes that the State of Bolivia violated I.V.'s right to access to information, in contravention of Article 13.1 of the American Convention, in relation to Article 1.1 thereof.

D. The right to privacy (article 11.2[129] of the American Convention) and right of the family (article 17.2[130] of the American Convention), in relation to article 1.1 of the American Convention

1. The sterilization without consent and the right to a private and family life and to form a family

147. As the Commission has previously maintained, a fundamental objective of Article 11 of the American Convention is to protect everyone from arbitrary actions by State authorities that interfere with private life.[131] Accordingly, the Inter-American Commission has maintained, "the sphere of privacy is characterized by being exempt and immune from abuse and arbitrary invasion by third parties or public authorities."[132]

148. The inter-American system has asserted that the decision to have biological children pertains to the most intimate sphere of private and family life and that the way such a decision is reached is part of the autonomy and identity of a person, both as an individual and as a partner, which is why it is protected under Article 11 of the American Convention.[133] Consequently, it constitutes a sphere of intimacy exempt from abusive or arbitrary interference by the State or its agents.

149. The right to private life is, in turn, related to women's reproductive autonomy, which includes 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 that right.[134] It extends also to their access to reproductive health services and to having free choice of and access to methods to regulate fertility, that are safe, effective, easily accessible and acceptable.[135] This implies that the right to private life

[129] Article 11.2 of the Convention stipulates: "No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence or of unlawful attacks on his honor or reputation".

[130] Article 17.2 of the Convention stipulates: "The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention".

[131] IACHR, Report No. 85/10, Case No. 12.361, Gretel Artavia Murillo et al. ("In Vitro Fertilization"),Costa Rica, Merits, July 14, 2010, paragraph 70; and I/A Court H.R., Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica , Preliminary objections, merits, reparations and costs), Judgment of November 28, 2012, Series C No. 257, paragraph 272.

[132] I/A Court H.R., Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica , Preliminary objections, merits, reparations and costs), Judgment of November 28, 2012, Series C No. 257, paragraph 142; I/A Court H.R., Case of Escher et al v. Brazil, Preliminary objections, merits, reparations and costs), Judgment of July 6, 2009, Series C No. 200, paragraph 113; I/A Court H.R., Case of the Ituango Massacres v. Colombia, Preliminary objection, merits, reparations and costs, Judgment of July 0, 2006, Series C No. 148, paragraph 194; I/A Court H.R., Case of Escué Zapata v. Colombia. Merits, reparations and costs, Judgment of July 4, 2007, Series C No. 165, paragraph 95; and I/A Court H.R., Case of Tristán Donoso v. Panama, Preliminary objection, merits, reparations and costs, Judgment of January 27, 2009, Series C No. 193, paragraph 55.

[133] IACHR, Report No. 85/10, Case No. 12.361, Gretel Artavia Murillo et al. ("In Vitro Fertilization"),Costa Rica, Merits, July 14, 2010, paragraph 76; and I/A Court H.R., Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica , Preliminary objections, merits, reparations and costs), Judgment of November 28, 2012, Series C No. 257, paragraph 142.

[134] I/A Court H.R., Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary objections, merits, reparations and costs, Judgment of November 28, 2012, Series C No. 257, paragraph 146; CEDAW, Artícle 16(e).

[135] I/A Court H.R., Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary objections, merits, reparations and costs, Judgment of November 28, 2012, Series C No. 257, paragraph 149.

may be violated when the means by which a woman can exercise the right to control her fertility are restricted.[136]

150. For its part, the right to found a family, recognized in Article 17.2 of the American Convention, is amply established in a number of international human rights instruments.[137] Both the Court and the Commission have stressed the dual aspects of the right to a family established in Article 17 of the American Convention, which entails for the State both a positive obligation to protect and a "negative" obligation to refrain from arbitrary or abusive interferences in this sphere.[138]

151. The Court has established that, given the importance of the right to protect the family, the State is obliged to favor the development and strengthening of the family nucleus.[139] In its analytical framework, the Inter-American Court has also pointed out that the possibility of procreating forms part of the right to found a family.[140]

152. The instant case refers to the performance of a sterilization procedure without the informed consent of the woman concerned. The Commission notes that, based on the proven facts, said sterilization caused the permanent loss of I.V.'s reproductive capacity.[141] Consequently, said procedure impaired I.V.'s right to decide freely and autonomously whether or not to become a mother, a decision protected by the right to form a family, recognized in Article 17.2. The exercise of this right, in turn, forms part of an intimate sphere in people's private lives, which is protected by Article 11.2 of the Convention.

