

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF I.V.\* v. BOLIVIA**

**JUDGMENT OF NOVEMBER 30, 2016**

***(Preliminary objections, merits, reparations and costs)***

In the case of *I.V.*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") composed of the following judges:

Roberto F. Caldas, President  
Eduardo Ferrer Mac-Gregor Poisot, Vice President  
Eduardo Vio Grossi, Judge  
Humberto Antonio Sierra Porto, Judge  
Elizabeth Odio Benito, Judge  
Eugenio Raúl Zaffaroni, Judge, and  
L. Patricio Pazmiño Freire, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and  
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or "the Court's Rules of Procedure"), delivers this judgment, structured as follows:

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\* The name of the presumed victim has been kept confidential following an explicit request, and the initials "I.V." are used to refer to her.

## TABLE OF CONTENTS

<b>I INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE</b> .....	4
<b>II PROCEEDINGS BEFORE THE COURT</b> .....	5
<b>III JURISDICTION</b> .....	8
<b>IV PRELIMINARY OBJECTIONS</b> .....	8
<b>A. Objection concerning the alleged lack of jurisdiction <i>ratione loci</i></b> .....	8
A.1 Arguments of the State and observations of the Commission and the representative.....	8
A.2 Considerations of the Court.....	9
<b>B. Objection concerning the alleged failure to exhaust domestic remedies</b> .....	9
B.1 Arguments of the State and observations of the Commission and the representative.....	9
B.2 Considerations of the Court.....	12
<b>V PRELIMINARY CONSIDERATIONS</b> .....	15
<b>A. Determination of the presumed victims</b> .....	15
<b>B. The factual framework of the case</b> .....	16
<b>C. Other human rights violations alleged by the representative</b> .....	16
<b>VI EVIDENCE</b> .....	17
<b>A. Documentary, testimonial and expert evidence</b> .....	17
<b>B. Admission of the evidence</b> .....	17
B.1 Admission of the documentary evidence .....	17
B.2 Admission of the statements and of the expert opinions .....	19
<b>C. Assessment of the evidence</b> .....	19
<b>VII FACTS</b> .....	19
<b>A. Background information</b> .....	19
<b>B. The caesarean section and the tubal ligation surgical procedure</b> .....	20
<b>C. Medical audits and report of the Ethics Tribunal of the La Paz Departmental Medical Association</b> .....	22
C.1 First medical audit .....	23
C.2 Second medical audit .....	23
C.3 Third medical audit .....	23
C.4 Report of the Ethics Tribunal of the La Paz Departmental Medical Association .....	24
<b>D. Administrative proceeding</b> .....	26
<b>E. Criminal proceedings</b> .....	27
E.1 First oral proceeding .....	27
E.2 Second oral proceeding .....	28
E.3 Third oral proceeding .....	31
<b>F. Physical and psychological effects of the surgical procedure</b> .....	33
<b>VIII MERITS</b> .....	34
<b>VIII-1 RIGHTS TO PERSONAL INTEGRITY, TO PERSONAL LIBERTY, TO DIGNITY, TO PRIVACY AND FAMILY LIFE, TO ACCESS TO INFORMATION, TO RAISE A FAMILY, AND TO RECOGNITION OF JURIDICAL PERSONALITY, IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE RIGHTS WITHOUT DISCRIMINATION, AND ALSO ARTICLE 7 OF THE CONVENTION OF BELÉM DO PARÁ</b> .....	35
<b>A. Arguments of the parties and of the Commission</b> .....	35
A.1 Arguments on the right to personal integrity (Article 5(1) of the American Convention) .....	35
A.2 Arguments on the right of access to information (Article 13(1) of the American Convention) .....	36
A.2.a Access to information and informed consent .....	36
A.2.b The right to know the truth.....	38
A.3 Arguments on the rights to dignity, to private and family life, and to raise a family (Articles 11(1), 11(2) and 17(2) of the American Convention).....	38
A.4 Arguments on the right to recognition of juridical personality (Article 3 of the American Convention) .....	39
A.5 Arguments on the prohibition of discrimination in relation to the alleged non-consensual sterilization (Article 1(1) of the American Convention in relation to Articles 5(1), 11(1), 11(2), 13(1) and 17(2) of this instrument) .....	39
A.6 Arguments on the right of women to a life free from violence (Article 7 of the Convention of Belém do Pará) .....	41
<b>B. Considerations of the Court</b> .....	42
B.1 Scope of the rights established in the American Convention in this case .....	42
B.2 Consent in international law, comparative law and jurisprudence.....	48
B.2.a The elements of consent in international law and jurisprudence.....	50
B.2.b The elements of consent derived from domestic legal systems .....	61
B.2.c Conclusion.....	63
B.3 Determination of the scope of the State's international responsibility .....	63
B.3.a Duty of prevention with regard to the rights recognized in Articles 5, 7, 11, 13 and 17 of the American Convention and 7(b) of the Convention of Belém do Pará .....	65
B.3.b Obligation to respect the rights recognized in Articles 5, 7, 11, 13 and 17 of the American Convention and 7(a) of the Convention of Belém do Pará.....	69
B.3.c Duty not to discriminate when respecting and ensuring the rights recognized in Articles 5, 7, 11, 13 and 17 of the American Convention .....	75

B.3.d	<i>The right of women to a life free from violence (Article 7(a) of the Convention of Belém do Pará)</i> .....	78
C.	<b>Conclusion</b> .....	80
	<b>VIII-2 RIGHT TO PERSONAL INTEGRITY AND THE PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT, IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE RIGHTS</b> .....	80
A.	<b>Arguments of the parties</b> .....	80
B.	<b>Considerations of the Court</b> .....	82
	<b>VIII-3 RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION, IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE RIGHTS WITHOUT DISCRIMINATION AND ARTICLE 7 OF THE CONVENTION OF BELÉM DO PARÁ</b> .....	85
A.	<b>Arguments of the parties and of the Commission</b> .....	85
A.1	<i>Arguments on access to justice</i> .....	85
A.2	<i>Arguments on the Convention of Belém do Pará</i> .....	87
A.3	<i>Arguments on discrimination in access to justice</i> .....	88
A.4	<i>Arguments on the obligation to ensure that the competent authority established by the laws of the State will determine the rights of everyone who files a remedy</i> .....	89
B.	<b>Considerations of the Court</b> .....	89
B.1	<i>Access to justice in cases of violation of sexual and reproductive rights</i> .....	91
B.2	<i>Determination of the effects of the closure of the criminal proceedings</i> .....	96
B.3	<i>Determination of the scope of the State's international responsibility owing to the criminal proceedings</i> .....	96
B.4	<i>Conclusion</i> .....	98
	<b>IX REPARATIONS (Application of Article 63(1) of the American Convention)</b> .....	98
A.	<b>Injured party</b> .....	99
B.	<b>Rehabilitation</b> .....	99
C.	<b>Satisfaction</b> .....	100
C.1	<i>Publications</i> .....	101
C.2	<i>Act to acknowledge responsibility</i> .....	101
D.	<b>Guarantees of non-repetition</b> .....	101
E.	<b>Other measures requested</b> .....	103
F.	<b>Compensation for pecuniary and non-pecuniary damage</b> .....	104
G.	<b>Costs and expenses</b> .....	106
H.	<b>Reimbursement of expenditure to the Victims' Legal Assistance Fund</b> .....	108
I.	<b>Method of complying with the payments ordered</b> .....	108
	<b>X OPERATIVE PARAGRAPHS</b> .....	109

## I

**INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE**

1. *The case submitted to the Court.* On April 23, 2015, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Court's jurisdiction the case of "I.V." against the Plurinational State of Bolivia (hereinafter "the State of Bolivia," "the Bolivian State" or "Bolivia"). According to the Commission, the case relates to the State's alleged international responsibility for the procedure to which I.V. was subjected in a public hospital on July 1, 2000. According to the Commission, this operation, consisting in bilateral tubal ligation, had been performed in the absence of an emergency situation and without the informed consent of I.V., who suffered the permanent and enforced loss of her reproduction function. The Commission determined that the procedure had constituted a violation of I.V.'s physical and psychological integrity, together with her rights to live free from violence and discrimination, of access to information, and to private and family life, in the understanding that reproductive autonomy formed part of those rights. According to the Commission, the State had not provided the presumed victim with an effective judicial remedy to address these violations.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

- a) *Petition.* On March 7, 2007, the Bolivian Ombudsman (hereinafter "the petitioner"), on behalf of I.V. (hereinafter "the presumed victim"), lodged the initial petition before the Commission. On March 6, 2015, the presumed victim decided to substitute the Ombudsman by the association, *Derechos en Acción*, represented by its Executive Director, Rielma Mencías Rivadeneira.
- b) *Admissibility Report.* On July 23, 2008, the Commission adopted Admissibility Report No. 40/08 in which it concluded that petition 270-07 was admissible.<sup>1</sup>
- c) *Merits Report.* On August 15, 2014, the Commission adopted Merits Report No. 72/14, under Article 50 of the Convention (hereinafter also "the Merits Report" or "Report No. 72/14"), in which it reached a series of conclusions and made several recommendations to the State.
  - a. *Conclusions.* The Commission concluded that the State was responsible for the violation of "the rights recognized in Articles 5(1), 8(1), 11(2), 13(1), 17(2) and 25(1) of the American Convention, in relation to the State obligation established in Article 1(1) of this instrument," to the detriment of I.V. In addition, the Commission concluded that the State had violated Article 7 of the Convention of Belém do Pará and its paragraphs (a), (b), (c), (f) and (g), to the detriment of I.V.
  - b. *Recommendations.* Consequently, the Commission made a series of recommendations to the State:
    - i. Make full reparation to I.V. for the human rights violations established in the [...] report, taking into consideration her opinion and her needs, including compensation for the pecuniary and non-pecuniary damage suffered;
    - ii. Provide I.V. with high quality, individual medical care tailored to her needs, and appropriate to treat her medical complaints;

<sup>1</sup> In that report, the Commission decided that the petition was admissible in relation to the presumed violation of the rights recognized in Articles 5(1), 8(1), 11(2), 13, 17 and 25 of the American Convention, in relation to Article 1(1) of this instrument, as well as in relation to Article 7 of the Convention of Belém do Pará. Cf. Admissibility Report No. 40/08, Case of I.V. v. Bolivia, July 23, 2008 (file of the procedure before the Commission, volume II, folios 256 to 272).

- iii. Investigate the facts surrounding the sterilization of I.V. without her consent, and establish the appropriate responsibilities and sanctions;
- iv. Take all necessary steps to ensure non-repetition of similar facts in future and, in particular, review the policies and practices applied in all hospitals with regard to obtaining the informed consent of patients;
- v. Adopt legislation, public policies, programs and directives to ensure respect for the right of everyone to be informed and counseled on health matters, and not to be subjected to procedures or treatments without their informed consent, when this is applicable. Such measures should give special consideration to the particular needs of persons who are in a vulnerable situation owing to the intersection of factors such as their sex, race, economic situation, or immigrant status, and
- vi. Investigate the deficiencies in the practices of the Judiciary and auxiliary bodies that permit excessive delays in judicial proceedings, and adopt the measures required to ensure effective access to justice through due process and an expeditious and effective administration of justice.

c. *Notification of the State.* The Merits Report was notified to the State in a communication of October 23, 2014, granting it two months to report on compliance with the recommendations.

d) *Reports on the Commission's recommendations.* On December 24, 2014, the State presented information on the implementation of the recommendations made by the Commission in its Report No. 72/14. A three-month extension was granted for the State to comply with the Commission's recommendations.

e) *Submission to the Court.* On April 23, 2015, considering the content of the State's report, and also the absence of additional reports or a request for an extension, the Commission submitted all the facts and human rights violations described in the Merits Report to the jurisdiction of the Inter-American Court "in view of the need to obtain justice" and the issues relating to inter-American public order in the area of the rights to health and to sexual and reproductive autonomy, together with informed consent in this regard.<sup>2</sup>

3. *Requests of the Inter-American Commission.* Based on the above, the Commission asked the Court to declare the international responsibility of the State for the violations indicated in its Merits Report (*supra* para. 2.c.a). The Commission also asked the Court to order the State to adopt certain measures of reparation, which will be described and analyzed in Chapter IX of this judgment.

## II PROCEEDINGS BEFORE THE COURT

4. *Notification to the representative and the State.* The Court notified the Commission's submission of the case to the presumed victim's representative (hereinafter "the representative") on July 17, 2015, and to the State on July 14, 2015.

5. *Brief with motions, pleadings and evidence.* On September 14, 2015, the presumed victim's representative<sup>3</sup> submitted to the Court her brief with motions, pleadings and evidence (hereinafter "motions and pleadings brief"). The representative agreed substantially with the arguments of the

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<sup>2</sup> The Commission appointed Commissioner Paulo Vannuchi, the Special Rapporteur for Freedom of Expression, Edison Lanza, and the Executive Secretary at that time, Emilio Álvarez Icaza L., as its delegates before the Court. It also appointed Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, Rosa Celorio and Ona Flores, Executive Secretariat lawyers, as legal advisers.

<sup>3</sup> Rielma Mencias Rivadeneira, Executive Director of "Derechos en Acción" represented the presumed victim in this case.

Commission and asked the Court to declare the State internationally responsible for the violation of the articles alleged by the Commission and, in addition, for the violation of Articles 3, 5(2), 11(1) and 25(2)(a) of the American Convention, in relation to Article 1(1) of the Convention, to the detriment of I.V.; and Article 5 of the Convention, in relation to Articles 19 and 1(1) of this instrument, to the detriment of N.V. and L.A.,<sup>4</sup> daughters of I.V. Furthermore, through her representative, the presumed victim asked to be granted access to the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Court's Legal Assistance Fund" or "the Fund"). Lastly, she asked the Court to require the State to adopt diverse measures of reparation and to reimburse certain costs and expenses.

6. *Answering brief.* On December 16, 2015, the State<sup>5</sup> submitted to the Court its brief answering the submission of the Merits Report of the Inter-American Commission on Human Rights and the brief with motions, pleadings and evidence of the representative (hereinafter "answering brief"). In its brief, the State filed preliminary objections on the alleged "lack of jurisdiction *ratione loci*" and the presumed "failure to exhaust domestic remedies."

7. *Victims' Legal Assistance Fund.* In an order of the President of the Court of January 13, 2016, the presumed victim's request, through her representative, to access the Court's Legal Assistance Fund was declared admissible.<sup>6</sup>

8. *Observations on the preliminary objections.* On February 22 and 28, 2015, respectively, the representative and the Inter-American Commission presented their observations on the preliminary objections filed by the State.

9. *Public hearing.* In an order of March 29, 2016,<sup>7</sup> the President called the parties and the Inter-American Commission to a public hearing to receive their final oral arguments and observations on the preliminary objections and eventual merits, reparations and costs, and also to receive the statements of the presumed victim, of a witness proposed by the State, and of three expert witnesses proposed by the representative, the State, and the Commission.<sup>8</sup> The public hearing took place on May 2, 2016, during the 114th regular session of the Court, held at its seat.<sup>9</sup>

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<sup>4</sup> The representative asked that, as in the case of I.V., and for the same reasons, the identity of her daughters should be protected and that, consequently they be referred to as N.V. and L.A. during the proceedings. On the instructions of the President of the Court, the parties were advised that the names of the presumed victim's daughters would be kept confidential and that the Court would use the initials "N.V." and "L.A." to refer to them.

<sup>5</sup> Initially, the State appointed the Attorney General, Héctor Enrique Arce Zaconeta, the Solicitor General for the State's Legal Defense and Representation, Pablo Menacho Diederich, and the acting Director General of Human Rights and Environmental Proceedings, Nelson Marcelo Cox Mayorga, as its agents. In addition, the State accredited the Solicitor General for the State's Legal Defense and Representation, Carmiña Llorenti Barrientos, and the lawyer, Guehiza Zeballos Grossberger, to substitute Pablo Menacho Diederich. Subsequently, the State accredited the Director General for Defense of Human Rights and the Environment, Israel Ramiro Campero Méndez, instead of Nelson Marcelo Cox Mayorga. Then, the State accredited the Director General for Defense of Human Rights and the Environment, Dante Justiniano Segales, instead of Israel Ramiro Campero Méndez. Finally, the State accredited the Director General of Defense, Emma Natalia Miranda Parra, instead of Dante Justiniano Segales, and a new Agent, the Director General for Defense of Human Rights and the Environment, Claudia Daniela Valda Mercado.

<sup>6</sup> *Cf. Case of I.V. v. Bolivia.* Order of the President of the Inter-American Court of January 13, 2016. Available at: [http://www.corteidh.or.cr/docs/asuntos/I.V\\_fv\\_16.pdf](http://www.corteidh.or.cr/docs/asuntos/I.V_fv_16.pdf)

<sup>7</sup> *Cf. Case of I.V. v. Bolivia.* Order of the President of the Inter-American Court of March 29, 2016. Available at: [http://www.corteidh.or.cr/docs/asuntos/iv\\_29\\_03\\_16.pdf](http://www.corteidh.or.cr/docs/asuntos/iv_29_03_16.pdf)

<sup>8</sup> In a communication of April 14, 2016, the Commission asked that the proposed expert opinion of Ana Cepin be provided by affidavit.

<sup>9</sup> There appeared at this hearing: (a) for the Inter-American Commission: Commissioner Margarette May Macaulay, and Executive Secretariat lawyers, Silvia Serrano Guzmán, Jorge H. Meza Flores and Erick Acuña Pereda; (b) for the representatives of the presumed victim: Rielma Mencias Rivadeneiro, Executive Director of "Derechos en Acción," and

During the hearing, the Court heard the statements of the presumed victim I.V., witness Edgar Torrico Ameller, and expert witnesses Christina Zampas and Erwin Hochstatter Arduz. In addition, the Court required the parties to submit certain information and documentation. In particular, it requested a complete copy of the case file of the administrative proceeding and of statements collected at the domestic level of those who had been involved in or witnessed the bilateral tubal ligation procedure performed on I.V. The affidavits were received on April 25, 28 and 29, 2016.

10. *Amici curiae.* The Court receive *amicus curiae* briefs from: (1) the International Human Rights Law Clinic of the Faculty of Law of Aix-en-Provence (France); (2) the Human Rights and Gender Justice Clinic of the School of Law at the City University of New York (CUNY) and Women Enabled International; (3) the Human Rights Clinic of the Law Faculty at the Universidad de Santa Clara and the International Justice Resources Center (Bolivia); (4) the University of Sussex and the Rights and Justice Research Centre; (5) the Allard K. Lowenstein International Human Rights Clinic of the Law School of the University of Yale and Women's Link Worldwide, and (6) the Reproductive Rights Center, on April 22, and May 10, 13, 14, 16 and 17, 2016, respectively.

11. *Final written arguments and observations.* On May 31 and June 2, 2016, the representative and the State, respectively, forwarded their final written arguments, as well as various annexes, and on June 2, 2016, the Commission presented its final written observations.

12. *Helpful evidence.* As the State did not forward all the information requested during the respective hearing, since it did not submit a complete copy of the file of the administrative proceeding, but only "significant documents" from this proceeding, and failed to remit the statements collected at the domestic level of those who had been involved in or had witnessed the bilateral tubal ligation procedure to which I.V. was subjected, it was asked to forward this information by June 24, 2016. On that date, the State remitted some clarifications concerning the helpful evidence. In particular, it indicated that "the State's institutions do not have the complete file of the [... administrative] proceeding." Regarding the statements, it advised that these had been collected and assessed opportunely by the jurisdictional authority during the criminal proceedings and were referred to in the rulings of the administrative proceeding and the medical audits.

13. *Observations of the parties and the Commission.* The President granted the parties and the Commission a specific time frame to submit any observations they deemed pertinent on the annexes forwarded by the State and the representative with their final written arguments. On July 5, 2016, the State forwarded the observations requested. The representative did not send observations within the time frame granted to this end and, following an extension, the Commission indicated that it had no observations to present,

14. *Disbursements in application of the Legal Assistance Fund.* On July 26, 2016, the Secretariat, on the instructions of the President of the Court, sent the State information on the disbursements made in application of the Victims' Legal Assistance Fund in this case and, as provided for in article 5 of the Court's Rules for the operation of the Fund, granted it a time frame to present any observations it deemed pertinent. The State did not present observations within the respective time frame.

15. *Deliberation of the case.* The Court began deliberating this case on November 29, 2016.

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Marcelo Claros Pinilla and Fernando Zambrana Sea, advisers, and (c) for the State of Bolivia: the agent, Héctor Enrique Arce Zaconeta, Attorney General; the deputy agent, Carmiña Llorenti Barrientos, Solicitor General for the State's Legal Defense and Representation; the deputy agent, Israel Ramiro Campero Méndez, Director General for Defense of Human Rights and the Environment; Guehiza Patricia Zeballos Grossberger, lawyer from the Attorney General's Office, and Juana Inés Acosta López, lawyer.

### **III JURISDICTION**

16. The Inter-American Court has jurisdiction to hear this case, pursuant to Article 62(3) of the American Convention, because Bolivia has been a State Party to the Convention since July 19, 1979, and accepted the contentious jurisdiction of the Court on July 27, 1993.