153. The Commission notes that, in light of the background provided by the State and the petitioner, it has been established that when the sterilization referred to in this case was performed, there was no risk at all to the life or health of I.V. A risk to I.V.'s life would only be posed in the event of another, future pregnancy.[142] That being so, the surgical procedure was not necessary because there was no emergency situation[143] such as would exempt the State from its obligation to obtain I.V.'s informed consent in order to perform the sterilization or any other additional procedure.

154. In addition, it was not a proportionate measure to safeguard I.V.'s future life because, there being no immediate risk, the goal of safeguarding her future life could have been met by taking measures that were less restrictive of her rights, such as counseling and medical prescription of contraceptive methods with non-permanent effects to prevent another pregnancy. Consequently, the Commission considers that performing the sterilization without I.V.'s informed consent was an arbitrary act.

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[136] I/A Court H.R., Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary objections, merits, reparations and costs, Judgment of November 28, 2012, Series C No. 257, paragraph 146.

[137] The Universal Declaration of Human Rights establishes the right to protection of the family in Article 16.1 and 16.3, while Article 23.2 of the **International** Covenant on Civil and Political Rights recognizes the right of men and women of marriageable age to marry and to found a family. Likewise, Article 16.1 of the CEDAW establishes the obligation of States Parties to ensure, on a basis of equality of men and women, the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.

[138] I/A Court H.R., Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2008. Series C No. 192, paragraph 55; and Case of Escher et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 6, 2009. Series C No. 200, paragraph 113; IACHR, Report on the Merits No. 64/11, Case 12.573, Merits, Marino López et al. (Operation Genesis), Colombia, March 31, 2011, paragraph 316.

[139] I/A Court H.R. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraph 62.

[140] I/A Court H.R., Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica , Preliminary objections, merits, reparations and costs, Judgment of November 28, 2012, Series C No. 257, paragraph 145.

[141] See supra, paragraphs 90 to 94 of the proven facts.

[142] See supra, paragraphs 63, 64, 70 and 71 of the proven facts.

[143] See supra, paragraph 141.

2. The sterilization without consent and gender-based discrimination

155. In the instant case, I.V. was the victim of a sterilization without her consent in a state hospital. As a result of that procedure, she permanently lost her ability to procreate and suffered psychological after-effects due to the impossibility of her becoming pregnant again. Added to that is the humiliation she was subjected to as the victim of a surgical procedure on her own body for which her opinion, interests, and needs were not taken into consideration, thereby violating her reproductive autonomy.

156. An international consensus exists that non-consensual sterilization constitutes a form of violence against women in which, as indicated in earlier sections above, a series of human rights are infringed. The Convention of Belém do Pará, as will be shown in the following section, recognizes that all women's right to a life free from violence includes the right to be free from all forms of discrimination. In the case of Miguel Castro Castro Prison v. Perú, the Inter-American Court, citing the Committee on the Elimination of All Forms of Discrimination against Women, 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, coercion and other deprivations of liberty."[144]

157. Accordingly, regarding the obligation of nondiscrimination, Article 1(1) of the American Convention provides that:

> The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

158. The Inter-American Court has held that "States must combat discriminatory practices at all levels, particularly in public bodies and, finally, must adopt the affirmative measures needed to ensure the effective right to equal protection for all individuals."[145] This includes the duty of the States not only to abstain from producing discriminatory legislation, standards and policies affecting women's equality, but also that such discriminatory standards, policies, and practices, as well, must be eliminated. Thus the Court has stated that: "The States are obliged to take affirmative measures to reverse or change discriminatory situations that exist in their societies to the detriment of a specific group of persons. This implies the special obligations to protect that the State must exercise with regard to acts and practices of third parties who, with its tolerance or acquiescence, create, maintain or promote discriminatory situations."[146]

159. Particularly in the area of maternal health, the IACHR has considered that the States have a duty to adopt affirmative measures to guarantee the accessibility of maternal health services and their availability, acceptability, and quality, as part of their obligations deriving from the principles of equality and non-discrimination.[147] For its part, the Inter-American Court of Human Rights has affirmed that it is necessary to consider the scope of the health rights of women from the perspective of women's needs and

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[144] I/A Court H.R., Case of the Miguel Castro-Castro Prison v. Peru, Judgment of November 25, 2006 (Merits, Reparations, and Costs), Series C No. 160, paragraph 303. Along those same lines, see: I/A Court H.R., Case of González et al. ("Cotton Field") v. Mexico, Preliminary objection, merits, reparations and costs, Judgment of November 16, 2009, Series C No. 205, paragraph 397.

[145] See I/A Court H.R., Case of the Girls Yean and Bosico v. Dominican Republic. Judgment of September 8, 2005. Series C No. 130, paragraph 141.

[146] I/A Court H.R., Case of Atala Riffo and Girls. v. Chile, Merits, reparations and costs, Judgment of February 24, 2012, Series C No. 239, paragraph 80

[147] IACHR, Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010, paragraph 76

interests "in view of the distinctive features and factors that differentiate women from men, namely: (a) biological factors [...], such as [...] their reproductive function."[148]

160. Now, the Commission has recognized that certain groups of women, as in the case of I.V., an immigrant woman of modest means, suffer discrimination throughout their lives based on one or more factors in addition to their sex, which increases their exposure to acts of violence and other violations of their human rights.[149] Likewise, the Special Rapporteur on violence against women, its causes and consequences, has established that "Discrimination based on race, ethnicity, national origin, ability, socio-economic class, sexual orientation, gender identity, religion, culture, tradition and other realities often intensifies acts of violence against women. The acknowledgement of structural aspects and factors of discrimination is necessary for achieving non-discrimination and equality."[150]

161. The IACHR considers that this case is an example of the multiple forms of discrimination that intersect to hinder the enjoyment and exercise of human rights by certain groups of women on the basis of their sex, immigrant status, and economic position. In this light, the Commission considers 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. In this regard, the CEDAW Committee has addressed the situation of women migrant workers with concern, stating that they "often suffer from inequalities that threaten their health. They may be unable to access health services, including reproductive health services, because insurance or national health schemes are not available to them, or they may have to pay unaffordable fees. As women have health needs different from those of men, this aspect requires special attention"[151] The Commission has also found that "[m]igrants are generally in a vulnerable situation as subjects of human rights; they are in an individual situation of absence or difference of power with regard to non-migrants (nationals or residents). [...] This leads to the establishment of differences in their access to the public resources administered by the State"[152].

162. Furthermore, the Commission considers that in the instant case there are signs that the medical team that performed the surgery on I.V. was influenced by gender stereotypes on the inability of women to make autonomous decisions with respect to their own reproduction. The medical decision to practice sterilization without I.V.'s informed consent reflects a notion that medical personnel are empowered to take better decisions than the woman concerned regarding control over reproduction. Accordingly, the Commission considers that the presence of these kinds of gender stereotypes in the actions of health personnel has a different impact on women than on men and leads to the former being discriminated against in health services and especially in the delivery of sexual and reproductive health care services. On this, the Commission has previously highlighted that ongoing gender stereotypes in the health sector act as an obstacle to women's access to maternal health services,[153] which also amounts to discrimination in women's access to health.

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[148] I/A Court H.R., Case of Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary objections, merits, reparations and costs), Judgment of November 28, 2012, Series C No. 257, paragraph 300.

[149] IACHR Report No. 28/07, Cases 12.496 - 12.498 , Claudia Ivette González et al. (Mexico), March 9,2007, paragraphs 251-252; Access to Justice for Women Victims of Violence in the Americas, OEA/Ser.L/V/II., Doc. 68, January 20, 2007, paragraphs 195-197; IACHR, Violence and Discrimination against Women in the Armed Conflict in Colombia, OEA/Ser/L/V/II. 124/Doc.67, October 18, 2006, paragraphs 102-106; IACHR, Report on The Right of Women in Haiti to be Free from Violence and Discrimination, OEA/Ser.L/V/II, Doc. 64, March 10, 2009, paragraph 90. See also Article 9 of the Convention of Belém do Pará.

[150] United Nations. Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, May 2, 2011. paragraph 67.

[151] United Nations, Committee on the Elimination of Discrimination against Women, General Recommendation No. 26 on women migrant workers, december 5, 2008, U.N. Doc. CEDAW/C/2009/WP.1/R, para. 17.