### **IV PRELIMINARY OBJECTIONS**

17. The State submitted the following arguments in its answering brief as preliminary objections: the lack of jurisdiction *ratione loci* and the presumed failure to exhaust domestic remedies. The State indicated the failure to exhaust two remedies in Bolivia's domestic jurisdiction that, it argued, could have been filed against Ruling No. 514/2006 of August 23, 2006, which confirmed the decision declaring the extinction of the criminal proceedings against the doctor who had performed the tubal ligation (*infra* para. 112): the cassation procedure and the application for constitutional amparo (protection). The Court will now decide on the objections filed.

#### **A. Objection concerning the alleged lack of jurisdiction *ratione loci***

##### *A.1 Arguments of the State and observations of the Commission and the representative*

18. The **State** filed the preliminary objection of the Court's lack of jurisdiction *ratione loci* based on Article 46(1)(a) of the Convention in relation to the violation of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, recognized in Article 5(2) of the Convention, because this had not occurred in the territory of Bolivia. The State argued that "I.V. claimed, disregarding the lack of connection between the facts, to attribute to the Bolivian State responsibility for acts and consequences that occurred in another country, thus contravening an elementary rule of liability, which is that the entity responsible is the one that, based on the evidence, has any degree of responsibility." In this regard, the State asserted that, "[...] regarding the supposed consequences of torture, I.V. has not been able to prove responsibility, which is an argument that is pertinent, appropriate and evidently sufficient for the Court to declare the admissibility of the objection concerning its lack of jurisdiction, because Bolivia is not responsible for any act of torture." Lastly, the State indicated that "the trauma or consequences that affect I.V. [...], were not the result of the procedure, but of acts of torture which she alleges that she suffered in Peru, a situation for which, the Bolivian State bears no responsibility." The State therefore asked the Court to "declare that it did not have jurisdiction to examine the supposed violations alleged by the representatives, which were the result of acts that took place outside Bolivian territory." In its final arguments, the State reaffirmed that the Court should refrain from declaring Bolivia responsible "for any act or any harm that was produced as a result of acts that took place in a foreign territory."

19. The **Commission** clarified that this preliminary objection was not related to the contents of the Merits Report, but was limited exclusively to references made in the brief with motions, pleadings and evidence by the presumed victim's representative. However, according to the Commission, those references "seek to provide information on other human rights violations suffered by I.V. before her forced sterilization, as background information and not for the purpose of deriving legal consequences with regard to the international responsibility of the State of Bolivia for acts that took place under the jurisdiction of another State and that are not part of these international proceedings." The Commission considered appropriate that the Court take note of this background information, "only insofar as it is pertinent for a better understanding of the [presumed] victim, her circumstances, and the effects of what did happen under the jurisdiction of

the State of Bolivia as a foreigner with numerous factors that contributed to her vulnerability before, during and after the facts described in the Merits Report.”

20. The presumed victim’s **representative** indicated that “[i]t would appear that there is confusion on the part of the Bolivian State when it argues that the representatives are claiming that the Court [...] should rule on the torture and cruel, inhuman or degrading treatment that I.V. did indeed suffer in Peru before moving to Bolivia where she was granted refugee status based precisely on the persecution and human rights violations that she had suffered in the neighboring country.” She added that, the events that took place in Peru were not part of the case, and that her arguments in relation to Article 5(1) and 5(2) of the Convention “refer to violations that I.V. suffered in Bolivian territory, as of July 1, 2000; violations [that were allegedly] perpetrated by a medical team of Bolivian public servants and that took place in a Bolivian public hospital.” In this regard, the representative clarified that “[a]ll the arguments that [she had submitted] on the violations of I.V.’s rights related to acts, omissions and a lack of diligence of the Bolivian, and not the Peruvian, public entities, public servants (doctors) and agents of justice, and they took place on Bolivian soil.” Lastly, the representative asked the Court to reject this preliminary objection.

#### A.2 Considerations of the Court

21. Regarding the representative’s arguments in relation to the possible violation of Article 5(2) of the Convention, their purpose is for the Court to rule on whether the tubal ligation procedure performed on I.V. in a public hospital of the Plurinational State of Bolivia constituted an act or torture or, at least, cruel or inhuman treatment. The Court notes that, in this case, the representative has not argued possible violations of the American Convention that took place in Peru, a country that is not a defendant in this case. Therefore, the Court affirms its jurisdiction *ratione loci* to hear this case, because the act that gave rise to the alleged international responsibility of the State for the violation of the rights recognized in the American Convention and other applicable treaties, consisting in the tubal ligation procedure, took place in Bolivia. In addition, the Court notes that the determination of whether this act constituted an act or torture or cruel or inhuman treatment is a matter to be elucidated when examining the merits of the matter. Based on the foregoing, this objection is rejected.

### B. Objection concerning the alleged failure to exhaust domestic remedies

#### B.1 Arguments of the State and observations of the Commission and the representative

22. The **State** filed the preliminary objection of failure to exhaust domestic remedies based on Article 46(1)(a) of the Convention. Regarding the cassation procedure, it indicated that, under domestic law, this is the ordinary remedy established by the Bolivian criminal procedure to contest rulings delivered by the Superior Courts of Justice that are contrary to preceding rulings by other Superior Courts of Justice or by the Criminal Chamber of the Supreme Court; the only requirement is that it must cite a contradictory precedent. The State indicated that this procedure would be “adequate and effective in this case, because [...] it is admissible to contest rulings delivered by the Superior Courts of Justice or the Criminal Chamber of the Supreme Court of Justice, in order for the Supreme Court of Justice to hand down a final judgment based on the applicable legal doctrine, that can annul the ruling that was the reason for the procedure and order the delivery of a new judgment.” In addition, it indicated that this remedy should have been filed before the delivery of Ruling No. 514/2006 of August 23, 2006, which confirmed the extinction of the criminal action owing to the passage of time.

23. Regarding the application for constitutional amparo, the State argued that, according to article 19 of the applicable Constitution, I.V. could have filed the application for constitutional

amparo, which was admissible “against wrongful acts or undue omissions of officials or private individuals that restrict or suppress, or threaten to restrict or suppress the rights and guarantees of the individual recognized by the Constitution and the law.” Regarding the effectiveness and appropriateness of the remedy to reverse the extinction of the criminal action owing to the maximum duration of the proceedings, the State added that “a series of rulings [existed] in which the Constitutional Court had revoked decisions ordering the extinction of a criminal action owing to maximum duration of the proceedings, based on the absence of substantiation and justification in the decisions that would have permitted determining to whom the delays that led to the extinction of the criminal action could be attributed.” Therefore, it asserted that, if I.V. had filed this remedy, it would have been effective and appropriate to re-establish the rights that she considered violated, by establishing, based on an adequate justification and grounds, that the delays could be attributed to the defendant and, consequently, the court would have established the impossibility of the action extinguishing.

24. Regarding the observations of the Commission and the representative, in its final arguments, the State expanded on the appropriateness and effectiveness of the application for amparo, indicating that: (i) since submitting its brief with observations on the admissibility of the petition, it had argued that the application for amparo was the appropriate and effective remedy to address I.V.’s situation, providing case law on the admissibility of the application for amparo against decisions ordering the extinction of the criminal action; (ii) in its observations on admissibility, the State had also demonstrated that the application for amparo had achieved the annulment of a decision determining the extinction of the criminal action; (iii) although the factual circumstances of the rulings cited by the State differed from the facts that are the purpose of the present dispute, this did not represent an obstacle to proving that the rule of law evidenced by these decisions was applicable to this specific case; (iv) the application for amparo was admissible in this specific case, because the constitutional judge could have taken into account the possible effects on I.V.’s rights of the decision extinguishing the criminal action, or that the defendant had intervened to cause a delay in the proceedings; (v) the application for amparo is not a special remedy, as understood in international human rights law; (vi) the standard established in the Convention and in case law for the exhaustion of domestic remedies indicates that the “adequate and effective” remedies should be exhausted, without making any reference to whether these are “ordinary or special,” so that even if it was a special remedy this would have no relevance, and (vii) the fact that the State based the appropriateness and effectiveness of the application for amparo on different constitutional rulings in its observations on admissibility and in the answer submitted to the Court did not make its arguments time-barred. Therefore, based on the principle of subsidiarity, the State asked the Court to declare that it was not competent to hear this case.

25. The **Commission** indicated that, “[e]ven though, at the admissibility stage before the Commission, the State argued the failure to exhaust domestic remedies, the content of this objection was based on the application for amparo, without any mention of the cassation procedure”; consequently, it considered that this was “time-barred because it was not filed at the proper procedural opportunity.” The Commission noted that “although the State invoked the application for amparo at the admissibility stage, the grounds for its appropriateness and effectiveness are different from those submitted to the [...] Court in its answering brief.” It argued, citing this Court’s case law, that “the rule on correspondence” should be applied, according to which the arguments presented before the Court to support this preliminary objection should correspond to those presented to the Commission during the admissibility stage. In this regard, and in this specific case, the Commission asserted that in its brief of December 4, 2007, presented at the admissibility stage before the Commission, the State had referred to three constitutional judgments in order to justify the appropriateness and effectiveness of the application for amparo,<sup>10</sup>

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<sup>10</sup> The first, dated January 11, 2006, which referred to an amparo filed by a defendant, which requested precisely the extinction of the criminal action. The second, of December 11, 2006, concerning an amparo against a declaration of

while, in its answering brief before the Inter-American Court, it had cited four different constitutional judgments. Based on the foregoing, the Commission argued that, from a simple comparison between the brief presented at the admissibility stage and the answering brief before the Court, "it is evident that the arguments and case law sources by which the State seeks to comply with the requirement to prove the appropriateness and effectiveness of the application for amparo are different in the two briefs." Consequently, the Commission concluded that "the arguments presented before the Inter-American Court to justify the failure to exhaust the application for constitutional amparo were time-barred."

26. Additionally, the Commission reiterated "all aspects of the analysis made in its Admissibility Report, which was based on the information available at the time, as well as on the treaty-based and regulatory provisions that govern the burden of proof in this matter and that grant it the primary authority to rule on the requirements for admissibility of petitions." Also, the Commission emphasized that the petitioner had indicated that, in Bolivia, no judgment reversing an application of the extinction of the criminal action had been handed down in an amparo proceeding, and that the State had not contested the petitioner's argument regarding the ineffectiveness of the application for amparo for cases such as that of I.V., even though it was appropriate in accordance with the burden of proof applicable in these circumstances. Thus, "at the time of its ruling, the information available to the Commission indicated that I.V. had exhausted all the ordinary remedies during the criminal proceedings." In these circumstances, the Commission determined that "the State failed to prove, at the proper procedural opportunity and pursuant to the rules for the burden of proof applicable to the objection of the failure to exhaust domestic remedies, that the application for amparo would have been appropriate and effective in this case." Consequently, in the Commission's opinion, I.V. had exhausted the domestic remedies.

27. Regarding the State's argument that the State cannot be required to abide by the arguments made at the admissibility stage in the proceedings before the Court, the Commission stressed that this requirement is in keeping with the Court's case law and constitutes a basic expression of the principles of "equality of arms" and legal certainty that apply to the inter-American procedure. Lastly, it emphasized that "a decision to the contrary would mean that the Inter-American Court could rule on arguments relating to the requirement of exhaustion of domestic remedies that the Commission was unable to evaluate and that the petitioners did not have the opportunity to contest at the corresponding stage."

28. The presumed victim's **representative** argued that the preliminary objection filed by the State before the Court did not correspond to the objection filed at the admissibility stage before the Commission. She indicated that the State had not filed any objection to the rule of the exhaustion of domestic remedies based on the cassation procedure at the admissibility stage before the Commission; consequently, filing an objection related to this remedy at the present procedural stage was time-barred. In addition, she argued that the cassation procedure was reserved for contesting rulings that decide restricted appeals, and not an incidental appeal as in this case with Ruling 514/2006, which was the judgment delivered by the First Criminal Chamber of the La Paz Superior Court of Justice. Consequently, the State's pretension that "this Court [...] consider that the cassation procedure should have been filed and exhausted by I.V., when according to the law and procedure this was not (and is not) feasible" constituted a lack of procedural loyalty. Lastly, the representative asserted that "[t]he argument on which the State founds this preliminary objection is totally false and proof of this is that the State has not cited any jurisprudential precedent to support it, and did not attach to its brief any final judgment (that is, a judgment in third instance) of the Supreme Court of Justice, or any constitutional judgment of the Constitutional Court." She concluded that, in I.V.'s case, the cassation procedure was not

admissible to contest Ruling 514/2006 and, therefore, asked the Court to reject the objection filed by the State.

29. The representative indicated that, in its observations of December 4, 2007, during the admissibility stage, the State had only indicated, in general, that the remedies of the domestic jurisdiction had not been exhausted, merely mentioning the application for constitutional amparo. However, the State did not reveal how the application for amparo was fully available and how it was adequate, appropriate and effective for the presumed victim's purpose. She indicated that the three constitutional judgments cited by the State in the single communication it had submitted to the Commission at the admissibility stage referred to situations that differed from the case of I.V. Moreover, the judgments cited did not prove that, by an application for constitutional amparo, it was possible to reverse a decision of the Superior Court of Justice that confirmed a decision determining the extinction of the criminal action owing to the maximum duration of the proceedings, which favored the defendant and was due to reasons that could be attributed to the organs of justice. Added to this, the representatives indicated, also, that I.V. was not obliged to exhaust this specific remedy because, according to this Court's case law, it was not necessary to exhaust all the remedies that might exist in domestic law. The constitutional amparo was a special remedy and, therefore, did not need to be exhausted. Consequently, the representative asked the Court to reject the objection filed by the State on the failure to exhaust the application for constitutional amparo.

### *B.2 Considerations of the Court*

30. Article 46(1)(a) of the American Convention establishes that admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45, depends on the remedies under domestic law having been pursued and exhausted in accordance with generally recognized principles of international law.<sup>11</sup> The Court recalls that the rule of the prior exhaustion of domestic remedies was conceived in the interest of the State, because it seeks to exempt the State from responding before an international organ for acts attributed to it before it has had the opportunity to rectify them with its own means. This signifies that, not only should such remedies exist formally, but they must also be adequate and effective, as a result of the exceptions established in Article 46(2) of the Convention.<sup>12</sup>

31. This Court has also indicated consistently that an objection to the Court's exercise of its jurisdiction based on the supposed failure to exhaust domestic remedies must be filed at the proper procedural moment; that is, during the admissibility procedure before the Commission;<sup>13</sup> following this, the principle of estoppel comes into play.<sup>14</sup> When arguing the failure to exhaust domestic remedies, the State must specify the remedies that have not yet been exhausted and prove that these were available and adequate, appropriate and effective.<sup>15</sup> In this regard, the Court reiterates that it is not the task of the Court or the Commission to identify, *ex officio*, which domestic

<sup>11</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*. Judgment of June 26, 1987. Series C No. 1, para. 85, and *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2016. Series C No. 316, para. 24.

<sup>12</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 61, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 24.

<sup>13</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra*, para. 88; *Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of July 2, 2004. Series C No. 107, para. 81, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 25.

<sup>14</sup> Cf. *Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 22, 2013. Series C No. 265, para. 47, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 25.

<sup>15</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra*, paras. 88 and 91, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 25.

remedies remained to be exhausted; thus, it is not incumbent on the international organs to rectify the lack of precision of the State's arguments.<sup>16</sup> This reveals that, when the State invokes the existence of a remedy that has not been exhausted, it must do so at the proper moment and must also clearly identify the remedy in question and how, in the case concerned, it would be adequate and effective to protect the person in the situation denounced.<sup>17</sup>

32. The Court recalls that the first element that must be determined in relation to a preliminary objection of this nature is whether the objection was filed at the proper procedural moment, an aspect that is in dispute in this case. The Court notes that the petition lodged on March 7, 2007, was forwarded to the State on May 8 that year, on which date the Inter-American Commission granted the State two months to remit its observations concerning the admissibility of the petition. On December 6, 2007, the State forwarded the observations requested,<sup>18</sup> asking the Commission to declare the petition inadmissible based on the failure to exhaust domestic remedies. In particular, the State indicated that I.V. "could have filed an application for constitutional amparo to obtain effective reparation of the rights claimed"; this remedy was regulated in article 19 of the Constitution and was the domestic remedy that should be exhausted.<sup>19</sup>

33. The Court notes that the State did file an objection of failure to exhaust domestic remedies during the processing of the petition at the admissibility stage before the Commission; but, it merely argued the failure to exhaust the application for constitutional amparo. Therefore, and pursuant to the Court's case law,<sup>20</sup> the State cannot argue before this Court the failure to exhaust other remedies that were not alleged at that procedural opportunity. Thus, the State's arguments regarding the alleged failure to exhaust the cassation procedure, which was filed for the first time in its answering brief before this Court, are time-barred.

34. Regarding to the alleged failure to exhaust the application for constitutional amparo, the Court notes that, as previously mentioned (*supra* para. 33), the State filed this objection in its brief with observations on the initial petition, so that it was filed at the proper procedural opportunity. As grounds for its preliminary objection in the procedure before the Commission, the State indicated that, according to article 19 of the Constitution in force at the time and article 94 of Law 1836, the application for constitutional amparo was admissible "against any undue decision, act or omission of an authority or official, provided that there was no other means or remedy for the immediate protection of rights and guarantees [...]." Additionally, it cited the Constitutional Court's decision No. 1261/2006-R of December 11, 2006, arguing that "if the presumed victim had filed the appeal against the decision declaring the extinction of the criminal proceedings arguing non-compliance with constitutional orders and judgments, she, therefore, did have an expeditious means to file a constitutional amparo" [*sic*]. In addition, it indicated that Constitutional Judgment No. 0921/2004-R of June 15, 2004, established the time frame for filing the application for constitutional amparo.

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<sup>16</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, para. 23, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 25.

<sup>17</sup> Cf. *Case of the Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 282, para. 30, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 25.

<sup>18</sup> Cf. Report GM-DGAJ-DAJ-2629-A/2007 of December 4, 2007, received on December 6, 2007, by the Inter-American Commission (file of the procedure before the Commission, volume II, folios 307 to 337).

<sup>19</sup> Cf. Report GM-DGAJ-DAJ-2629-A/2007 received on December 6, 2007, by the Inter-American Commission (file of the procedure before the Commission, volume II, folio 325).

<sup>20</sup> Cf. *Case of Herrera Ulloa v. Costa Rica, supra*, paras. 82 and 83, and *Case of Chinchilla Sandoval v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of February 29, 2016. Series C No. 312, para. 26.

35. Meanwhile, the petitioner argued before the Commission that there was no precedent in the case law of the Bolivian Constitutional Court that, by filing of an application for constitutional amparo, it was possible to annul a decision that extinguished criminal proceedings due to violation of due process in relation to a delay in justice that could be attributed to the jurisdictional organ. Also, she distinguished the precedent cited of Constitutional Court Decision No. 1261/2006-R from the instant case, because the case *sub judice* did not refer to a supposed extinction of the criminal proceedings based on their supposed abandonment owing to the failure to attend a hearing.

36. The State never responded to this argument and, therefore, did not present elements that would have allowed the Commission to reject the considerations presented by the petitioner regarding the lack of appropriateness and effectivity of the application for amparo in the circumstances of this case; that is, to contest a decision of the high court that confirmed the declaration of extinction of the criminal action for causes that could be attributed to the organs of justice in the criminal proceedings against the physician who had performed the tubal ligation. Based on the arguments of the petitioner that were not contested by the State, the Commission concluded that the petitioner had exhausted the ordinary remedies of the criminal justice system and that, taking into account the case law of the Bolivian Constitutional Court, the filing of the application for amparo would have had "few probabilities of success."<sup>21</sup> Thus, this Court concludes that, even though the State filed the preliminary objection in the procedure before the Commission and indicated the remedy that, in its opinion, had not been exhausted, it failed to comply with the burden of proof by proving that it was adequate, appropriate and effective at the proper procedural opportunity, because the decision cited by the State in the procedure before the Commission referred to aspects such as the abandonment of the dispute and the time frames to justify the failure to attend a hearing, which have no relationship to the facts of this case.

37. This conclusion is reinforced by the fact that the State modified its arguments before this Court. Indeed, in the proceedings before the Court, the State focused its arguments on indicating that the application for amparo was admissible to reverse the extinction of the criminal action based on the maximum duration of the proceedings when the dilatory actions were caused by the defendant and, in this regard, cited Constitutional Judgment No. SC 2009/2010-R of November 3. Subsequently, in its final arguments, the State alleged that, even though the facts of the precedents cited did not correspond to the facts of the instant case, in general it could be concluded that the application for amparo was appropriate to annul a decision on the extinction of the criminal proceedings. To this end, it cited Constitutional Judgment No. 1529/2011-R of October 11, 2011, that made it necessary to weigh the right of the accused not to be subjected to criminal proceedings indefinitely and the right of the presumed victim to obtain justice in the specific case. The Court notes that the said precedent is dated after the Admissibility Report and is based on a provision of the new Constitution, so that the Commission could not have taken it into account when issuing a decision on admissibility. In this regard, and in relation to the dispute between the parties and the Commission concerning the possibility of the State changing the grounds for its arguments during the admissibility procedure in relation to those outlined in the proceedings before the Court, this Court recalls its consistent case law that the arguments concerning the preliminary objection filed by the State before the Commission during the admissibility stage should correspond to those alleged before the Court.<sup>22</sup>

38. The Court emphasizes that the State, when arguing failure to exhaust domestic resources, has the burden not only of specifying at the proper opportunity the domestic remedies that have

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<sup>21</sup> Admissibility Report No. 40/08 of July 23, 2008, para. 73 (file of the procedure before the Commission, volume II, folios 268 to 270).

<sup>22</sup> Cf. *Case of Furlan and family v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012. Series C No. 246, para. 29, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 28.

not yet been exhausted, but also of demonstrating that those remedies were available and were appropriate and effective. In this case, the State did not meet this burden of proof opportunely. Based on the foregoing, the Court rejects the preliminary objection filed by the State.

## V PRELIMINARY CONSIDERATIONS

39. Before examining the pertinent facts and the application of the norms of the American Convention to those facts, the Court must include some preliminary consideration on the determination of the presumed victims, the delimitation of the factual framework, and the presumed violations of rights alleged by the representative.

### A. *Determination of the presumed victims*

40. The **State** argued that the violations of the human rights of N.V. and L.A., alleged by the representative, referred to facts that had not been included in the Merits Report. In this regard, although the Commission had referred to the alleged non-consensual sterilization, it had not established a factual framework for presumed violations in relation to I.V.'s daughters, and had not classified them as indirect victims. Consequently, the State rejected the inclusion of N.V. and L.A. as presumed victims in this case, on the grounds that: (i) the daughters had not been included in the Commission's Merits Report; (ii) the facts of this case did not demonstrate mass violations that had prevented their identification at the proper opportunity; (iii) the judgments cited by the representative refer to factual circumstances that differed from this cases and were not applicable to it, and (iv) the representative never requested a declaration of the State's international responsibility for violating the rights of I.V.'s daughters before the Commission. The **representative** argued that it was based on the passage of time that the two daughters had become indirect victims of the State's actions and inaction in relation to their mother. She added that, although it was I.V. who had experienced both the sterilization and the denial of justice directly, over the ensuing 16 years, N.V. and L.A. had also become victims of those violations and their negative implications and impacts. The **Commission** made no observations in this regard.

41. The Court recalls that, in order to safeguard legal certainty, and pursuant to Article 35(1) of the Court's Rules of Procedure, the presumed victims must be duly identified and indicated in the Merits Report of the Commission, apart from the exceptional circumstance established in Article 35(2) of the Rules of Procedure. Consequently, the responsibility for identifying the presumed victims in a case before the Court, precisely and at the proper procedural opportunity corresponds to the Commission and not to this Court.<sup>23</sup>

42. The Court has verified that, in its Merits Report, the Commission established I.V. as the sole victim in this case. However, when submitting the motions and pleadings brief, in addition to identifying I.V. as presumed victim, the representative added L.A. and N.V., the daughters of I.V., as presumed victims of the violation of Article 5 of the Convention, in relation to Articles 19 and 1(1) of this instrument. The Court points out that the instant case does not relate to one of the exceptions under the said Article 35(2) that could justify the identification of presumed victims following the Merits Report.

43. Therefore, in application of Article 35(1) of its Rules of Procedure and its consistent case law, the Court declares that it will only consider I.V. to be the presumed victim, because she was the only person identified as such in the Commission's Merits Report.

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<sup>23</sup> Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of Flor Freire v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2016. Series C No. 315, para. 32.

### **B. The factual framework of the case**

44. The **State** asked the Court to disregard the additional facts presented in the motions and pleadings brief before it began to examine the merits of the case. The State underlined that the representatives may invoke the violation of rights other than those established in the Merits Report, but those rights should be restricted to the facts contained in the Merits Report. The **representative** indicated that the motions and pleadings brief was limited to the factual framework established by the Commission in its Merits Report and no new facts had been alleged. She also stressed that the State had not indicated which new facts its request referred to. Consequently, she asked the Court to reject the request because it was based on imprecise arguments. The **Commission** made no ruling in this regard.

45. This Court has established that the factual framework for the proceedings before it is constituted by the facts contained in the Merits Report submitted to its consideration. Consequently, it is not admissible for the parties to allege new facts that differ from those contained in the Merits Report, although they may present those that explain, clarify or reject the facts mentioned in the said report that have been submitted to the Court's consideration (also called "supplementary facts").<sup>24</sup> The exception to this principle are facts that qualify as supervening facts, and they may be forwarded to the Court at any stage of the proceedings prior to the delivery of judgment, provided they relate to the facts of the case.

46. In its Merits Report, the Commission established, as the factual framework for the proceedings before the Court, the procedure to which I.V. was subjected in a Bolivian public hospital on July 1, 2000, and the subsequent failure of the State to provide an effective judicial remedy. However, the Court notes that, in its answering brief, the State failed to indicate the additional facts to which it alluded; thus, the presumed new facts that the representative allegedly included in her motions and pleadings brief cannot be clearly identified from the information provided. Nevertheless, it is possible to infer from the answering brief that the facts alluded to by the State correspond to events that occurred while I.V. was living in Peru. In this regard, and if it finds it pertinent, the Court notes that it could take into account personal factors, such as the presumed victim's situation and, in particular, the events that I.V. experienced in Peru, when examining the merits in order to evaluate the characterization of the fact that took place in Bolivia as torture or other cruel, inhuman or degrading treatment, because this characterization depends on various factors, including the victim's vulnerability and the context and specific circumstances of each case. Consequently, the Court finds that the State's request that it not take into consideration the facts presented in the motions and pleadings brief is inadmissible.

### **C. Other human rights violations alleged by the representative**

47. The **State** contested the representative's inclusion of presumed violation of rights that had not been indicated previously in the Merits Report: namely, the rights recognized in Articles 3, 5(2) and 25(2) of the Convention, and also the presumed violation of Article 5 in relation to Articles 1(1) and 19 of this instrument with regard to N.V. and L.A. The **representative** asked the Court to disregard the State's objection and stressed that, according to the Court's case law, the presumed victims and their representatives could invoke the violation of rights other than those included in the Merits Report, provided that they related to the facts contained in that document. The representative indicated that the alleged violations were founded not only on the factual framework established by Commission, but also on the facts described by the petitioners throughout the proceedings under the inter-American system. The **Commission** made no ruling in this regard.

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<sup>24</sup> Cf. *Case of Veliz Franco et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 277, para. 25, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 41.

48. The Court recalls that, according to its consistent case law, the possibility of changing or varying the legal classification of the facts that form the grounds for the specific case is permitted during proceedings under the inter-American system. In this regard, the presumed victims and their representatives may invoke the violation of rights other than those included in the Merits Report, provided these relate to the facts contained in that document, because the presumed victims are entitled to all the rights recognized in the Convention.<sup>25</sup>

49. Consequently, the Court notes that the representative's arguments with regard to Articles 3, 5(2) and 25(2) of the American Convention are founded on facts that form part of the factual framework presented by the Commission. Therefore, the Court does not accept the State's argument that the human rights violations alleged by the representative are inadmissible, because the presumed victim and her representative are authorized to invoke the violations of rights other than those established in the Merits Report, provided they conform to the factual framework established by the Commission. In the case of the representative's arguments concerning Article 5 in relation to Articles 1(1) and 19 of the Convention with regard to N.V. and L.A., the Court finds that they are not admissible, because the latter are not considered presumed victims in this case (*supra* para. 43).

## **VI EVIDENCE**

50. Based on the provisions of Articles 46 to 51, 57 and 58 of the Rules of Procedure, the Court will examine the admissibility of the documentary evidence forwarded by the parties on different procedural occasions, the statements, testimony and expert opinions provided by affidavit and during the public hearing, and also the helpful evidence requested by the Court.

### **A. Documentary, testimonial and expert evidence**

51. The Court received diverse documents presented as evidence by the State, the representative and the Inter-American Commission attached to their main briefs and final arguments (*supra* paras. 1, 5, 6 and 11). The Court also received the affidavits prepared by N.V., Andre Alois Frederic Gautier, Emma Bolshia Bravo Cladera and Marco Vladimir Vargas Terrazas. In addition, it received the opinions of expert witnesses Ana G. Cepin<sup>26</sup> and Luisa Cabal. Regarding the evidence provided at the public hearing, the Court received the statements of the presumed victim I.V., the witness, Edgar Torrico Ameller, and expert witnesses Christina Zampas and Erwin Hochstatter Arduz.

### **B. Admission of the evidence**

#### *B.1 Admission of the documentary evidence*

52. In this case, as in others, the Court accepts the evidentiary value of those documents presented at the proper procedural opportunity by the parties and the Commission that were not contested or opposed, and the authenticity of which was not questioned.<sup>27</sup>

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<sup>25</sup> Cf. *Case of the "Five Pensioners" v. Peru. Merits reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of the Triunfo de la Cruz Garifuna Community and its members v. Honduras. Merits reparations and costs*. Judgment of October 8, 2015. Series C No. 305, para. 204.

<sup>26</sup> In a note of April 18, 2016, the Secretariat advised that the President of the Court had decided to accept the Commission's request to modify the way in which this expert opinion was received and, therefore, that expert witness Ana Cepin should provide her expert opinion by affidavit.

<sup>27</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 140, and *Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 22, 2016. Series C No. 314, para. 36.

53. Regarding the documents indicated by electronic links,<sup>28</sup> the Court notes that neither the parties nor the Commission opposed them or commented on the content and authenticity of such documents; they are therefore admitted for incorporation into the body of evidence in this case.

54. Regarding the newspaper articles, the Court has considered that they may be assessed when they refer to well-known public facts or declarations of State officials or when they corroborate aspects of the case.<sup>29</sup> Consequently, the Court decides not to admit the note remitted by the State with its annex 28, because its source and date of publication cannot be verified.

55. That said, regarding the procedural moment to present documentary evidence, according to Article 57(2) of the Rules of Procedure, this should generally be presented with the briefs submitting the case, with motions and pleadings, or answering the presentation of the case, as applicable. The Court recalls that evidence forwarded outside the proper procedural opportunities is not admissible, apart from the exceptions established in the said Article 57(2) of the Rules of Procedure; namely, *force majeure*, grave impediment or if it relates to a fact that occurred following the said procedural moment.<sup>30</sup>

56. In the case of the documents provided by the State and the representative with their final written arguments, the Court notes that some of these relate to helpful evidence requested during the public hearing, in particular annexes 2 (audits and some elements of the administrative file) and 6 (certifications of the professional history of the instructing physician) forwarded by the State, and also annex 3 (Final decision No. 020/2002 issued by the Legal Advisory Services Unit of the La Paz Departmental Health Service on July 25, 2002, complete) forwarded by the representative. Also, regarding the complete case file of the criminal proceedings forwarded by the State (annex 1), it should be noted that its incorporation into the file is necessary in order to make a correct appraisal of the proceedings held by the State. Consequently, these documents must be incorporated into the body of evidence of this case under Article 58(b) of the Rules of Procedure. Regarding annexes 3 (1993 WHO manual, entitled "Female sterilization: a guide to provision of services"), 4 (Law on the Judiciary Council of December 22, 1997) and 5 (Law No. 045 against racism and all forms of discrimination of October 8, 2010) provided by the State, as well as annexes 4 to 12 (including the 1993 WHO manual, entitled "Female sterilization: a guide to provision of services," the Code of Medical Ethics and Deontology, the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of January 5, 2016, and the Draft articles on responsibility of States) forwarded by the representative, the Court notes that their late presentation was not justified by any of the exceptional reasons established in the Rules of Procedure, and they were not expressly requested by the Court as helpful evidence; they are therefore time-barred. Nevertheless, since it is relevant for the Court to examine the 1993 WHO manual on female sterilization and the Code of Medical Ethics and Deontology, and also the laws of Peru, Mexico and Chile, the Court incorporates these documents, *ex officio*, because they are useful for deciding this case.

57. With regard to the documents on costs and expenses remitted by the representative with her final written arguments,<sup>31</sup> the Court will only consider those that refer to new costs and expenses incurred due to the proceedings before this Court; in other words, those incurred after the submission of the motions and pleadings brief.

<sup>28</sup> Annexes 24 to 44 and 46 to 52 of the motions and pleadings brief were provided only by electronic link.

<sup>29</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 146, and *Case of Tenorio Roca et al. v. Peru, supra*, para. 38.

<sup>30</sup> Cf. *Case of the Barrios Family v. Venezuela. Merits reparations and costs*. Judgment of November 24, 2011. Series C No. 237, para. 17, and *Case of Tenorio Roca et al. v. Peru, supra*, para. 39.

<sup>31</sup> Annex 1: Updated table of "costs and expenses," and Annex 2: Invoices, receipts, vouchers, travel costs, and contracts verifying "costs and expenses."

## B.2 Admission of the statements and of the expert opinions

58. The Court finds it pertinent to admit the statements and expert opinions provided during the public hearing and by affidavit, insofar as they are in keeping with the purpose defined by the President in the order requiring them,<sup>32</sup> and the purpose of this case.

### C. Assessment of the evidence

59. Based on its consistent case law regarding evidence and its assessment, the Court will examine and assess the documentary evidence forwarded by the parties and the Commission that have been incorporated by this Court, together with the statements and expert opinions, in order to establish the facts of the case and rule on the merits. To this end, it will abide by the principles of sound judicial criteria, within the corresponding legal framework, taking into account the whole body of evidence and the arguments submitted during the proceedings.<sup>33</sup>

60. Lastly, pursuant to its case law, the Court recalls that the statements made by presumed victims cannot be assessed in isolation, but only within the whole body of evidence, insofar as they may provide further information on the presumed violations and the consequences.<sup>34</sup>

## VII FACTS

### A. Background information

61. Before describing the proven facts that are the purpose of this case, the Court finds it pertinent to refer to the presumed victim's personal circumstances. I.V. was born in the Republic of Peru on May 20, 1964.<sup>35</sup> She advised that she had twice been detained in the Peruvian National Counter-Terrorism Directorate (DINCOTE), where she had experienced physical, sexual and psychological abuse.<sup>36</sup> In 1982, she had her first daughter. In 1989, she went to live with J.E.<sup>37</sup> In 1991, N.V., their first daughter together was born in Peru.<sup>38</sup> In 1993, J.E. moved to La Paz, Bolivia, requesting refugee status. In February 1994, I.V. and N.V. were reunited with him in La Paz. In April 1994, the family obtained refugee status in Bolivia.<sup>39</sup> In Bolivia, I.V. obtained a technical

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<sup>32</sup> The purpose of all these statements was established in the order of the President of the Court of March 29, 2016, first and fifth operative paragraphs. The order may be consulted on the Court's webpage using the following link: [http://www.corteidh.or.cr/docs/asuntos/iv\\_29\\_03\\_16.pdf](http://www.corteidh.or.cr/docs/asuntos/iv_29_03_16.pdf)

<sup>33</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, paras. 69 to 76, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 47.

<sup>34</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Tenorio Roca et al. v. Peru, supra*, para. 46.

<sup>35</sup> Cf. Foreigner's identity card (evidence file, volume VIII, annex 5 to the brief with motions, pleadings and evidence, folio 2314).

<sup>36</sup> Cf. Psychological appraisal of the psycho-social effects suffered by I.V. owing to the non-consensual sterilization performed by the ITEI on May 12, 2008 (evidence file, volume VIII, annex 20 to the brief with motions, pleadings and evidence, folios 2354 and 2355).

<sup>37</sup> Cf. Psychological appraisal of the psycho-social effects suffered by I.V. owing to the non-consensual sterilization performed by the ITEI on May 12, 2008 (evidence file, volume VIII, annex 20 to the brief with motions, pleadings and evidence, folios 2354 and 2355).

<sup>38</sup> Cf. Birth certificate of N.V. issued by the Civil Registry of the Pueblo Libre District Municipality (evidence file, volume VIII, annex 15 to the brief with motions, pleadings and evidence, folio 2338).

<sup>39</sup> Cf. Psychological appraisal of the psycho-social effects suffered by I.V. owing to the non-consensual sterilization performed by the ITEI on May 12, 2008 (evidence file, volume VIII, annex 20 to the brief with motions, pleadings and

diploma in hotel administration<sup>40</sup> and, in 2014, she obtained a law degree.<sup>41</sup>

**B. The caesarean section and the tubal ligation surgical procedure**

62. In February 2000, on becoming aware of the existence of the Universal Health Insurance for Mothers and Children and the basic health insurance program, I.V., who was 35 years of age at the time and pregnant with her third daughter, began to attend the Women's Hospital in La Paz to receive pre-natal health care.<sup>42</sup>

63. On the afternoon of July 1, 2000, I.V. was admitted to the Women's Hospital in La Paz, after experiencing the spontaneous rupture of the membranes at week 38.5 of her pregnancy and pain at the level of the caesarean section she had undergone in 1982<sup>43</sup> (*supra* para. 61). Since the attending physician verified that she had previously had a caesarean section, that she had not gone into labor, and that the fetus was in transversal position, he decided to perform a caesarean section.<sup>44</sup> During the procedure, the surgical team consisted of the obstetrician-gynecologist, who was the head of the doctors on call at the time and acted as the instructing surgeon and second surgeon; the third-year resident doctor acting as the main surgeon; the anesthetist<sup>45</sup> and the assistant.<sup>46</sup> An intern, acted as a second assistant, and an operating theater assistant were also present during the procedure.<sup>47</sup>

64. The caesarean section was started by the third-year resident doctor just after 19:00 hours.<sup>48</sup> However, during the caesarean section surgical procedure, the presence of numerous

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evidence, folios 2354 to 2355).

<sup>40</sup> Cf. Professional certification in the specialty of hotel administration issued by the First Hotel and Tourism School of Bolivia on August 23, 1996 (evidence file, volume VIII, annex 7 to the brief with motions, pleadings and evidence, folio 2319).

<sup>41</sup> Cf. Diploma granted by the Universidad Mayor de San Andrés on September 15, 2014 (evidence file, volume VIII, annex 10 to the brief with motions, pleadings and evidence, folio 2326).

<sup>42</sup> Cf. Medical record (file of the procedure before the Commission, volume II, folios 339 to 378); Record of the Medical Audit Decisions Committee of March 13, 2001 (evidence file, volume VII, annex 3 to the submission of the case, folios 2120 to 2134), and Statement made by I.V. before the Inter-American Court during the public hearing held on May 2, 2016.

<sup>43</sup> Cf. Medical record (file of the procedure before the Commission, volume II, folios 339 to 378).

<sup>44</sup> Cf. Preoperative note dated 1, 2000 (evidence file, volume X, annex 16 al Answering brief of the State, folio 3650); Medical Audit record of the operation performed on I.V. (evidence file, volume VII, annex 1 to the submission of the case, folios 2115 and 2116); Final conclusions of the medical audit by the Departmental Medical Audit Committee of March 9, 2001 (evidence file, volume VII, annex 2 to the submission of the case, folio 2118), and Report issued by the Medical Audit Decisions Committee of March 13, 2001 (evidence file, volume VII, annex 3 to the submission of the case, folios 2120 to 2134).

<sup>45</sup> Cf. Record of the surgical procedure transcribed by the Women's Hospital (evidence file, volume VII, annex 8 to the submission of the case, folio 2138); Medical Audit record of the operation performed on I.V. (evidence file, volume VII, annex 1 to the submission of the case, folios 2115 and 2116); Statement made by Edgar Torrico Ameller before the Inter-American Court during the public hearing held on May 2, 2016, and Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folios 3929 to 3939).

<sup>46</sup> Cf. Resolution issued by the Second Trial Court of the La Paz Judicial District on November 18, 2002 (evidence file, volume X, annex 17 to the State's answering brief, folio 3654).

<sup>47</sup> Cf. Medical Audit record of the operation performed on I.V. (evidence file, volume VII, annex 1 to the submission of the case, folios 2115 and 2116); Report of the Audit Committee on the case of patient I.V. of August 22, 2000 (evidence file, volume VII, annex 4 to the submission of the case, folio 2136), and Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folio 3936).

<sup>48</sup> Cf. Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folios 3929 to 3939); Statement made by Edgar Torrico Ameller before the Inter-American Court during the public hearing held on May 2, 2016; Statement made by J.E. on July 27, 2004, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XII, annex 1(c)) to the State's final arguments, folio 4755), and Resolution issued by the Second Trial Court of the La Paz Judicial District on November 18, 2002 (evidence file, volume X, annex 17 to

adhesions in the lower uterine segment was verified<sup>49</sup> and, therefore, owing to the complexity of the case, the obstetrician-gynecologist took charge of the operation in his capacity as instructing surgeon.<sup>50</sup> After the neonatologist had taken the newborn, I.V. underwent a bilateral tubal ligation using the Pomeroy technique.<sup>51</sup> Both surgical procedures were performed while the patient was under epidural anesthetic.<sup>52</sup>

65. Prior to the surgical procedure, I.V.'s husband, J.E., had signed a form entitled "Family authorization for surgery or special treatment," in relation to the caesarean section.<sup>53</sup> This form was not signed by I.V. During the peri-operative period, the obstetrician-gynecologist asked someone to fetch I.V.'s husband so that he could authorize the tubal ligation.<sup>54</sup> They were unable to find J.E.<sup>55</sup>

66. The record of the surgical procedure performed on I.V. contained 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 hysterotomy 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 to perform a Pomeroy bilateral tubal ligation through the incision in the womb to safeguard the future life of the mother; she is informed of this in the peri-operative period and she gives her verbal consent. The tubal ligation is performed with difficulty because of the adhesions [...].<sup>56</sup>

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the State's answering brief, folios 3652 to 3659).