[152] 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, para. 112.

[153] IACHR, Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010, paragraph 38.

163. Consequently, the IACHR considers that the absence of informed consent in this case led to I.V. not receiving the appropriate maternal health services needed in relation to her reproductive capacity, thereby curtailing her free and autonomous choice in this area peculiar to women. Consequently, I.V.'s non-consensual sterilization constituted a form of discrimination against her guaranteed right to humane treatment under Article 5.1 of the American Convention, as well her right to a private and family life and to found a family under Articles 11 and 17 of the American Convention.

164. The Commission concludes that, in performing a surgical sterilization on I.V. without her consent, the State of Bolivia violated her rights to private and family life and her right to found a family, contravening Articles 11.2, and 17.2 of the American Convention, in conjunction with the obligations to respect rights and ensure their free exercise without any discrimination set forth in Article 1.1 of that same instrument.

E. Right to a fair trial and right to judicial protection (Articles 8.1[154] and 25.1[155] of the American Convention, in conjunction with Article 1.1 of the American Convention)

165. The Inter-American Court has held that any person whose human rights have been violated "has a right to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention."[156]

166. The protection of these rights is reinforced by the general obligation to respect and ensure human rights imposed by Article 1.1 of the American Convention. In this regard, the Inter-American Court has held that:

> Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, inter alia, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered. ... Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society." That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees ... for the determination of his rights, whatever their nature.[157]

167. In the instant case, the Commission notes that following the non-consensual sterilization performed on I.V., administrative proceedings were instituted against the two physicians who performed the procedure, which ended with the dismissal of proceedings against both of them.[158] Criminal proceedings were also initiated against the physician responsible for the surgery on account of the crime of extraordinarily serious injuries to I.V. Those proceedings ended with a statement that the right to bring

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[154] Article 8.1 of the Convention stipulates: "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

[155] Article 25.1 of the Convention stipulates: "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

[156] I/A Court H.R., Barrios Altos Case v. Peru. Judgment of March 14, 2001, Series C, Nº 75, paragraph 48.

[157] I/A Court H.R., Loayza Tamayo Case v. Peru. Reparations. Judgment of November 27, 1998. Series C No. 42, paragraph 169; I/A Court H.R., Velásquez Rodríguez Case v. Honduras. Preliminary Exceptions,. Judgment of June 26, 1987. Series C No. 1, paragraph 91; I/A Court H.R., Fairén Garbi and Solís Corrales Case v. Honduras. Preliminary Exceptions. Judgment of June 26, 1987. Series C No. 2, paragraph 90; I/A Court H.R., Godínez Cruz Case v. Honduras. Preliminary Exceptions. Judgment of June 26, 1987. Series C No. 3, paragraph 93.

[158] See supra, paragraph 74 of the proven facts.

criminal action had expired and with the archiving of the case due to procedural delays attributable to the bodies responsible for administration of justice.[159]

168. As regards the criminal proceedings, the Commission notes that they went on for four years without a final judgment being handed down on the merits of the case.[160] The Commission likewise underscores that fact that during the proceedings two judgments were handed down[161] that explicitly recognized that during the trial process various procedural errors and delays had been made that can be attributed to the organs responsible for administering justice, as a result of which the right to bring criminal action was declared to have lapsed and the case was archived. Here, the Commission observes that the first of the aforementioned judgments established that the criminal proceedings were delayed due to the ineffectiveness of the officials responsible for the notifications needed to constitute the courts and because jurisdictional organs proceeded to suspend hearings and pass the case from one jurisdiction to another for trivial reasons. The second judgment, for its part, established that the delays in the proceedings were due to the court that heard the case, because it twice had to annul the proceedings thus far due to procedural deficiencies.