<sup>49</sup> Cf. Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folio 3937); Statement made by Edgar Torrico Ameller before the Inter-American Court during the public hearing held on May 2, 2016; Record of the surgical procedure transcribed by the Women's Hospital (evidence file, volume VII, annex 8 to the submission of the case, folio 2138); Final conclusions of the medical audit by the Departmental Medical Audit Committee of March 9, 2001 (evidence file, volume VII, annex 2 to the submission of the case, folio 2118), e Report of the Audit Committee on the case of patient I.V. of August 22, 2000 (evidence file, volume VII, annex 4 to the submission of the case, folio 2136).

<sup>50</sup> Cf. Statement made by Edgar Torrico Ameller before the Inter-American Court during the public hearing held on May 2, 2016; Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folios 3929 to 3939), and Resolution issued by the Second Trial Court of the La Paz Judicial District on November 18, 2002 (evidence file, volume X, annex 17 to the State's answering brief, folios 3652 to 3659).

<sup>51</sup> Cf. Record of the surgical procedure transcribed by the Women's Hospital (evidence file, volume VII, annex 8 to the submission of the case, folio 2138).

<sup>52</sup> Cf. Record of the surgical procedure transcribed by the Women's Hospital (evidence file, volume VII, annex 8 to the submission of the case, folio 2138); Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folio 3937), and Statement made by Edgar Torrico Ameller before the Inter-American Court during the public hearing held on May 2, 2016.

<sup>53</sup> Cf. Family authorization form for surgery or special treatment (evidence file, volume X, annex 18 to the State's answering brief, folio 3661), and Resolution issued by the Second Trial Court of the La Paz Judicial District on November 18, 2002 (evidence file, volume X, annex 17 to the State's answering brief, folio 3654).

<sup>54</sup> Cf. Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folio 3937); Statement made by Edgar Torrico Ameller before the Inter-American Court during the public hearing held on May 2, 2016, and Report of the Audit Committee on the case of patient I.V. of August 22, 2000 (evidence file, volume VII, annex 4 to the submission of the case, folio 2136).

<sup>55</sup> Dr. María del Rosario Arteaga Méndez stated that she had not taken part in the operation and that, at the request of several nurses, on the day of the incident, she when to look for I.V.'s husband, without knowing why he was required and without being able to find him in the hospital. Cf. Statement made by María del Rosario Arteaga Méndez on August 17, 2000, according to the medical record of the surgical procedure performed on I.V. issued by the Medical Audit Committee of the Women's Hospital (evidence file, volume VII, annex 1 to the submission of the case, folio 2115), and Statement made by María del Rosario Arteaga Méndez on July 29, 2004, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XII, annex 1(d)) to the State's final arguments, folio 4826).

<sup>56</sup> Record of the surgical procedure transcribed by the Women's Hospital (evidence file, volume VII, annex 8 to the

67. Two days after the operation, the resident doctor made the following annotation on the patient's progress record:

3/07/00. Yesterday, the patient was told that a bilateral tubal ligation had been performed owing to medical necessity; this was accepted by the patient who understood that a future pregnancy posed a danger to her life. Dr. Vargas.<sup>57</sup>

68. I.V. has consistently denied before the domestic courts, during the procedure before the Commission and also before this Court that she gave verbal consent for the tubal ligation procedure. I.V. has stated that it was, during the visit of the resident doctor on July 2, 2000, that she became aware that the tubal ligation had been performed.<sup>58</sup>

69. Indeed, during the hearing in this case, in response to the question posed by her representative as to whether, when she was in the operating theater, she had been given an explanation, consulted, or requested to provide informed consent, and when she became aware of her sterilization, I.V. stated:

He never consulted me [referring to Dr. Torrico]; no explanation, nothing [...]; the doctor made an inhuman decision about my life, about my body, he tied my Fallopian tubes, even using the most radical method, the Pomeroy method, destroying my dreams [...] and also those of my family. [...] The only two questions that I was asked during the caesarean section procedure were: first, where did they perform the first caesarean section, to which I responded: in Lima, Peru, and the second was whether I had suffered complications, to which I responded: no. [...] Dr. Vargas [also] didn't tell me anything; he said nothing during the whole surgical procedure [...].

I found out on Sunday, July 2, during the medical visit by Dr. Marco Vargas Terrazas. He came over and I asked him how the operation had gone and he told me that it had gone well, but they had performed a tubal ligation, and I asked why they had done this and he told me that it was to safeguard my future life; then I asked whether the baby's life or mine was in danger, and he said no, and then, when my husband came I told him what they had done to me and my husband was also outraged; he was really dismayed by everything they told us [...]. My husband also asked him why they had not considered performing a vasectomy on him, and why had they performed a tubal ligation on me [...].<sup>59</sup>

70. Consequently, there are contrary versions of the same fact because, while the doctor who performed the procedure affirms that he had obtained the informed consent of I.V., she indicates the contrary and denies having provided it, a matter that will be analyzed when examining the merits of this judgment (*infra* paras. 224 to 236).

71. I.V. and her daughter were released from hospital on July 5, 2000.<sup>60</sup>

### **C. Medical audits and report of the Ethics Tribunal of the La Paz Departmental Medical Association**

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submission of the case, folio 2138).

<sup>57</sup> Progress report of I.V. of the Women's Hospital (evidence file, volume VII, annex 9 to the submission of the case, folio 2140).

<sup>58</sup> Cf. Statement made by I.V. before the Inter-American Court during the public hearing held on May 2, 2016, and Statement made by I.V. on July 27, 2004, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XII, annex 1(c)) to the State's final arguments, folios 4759 to 4761).

<sup>59</sup> Statement made by I.V. before the Inter-American Court during the public hearing held on May 2, 2016. See also, Statement made by I.V. on July 27, 2004, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XII, annex 1(c)) to the State's final arguments, folios 4759 to 4761).

<sup>60</sup> Cf. Progress report of I.V. of the Women's Hospital (evidence file, volume VII, annex 3 to the submission of the case, folio 2130).

72. As a result of the facts and the claims filed by I.V., three medical audits were conducted and the Ethics Tribunal of the La Paz Departmental Medical Association issued a ruling concerning the tubal ligation performed on I.V. following the caesarean section.

### *C.1 First medical audit*

73. The first medical audit was conducted by the Audit Committee of the Women's Hospital.<sup>61</sup> This committee issued its conclusions based on the reports prepared by the medical personnel present during the surgical procedure.<sup>62</sup>

74. In its report of August 22, 2000, the Committee concluded that:

[...] having taken the decision to perform a caesarean section due to the aforementioned complications (adhesions), at that point the surgeon takes the decision to consult the patient, who was conscious (epidural anesthesia) regarding a bilateral tubal ligation, because of the risk to her life if she had to undergo another similar operation. The mother, who was awake, gives the corresponding authorization for that procedure; this reply is confirmed and was witnessed by the members of the surgical team, third-year resident Rodrigo Arnez and the person responsible for preparing the operating theater, María Modesta Ticona. A request was also made to find the husband to give his authorization, but he could not be found at that time.

### *C.2 Second medical audit*

75. The second medical audit was conducted by the Departmental Medical Audit Committee of the La Paz Departmental Health Service (SEDES).<sup>63</sup> This committee prepared a report of "Final conclusions" dated March 9, 2001, based on unspecified documents and I.V.'s medical record.<sup>64</sup>

76. The Committee concluded that "the bilateral tubal ligation procedure was performed prophylactically and to safeguard the mother's future wellbeing." It also stated that it "fully support[ed] the report prepared by the Medical Audit Committee (Women's Hospital)."<sup>65</sup>

### *C.3 Third medical audit*

77. The third medical audit was conducted by the Medical Audit Decisions Committee of the General Directorate of Health Services of the Ministry of Health and Social Services.<sup>66</sup> The report to determine the reasons and circumstances under which a tubal ligation was performed during a caesarean section operation was prepared by an audit team and then submitted to the Medical Audit Decisions Committee on March 13, 2001.<sup>67</sup>

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<sup>61</sup> Consisting of the Head of Training and Research, the Head of Neonatology, and a member of the Audit Committee.

<sup>62</sup> Cf. Report of the Audit Committee on the case of patient I.V. of August 22, 2000 (evidence file, volume VII, annex 4 to the submission of the case, folio 2136).

<sup>63</sup> Consisting of representatives of medical associations and health-related scientific committees.

<sup>64</sup> Cf. Final conclusions of the medical audit by the Departmental Medical Audit Committee of March 9, 2001 (evidence file, volume VII, annex 2 to the submission of the case, folio 2118).

<sup>65</sup> Final conclusions of the medical audit by the Departmental Medical Audit Committee of March 9, 2001 (evidence file, volume VII, annex 2 to the submission of the case, folio 2118).

<sup>66</sup> Consisting of members of the Committee and the Audit team: the Director General of Health Services; the Head of the National Health Care Unit; the Head of the National Basic Health Care Insurance Unit; the Head of Development of the Health Services Network; a lawyer with experience in malpractice; a member of the Quality and Regulation Technical Group; the Coordinator and External Auditor; a doctor representing the SBS, and a specialist in obstetrics/gynecology.

<sup>67</sup> Cf. Report issued by the Medical Audit Decisions Committee of March 13, 2001 (evidence file, volume VII, annex 3 to the submission of the case, folio 2120).

78. The conclusions of this report established that errors were made when drawing up the case history, in the progress notes, and in the Hospital's records, and also indicated that I.V.'s life was not in danger and, consequently, found that the sterilization of I.V. was not justified based on the health norms in force. Specifically, the Committee concluded that:

[...]

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 hysterotomy 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 get the opinion of the patient during the surgical or peri-operative procedure because the patient is under surgical stress and anesthesia, even though the latter is local.

6. Dr. Vargas has referred to "communicating" the tubal ligation to the patient during the peri-operative period; but, in his progress note dated July 3, he stated: yesterday, he had "communicated" to the patient that the bilateral tube ligation had been performed out of medical necessity.

7. It was verified that, in the Record of Caesarean or Emergency Operations in the Hospital's operating theater, there is no record on July 1, 2000, of the operation corresponding to [I.V.].

[...] <sup>68</sup>

79. Based on this report, the Committee identified five aspects – medical decision and implementation of norms and protocols; inexistence of written consent to the tubal ligation; problems in following up on the explanatory process; administrative problems concerning the inexistence of records of surgical procedures, and inexistence of the anesthesia record – that led them to make several recommendations, including: the dismissal of the physician, an audit of the Women's Hospital; training regarding malpractice for the Women's Hospital; a reprimand to the Management of the Women's Hospital owing to "loss of documentation and negligence in the control of completion of medical and administrative records," and the "forward[ing of] a report of the Medical Audit to the [Departmental Health Service] SEDES, so that it could implement the corresponding sanctions and advise [I.V.] of the conclusions reached by the Medical Audit Decisions Committee."<sup>69</sup>

#### *C.4 Report of the Ethics Tribunal of the La Paz Departmental Medical Association*

80. The Ethics Tribunal of the La Paz Departmental Medical Association issued a report on the case of I.V. dated October 5, 2001, in response to the notes received from the Minister of Health and Social Services and the Director of the Complaints Department of the Ombudsman's Office in August and September 2001, respectively.<sup>70</sup> The Ethics Tribunal disagreed with the decision reached by the Medical Audit Decisions Committee of the General Directorate of Health Services of the Ministry of Health and Social Services, which had conducted the preceding audit.

81. Among its considerations, it affirmed that, the documentation analyzed included an institutional form of the Women's Hospital signed by the patient's husband and authorizing the

<sup>68</sup> Report issued by the Medical Audit Decisions Committee of March 13, 2001 (evidence file, volume VII, annex 3 to the submission of the case, folios 2120 to 2133).

<sup>69</sup> Report issued by the Medical Audit Decisions Committee of March 13, 2001 (evidence file, volume VII, annex 3 to the submission of the case, folio 2121).

<sup>70</sup> Cf. Report of the Ethics Tribunal of the La Paz Departmental Medical College / Case of claim by the patient I.V. of October 5, 2001 (evidence file, volume VII, annex 19 to the submission of the case, folio 2166).

caesarean section and, if necessary, any "special treatment" that had to be carried out "in anticipation of the different surgical findings, contingencies and/or complications that could occur during the caesarean section procedure, which could require the execution of additional corrective or preventive procedures."<sup>71</sup> The Ethics Tribunal considered that the Pomeroy-type bilateral tubal ligation would fall within this concept.<sup>72</sup>

82. Additionally, the Ethics Tribunal indicated that "it was not possible to have the specific, written informed consent for the tubal ligation, because this procedure was not anticipated, and it was performed by the surgeon owing to the necessity revealed by the findings during the operation";<sup>73</sup> thus, the verbal authorization that the patient allegedly gave was sufficient.<sup>74</sup> In this regard, it indicated that what jeopardized the patient's life was "the future risk of rupture of the uterus in another pregnancy, owing to the weakness of the uterine wall following the caesarean section procedure."<sup>75</sup>

83. The relevant part of this report included the following conclusions:

[...]

6. The bilateral tubal ligation decision had to be taken during the surgical procedure because, prior to the cesarean section, the surgical 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 similar statements asserting that the patient gave her verbal authorization for the bilateral tubal ligation procedure.<sup>76</sup>

84. The Ethics Tribunal recognized that there had been a lack of uniformity and coherence in the methodology used in the different audit procedures conducted up until that time,<sup>77</sup> and added that the different methods and contradictory results indicated structural problems in the health sector: "[t]hat difference in methodology has led to contradictory results revealing serious shortcomings in the organization of the sector's institutions in order to implement this type of action, as well as their functional interrelationship and degrees of dependency."<sup>78</sup> It emphasized that the purpose of the medical audits was "to improve the quality of care in the health services" and not to conduct "an [...] administrative procedure [...] that could lead to sanctions."<sup>79</sup> Consequently, it considered that it was not appropriate to determine that the physician should be dismissed owing to his long professional career abiding by the rules of gynecology/obstetrics. Even though it did not specifically

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<sup>71</sup> Report of the Ethics Tribunal of the La Paz Departmental Medical College / Case of claim by the patient I.V. of October 5, 2001 (evidence file, volume VII, annex 19 to the submission of the case, folio 2168).

<sup>72</sup> Cf. Report of the Ethics Tribunal of the La Paz Departmental Medical College / Case of claim by the patient I.V. of October 5, 2001 (evidence file, volume VII, annex 19 to the submission of the case, folio 2168).

<sup>73</sup> Report of the Ethics Tribunal of the La Paz Departmental Medical College / Case of claim by the patient I.V. of October 5, 2001 (evidence file, volume VII, annex 19 to the submission of the case, folio 2167).

<sup>74</sup> Cf. Report of the Ethics Tribunal of the La Paz Departmental Medical College / Case of claim by the patient I.V. of October 5, 2001 (evidence file, volume VII, annex 19 to the submission of the case, folio 2167).

<sup>75</sup> Report of the Ethics Tribunal of the La Paz Departmental Medical College / Case of claim by the patient I.V. of October 5, 2001 (evidence file, volume VII, annex 19 to the submission of the case, folio 2168).

<sup>76</sup> Report of the Ethics Tribunal of the La Paz Departmental Medical College / Case of claim by the patient I.V. of October 5, 2001 (evidence file, volume VII, annex 19 to the submission of the case, folios 2166 to 2170).

<sup>77</sup> Cf. Report of the Ethics Tribunal of the La Paz Departmental Medical College / Case of claim by the patient I.V. of October 5, 2001 (evidence file, volume VII, annex 19 to the submission of the case, folio 2168).

<sup>78</sup> Report of the Ethics Tribunal of the La Paz Departmental Medical College / Case of claim by the patient I.V. of October 5, 2001 (evidence file, volume VII, annex 19 to the submission of the case, folio 2168).

<sup>79</sup> Report of the Ethics Tribunal of the La Paz Departmental Medical College / Case of claim by the patient I.V. of October 5, 2001 (evidence file, volume VII, annex 19 to the submission of the case, folio 2166).

mention the norms he abided by: “[i]t seems inappropriate and unjust to sanction a specialist who has worked in an institution for more than 26 years with dismissal for performing a procedure established in the norms of gynecology/obstetrics to save a patient from potential future complications.”<sup>80</sup>

85. Lastly, it recommended that I.V. should be given a detailed explanation of everything that happened, as well as the standardization and systematic application of written informed consent in the health care services.<sup>81</sup>

#### **D. Administrative proceeding**

86. On May 12, 2002, the Technical Director of the La Paz Departmental Health Service instructed the Legal Advisory Services Unit of the La Paz Departmental Health Service to open an administrative proceeding, following various recommendations by the Ombudsman and the Minister of Health and Social Services.<sup>82</sup> On May 17, the administrative proceeding was opened against the instructing physician and the resident doctor.<sup>83</sup>

87. On July 25, 2002, the Head of the La Paz SEDES Legal Advisory Services Unit issued the final decision in the administrative proceeding, which established the administrative liability of the instructing physician and ordered his dismissal based on article 29 of Law 1178,<sup>84</sup> while declaring that the case against the resident doctor was dismissed, because he was acting in his capacity as a resident doctor and, according to the internal regulations, “was completely prohibited from performing any surgical procedure without the guidance of the ‘professor,’ in this case, Dr. Edgar Torrico Ameller.”<sup>85</sup>

88. This decision reviewed the statements of the two doctors. In particular, it indicated that the resident doctor had stated that “it was necessary to perform the caesarean section and also the tubal ligation from a medical point of view, but incorrect from a legal point of view, because we should have waited for I.V., after the operation, to take a decision on whether or not to have her tubes tied.”<sup>86</sup>

89. On February 12, 2003, the instructing physician filed an “appeal” against the decision, requesting that the information from the medical audits be taken into consideration, which “established support for him” and also the statements revealing that I.V. gave her verbal consent to the tubal ligation. He also indicated that he had “complied with the rules of procedure and the

<sup>80</sup> Report of the Ethics Tribunal of the La Paz Departmental Medical College / Case of claim by the patient I.V. of October 5, 2001 (evidence file, volume VII, annex 19 to the submission of the case, folio 2169).

<sup>81</sup> Cf. Report of the Ethics Tribunal of the La Paz Departmental Medical College / Case of claim by the patient I.V. of October 5, 2001 (evidence file, volume VII, annex 19 to the submission of the case, folio 2169).

<sup>82</sup> Cf. Final decision No. 020/2002 issued by the Legal Advisory Services Unit of the La Paz Departmental Health Service on July 25, 2002 (evidence file, volume XIV, annex 3 to the representative’s final arguments, folios 5769 to 5771).

<sup>83</sup> Cf. Final decision No. 020/2002 issued by the Legal Advisory Services Unit of the La Paz Departmental Health Service on July 25, 2002 (evidence file, volume XIV, annex 3 to the representative’s final arguments, folios 5769 to 5771).

<sup>84</sup> Article 29. Administrative liability shall be incurred when the act or omission contravenes the legal and administrative order and the norms that regulate the function-related conduct of the public servant. This shall be determined by the internal procedures of each entity that take into account the results of the audit, if one has been conducted. The competent authority shall apply, based on the gravity of the offense, the sanctions of: a fine of up to 20% of the monthly remuneration; suspension for a maximum of 30 days, or dismissal.

<sup>85</sup> Final decision No. 020/2002 issued by the Legal Advisory Services Unit of the La Paz Departmental Health Service on July 25, 2002 (evidence file, volume XIV, annex 3 to the representative’s final arguments, folios 5769 to 5771).

<sup>86</sup> Final decision No. 020/2002 issued by the Legal Advisory Services Unit of the La Paz Departmental Health Service on July 25, 2002 (evidence file, volume XIV, annex 3 to the representative’s final arguments, folios 5769 to 5771).

Bolivian Health Regulations, when carrying out the delicate task of saving [I.V.'s] life."<sup>87</sup>

90. On March 10, 2003, the Head of the La Paz SEDES Legal Advisory Services Unit issued a new administrative decision, based on articles 21 and 24 of Supreme Decree No. 26237 which regulated the appeal for annulment of a decision. In this decision, it was decided to annul the declaration of administrative liability and dismissal of the instructing physician and ordered the closure of the procedure against him based on, among other matters, the following information:

1. [Under the] Bolivian Health Regulations [...] the goal is to reduce 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 [I.V.] gave her consent to the tubal ligation procedure.
3. That [...] the Medical Audit Committee of the Women's Hospital, established that [I.V.] was awake because she had been given epidural anesthesia [...] and that she gave authorization for her surgical procedure, as confirmed and witnessed by the medical team [...].
4. [...] The Departmental Medical Audit Committee fully supports the report issued by the Women's Hospital [...] establishing] that the tubal ligation procedure was performed for prophylactic purposes and to preserve future maternal well-being."<sup>88</sup>

91. On March 14, 2003, it was declared that this decision was final.<sup>89</sup>

## **E. Criminal proceedings**

### *E.1 First oral proceeding*

92. On August 31, 2002, the Public Prosecution Service filed criminal charges against the instructing physician for the offense of severe injuries to the detriment of I.V., established in paragraph 2 of article 270 of the Bolivian Criminal Code.<sup>90</sup> The charges were based on the tubal ligation having been performed on I.V. arbitrarily and without abiding by the legal procedure in force for that type of irreversible surgical procedure.<sup>91</sup> The criminal proceedings were heard by the Second Trial Court of La Paz, which issued an order to start the trial on October 1, 2002.<sup>92</sup> On October 26, 2002, I.V. asked to become a complainant and civil party to the proceedings.<sup>93</sup>

93. In a judgment of November 18, 2002, the Second Trial Court of La Paz unanimously convicted the physician, as author of the offense of severe injuries, to a suspended sentence of three years' imprisonment.<sup>94</sup> As grounds for this decision, the judgment found that there was no

<sup>87</sup> The brief of this appeal does not appear in the case file, but was reviewed in the unnumbered administrative decision issued by the Legal Advisory Services Unit of the La Paz Departmental Health Service on March 10, 2003 (evidence file, volume VII, annex 21 to the submission of the case, folios 2175 to 2176).

<sup>88</sup> Unnumbered administrative decision issued by the Legal Advisory Services Unit of the La Paz Departmental Health Service on March 10, 2003 (evidence file, volume VII, annex 21 to the submission of the case, folios 2175 to 2176).

<sup>89</sup> Cf. Decision of March 14, 2003 (evidence file, volume XII, annex 1(a) to the State's final arguments, folio 4225).

<sup>90</sup> Article 270. (Severe injuries). The author shall be sentenced to three to nine years' imprisonment when the injury results in: [...] 2. The permanent impairment of health, or the loss or the use of a sense, of a limb, or of a function.

<sup>91</sup> Cf. Charges, case No. PTJ894/2002 filed by the District Prosecutor of La Paz on August 31, 2002 (evidence file, volume VII, annex 22 to the submission of the case, folios 2178 to 2183).

<sup>92</sup> Cf. Order to open the proceedings, Resolution No. 071/2002 of October 1, 2002 (evidence file, volume VII, annex 23 to the submission of the case, folios 2185 to 2186).

<sup>93</sup> Cf. Brief presented by I.V. before the Second Trial Court on October 29, 2002 (evidence file, volume XII, annex 1(a) to the State's final arguments, folio 4011).

<sup>94</sup> Cf. Resolution No. 086/2002 issued by the Second Trial Court of La Paz on November 18, 2002 (evidence file, volume VII, annex 24 to the submission of the case, folios 2188 to 2195).

medical justification to perform the tubal ligation; that the statements reporting the verbal authorization of this procedure were contradictory, and that, even if this authorization had been given, it would have no legal value:

It has been abundantly established that there was no rational or medical justification for performing the bilateral tubal ligation, given that the numerous adhesions and the incision in the uterus did not constitute an immediate and imminent risk to the patient's life. The possibility of a health complication 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 arise, particularly since, with birth control counseling, the couple might never have another pregnancy by using other contraceptive methods or, ultimately, deciding to opt for tubal ligation surgery, but WITH PRIOR INFORMED CONSENT.

[...]

Throughout the trial, an attempt has been made to demonstrate that the patient gave her verbal consent to the bilateral tubal ligation procedure during the peri-operative period. However, this court is convinced that contradictions exist in that respect[.]

[...]

This court establishes fully that, even if the patient had given her verbal consent during the surgical procedure, IT WOULD NOT BE LEGALLY VALID, because the patient was under surgical stress and anesthesia and, consequently, did not possess the appropriate mental or volitional faculties to authorize or consent to a surgical procedure involving the loss of her reproductive capacity. Finally, this court finds that, for this kind of surgery, verbal authorizations are not valid. Rather there must be WRITTEN CONSENT BASED ON INFORMATION AND GUIDANCE PROVIDED TO THE COUPLE BY THE PHYSICIAN, as established by medical regulations in Bolivia and internationally.<sup>95</sup>

94. This judgment was appealed by the persons convicted on December 5, 2002.<sup>96</sup> The appeal was decided on February 12, 2003, by the Third Criminal Chamber of the Superior Court of the La Paz Judicial District, declaring that the appeal was admissible, annulling the judgment that had been appealed completely, and ordering that the case be re-tried by another Trial Court.<sup>97</sup> It considered that the appealed judgment had been delivered with irremediable defects involving the failure to respect, or the violation of rights and guarantees established in the Constitution, in the conventions and treaties in force, and in the Code of Criminal Procedure; in particular, infringements of the right to admissibility of evidence to the detriment of the defense, and flaws in the application of criminal law.<sup>98</sup>

### *E.2 Second oral proceeding*

95. On March 14, 2003, the case was moved to the First Trial Court of the La Paz Judicial District<sup>99</sup> and on March 17, 2003, an order was issued to open the proceedings.<sup>100</sup> On April 22, 2003, the First Trial Court annulled the drawing of lots for lay judges and the resulting constitution of the Court owing to a problem with the computerized system, and established a new date and time for the hearing of the oral proceeding, for the public hearing to draw lots for lay judges, and

<sup>95</sup> Resolution No. 086/2002 issued by the Second Trial Court of La Paz on November 18, 2002 (evidence file, volume VII, annex 24 to the submission of the case, folios 2191 to 2192).

<sup>96</sup> Cf. Brief of the restricted appeal presented by Dr. Edgar Torrico Ameller on December 5, 2002 (evidence file, volume XII, annex 1(a) to the State's final arguments, folios 4139 to 4151).

<sup>97</sup> Cf. Resolution No. 21/003 issued by the Third Criminal Chamber of the Superior Court of the La Paz Judicial District on February 12, 2003 (evidence file, volume VII, annex 25 to the submission of the case, folios 2197 to 2200).

<sup>98</sup> Cf. Resolution No. 21/003 issued by the Third Criminal Chamber of the Superior Court of the La Paz Judicial District on February 12, 2003 (evidence file, volume VII, annex 25 to the submission of the case, folios 2197 to 2200).

<sup>99</sup> Cf. Filing of the case before the First Trial Court of the La Paz Judicial District on March 14, 2003 (evidence file, volume VII, annex 26 to the submission of the case, folio 2202).

<sup>100</sup> Cf. Order to open the proceedings of March 17, 2003 (evidence file, volume XII, annex 1(a) to the State's final arguments, folios 4213 to 4214).

for the hearing to constitute the court.<sup>101</sup>

96. On May 9, 2003, the Presiding Judge of the First Trial Court and a technical judge of this court recused themselves from hearing the case, the former because he had given his opinion out of court in an interview, and the latter because he had been accused of malfeasance in this case.<sup>102</sup> Consequently, the file of the proceedings was remitted to the Third Trial Court of La Paz,<sup>103</sup> which returned the case to the original court on May 12, 2003, due to procedural defects relating to the acceptance or rejection of the recusals.<sup>104</sup>

97. Since a sufficient number of citizens had not come forward to constitute the Third Trial Court, it was decided to forward the case to the nearest judicial district,<sup>105</sup> which was El Alto; accordingly, the file was forwarded to the Trial Court on duty on May 28, 2003.<sup>106</sup> The case was then moved to the Second Trial Court of El Alto on May 31, 2003, and a date was set for the hearing of the oral proceeding and for the public hearing to draw lots for lay judges.<sup>107</sup>

98. On July 15, 2003, a special public hearing was held to constitute the court before the El Alto Second Trial Court. At the hearing it was reported that none of the citizens whose names had been drawn had been notified, because they had not been located at their registered addresses. Consequently, the Court decided to refer the case to the nearest judicial district, corresponding to the town of Achacachi.<sup>108</sup>

99. On February 16, 2004, a public hearing was held to constitute a court before the Achacachi Trial Court, which determined, having held the hearing and being unable to constitute a court with lay judges, to remit the proceedings to the nearest judicial district, which corresponded to Copacabana.<sup>109</sup> The case was forwarded to that court on February 19, 2004.<sup>110</sup> On April 30, 2004, an order was issued to admit the case.<sup>111</sup>

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<sup>101</sup> Cf. Resolution No. 19/2003 issued by the First Trial Court of the La Paz Judicial District, Reasoned order of April 22, 2003 (evidence file, volume VII, annex 27 to the submission of the case, folios 2204 to 2205).

<sup>102</sup> Cf. Brief submitted by Dr. Jose Luis Rivero Aliaga, President of the First Trial Court, to the technical judge of this Court on May 9, 2003 (evidence file, volume VII, annex 28 to the submission of the case, folio 2207); Brief submitted by Dr. Raúl Gaston Huaylla Rivera, technical judge of the First Trial Court in case FIS No. 894, dated May 9, 2003 (evidence file, volume VII, annex 29 to the submission of the case, folio 2209).

<sup>103</sup> Cf. Remittal of case FIS 894 to the Third Trial Court (TS-1. N° 92/2003), on May 9, 2003 (evidence file, volume VII, annex 30 to the submission of the case, folio 2211).

<sup>104</sup> Cf. Decision issued by the Third Trial Court of the La Paz Judicial District on May 12, 2003 (evidence file, volume VII, annex 31 to the submission of the case, folio 2213).

<sup>105</sup> Cf. Record of public hearing to constitute a court (evidence file, volume XII, annex 1(b) to the State's final arguments, folio 4375).

<sup>106</sup> Cf. Remittal of original file to the acting Trial Court of El Alto (TS 1 Of. No. 105/03), on May 28, 2003 (evidence file, volume VII, annex 32 to the submission of the case, folio 2215).

<sup>107</sup> Cf. Resolution issued by the Second Trial Court of El Alto on May 31, 2003 (evidence file, volume VII, annex 33 to the submission of the case, folio 2217).

<sup>108</sup> Cf. Record of public hearing for the special constitution of the Second Trial Court of El Alto of July 15, 2003 (evidence file, volume VII, annex 34 to the submission of the case, folio 2219).

<sup>109</sup> Cf. Record of public hearing for the special constitution of the Trial Court of Achacachi of February 16, 2004 (evidence file, volume VII, annex 35 to the submission of the case, folio 2221).

<sup>110</sup> Cf. Remittal to the Trial Court of the province of Copacabana on February 19, 2004 (evidence file, volume VII, annex 35 to the submission of the case, folio 2222).

<sup>111</sup> Cf. Order to initiate the trial of April 30, 2004 (evidence file, volume XII, annex 1(c)) to the State's final arguments, folios 4534 to 4535).

100. On August 13, 2004, following the oral proceeding, the Copacabana Trial Court composed of three lay judges and a technical judge delivered judgment. In this judgment it rejected the plea of unfounded proceedings filed by the defense and declared the instructing physician guilty of the offense of negligent bodily harm (*lesión culposa*) defined in article 274 of the Bolivian Criminal Code, sentencing him to a fine of sixty-four thousand bolivianos, plus costs in favor of the State, and reparation of the damage to I.V.<sup>112</sup>

101. The physician filed a "restricted appeal"<sup>113</sup> against this sentence arguing, above all, the objection of unfounded proceedings, because the Public Prosecution Service should not have filed an action against him, since, as a medical professional, his actions were subject to specific rules and regulations.<sup>114</sup> The Second Criminal Chamber of the La Paz Superior Court of Justice required that the formal defects and omissions noted in the appeal be rectified.<sup>115</sup> Meanwhile, in response to the restricted appeal, I.V. asked the Court to confirm the judgment that had been delivered and argued that "the main purpose [of the appeal was] to gain time so that in February [2005] the criminal action would extinguish."<sup>116</sup>

102. The appeal was decided by the Second Criminal Chamber of the La Paz Superior Court of Justice on October 22, 2004.<sup>117</sup> The Chamber annulled the appealed judgment in its entirety and ordered that the case be heard by another court. As grounds for this decision, the Chamber considered that the appealed judgment had not complied fully with the legal provisions regulating the formal requirements and the substantiation of the judgment.<sup>118</sup>

103. I.V. filed a cassation appeal against the said decision,<sup>119</sup> which was declared inadmissible by the First Criminal Chamber of the Supreme Court of Justice on February 1, 2005, considering that, even though the appellant had forwarded the precedents that she had cited as being contradictory, she had not "specifie[d] the similar facts, or explain[ed] clearly the contradictory legal meaning between the contested judgment and the precedents she ha[d] forwarded, thus failing to comply with basic requirements [...]."<sup>120</sup>

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<sup>112</sup> Cf. Resolution No. 32/2004 issued by the Copacabana Trial Court on August 13, 2004 (evidence file, volume VII, annex 36 to the submission of the case, folios 2224 to 2230).

<sup>113</sup> Article 407. (Grounds). The remedy of restricted appeal shall be filed for disregard or erroneous application of the law. When the legal rule that is cited as having been disregarded or erroneously applied constitutes a procedural flaw, the remedy shall only be admissible if the interested party has opportunely claimed its correction or has reserved the right to appeal, except in cases of absolute nullity or in cases of defects in the judgment pursuant to the provisions of articles 169 and 370 of this Code. This remedy may only be filed against judgments and with the restrictions established in the following articles.

<sup>114</sup> Cf. Restricted appeal filed by Dr. Edgar Torrico Ameller on August 30, 2004 (evidence file, volume X, annex 31 al Answering brief of the State, folios 3840 to 3854).

<sup>115</sup> Cf. Order issued by the Second Criminal Chamber of the La Paz Superior Court of Justice on October 8, 2004 (evidence file, volume XIII, annex 1(d)) to the State's final arguments, folio 4909).

<sup>116</sup> Brief submitted by I.V. before the Trial Court of the province of Manco Kapac Copacabana on September 21, 2004 (evidence file, volume X, annex 32 al Answering brief of the State, folios 3857 to 3862).

<sup>117</sup> Cf. Ruling No. 265/2004 issued by the Second Criminal Chamber of the La Paz Superior Court of Justice on October 22, 2004 (evidence file, volume VII, annex 37 to the submission of the case, folios 2232 to 2236).

<sup>118</sup> Cf. Ruling No. 265/2004 issued by the Second Criminal Chamber of the La Paz Superior Court of Justice on October 22, 2004 (evidence file, volume VII, annex 37 to the submission of the case, folios 2232 to 2236).

<sup>119</sup> Cf. Remedy of cassation file by I.V. before the Second Criminal Chamber of the District Superior Court on November 22, 2004 (evidence file, volume X, annex 34 al Answering brief of the State, folios 3873 to 3876).

<sup>120</sup> Order No. 3 issued by the First Criminal Chamber of the Supreme Court of Justice on February 1, 2005 (evidence file, volume VII, annex 38 to the submission of the case, folios 2238 to 2239).

### E.3 Third oral proceeding

104. The Superior Court of Justice returned the case to the Copacabana Trial Court,<sup>121</sup> which, in turn, referred the case to the Trial Court of Sica Sica, province of Aroma, on August 2, 2005,<sup>122</sup> and the matter was admitted in this court on August 3, 2005,<sup>123</sup> in compliance with the decision of the Second Criminal Chamber of the La Paz Superior Court of Justice (*supra* para. 102).

105. On August 10, 2005, I.V. requested the Second Criminal Chamber of the La Paz Superior Court to refer the case to La Paz, considering that it was very burdensome for the parties and for the Public Prosecution Service to pursue proceedings before a jurisdiction that was so far from the place where the supposed offense had been committed and from the domicile of the parties.<sup>124</sup>

106. On August 30, 2005, the instructing physician requested the Sica Sica Trial Court to extinguish the criminal action owing to the maximum duration of the proceedings.<sup>125</sup>

107. On August 23, 2005, I.V. filed a complaint before the District Prosecutor against the prosecutor in charge of her case, indicating that, during the most recent 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 made an effort to take steps to prevent a delay in the new criminal trial and asked that another prosecutor be put in charge of the case.<sup>126</sup> This request was repeated on September 6, 2005.<sup>127</sup> Also, on September 6, 2005, I.V. wrote to the Sica Sica Trial Court asking that the case be forwarded to La Paz.<sup>128</sup>

108. On September 23, 2005, the instructing physician asked the Sica Sica Trial Court to suspend the hearing of the oral trial scheduled for October 3, 2005.<sup>129</sup> The Court admitted this request and set October 12, 2005, as the new date for the hearing.<sup>130</sup>

109. On January 20, 2006, the Sica Sica Trial Court declared that it lacked jurisdiction to continue hearing the proceedings and decided to refer the case to the La Paz Superior Court of Justice, so that it could determine whether to forward it to the competent trial court of La Paz.<sup>131</sup>

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<sup>121</sup> Cf. Return of the case to the Trial Court of Copacabana under a communication of February 24, 2005, received on April 29, 2005 (evidence file, volume VII, annex 39 to the submission of the case, folio 2241).

<sup>122</sup> Cf. Remittal of original copies of the proceedings to the Sica Sica Trial Court under a communication of May 16, 2005, received on August 2, 2005 (evidence file, volume VII, annex 40 to the submission of the case, folio 2243).

<sup>123</sup> Cf. Decision issued by the Sica Sica Trial Court on August 3, 2005 (evidence file, volume VII, annex 41 to the submission of the case, folio 2245).

<sup>124</sup> Cf. Brief submitted to the Second Criminal Chamber of the La Paz Superior Court of Justice on August 10, 2005 (evidence file, volume VII, annex 42 to the submission of the case, folios 2247 to 2248).

<sup>125</sup> Cf. Brief submitted by Dr. Edgar Torrico Ameller to the Sica Sica Trial Court on August 30, 2005 (evidence file, volume XIII, annex 1(e)) to the State's final arguments, folios 5042 to 5047).

<sup>126</sup> Cf. Letter addressed to the Superior District Prosecutor by I.V. on August 23, 2005 (evidence file, volume VII, annex 43 to the submission of the case, folio 2250).

<sup>127</sup> Cf. Letter addressed to the Superior District Prosecutor by I.V. on September 6, 2005 (evidence file, volume VII, annex 44 to the submission of the case, folio 2252).

<sup>128</sup> Cf. Brief submitted to the Sica Sica Trial Court on September 6, 2005 (evidence file, volume XIII, annex 1.e) to the State's final arguments, folios 5050 to 5051).

<sup>129</sup> Brief submitted by Dr. Edgar Torrico Ameller before the Sica Sica Trial Court on September 23, 2005 (evidence file, volume VII, annex 45 to the submission of the case, folio 2254).

<sup>130</sup> Cf. Resolution issued by the Sica Sica Trial Court on September 27, 2005 (evidence file, volume VII, annex 46 to the submission of the case, folio 2256).

<sup>131</sup> Cf. Resolution No. 03/2006 issued by the Sica Sica Trial Court on January 20, 2006 (evidence file, volume VII, annex

On February 10, 2006, the Second Criminal Chamber of the La Paz Superior Court of Justice decided to remit the proceedings to the Fourth Trial Court of La Paz,<sup>132</sup> and this decision was complied with on March 16, 2006.<sup>133</sup>

110. On March 20, 2006, the Fourth Trial Court of La Paz returned the case to the Second Criminal Chamber of the La Paz Superior Court of Justice for the latter to remedy a procedural defect.<sup>134</sup> On April 10, 2006, the same court set aside its decision of March 20, 2006, and admitted the case.<sup>135</sup>

111. On April 28, 2006, the instructing physician's defense filed a motion that the criminal action be extinguished, based on article 133 of the Bolivian Code of Criminal Procedure,<sup>136</sup> because more than three years had elapsed since the first action of the proceedings against him.<sup>137</sup> The oral trial began on May 7, 2006.<sup>138</sup> When the oral trial was re-started on June 1, 2006, the Fourth Trial Court of La Paz declared that the motion for the action to be extinguished was founded and ordered that the case be closed.<sup>139</sup> This decision indicated that it was the organs responsible for the administration of justice that had caused the delays and considered:

That the case documents reveal quite clearly that there has been a delay related, first, to the ineffectiveness of the officials responsible for delivering correct notifications for the constitution of a court jury and, then, to jurisdictional bodies that, for trivial reasons, have proceeded to suspend hearings and move the case from one jurisdiction to another [...]. The organs responsible for administering justice have toyed with the law in a way that seriously impaired the correct administration of justice.<sup>140</sup>

112. Both the prosecutor and I.V. filed an appeal against the decision declaring the extinction of the criminal proceedings.<sup>141</sup> On August 23, 2006, the First Criminal Chamber of the Superior Court of La Paz declared the appeals inadmissible and the questions raised irrelevant and, therefore, confirmed the contested decision.<sup>142</sup> This ruling reiterated that the delays in the proceedings were

47 to the submission of the case, folios 2258 to 2260).

<sup>132</sup> Cf. Resolution No. 36/2006 issued by the Second Criminal Chamber of the Superior Court of La Paz on February 10, 2006 (evidence file, volume VII, annex 48 to the submission of the case, folio 2262).

<sup>133</sup> Cf. Remittal of the original copies of the proceedings to the Fourth Trial Court on March 16, 2006 (evidence file, volume VII, annex 49 to the submission of the case, folio 2264).

<sup>134</sup> Cf. Decision issued by the Fourth Trial Court of La Paz on March 20, 2006 (evidence file, volume VII, annex 50 to the submission of the case, folio 2266).