169. In light of the above, the Commission considers that the way the Judiciary acted was ineffective, because the procedural defects and unwarranted delays ascertained during the criminal proceedings, as a result of which the right to bring criminal action was declared to have lapsed, resulted in a denial of justice for I.V., depriving her of her right to judicial determination of liabilities derived from the human rights violation to which she was subjected and to reparation for the harm done. Accordingly, the Commission recalls that the Inter-American Court has held that:

> [t]he right to effective judicial protection requires judges to guide the proceedings in a way that avoids undue delays and obstructions resulting in impunity, thus thwarting the due judicial protection of human rights, and that judges, in their capacity to guide the proceedings, have the obligation to manage and prosecute judicial proceedings in a way that does not sacrifice justice and due process of law to formalism and impunity; otherwise, this leads to the violation of the State's international obligation of prevention and to protect human rights, and violates the right of the victim and his or her next of kin to know the truth of what happened, that those responsible are identified and punished, and to obtain the corresponding reparations.[162]

170. Moreover, in cases in which human rights violations have been committed by government officials, the Commission has stated that the States are also obliged to investigate the systemic flaws that favored such violations, with a view to preventing their repetition.[163] In addition, in both the inter-American and United Nations systems, it has been acknowledged that States must take administrative, disciplinary or criminal action to bring government officials to account when they break the law.[164]

171. In the instant case, it 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. For that reason, the obligations referred to in the foregoing paragraph

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[159] See supra, paragraphs 88 and 89 of the proven facts.

[160] See supra, paragraphs 75 - 89 of the proven facts.

[161] See supra, paragraphs 73 and 74 of the proven facts.

[162] I/A Court H.R., Suárez Peralta v. Ecuador, Preliminary objections, merits, reparations and costs, Judgment of May 21, 2013, Series C No. 261, paragraph 93

[163] IACHR, Report No. 80/11, Case 12.626, Jessica Lenahan (Gonzales) et al. (United States), Merits, July 21, 2011, paragraph 178.

[164] IACHR, Report No. 80/11, Case 12.626, Jessica Lenahan (Gonzales) et al. (United States), Merits, July 21, 2011, paragraph 178; Access to justice for Women Victims of Violence in the Americas , OEA/Ser.L/V/II., Doc. 68, January 20, 2007, paragraph 77; United Nations, Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women, resolution approved by the United Nations General Assembly, A/RES/52/86, February 2, 1998, Annex, Section II

imply that the State should have investigated the workings of the public health system to determine the underlying causes that made it possible for a surgical sterilization to be practiced in a State hospital without I.V.'s informed consent and should have taken steps to ensure that nothing like this happens again. Likewise, the State should have investigated and brought to account the physicians who contravened house rules regulating the obtaining of informed consent. A timely and exhaustive investigation of this kind would have constituted for I.V. a form of reparation with a chance of transforming the context of discrimination against women -- as well as gender stereotypes -- that facilitated I.V. sterilization without her consent.[165]

172. At the same time, the IACHR reiterates that the States have a duty to guarantee appropriate access to justice for women when any of their human rights are violated, including those relating to their sexual and reproductive health.[166] There are two dimensions associated with this duty. The first is criminal sanctions when acts occur that may constitute a form of violence against women. This aspect will be discussed later in this report. A second dimension has to do with the need to address the causes and systemic flaws that gave rise to the human rights violation under review. The impunity associated with violations of women's rights -- including their sexual and reproductive rights -- constitutes a form of discrimination against them and undermines the obligation not to discriminate included in Article 1.1 of the American Convention.

173. Consequently, in the instant case, the Commission notes that the denial of justice for I.V. derived from procedural deficiencies during the criminal trial proceedings, and the fact that the violations of her human rights, including her reproductive rights, went unpunished, constitute a form of discrimination against the exercise of her rights to judicial guarantees and judicial protection.

174. In light of the above, the Commission concludes that the State, through acts carried out by its judiciary and its health system, violated I.V.'s right to access to justice and her right to due guarantees and effective judicial protection, in contravention of Articles 8.1 and 25.1 of the American Convention, in conjunction with the obligation not to discriminate established in Article 1.1 of that same instrument.

F. Article 7 of the Convention of Belém do Pará

175. The Convention of Belém do Pará, the most ratified instrument in the inter-American human rights system,[167] asserts that the obligation to act with due diligence acquires a special connotation for State in cases of violence against women. This Convention reflects a concern shared by the entire Hemisphere regarding the seriousness of the problem of violence against women, its links to the discrimination that women have historically suffered from, and the need to adopt comprehensive strategies to prevent, punish, and eliminate it. The Convention of Belém do Pará also recognizes that the critical link between women's access to appropriate judicial protections when they are victims of acts of violence and elimination of the problem of the discrimination that perpetuates it.[168]

176. Article 1 of the Convention of Belém do Pará, defines violence against women as follows: "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."