<sup>135</sup> Cf. Decision issued by the Fourth Trial Court of La Paz on April 10, 2006 (evidence file, volume VII, annex 51 to the submission of the case, folio 2268).

<sup>136</sup> Article 308 (4) of the Code of Criminal Procedure establishes the exception of the extinction of the criminal action, and article 27 (10), stipulates that this shall be declared based on the expiry of the maximum time for the duration of the proceedings and, according to article 133, this shall not exceed three years from the first act of the proceedings, except in case of contempt of court.

<sup>137</sup> Cf. Brief filed by Dr. Edgar Torrico Ameller before the Fourth Trial Court of La Paz on April 28, 2006 (evidence file, volume X, annex 36 to the answering brief of the State, folios 3881 to 3890).

<sup>138</sup> Cf. Record of the oral hearing (evidence file, volume XIII, annex 1(f)) to the State's final arguments, folios 5344 to 5354).

<sup>139</sup> Cf. Ruling No. 13/06 issued by the Fourth Trial Court of La Paz on June 1, 2006 (evidence file, volume VII, annex 52 to the submission of the case, folios 2270 to 2275).

<sup>140</sup> Ruling No. 13/06 issued by the Fourth Trial Court of La Paz on June 1, 2006 (evidence file, volume VII, annex 52 to the submission of the case, folio 2274).

<sup>141</sup> Cf. Appeal filed by the prosecutor on June 1, 2006 (evidence file, volume XIII, annex 1(f)) to the State's final arguments, folio 5355); Appeal filed by I.V. on June 8, 2006 (evidence file, volume XIII, annex 1(f)) to the State's final arguments, folios 5361 to 5367).

<sup>142</sup> Cf. Ruling No. 514/06 issued by the First Criminal Chamber of the Superior Court del Distrito of La Paz on August 23,

attributable to the courts, indicating: “[a] review of the court records shows that the delay is attributable to the court hearing the case because, twice, it caused the proceedings to be annulled due to procedural defects.”<sup>143</sup>

113. On September 21, 2006, the Fourth Trial Court of La Paz indicated that, by law, the said decision was final, and it was not necessary to expressly declare that it had become final.<sup>144</sup>

**F. Physical and psychological effects of the surgical procedure**

114. 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.<sup>145</sup> I.V. was also diagnosed with atrophic endometritis in March 2002.<sup>146</sup> I.V. had to undergo another surgical procedure owing to these aftereffects.<sup>147</sup>

115. I.V. suffered anguish and frustration as a result of the tubal ligation. She believed that her right to become a mother again had been violated and felt “less of a woman because she could not have more children.”<sup>148</sup> In 2002, I.V.’s household broke up and she was left responsible for her two daughters who live in Bolivia. Despite psychotherapy, I.V. has suffered emotional crises, some of them very strong,<sup>149</sup> and this led her to ask the Inter-American Commission to grant precautionary measures in her favor and in favor of her two daughters.<sup>150</sup> In November 2013, I.V. suffered a more severe crisis that led her to destroy almost all the files and papers with her name or personal data that she had kept at home. She was admitted to the emergency department of the mental health ward of the La Paz Hospital de Clínicas for three weeks from November 12 to December 2, 2013.<sup>151</sup> Since that time, I.V. is on medication.<sup>152</sup> I.V.’s mental state also affected her daughters.<sup>153</sup>

2006 (evidence file, volume VII, annex 53 to the submission of the case, folios 2277 to 2279).

<sup>143</sup> Ruling No. 514/06 issued by the First Criminal Chamber of the Superior Court del Distrito of La Paz on August 23, 2006 (evidence file, volume VII, annex 53 to the submission of the case, folio 2278).

<sup>144</sup> Cf. Decision issued by the Fourth Trial Court of La Paz on September 21, 2006 (evidence file, volume XIII, annex 1.f) to the State’s final arguments, folio 5401).

<sup>145</sup> Cf. Report of gynecological intravaginal ultrasound scan of August 14, 2000 (evidence file, volume VII, annex 11 to the submission of the case, folio 2150); Pathology and Cytology Laboratory Report of August 17, 2000 (evidence file, volume VII, annex 12 to the submission of the case, folio 2152); Report of gynecological intravaginal ultrasound scan of August 23, 2000 (evidence file, volume VII, annex 13 to the submission of the case, folio 2154), and Medical certificate of September 3, 2000 (evidence file, volume VII, annex 14 to the submission of the case, folio 2156).

<sup>146</sup> Cf. Radiology report in relation to a request for a hysterosalpingogram (HSG) test, with the results dated March 25, 2002 (evidence file, volume VII, annex 15 to the submission of the case, folio 2158).

<sup>147</sup> Cf. Brief containing an accusation filed by I.V. before the Trial Court of the province of Manco Kapac Copacabana on March 27, 2011 (evidence file, volume XII, annex 1.(c)) to the State’s final arguments, folio 4515).

<sup>148</sup> Institute for Therapy and Research on the Effects of State Torture and Violence (ITEI), Psychological examination of I.V. on August 11, 2015 (evidence file, volume VIII, annex 21 to the brief with motions, pleadings and evidence, folios 2363 to 2384).

<sup>149</sup> According to the evaluation made by the Institute for Therapy and Research on the Effects of State Torture and Violence (ITEI), in 2013, I.V. developed an organic schizophreniform psychosis believing that the State was pursuing her in order to kill her. Cf. Medical report of the Hospital de Clínicas, dated January 17, 2014, on the hospitalization of I.V. in the Mental Health Unit, and her medical diagnosis: organic schizophreniform psychosis (evidence file, volume IX, annex 68 to the brief with motions, pleadings and evidence, folio 3330).

<sup>150</sup> Cf. Communication of the Commission on I.V.’s request for precautionary measures (MC-1 49-13) (evidence file, volume VIII, annex 13 to the brief with motions, pleadings and evidence, folio 2334).

<sup>151</sup> Cf. Medical report of the Hospital de Clínicas, dated January 17, 2014, on the hospitalization of I.V. in the Mental Health Unit and her medical diagnosis: organic schizophreniform psychosis (evidence file, volume IX, annex 68 to the brief with motions, pleadings and evidence, folio 3330).

<sup>152</sup> Cf. Medical prescription for carbamazepine and haloperidol issued to I.V. by the Hospital de Clínicas of La Paz

116. The following are the conclusions of the last psychological examination of I.V. conducted by the ITEI in August 2015:<sup>154</sup>

- A. A high degree of consistency and congruence exists between the suffering that subsists owing to the non-consensual sterilization and her desire to have at least one more child.
- B. A high degree of consistency and congruence exists between the suffering and the need for justice to be done because this is a case of a "man-made disaster."
- C. A high degree of consistency and congruence exists between the injustice suffered owing to the physician's abuse of power and the desire that the abuser be condemned.
- D. A high degree of consistency and congruence exists between [I.V.'s] search for justice and a public acknowledgement of the harm caused. A temporal relationship exists between the facts suffered and the current psychological symptoms; particularly, the persistent anguish owing to the desire for a future maternity that has been curtailed by external forces.
- E. The mental reactions noted are foreseeable or typical reactions in the affected person's social and cultural context.
- F. A high degree of consistency and congruence exists between what [I.V.] has suffered and her wish to contribute to the efforts to ensure that this type of abuse is not repeated.
- G. There is clinical and diagnostic evidence of effects on her mental state.

## VIII MERITS

117. In this chapter, the Court will address the merits of the case. The Court finds it pertinent, owing to the different legal arguments presented and the fact that many of them are interrelated, to divide the analysis into three sections. First, the Court will examine all the arguments concerning the alleged violations relating to the tubal ligation procedure to which I.V. was subjected. Then, the Court will address the arguments relating to the possible constitution of an act of torture or cruel, inhuman or degrading treatment. Lastly, the Court will examine all the arguments related to the right of access to justice.

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(evidence file, volume IX, annex 79 to the brief with motions, pleadings and evidence, folios 3372 to 3376).

<sup>153</sup> According to the ITEI evaluation: "[t]he unauthorized sterilization of the mother has affected the lives of the whole family and, particularly [N.V.] who, since her parents separated, is the main support for her mother, having to share her pain, concerns and emotional burden. The effect of this situation is that [N.V.] could not imagine being able to share her concerns and her problems, keeping everything to herself." ITEI, Psychological evaluation of N.V. on August 3, 2015 (evidence file, volume VIII, annex 22 to the brief with motions, pleadings and evidence, folios 2386 to 2397). The ITEI indicated the following with regard to L.A.: "[t]he unauthorized sterilization of the mother has affected the lives of the whole family and, particularly [L.A.], who although unable to understand the reasons, owing to her age, could not count on a mother with sufficient emotional availability and time to provide her with the attention that she would have needed." ITEI, Psychological evaluation of L.A., on July 28, 2015 (evidence file, volume VIII, annex 23 to the brief with motions, pleadings and evidence, folios 2399 to 2410).

<sup>154</sup> Psychological evaluation of I.V. by the ITEI on August 11, 2015 (evidence file, volume VIII, annex 21 to the brief with motions, pleadings and evidence, folios 2363 to 2384).

**VIII-1**  
**RIGHTS TO PERSONAL INTEGRITY,<sup>155</sup> TO PERSONAL LIBERTY,<sup>156</sup> TO DIGNITY,<sup>157</sup> TO**  
**PRIVACY AND FAMILY LIFE,<sup>158</sup> TO ACCESS TO INFORMATION,<sup>159</sup> TO RAISE A FAMILY,<sup>160</sup>**  
**AND TO RECOGNITION OF JURIDICAL PERSONALITY,<sup>161</sup> IN RELATION TO THE**  
**OBLIGATIONS TO RESPECT AND TO ENSURE RIGHTS WITHOUT DISCRIMINATION,<sup>162</sup> AND**  
**ALSO ARTICLE 7 OF THE CONVENTION OF BELÉM DO PARÁ<sup>163</sup>**

118. In this section, the Court will examine the arguments concerning the alleged violations related to the tubal ligation procedure to which I.V. was subjected. To this end, the Court finds it pertinent, first, to describe the arguments of the parties and of the Commission regarding Articles 5(1), 13(1), 11(1), 11(2), 17(2), 3 and 1(1) of the American Convention, and also Article 7 of the Convention of Belém do Pará, and then to present the pertinent considerations and decide the disputes collectively, rather than separately article by article.

**A. Arguments of the parties and of the Commission**

*A.1 Arguments on the right to personal integrity (Article 5(1) of the American Convention)*

119. The **Commission** argued that the right to personal integrity is a broad concept that includes a woman's maternal health, and its protection entails the State's obligation to ensure that women have access, on an equal footing, to adequate and timely health services and to the necessary information on maternity and reproductive health. In this regard, it considered that performing the surgical procedure of sterilization without I.V.'s consent did not constitute an appropriate or opportune measure of maternal health and deprived her, permanently and absolutely, of her reproductive rights, which violated her right to physical and mental integrity, and caused her feelings of profound anguish, helplessness and frustration, exacerbated by the lack of access to justice. In addition, it considered that the existence of a request to reverse a tubal ligation by the

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<sup>155</sup> Article 5(1) establishes that: "Every person has the right to have his physical, mental, and moral integrity respected."

<sup>156</sup> Article 7(1) stipulates that: "Every person has the right to personal liberty and security,"

<sup>157</sup> Article 11(1) establishes that: "Everyone has the right to have his honor respected and his dignity recognized."

<sup>158</sup> Article 11(2) requires that: "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."

<sup>159</sup> Article 13(1) establishes that: "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."

<sup>160</sup> Article 17(2) establishes that: "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."

<sup>161</sup> Article 3 stipulates that: "Every person has the right to recognition as a person before the law."

<sup>162</sup> Article 1(1) establishes 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".

<sup>163</sup> The relevant part of Article 7 establishes that: "The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: (a) refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; (b) apply due diligence to prevent, investigate and impose penalties for violence against women; (c) include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures where necessary [...]."

victim of a forced sterilization was irrelevant to the assessment of the violation of her personal integrity and/or her reproductive rights. In addition, it considered that a surgical procedure or an invasive medical treatment, without the patient's consent, constituted a violation of the right to personal integrity, which was related to other rights recognized in the Convention.

120. The **representative** endorsed the arguments of the Commission.

121. The **State** considered that, asserting the inexistence of consent was disproportionate, in view of the fact that, during the surgical procedure, the attending physician in the presence of his team, decided to consult I.V. about the possibility of performing the tubal ligation as a result of the clinical picture observed during the caesarean section. In response to this consultation and advice, I.V. had given her free, voluntary and spontaneous consent. The State concluded that the surgical procedure performed on I.V. was characterized as a high-risk obstetric procedure and, consequently, the actions of the instructing physician were only aimed at safeguarding her life and integrity. Thus, in an exceptional emergency situation, reducing the need to obtain this consent to a mere formality consisting in a consent form signified jeopardizing the immediate need for the surgical procedure. The State indicated that the alleged violation of I.V.'s personal integrity in relation to her condition as a woman, who was poor, Peruvian and a refugee in Bolivia, and the presumed continuity of this violation, was unwarranted in this specific case, because it concerned a sterilization procedure performed with I.V.'s prior and free consent. Therefore, the State could not assume any responsibility.

*A.2 Arguments on the right of access to information (Article 13(1) of the American Convention)*

*A.2.a Access to information and informed consent*

122. The **Commission** considered that the right of access to information and informed consent are essential instruments to ensure other rights such as personal integrity, autonomy, sexual and reproductive health, the right to decide freely on maternity and to raise a family, as well as to give free and informed consent to any measure that may affect the reproductive capacity, and these are all interrelated. In addition, it established that the right of access to information protected the right of a patient to receive from the State, previously and formally, relevant, comprehensible information to be able to take free well-informed decisions on intimate aspects of her health, body and personality, and required that the State obtain this consent prior to any health procedure. The Commission noted that, as tubal ligation was a permanent method of contraception, the controls to ensure free and informed consent needed to be more rigorous. In this regard, the Commission concluded that: (i) there was no record that the presumed victim received complete information on her health situation and the nature of the clinical diagnosis based on which the tubal ligation procedure was recommended, nor that the relevant person had provided her with a detailed description of the nature, risks and consequences of the procedure; (ii) in addition, it appeared that the patient had not been advised about alternative treatments to safeguard her life in the case of a future pregnancy, such as the use of non-permanent contraception methods; (iii) a situation of medical emergency did not exist that would have required the tubal ligation to save I.V.'s life during her surgery; to the contrary, it was an elective procedure that could be performed at any other moment, so that there was no justification for the patient not to have obtained timely and accessible information on contraception methods, and (iv) I.V. should not have been consulted about the sterilization during the caesarean section, because she was under epidural anesthesia, and it is reasonable to consider that she was in a state of surgical stress, so that her consent could not be truly free. The Commission indicated that, even if I.V. had been given information verbally, as argued by the State, that did not meet the necessary requirements and conditions to have enabled her to give her informed consent. It also indicated that there was no real and immediate danger to her life that would have excluded the need for her express consent.

123. The **representative** indicated that I.V. was sterilized without her prior, full, free and informed consent, because she was never told that a tubal ligation would be performed. She indicated that there was no record that the protocols on consent and on tubal ligation had been complied with in the case of the presumed victim and based on existing laws. The representative indicated that I.V. found out about the surgical procedure the day after it had been performed – in other words, July 2, 2000 – as revealed by the “progress sheet” signed by the resident doctor, which records that I.V. was only informed about the tubal ligation at that time. Accordingly, this disproves the evidence used by the State to assert that I.V. had given her consent – that is, the contradictory statements of some members of the medical team. She also indicated that: (i) requesting a woman’s consent to a tubal ligation in the circumstances described was inadmissible, especially if there was no medical emergency; (ii) the medical indication could not be taken as a factor that excluded the need to obtain prior, full, free and informed consent, and (iii) it was inadmissible to consider that written consent was a “mere and unimportant formality,” when domestic law required this. Regarding the international standards for informed consent, the representative considered that they already existed and were in force at the time of the facts, and indicated that the Court had the authority to consider this matter in accordance with an evolutive interpretation of the Convention.

124. The **State** affirmed that the tubal ligation procedure had not been planned by either the medical professionals or I.V., because the surgical procedure was performed during the caesarean section in light of the clinical picture observed, consisting of the adhesions found and the type of incision that had to be made in the uterus. It indicated that I.V. was informed of these complications, of the risks that another pregnancy would involve, of the benefits of the tubal ligation, and of the existing alternatives, “in a reasonable time, taking into account the circumstances,” and added that the bilateral tubal ligation procedure was performed to safeguard the health and life of the mother under the assumption that she could become pregnant again. The State argued that I.V. gave her verbal consent, as proved by the statements of the medical team, after they had tried unsuccessfully to find her husband to formalize the verbal authorization. The State added that: (i) nothing revealed that I.V.’s cognitive faculty was impaired in a way that would have prevented her understanding the situation; during the operation, she did not suffer surgical stress; the administration of an epidural anesthesia would not have inhibited her from understanding, and I.V. had full use of her intellectual capacity; (ii) in addition, there was no indication that the information provided to the patient had been misleading or distorted or that the health personnel had exerted any kind of pressure, so that the verbal consent was provided freely by the patient on understanding that a new pregnancy would endanger her life, and (iii) owing to the circumstances of the case, it was not possible to apply the rules of written consent, and its absence did not signify the absence of consent and, in particular, a forced sterilization. Therefore, the State considered that the actions complied with the basic parameters of a process of informed consent.

125. Additionally, following the public hearing of the case and in its final written arguments, the State indicated that, although it was admissible for the Court to incorporate the elements of prior, free and informed consent in the interpretation of the provisions of the Convention, it would be legally incorrect to apply retroactively elements that not only did not exist in international law at the time of the facts, but whose complete development stems from instruments that are non-binding for the State. Furthermore, it indicated that I.V.’s consent was obtained in accordance with the standards that were in force at the time, which did not require, for example, that this was written or that the health personnel should inform the patient of alternative methods. It indicated that, even based on the 1994 WHO document “Female sterilization: a guide to provision of services,” the standard, in 2000, was that, in cases such as that of I.V., the doctor could perform sterilization even without the patient’s consent, although this was exceptional and when the sterilization arose from a medical indication and there were reasonable and non-arbitrary criteria

that there was a high probability that a further pregnancy would have fatal consequences. The State argued that, even though the standards authorized the doctor to perform sterilization without I.V.'s consent, he had asked for this in a prior, free and informed manner. The State alleged that, now, it has various documents, including the 2008 "Protocol to obtain informed consent," which have incorporated the relevant standards of international law, as it has evolved over the years.

*A.2.b The right to know the truth*

126. The **representative** asserted that the State's assertions that seek to show that I.V. was consulted in the peri-operative period and that, in July 2000, the prior, written, free and informed consent of the patient who was going to be subjected to a tubal ligation was not required, were erroneous. She argued that those assertions "are inexact, to say the least, [and are] not in keeping with the truth, or the 'right to the truth' to which I.V. is entitled." She also indicated that I.V. hoped that, through its jurisdiction, the Court would allow the comprehensive, complete and public truth to be known about the specific circumstances of the facts that occurred on July 1, 2000.

127. The **Commission** and the **State** made no express mention of this point.

*A.3 Arguments on the rights to dignity, to private and family life, and to raise a family (Articles 11(1), 11(2) and 17(2) of the American Convention)*

128. The **Commission** indicated that the sterilization of I.V. was performed in an arbitrary manner and without informed consent, even though there was no immediate risk to her life or health, which would only have been affected if she became pregnant in the future, and this could be prevented by less restrictive measures, such as the use of non-permanent contraception methods. The Commission argued that non-consensual sterilization resulted in the permanent loss of I.V.'s reproductive capacity and, consequently, affected her right to reproductive autonomy, which included the capacity to decide freely and autonomously the number of children and the interval between births, which formed part of the most intimate sphere of private and family life, pursuant to Article 11(2) of the Convention. Also, according to the Commission, non-consensual sterilization violated the right of I.V. to have the possibility of having more children, a decision that was protected by the right to raise a family, recognized in Article 17(2) of the Convention. The Commission did not refer explicitly to the right to protection of I.V.'s dignity.

129. The **representative** agreed with the legal grounds and conclusions developed by the Commission in relation to the violation of Articles 11(2) and 17(2) of the American Convention and emphasized that, after July 1, 2000, I.V. was never able to decide, either alone or with her partner, on whether to become pregnant again, and that the violation of these rights was constituted even though I.V. already had children and had founded a family. She added that the fact that the authorization for the caesarean section was signed by I.V.'s partner and not by her, even though she had the possibility of doing this during the five hours she waited before entering the operating theater, involved a violation of her right to privacy and her autonomy of decision in relation to her reproductive rights.

130. In addition, the representative stressed that, although the Commission had merely established a violation of Article 11(2) of the American Convention, Article 11(1) of this instrument had also been violated, in the understanding that the State failed to recognize I.V.'s dignity due, above all: (i) to the fact that even though Bolivian Health Regulation MSPS-98, was in force, I.V. was subjected, without consulting her, to a highly invasive and irreversible procedure, as if her decision "was unimportant or of no value"; (ii) the fact that the medical team tried to obtain the written consent of I.V.'s partner when I.V. was in the operating theater also constituted a "very serious offense to the dignity of [I.V.]," because the decision on the tubal ligation corresponded only and exclusively to her, based on her reproductive autonomy; (iii) the fact that on the day

following the operation, a doctor told I.V. very casually and unconcernedly, that she had been sterilized; (iv) the fact that during the procedure before the Commission, the State argued that I.V. had not indicated an intention to request reversal of the tubal ligation, and (v) the fact that during the domestic investigations and proceedings, which I.V. had to promote and take part in, she experienced constant re-victimization and was confronted by the corporate cover-up that the doctors provided to their colleagues.

131. The **State** argued that I.V., by a "rational assessment and weighing up of her right to life versus her right to reproduction, with appropriate counseling, decided to safeguard her life in light of the imminent risk posed by a possible pregnancy, giving her consent to a tubal ligation, an autonomous decision, in which the State did not intervene." Accordingly, the State considered that I.V.'s prior, free and voluntary consent meant that consent had been given to the tubal ligation and, therefore, the State had not interfered in the private sphere of her decisions or interfered arbitrarily or abusively in her private life, or with regard to her right to raise a family. In addition, the State indicated that no causal nexus existed between the procedure performed and the decision to raise a family because, at the time, I.V. had already founded a family. The State affirmed that the representative's arguments were contradictory, because it contrasted the right of a man and a woman to raise a family, a decision that should be taken by both of them, with the right that allows a woman to have absolute autonomy and control over her body. The State did not refer explicitly to I.V.'s right to protection of her dignity.

*A.4 Arguments on the right to recognition of juridical personality (Article 3 of the American Convention)*

132. The **representative** argued that the right to recognition of juridical personality was autonomous and it was not violated merely in cases of enforced disappearance. She considered that the medical team decided, unilaterally, to perform a tubal ligation on I.V.'s reproductive organ, without consulting her as to whether she consented to this procedure. The representative argued that I.V. had the right to be recognized as a subject of rights by the medical team, but this did not happen, because the team ignored the fact that the situation involved a woman with the right to decide autonomously about her private life, her humanity, her physical and emotional integrity, and her reproductive rights. The representative added that, even if the situation outlined by the State concerning I.V.'s verbal acceptance of the surgical procedure were to be accepted, this was given at a moment in which I.V., who was under the complete control of the doctors and in the stressful and vulnerable setting of the operating theatre, did not have the cognitive capacity to understand fully what was happening; in other words, her capacity to act freely was annulled, even though this capacity is one of the essential elements of the juridical personality; thus, the said consent was invalid.

133. The **State** argued that "in this specific case, I.V. was not annulled as a subject of rights and obligations, because she was able to exercise them at all times before public institutions (hospitals – in the exercise of her right to health) and jurisdictional organs, in order to denounce the perpetration of presumed offenses" and it considered that there were no grounds for analyzing "a presumed violation of I.V.'s right to juridical personality, as if the facts constituted an enforced disappearance."

134. The **Commission** made no explicit reference to this right.

*A.5 Arguments on the prohibition of discrimination in relation to the alleged non-consensual sterilization (Article 1(1) of the American Convention in relation to Articles 5(1), 11(1), 11(2), 13(1) and 17(2) of this instrument)*

135. The **Commission** indicated that I.V. was the victim of sterilization without her consent in a

public health institution and, as a result, permanently lost her ability to procreate and suffered psychological aftereffects, added to "the humiliation she was subjected to as the victim of a surgical procedure on her body for which her opinion was not taken into consideration, thereby violating her reproductive autonomy." It indicated that an international consensus existed that non-consensual sterilization constituted a form of violence against women in which a series of human rights are infringed. The Commission added that, in the area of maternal health, it "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."

136. The Commission recalled that it "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." The Commission considered 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 situation." In this regard it argued that "women migrants of scarce resources are in a special situation of vulnerability, often being forced to seek public medical services that may not be suitable to meet their needs due to the limited nature of the care options available to them."

137. The Commission also argued that there were signs that the medical team that performed the surgery on I.V. was influenced by gender stereotypes concerning the inability of women to make autonomous decisions with regard to their own reproduction. In this regard, it considered that the medical decision to perform sterilization without I.V.'s informed consent reflected a notion that medical personnel are empowered to take better decisions than the woman concerned regarding control over her reproduction. According to the Commission, "the presence of these kinds of gender stereotypes in health personnel has a differentiated impact on women and leads to discrimination against them in the health services and especially in the provision of sexual and reproductive health care services." In this regard, the Commission recalled that persistent gender stereotypes in the health sector act as an obstacle to women's access to maternal health services, which also amounts to discrimination in women's access to health.

138. The Commission concluded that the absence of informed consent led to I.V. not receiving the appropriate maternal health services in relation to her reproductive capacity, thereby curtailing her free and autonomous choice in this sphere unique to women. Consequently, the Commission argued that I.V.'s non-consensual sterilization constituted a form of discrimination against her in relation to the guarantee of her right to personal integrity under Article 5(1) of the American Convention, as well as her right to private and family life and to raise a family under Articles 11 and 17 of the American Convention.

139. The **representative** indicated that discrimination existed in cases of forced sterilization not only in relation to Articles 5(1), 11(2) and 17(2) of the American Convention, but also in relation to Article 13(1) of this instrument. In this regard, she argued that the right to receive information (Article 13 of the American Convention) was violated based on discrimination and, also, expanded on the factors of discrimination that presumably motivated the violation of I.V.'s rights. In particular, she argued that "enforced sterilization is a discriminatory phenomenon that affects women just as, in this case, it affected I.V. because she is a woman." She also argued that I.V. was attended in the Women's Hospital with the profile of being a poor woman with little schooling, of another national origin, and, according to the representative, this had given rise to feelings and attitudes of xenophobia and discrimination. Lastly, she indicated that, in addition to being a "woman," "poor" and "Peruvian," I.V. was and is a refugee in Bolivia and, as such, had also been a victim of discrimination. In sum, she concluded that I.V. suffered numerous types of discrimination in the Women's Hospital.

140. The **State** argued that it had “never exercised gender-based discrimination in relation to I.V.’s reproductive rights,” and noted that “there is no evidence whatsoever proving that I.V. was subjected to discriminatory treatment *de iure* or *de facto* by the State in relation to the rights recognized in Articles 11(2) and 17(2) of the Convention.” Regarding the inexistence of discrimination *de iure*, the State indicated that Bolivian law on the provision of health services was not exclusive, and furthermore, there was no discrimination whatsoever or discriminating criteria in the regulations on choice and informed consent (Health Regulation MSPS 4-98), or in the surgical protocols applied in this specific case. Consequently, it argued that “there is no provision whatsoever in relation to reproductive health that, based on discrimination, limits the exercise of the reproductive rights of women.” In addition, the State argued the inexistence of discrimination *de facto*, because the “the medical personnel performed their tasks professionally, and without making any distinctions to the detriment of I.V.” It argued that actions, such as the performance of the caesarean section to protect her life and that of the baby, were carried out in accordance with the patient’s needs. Therefore, in its opinion, there was no record showing that the alleged numerous forms of discrimination existed, based on the fact that I.V. was a woman, a migrant, and with scarce financial resources, because she was provided with every possibility of access to health care services, and the respective controls to protect her maternal health.

141. Regarding the supposed existence of a systematic pattern of forced sterilization, the State indicated that tubal ligation “can never be classified as a practice of forced sterilization based on discriminatory criteria, seeking to portray the State as a violator of human rights, as if its actions were aimed at arbitrarily limiting the reproductive freedom of women through a mass, obligatory and systematic government birth control policy, an argument that [... it] reject[ed]] because it was totally divorced from reality.” It also argued that, the instant case “absolutely cannot be compared to the acts of forced sterilization [that occur in other countries and] that, based on a poverty control policy, take away the right of women to decide if and when to have children, thus affecting the country’s marginalized and indigenous communities [...].”

142. Lastly, the State rejected the facts alleged in this case, because they did not accord with the provisions of Articles 17(2) and 11(2), in relation to Article 1(1) of the Convention, since “the presumed violation of I.V.’s family life was not the result of a specific act or omission of the State to this end, but rather the result of a free, voluntary and rational decision not to conceive more children.” Accordingly, the State asked the Court to declare that the State had not violated the said provisions.

*A.6 Arguments on the right of women to a life free from violence (Article 7 of the Convention of Belém do Pará)*

143. The **Commission** considered that non-consensual sterilization also violated I.V.’s right to live free of all forms of violence in violation of Article 7 of the Convention of Belém do Pará. In this regard, the Commission argued that “performing a non-consensual sterilization causes the woman concerned pain and suffering and constitutes a form of violence, with ongoing physical and psychological consequences for her reproductive health.” It indicated that this had been expressly recognized in the laws of several Latin American countries, such as Argentina and Venezuela, which classified forced sterilization as a form of obstetric or autonomous violence. In the instant case, the Commission argued that, as a result of her sterilization, I.V. had been prevented, permanently, 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. On this basis, the Commission concluded that, in this regard, the State had violated the obligation to refrain from any act or practice of violence against women in violation of the obligations established in Article 7 of the Convention of Belém do Pará.

144. The **representative** agreed with the legal grounds and conclusions set forth by the Commission in its Merits Report in relation to the violation of Article 7 (a, b, c, f and g) of the Convention of Belém do Pará.

145. The **State** rejected the Commission's arguments that, for I.V., the presumed non-consensual sterilization constituted a form of violence and interference in her private and family life, "because I.V. gave her free and voluntary consent, with appropriate counseling concerning the risks and benefits of the procedure, so that the tubal ligation was performed as a prophylactic measure and to comply with the protection of her life." The State also argued that it had not failed to comply with Article 7 of the Convention of Belém do Pará, because its public institutions had not committed any act of violence against I.V., with regard to her decision-making either in her private life, or in the sphere of her intimacy. Consequently, the State argued that it had complied with the obligations established in Article 7 of the Convention of Belém do Pará.

146. Regarding the duty to refrain from any act or practice of violence against women and to ensure that the conduct of its authorities, officials, personnel, agents and institutions complied with this obligation, the State argued that, during the surgical procedure, "it was I.V. who, with appropriate counseling about the risks and benefits of the procedure, gave her consent to the tubal ligation," and that "[t]he medical personnel performed the tubal ligation procedure abiding strictly by the *lex artis* of the medical profession, offering information on the procedure, performing the operation as a prophylactic measure, and providing the medical care services in accordance with the patient's needs." The State also argued that it had not facilitated or consented to any violence against I.V. Lastly, the State indicated that, at the time of the facts, its laws contained provisions that protected women, as well as measures that regulated the actions of professionals trained in surgical contraceptive procedures. It added that, "even though the form for granting informed consent existed when I.V. underwent the surgical procedure, this could not be used because the patient took the decision in the operating theater, based on the best medical criteria for her health."

## **B. Considerations of the Court**

147. The main dispute in the instant case consists in determining whether the tubal ligation performed on I.V. on July 1, 2000, in Bolivia, by a public official in a State hospital was contrary to the State's international obligations. The key aspect to elucidate is, therefore, whether this procedure was performed after the patient's informed consent had been obtained in accordance with the parameters established in international law for this type of medical act at the time of the facts. If it is determined that this consent was not properly obtained, there is an additional dispute between the parties as to how the Court should classify the facts of this case; in other words, the legal classification that should be assigned to the conduct. Taking this into account and in order to determine whether the international responsibility of the State has been constituted, the Court finds it pertinent to proceed, first, to provide content to the scope of the rights established in the American Convention that have been alleged in this case and that are applicable with regard to sexual and reproductive health. Accordingly, the Court will now interpret the scope of the rule of informed consent and determine the parameters for the analysis of the facts of this case. The Court will then make the corresponding determinations, taking into account the factual dispute that exists concerning whether or not consent was obtained during the procedure and, if appropriate, how this was obtained. Lastly, the Court will make the corresponding determinations on the international responsibility of the State.

### *B.1 Scope of the rights established in the American Convention in this case*

148. In this section, the Court will interpret the American Convention in order to determine the scope of the rights to personal integrity, to personal liberty, to dignity, to private and family life, to

raise a family, and of access to information, as relevant to decide the dispute in this case.

149. The Court notes that Article 11 of the American Convention protects one of the most fundamental values of the human being, understood as a rational being; and this is recognition of his or her dignity. Indeed, the first paragraph of this article contains a universal clause of protection of dignity, which is based on both the principle of the autonomy of the individual, and the idea that all individuals should be treated equally, as ends in themselves in accordance with their intentions, will and the decisions they take about their life. Meanwhile, the second paragraph establishes the sanctity of private and family life, among other protected spheres. The Court has affirmed that this sphere of the private life of the individual is characterized by being a space of liberty exempt and immune from arbitrary and abusive interference by third parties or public authorities.<sup>164</sup>

150. That said, a crucial aspect of the recognition of dignity is every human being's possibility of self-determination and free choice of the options and circumstances that give a meaning to his or her existence in keeping with their own choices and beliefs.<sup>165</sup> In this context, the principle of the autonomy of the individual plays an essential role, and prohibits any State action that attempts to "instrumentalize" individuals; in other words, convert them into a means for purposes unrelated to their choices about their own life, body and full development of their personality within the limits imposed by the Convention.<sup>166</sup>

151. In this regard, the Court has interpreted Article 7 of the American Convention broadly by indicating that it includes the concept of liberty in a wide-ranging sense as the capacity to do or not to do everything that is legally permitted. In other words, it constitutes the right of everyone to organize, based on the law, their individual and social life in keeping with their own choices and beliefs. Liberty, thus defined, is a basic human right, inherent in the attributes of the person, which permeates the whole American Convention.<sup>167</sup> Even though neither the Commission nor the representative explicitly argued the violation of Article 7 of the Convention in this case, this does not prevent the Court from applying it based on the general legal principle of *iura novit curia*, which international case law has used repeatedly, in the sense that the judge has the authority, and even the duty, to apply the pertinent legal provisions in a case, even when they have not been expressly cited by the parties.<sup>168</sup>

152. The Court has also stipulated that the protection of the right to private life is not limited to the right to privacy, because it encompasses a series of factors related to the dignity of the individual, including, for example, the ability to develop one's own personality and aspirations, determine one's own identify, and define one's own personal relations. The concept of private life

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<sup>164</sup> Cf. *Case of the Ituango Massacres v. Colombia*, *supra*, para. 194, and *Case of the Santa Bárbara Campesino Community v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299, para. 200.

<sup>165</sup> Cf. *Case of Atala Riffo and daughters v. Chile. Merits reparations and costs*. Judgment of February 24, 2012. Series C No. 239, para. 136, and *Case of Flor Freire v. Ecuador*, *supra*, para. 103.

<sup>166</sup> Article 32 of the American Convention, entitled "Relationship between Duties and Rights", establishes that:  
 1. Every person has responsibilities to his family, his community, and mankind.  
 2. The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

<sup>167</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 52, and *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, para. 142.

<sup>168</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 163, and *Case of the Kaliña and Lokono Peoples v. Suriname. Merits reparations and costs*. Judgment of November 25, 2015. Series C No. 309, para. 259.

encompasses aspects of physical and social identity, including the right to personal autonomy, personal development, and the right to establish and develop relationships with other human beings and with the external world.<sup>169</sup> The effectiveness of the exercise of the right to private life is decisive for the possibility of exercising personal autonomy over the future course of events that are relevant for a person's quality of life.<sup>170</sup> Private life includes the way in which individuals see themselves and how they decide to project themselves towards others,<sup>171</sup> and is an essential condition for the free development of the personality. The Court has also indicated that choices and decisions with regard to maternity form an essential part of the free development of a woman's personality.<sup>172</sup> Consequently, the decision of whether or not to become a mother or father belongs to the sphere of the autonomous decisions of the individual in relation to his or her private and family life.<sup>173</sup>

153. On this point, the Court reiterates that Article 11(2) of the American Convention is closely related to the right recognized in Article 17 of this instrument,<sup>174</sup> which recognizes the central role of the family and family life in the existence of the individual and in society in general.<sup>175</sup> In particular, Article 17(2) of the American Convention protects the right to raise a family, which includes the possibility of procreation.<sup>176</sup>

154. The Court has also underlined the intrinsic connection between the rights to private life and to personal integrity and human health,<sup>177</sup> and that the absence of adequate medical care may result in the violation of Article 5(1) of the Convention.<sup>178</sup> The Court has established that, in order to comply with the obligation to guarantee the right to personal integrity in the area of health care, States must create an appropriate legal framework that regulates the provision of health services, establishing quality standards for public and private institutions, which prevent any risk of violating personal integrity when providing such services. In addition, the State must establish official State mechanisms to supervise and monitor health care institutions, and procedures for the administrative and legal protection of victims, the effectiveness of which will, ultimately, depend on how they are implemented by the corresponding administrative body.<sup>179</sup>

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<sup>169</sup> Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 129, and *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica, supra*, para. 143.

<sup>170</sup> Cf. *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica, supra*, para. 143.

<sup>171</sup> Cf. *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, para. 119, and *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica, supra*, para. 143.

<sup>172</sup> Cf. *Mutatis mutandi, Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 97, and *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica, supra*, para. 143.

<sup>173</sup> Cf. *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica, supra*, para. 143.

<sup>174</sup> Cf. *Case of Atala Riffo and daughters v. Chile, supra*, para. 169.

<sup>175</sup> Cf. *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica, supra*, para. 145.

<sup>176</sup> Cf. *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica, supra*, para. 145, citing Human Rights Committee, General Comment No. 19, *The family*, July 27, 1990, para. 5 ["The right raise a family implies, in principle, the possibility to procreate and live together."]

<sup>177</sup> Cf. *Case of Albán Cornejo et al. v. Ecuador. Merits, reparations and costs*. Judgment of November 22, 2007. Series C No. 171, para. 117; *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261, para. 130; *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 21, 2015. Series C No. 298, para. 171, and *Case of Chinchilla Sandoval v. Guatemala, supra*, para. 170.

<sup>178</sup> Cf. *Case of Tibi v. Ecuador. Preliminary objections, Merits, Reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 157, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 171.

<sup>179</sup> Cf. *Case of Ximenes Lopes v. Brazil. Merits, reparations and costs*. Judgment of July 4, 2006. Series C No. 149,

155. Health, as an integral part of the right to personal integrity, encompasses not only access to health care services under which everyone has an equal opportunity to enjoy the highest attainable level of health, but also the freedom of each individual to control his or her own health and body, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.<sup>180</sup> Thus, the existence of a connection between physical and mental integrity and personal autonomy and the liberty to take decisions regarding one's own body and health requires, on the one hand, that the State ensure and respect decisions and choices that have been made freely and responsibly and, on the other, that access to the relevant information is guaranteed so that individuals are in a position to take informed decisions on the course of action with regard to their body and health based on their personal life project. In the area of health, opportune, complete, comprehensible and reliable information should be provided, *ex officio*, because this is essential for decision-making in this area.<sup>181</sup>

156. In this regard, and as this Court has recognized, Article 13 of the American Convention includes the right to seek, receive and impart information and ideas of all kinds,<sup>182</sup> which protects the right of access to information, including personal health-related information.<sup>183</sup> The right of everyone to obtain information is supplemented by a correlative positive obligation of the State to provide this information, so that the individual may have access to receive and assess it.<sup>184</sup> In this regard, health personnel should not wait for a patient to request information or ask question about their health for the information to be given. The obligation of the State to provide information *ex officio*, known as "active transparency obligation," imposes on States the duty to provide the necessary information for individuals to be able to exercise other rights, which is particularly relevant in the area of health care, because this contributes to the accessibility of the health services and to enabling individuals to take free, full, well-informed decisions. Consequently, the right of access to information has an instrumental nature to achieve the satisfaction of other rights under the Convention.<sup>185</sup>

157. It is evident that sexual and reproductive health<sup>186</sup> is an expression of health that has

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paras. 89 and 99, and *Case of Suárez Peralta v. Ecuador*, *supra*, para. 132.

<sup>180</sup> Cf. UN, Committee on Economic, Social and Cultural Rights, General Comment No. 14, *The right to the highest attainable standard of health*, E/C.12/2000/4, August 11, 2000, para. 8.

<sup>181</sup> Cf., *mutatis mutandi*, *Case of Furlan and family v. Argentina*, *supra*, para. 294.

<sup>182</sup> Cf. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits reparations and costs*. Judgment of February 5, 2001. Series C No. 73, para. 64, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 261.

<sup>183</sup> Cf. *Case of Claude Reyes et al. v. Chile. Merits reparations and costs*. Judgment of September 19, 2006. Series C No. 151, para. 77, and *Case of Furlan and family v. Argentina*, *supra*, para. 294. See also, UN, Committee on Economic, Social and Cultural Rights, General Comment No. 14, *The right to the highest attainable standard of health*, August 11, 2000, para. 12.

<sup>184</sup> Cf. *Case of Claude Reyes et al. v. Chile*, *supra*, para. 77.

<sup>185</sup> Cf. IACHR, *Access to Information on Reproductive Health from a Human Rights Perspective*, November 22, 2011, paras. 25 to 26.