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[165] I/A Court H.R., Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, paragraph 450.

[166] Access to justice for Women Victims of Violence in the Americas, OEA/Ser.L/V/II., Doc. Doc. 68, January 20, 2007, paragraphs 3 and 4; Access to Maternal Health Care from a Human Rights Perspective, OEA/Ser. L/V/II. Doc. 69; June 7, 2010, Recommendation 12.

[167] The Convention of Belém do Pará has been ratified by 32 OAS member states.

[168] I/A Court H.R., Case of González et al. ("Cotton Field") v. Mexico, Preliminary objection, merits, reparations and costs, Judgment of November 16, 2009, Series C No. 205, paragraph 400; IACHR, Report No.51/13, Case 12.551, Paloma Angélica Escobar Ledezma et al, Mexico, Merits, July 12, 2013, paragraph 121.

177. Article 7 of the Convention of Belém do Pará establishes a set of complementary and immediate obligations of the State to achieve effective prevention, investigation, punishment and reparation in cases of violence against women that include:

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.

178. The IACHR has established, as one of the most important principles, that the obligation of States in cases of violence against women includes the duties to investigate, prosecute, and convict those responsible, along with the duty to "prevent these degrading practices."[169] It has also asserted that judicial ineffectiveness in cases of violence against women creates a climate of impunity that is conducive to violence, "since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts." [170]

179. The foregoing paragraphs have established that I.V. was subjected to a surgical sterilization procedure without her informed consent, which violated her rights to access to information, humane treatment, and a private and family life. The IACHR considers that the non-consensual sterilization which is the subject of this case also violated I.V.'s right to live free from all forms of violence, thereby contravening Article 7 of the Convention of Belém do Pará.[171]

180. Accordingly, the IACHR stresses that performing a non-consensual sterilization causes the affected women pain and suffering and constitutes a form of violence, with ongoing physical and psychological consequences for those women's reproductive health. This has been expressly recognized in the legislation of some Latin American countries such as Argentina[172] and Venezuela.[173] The Commission has

[169] IACHR, Report on the Merits No. 54/01, Maria Da Penha Fernandes (Brazil), April 16, 2001, paragraph 56.

[170] IACHR, Report on the Merits No. 54/01, Maria Da Penha Fernandes (Brazil), April 16, 2001, paragraph 56.

[171] IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, paragraph 62

[172] Argentina, Law No. 26485 *on comprehensive protection to prevent, punish and eradicate violence against women in areas where they develop their interpersonal relations*, enacted on April 1, 2009. Article 6: Modalities. For the purposes of this Act, modalities are the ways in which different types of violence against women manifest in diverse areas, the following being especially included: [...] d) Violence against reproductive freedom: that which violates the right of women to decide freely and responsibly on the number of pregnancies or the time between births [...]. e) Obstetric violence: that which is perpetrated by health personnel on the body and reproductive processes of women, and is expressed in a dehumanized treatment, the abuse of medicalization and the pathologizing of natural processes [...]".

also had the opportunity to receive information regarding these matters in the context of thematic hearings.[174] In this case, the sterilization of I.V. has resulted in her being permanently prevented from exercising her reproductive autonomy to decide freely and responsibly on the number and spacing of her children, using the methods available to facilitate that right.[175]

181. At the same time, the Commission reiterates the crucial link between the problem of violence against women and their right to live free from all forms of discrimination.[176] Along those same lines, the CEDAW Committee has stated that the definition of discrimination in Article 1 of the Convention "includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence."[177]

182. In light of the link between violence and discrimination, the Commission notes that the lack of punishment of an act of violence against women may also constitute a form of discrimination. On that principle, the Commission and the Inter-American Court have held that the lack of due diligence that leads to impunity "reproduces the violence that it claims to be trying to counter, without prejudice to the fact that it alone constitutes discrimination regarding access to justice."[178]

183. In light of the above, the Commission considers that, in the instant case, given that non-consensual sterilization is a form of violence against women, the State should have acted with due diligence to investigate and punish those responsible for it. Nevertheless, it transpires from the facts of the case that no punishment was ordered against those responsible for performing sterilization on I.V. without her consent. Consequently, the Commission is of the opinion that the lack of punishment in this case constitutes a violation of the obligations established in Article 7. b of the Convention of Belém do Pará and, at the same time, a form of discrimination against I.V.

184. Accordingly, the Court considers that the numerous delays and instances of negligence attributable to the Judiciary during the criminal proceedings regarding the sterilization performed on I.V., which resulted in the right to bring criminal action elapsing, violated the obligations established in paragraphs (f) and (g) of the aforementioned Article 7 of the Convention of Belém do Pará. It also concludes that from the presentations of the parties it does not transpire that any proceedings have been initiated to establish the possible liability of other civil servants in respect of the facts of this case, such as those responsible for establishing the protocols relating to the granting of informed consent in the hospital. That would contravene the general obligation to adopt all necessary measures, immediately and without procrastination, to prevent, punish and eliminate violence against women pursuant to Article 7 of the Convention of Belém do Pará.

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[173] Venezuela, Organic Law on the Right of Women to a Life Free of Violence, published on April 23, 2007. Article 15: "The following are considered forms of gender-based violence against women: [...] 14. Forced sterilization: to practice or knowingly cause - without providing adequate information, without her voluntary informed consent, and without justification- a medical or surgical treatment or other act that results in the sterilization or deprivation of a woman's biological and reproductive capacities."

[174] For example, this issue was addressed in a thematic hearing about "maternal health and obstetric violence reports in Mexico", which took place on March 27, 2014, during the Commission's 150th Period of Sessions.

[175] IACHR, Access to Maternal Health Services from a Human Rights Perspective, June 7, 2010, paragraph 75; and IACHR, Access to Information on Reproductive Health from a Human Rights Perspective, November 22, 2011, paragraph 66

[176] IACHR, Report No.51/13, Case 12.551, Paloma Angélica Escobar Ledezma et al, Mexico, Merits, July 12, 2013, paragraph 117.

[177] Committee on the Elimination of Discrimination against Women, General Recommendation No. 19; Violence against Women, 1992, paragraph 6.

[178] IACHR, Report No.51/13, Case 12.551, Paloma Angélica Escobar Ledezma et al, Mexico, Merits, July 12, 2013, paragraph 121; I/A Court H.R., Case of González et al. ("Cotton Field") v. Mexico, Preliminary objection, merits, reparations and costs, Judgment of November 16, 2009, Series C No. 205, paragraph 400.

185. In light of the above, the Commission concludes that in this matter the State violated the duty to refrain from any practice or act of violence against women, thereby contravening the obligations established in Article 7 of the Convention of Belém do Pará, and failed to abide by its duty to act with the necessary due diligence to punish these kinds of acts.

VI. CONCLUSIONS

186. In light of the considerations of fact and law set forth in this report, the Inter-American Commission concludes that the State of Bolivia violated, to the detriment of I.V., the rights established in Articles 5.1, 8.1, 11.2, 13.1, 17.2 and 25.1 of the American Convention, in conjunction with the State obligations established in Article 1.1 of that same instrument. The Commission likewise concludes that the State violated Article 7. a, b, c, f, and g of the Convention of Belém do Pará to the detriment of I.V.

VII. RECOMMENDATIONS

187. Based on the analysis and conclusions of the instant case, the Inter-American Commission on Human Rights recommends that the State of Bolivia:

1. Offer a comprehensive set of reparation to I.V. for the human rights violations established in this report, taking her prospects and needs into consideration, including compensation for the material harm and personal/emotional distress she suffered.

2. Provide I.V. with high quality medical care, tailored to her needs and to appropriate treatment of her ills.

3. Investigate the facts surrounding the sterilization of I.V. without her consent and establish appropriate liabilities and punishments.

4. Take all necessary steps to ensure that similar acts are not committed again and, in particular, review policies and practices applied in all hospitals with respect to obtaining the informed consent of patients, both female and male.

5. Adopt legislation, public policies, programs, and directives to ensure respect for the right of all individuals to be informed and counseled on health matters and not to be subjected to procedures or treatments without their informed consent, wherever applicable. Such measures should take special consideration of the particular needs of persons who are in a vulnerable situation due to the intersection of factors such as their sex, race, economic position, or condition as migrant, among others.

6. Investigate the shortcomings in the practices of the Judiciary and its auxiliary organs that permit excessive delays in judicial procedures and adopt such measures as are needed to guarantee effective access to justice through due process and the expeditious and effective administration of justice.