<sup>186</sup> The Court has adopted the concept of reproductive health defined by the Programme of Action of the International Conference on Population and Development held in Cairo in 1994, as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chances of having a healthy infant." Programme of Action of the International Conference on Population and Development, El Cairo, UN, A/CONF.171/13/Rev.1, 1994, para. 7.2. Cf. *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica*, *supra*, para. 148. Similarly, the Court has

special implications for women owing to their biological capacity to conceive and give birth. On the one hand, it is related to reproductive freedom and autonomy with regard to the right to take autonomous decisions, free from violence, coercion and discrimination, concerning one's life project, body, and sexual and reproductive health.<sup>187</sup> On the other hand, it refers to both reproductive health services and information, education and the means that allow the exercise of the right to decide freely and responsibly on the number of children desired and the spacing between births.<sup>188</sup> The Court has considered that "the lack of legal safeguards to take into consideration reproductive health may result in a serious impairment of reproductive freedom and autonomy."<sup>189</sup>

158. In particular, it is worth emphasizing that according to the Committee on Economic, Social and Cultural Rights, "[r]eproductive health means that women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right of access to appropriate health-care services [...]."<sup>190</sup> Consequently, the Court finds that States must guarantee access to information on health matters, especial in the area of sexual and reproductive health,<sup>191</sup> and the denial of this has often signified a barrier for the full exercise of this right and an impediment to free and full decision-making. Therefore, the Court considers that, with regard to sexual and reproductive health, the State obligation of active transparency includes the duty of health care personnel to provide information that helps ensure that people are able to take free and responsible decisions concerning their own body and sexual and reproductive health, and this relates to intimate aspects of their personality and their private and family life.

159. In this sense, the Court understands that the informed consent of the patient is a condition *sine qua non* in medical practice, and is based on respect for the patients' autonomy and freedom to take their own decisions in keeping with their life project. In other words, informed consent ensures the practical effects of the norm that recognizes autonomy as an essential element of the dignity of the person

160. In this context, the special relationship between doctor and patient acquires special relevance. However, the Court notes that this relationship is characterized by the asymmetry in the exercise of power by the physician based on his special professional knowledge and control of information. This differentiated power is regulated by certain principles of medical ethics; above all, the principles of the patient's autonomy, beneficence and not maleficence, and justice. Given that the physician is a person who also acts on the basis of his own convictions and preferences, it is

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considered that, according to the Pan-American Health Organization (PAHO), sexual and reproductive health "implies that people are able to have a satisfying and safe sex life and have the capability to reproduce as well as the freedom to decide if, when, and how to do so." Pan-American Health Organization, *Health in the Americas 2007*, Volume I - Regional, Washington D.C, 2007, p. 143.

<sup>187</sup> Cf. UN, Committee on Economic, Social and Cultural Rights, General Comment No. 22, *Right to sexual and reproductive health*, May 2, 2016, para. 5.

<sup>188</sup> Article 16(e) of the Convention for the Elimination of All Forms of Discrimination against Women.

<sup>189</sup> *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica*, *supra*, para. 147.

<sup>190</sup> Cf. *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica*, *supra*, para. 148, citing UN, Committee on Economic, Social and Cultural Rights, General Comment No. 14, *The right to the highest attainable standard of health*, August 11, 2000, footnote 12.

<sup>191</sup> The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment made a special analysis of reproductive rights in his 2013 report and considered that: "[a]ccess to information about reproductive health is imperative to a woman's ability to exercise reproductive autonomy, and the rights to health and to physical integrity." UN, 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, para. 47.

plausible that some of his actions may run counter to the life project of his patients. In this regard, the Court notes that the World Medical Association's 1981 Lisbon Declaration on the Rights of the Patient, which is the first declaration that sets out general rules for physician-patient relations and, specifically, the rights of patients, starts out by indicating that [w]hile a physician should always act according to his/her conscience, and always in the best interests of the patient,<sup>[192]</sup> equal effort must be made to guarantee patient autonomy and justice. [...].” Therefore, the principle of autonomy acquires vital importance in the sphere of health, as a rule that establishes an adequate balance between the beneficial medical action and the power of decision that the patient, as an autonomous moral subject, retains in order to avoid actions of a paternalistic nature in which patients are instrumentalized to avoid harm to their health.

161. The Court notes that, in the practice of medicine, recognition of informed consent as an expression of the autonomy of the individual in the sphere of health has signified a paradigm shift in the physician-patient relationship, because the model of informed and free decision-making has evolved to focus on a participatory process with the patient, rather than the former paternalistic model where the physician, as the expert in the matter, was the one who decided what was best for the person who needed a particular treatment. From this perspective, patients are empowered and collaborate with the physician as the main actor in the decisions that must be taken with regard to their bodies and health, rather than the passive subjects of this relationship. The patient is free to choose alternatives that physicians may consider contrary to their advice, and this is the most evident expression of respect for autonomy in the sphere of medicine. This paradigm shift is reflected in various international instruments which refer to the right of the patient to freely accede to a beneficial medical act or allow it to be performed, without any type of violence, coercion or discrimination, after having received appropriate and timely information prior to taking the decision.

162. Based on the foregoing, the Court considers that informed consent with regard to the pertinence of a medical intervention with permanent consequences on the reproductive apparatus, such as tubal ligation, belongs to the sphere of the autonomy and private life of a woman who can freely choose the life project that she considers most appropriate; in particular, whether or not she desires to retain her reproductive ability, the number of children she wishes to have, and the spacing between them

163. The Court considers that the obligation to obtain informed consent signifies establishing limits to medical intervention and guaranteeing that those limits are adequate and effective in the practice, so that neither the State, nor third parties, especially the medical community, may arbitrarily interfere in the sphere of personal integrity or privacy of the individual, especially as regards access to health services and, in the case of women, family planning and other services related to sexual and reproductive health. Similarly, the rule of informed consent relates to the right of access to information on health matters, because patients can only give their informed consent if they have received and understood sufficient information that allows them to take a considered decision. Consequently, in the area of health, the Court reiterates the instrumental nature of the right of access to information, because it is an essential means to obtain informed consent and, thus, to realize the right to autonomy and liberty as regards reproductive health.

164. From the point of view of international law, informed consent is an obligation that has been established when developing the human rights of patients. It is both a legal and an ethical obligation of health personnel, who must consider it an element of medical expertise and good

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<sup>192</sup> The World Medical Association also adopted an International Code of Medical Ethics in 1949, revised in 2006, in which it declared as one of the duties of doctors that they must “respect the right of a patient with capacity to accept or reject a treatment” and “respect the rights and preferences of patients” “[...] providing a competent medical service [...] respecting human dignity.”

practice (*lex artis*) in order to ensure accessible and acceptable health services.<sup>193</sup> The Court will now establish the elements of informed consent in force at the time of the facts of this case.

### *B.2 Consent in international law, comparative law and jurisprudence*

165. The Court has established that States have the international obligation to obtain informed consent before performing any medical act based, above all, on the autonomy and self-determination of the individual, and as part of respecting and ensuring the dignity of every human being, as well as their right to personal liberty. This means that the individual may act according to his or her own wishes, and ability to consider choices, take decisions and act without the arbitrary interference of third parties, all of this within the limits established in the Convention. This is so, especially, in cases of female sterilization, because such procedures entail the permanent loss of reproductive capacity. The need to obtain informed consent protects not only the right of patients to decide freely whether they wish to submit to a medical act, but is also an essential mechanism to achieve the respect and guarantee of different human rights recognized by the American Convention, such as to dignity, to personal liberty, to personal integrity – including health care and, in particular, sexual and reproductive health care – to private and family life and to raise a family. In addition, the Court finds that the guarantee of free consent and the right to autonomy in the choice of contraception methods is an effective deterrence, especially in the case of women, of the practice of involuntary, non-consensual, coercive or forced sterilization.

166. The Court considers that the concept of informed consent consists in a prior decision to accept or to submit to a medical act in the broadest sense, which has been freely obtained – in other words, without threats or coercion, improper induction or incentives – and given after obtaining adequate, complete, reliable, comprehensible and accessible information, provided that this information has really been understood, which would allow the individual to give their full consent. Informed consent is the positive decision to submit to a medical act resulting from a decision process, or prior, free and informed choice, which constitutes a two-way mechanism of interaction in the physician-patient relationship, through which the patient plays an active role in the decision-making, thus moving away from the paternalistic view of medicine, and focusing on the autonomy of the individual (*supra* paras. 160 and 161). This consists not only in an act of acceptance,<sup>194</sup> but also in the result of a process in which the following elements must be present for it to be considered valid: the consent must be prior, free, full and informed. All these elements are interrelated, because consent cannot be free and full if it has not been given after the patient has obtained and understood comprehensive information.

167. In this regard, the Court finds it necessary to refer, first, to the State's argument that, when the facts of this case occurred, July 1, 2000, several of the standards for informed consent, in particular regarding the information that health-care personnel should provide to the patient, were not in force. The Court understands that the essential elements of consent have remained untouched throughout the evolution of the concept, as will be referred to below. However, it is possible to note that, nowadays, these elements have been incorporated into both international law and the domestic law of the States including, for example, more detail and specificity concerning the type and content of the information that must be provide to the patient so that the latter can

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<sup>193</sup> In this regard, el Committee on Economic, Social and Cultural Rights has indicated that the right to health in all its forms and at all levels contains the following interrelated and essential elements: availability, accessibility, acceptability and quality. The guarantee of accessibility involves non-discrimination, physical accessibility, economic accessibility (affordability), and information accessibility. Meanwhile, acceptability means that it is respectful of medical ethics and culturally appropriate. *Cf.* UN, Committee on Economic, Social and Cultural Rights, General Comment No. 14, *The right to the highest attainable standard of health*, August 11, 2000, para. 12.

<sup>194</sup> *Cf.* UN, Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, A/64/272, August 10, 2009, para. 9.

take a decision, depending on the medical intervention concerned. In the Court's opinion, this means that, in a case of sterilization in 2000, the basic essential information could not be omitted by the health personnel (*infra* para. 190). Also, the Court finds it opportune to recall that, based on the facts of this case, the obligation to obtain informed consent was a crucial mechanism for the effective enjoyment of other rights recognized in the American Convention; thus, the year in which the wrongful acts took place was irrelevant. The obligation to obtain informed consent should have been respected by the States Parties from the moment they ratified this treaty; it did not arise following the Court's application and interpretation of the Convention in the exercise of its contentious jurisdiction.<sup>195</sup>

168. That said, the Court notes that the inter-American system for the protection of human rights does not include a treaty-based norm on regional bioethics and human rights that develops the scope and content of the rule of informed consent.<sup>196</sup> Therefore, to interpret the scope of the State obligations in relation to the facts of this case, the Court will have recourse, based on the general rules of interpretation established in Article 29 of the American Convention, and in the Vienna Convention on the Law of Treaties,<sup>197</sup> to the international *corpus juris* on the matter, as it has on previous occasions.<sup>198</sup> Regarding consent, the *corpus juris* is based on international declarations, guidelines, opinions of expert medical committees, directives, criteria and other authorized statements by specialized bodies, such as the World Health Organization (hereinafter "WHO"), the International Federation of Gynecology and Obstetrics (hereinafter "FIGO"), the World Medical Association (hereinafter also "WMA"), the United Nations Educational, Scientific and Cultural Organization (hereinafter "UNESCO"), the United Nations Treaty Bodies, the Council of Europe, and the European Court of Human Rights. These agencies have established common legal standards that constitute general protection for the prior, free, full and informed nature of consent.

169. Regarding the State's argument that the Commission had made numerous references to its thematic reports,<sup>199</sup> seeking to use them to analyze the facts of the case, the Court notes that, among other sources, these were cited in the Merits Report to interpret the scope and content of the obligations established in the American Convention. Even though the Court considers that the criteria established in these reports do not generate binding obligations for the State, this does not prevent the Commission from taking them into account because, when appropriate, they may guide or reinforce the Court's interpretation and application of the international *corpus juris* in this

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<sup>195</sup> Cf., *mutatis mutandi*, *Case of Vélez Restrepo and family v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of September 3 2012. Series C No. 248, paras. 241 and 244, and *Case of Tenorio Roca et al. v. Peru*, *supra*, para. 196.

<sup>196</sup> The Court notes that, within the framework of the Council of Europe and the European system, diverse documents exist that expressly regulate the patient's prior, free, full and informed consent for the performance of any medical intervention. Cf. Articles 1 to 3 of A Declaration on the Promotion of Patients' Rights in Europe, adopted by the WHO Regional Office for Europe in 1994; articles 5 and 6 of the Convention for the Protection of the Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (hereinafter "Oviedo Convention"), adopted by the Council of Europe on April 4, 1997, which entered into force on December 1, 1999, and its Explanatory report, and article 3 of the Charter of Fundamental Rights of the European Union, adopted in 2000, and amended in 2007.

<sup>197</sup> Cf. *The Right to Information on Consular Assistance within the Framework of Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 114, and *Case of Gonzales Lluy et al. v. Ecuador*, *supra*, para. 21.

<sup>198</sup> Cf. *The Right to Information on Consular Assistance within the framework of Due Process of Law*. Advisory Opinion OC-16/99, *supra*, para. 120; *Juridical Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 117; *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, paras. 192 to 194, and *Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 272, paras. 129, 135, 216 and 217.

<sup>199</sup> Access to Maternal Health Services from a Human Rights Perspective of June 7, 2010, and Access to Information on Reproductive Health from a Human Rights Perspective of November 22, 2011.

case insofar as they identify, systematize and analyze the relevant regional and international legal criteria.

*B.2.a The elements of consent in international law and jurisprudence*

170. The Court will now examine how informed consent and its elements have been treated and developed at the international level, with regard to both medical interventions in general<sup>200</sup> and to the consent that should be obtained in cases of female sterilization.

171. Informed consent was codified in the aftermath of the Second World War and in reaction to the atrocities committed with the publication of the 1947 Nuremberg Code of medical ethics. Even though this instrument referred to medical interventions arising from scientific research,<sup>201</sup> as of that time it was established that the voluntary consent of the human subject was absolutely necessary, and this meant that the person involved should have legal capacity to give consent, should be able to exercise free power of choice, and should have sufficient knowledge and comprehension of the elements of the subject matter involved to take a decision. This latter element required that the information provided should include the nature, duration and purpose of the experiment, and the method, inconveniences and effects upon the subject's health.<sup>202</sup> In other words, as of that time, it was understood that consent must be prior, free and obtained after having received comprehensible information.

172. After the Nuremberg Code on medical ethics, various documents have referred more specifically to patients' rights and to medical interventions in general and have repeated the need to obtain prior consent to any medical intervention following a process of free, full and informed choice. The World Medical Association, UNESCO and the WHO, among other bodies, have also referred to this.

173. Furthermore, in relation to sexual and reproductive rights, both the Programme of Action of the International Conference on Population and Development, held in Cairo in 1994,<sup>203</sup> and the Declaration and Platform for Action of the Fourth World Conference on Women held in Beijing in 1995,<sup>204</sup> refer to the need to obtain responsible, voluntary and informed consent for the exercise of these rights. Additionally the FIGO Committee for the Ethical Aspects of Human Reproduction and Women's Health has referred to the elements of consent in recommendations on standards for informed consent since 1995, and on female sterilization since 1989. These standards were

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<sup>200</sup> In general, the term medical interventions will be understood in its broad sense; that is, it encompasses all the medical interventions performed for prevention, diagnosis, treatment, rehabilitation and surgical procedures; scientific research, and the participation of subject patients during medical practice to teach students.

<sup>201</sup> Other international treaties have also expressly recognized informed consent in relation to medical experiments. Articles 7 of the International Covenant on Civil and Political Rights, 15 of the Convention on the Rights of Persons with Disabilities, and 9 of the Arab Charter on Human Rights establish similar provisions in the sense that "no one shall be subjected without his free consent to medical or scientific experimentation." Additionally, there are other international documents that clearly establish the need to obtain free, full and informed consent; they include the Istanbul Protocol with regard to medical examinations to determine the existence of torture or other cruel, inhuman or degrading treatment, and the Ethical Guidelines for Biomedical Research on Human Subjects. Cf. United Nations, Istanbul Protocol. Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, August 9, 1999, adopted in 2000, paras. 63 and 64, and Council for International Organizations of Medical Sciences (CIOMS), in collaboration with the World Health Organization (WHO), International Ethical Guidelines for Biomedical Research Involving Human Subjects, Geneva, 2002, standards 4, 5 and 6.

<sup>202</sup> Cf. Nuremberg Code of medical ethics, 1947.

<sup>203</sup> Cf. Programme of Action of the International Conference on Population and Development, Cairo, UN doc A/CONF.171/13/Rev.1, 1994, para. 7.17.

<sup>204</sup> Cf. Declaration and Platform for Action of the Fourth World Conference on Women, Beijing, A/CONF.177/20, 1995, paras. 96 and 106.g).

repeated and systematized in 2014 by several agencies of the universal system when issuing a statement on "Eliminating forced, coercive and otherwise involuntary sterilization."

174. Likewise, the Court underlines that the European Court of Human Rights has interpreted the rule of informed consent on several occasions, both in cases relating to medical interventions in general,<sup>205</sup> and in specific cases of female sterilization, establishing that such consent is essential for the performance of any medical intervention. In particular, the European Court decided that prior, free, full and informed consent was a requisite for a surgical sterilization procedure in relation to facts that occurred in Slovakia in 1999.<sup>206</sup> The Committee for the Elimination of Discrimination against Women ruled similarly in the case of *A.S. v. Hungary* with regard to facts that took place in January 2001.<sup>207</sup>

175. As indicated, the Court notes that the key aspect of the legal standards aimed at protecting individuals faced with medical procedures has been prior, free, full and informed consent. These elements, which are characteristic of valid consent, have been present in the fields of medicine and human rights since the adoption of the 1947 Nuremberg Code of medical ethics and continue to be central to the development of bioethics and law. Furthermore, the Court considers that the standards for informed consent for medical interventions in general are applicable to female sterilization because this is a surgical procedure. However, owing to the nature and gravity of the procedure, which involves a woman losing her reproductive capacity permanently, there are special factors that must be taken into account by the health personnel during the process of informed choice that may result in obtaining informed consent to submit to sterilization. The Court will now define the content of the essential elements of consent derived from the international *corpus juris*.

*i) The prior nature of the consent*

176. The first element of consent to be considered is its prior nature, which means that consent must always be given before any medical intervention. The Court notes that it is not possible to validate consent after the medical intervention had concluded. The prior nature of the consent has been referred to, or is understood implicitly, in all the international instruments that regulate this matter. Indeed, the 1964 Declaration of Helsinki on ethical principles for medical research involving human subjects<sup>208</sup> and the 1981 Declaration of Lisbon on the rights of the patient,<sup>209</sup> both adopted by the World Medical Association, as well as the 2005 Universal Declaration on Bioethics and Human Rights of UNESCO,<sup>210</sup> emphasize that "[a]ny preventive, diagnostic and therapeutic medical

<sup>205</sup> See, *inter alia*, ECHR, *Case of Glass v. The United Kingdom*, No. 61827/00. Judgment of March 9, 2004; *Case of Juhnke v. Turkey*, No. 52515/99. Judgment of May 13, 2008; *Case of M.A.K. and R.K. v. The United Kingdom*, Nos. 45901/05 and 40146/06. Judgment of March 23, 2010; *Case of R.R. v. Poland*, No. 27617/04. Judgment of May 26, 2011; *Case of Elberte v. Latvia*, No. 61243/08. Judgment of January 13, 2015.

<sup>206</sup> Cf. ECHR, *Case of V.C. v. Slovakia*, No. 18968/07. Judgment of November 8, 2011; *Case of N.B. v. Slovakia*, No. 29518/10. Judgment of June 12, 2012, and *Case of I.G., M.K. and R.H. v. Slovakia*, No. 15966/04. Judgment of November 13, 2012 (evidence file, volume VIII, annexes 26, 27 and 28 to the brief with motions, pleadings and evidence, folios 2474 to 2577).

<sup>207</sup> UN, Committee for the Elimination of Discrimination against Women, *A.S. v. Hungary* (Communication No. 4/2004), CEDAW/C/36/D/4/2004, August 29, 2006; the facts of this case took place in January 2001. In the inter-American system, the Court has no case law on informed consent in cases of forced, involuntary or coercive sterilization. However, it should be pointed out that the Inter-American Commission intervened in and approved a friendly settlement agreement in the matter of *María Mamérita Mestanza v. Peru*.

<sup>208</sup> Cf. Declaration of Helsinki. Ethical principles for medical research involving human subjects, adopted by the World Medical Association in 1964, revised in 2013, Principles 25 to 32.

<sup>209</sup> Cf. Declaration of Lisbon on the rights of the patient, adopted by the World Medical Association in 1981, revised in 2005 and reaffirmed in 2015, Principles 3, 7 and 10.

<sup>210</sup> Cf. Universal Declaration on Bioethics and Human Rights, adopted by the General Conference of UNESCO on October 19, 2005, article 6. UNESCO has also regulated the principle of prior, free and informed consent in other declarations, such

intervention is only to be carried out with the prior, free and informed consent of the person concerned.” This has been ratified also by the FIGO,<sup>211</sup> the WHO<sup>212</sup> and the Committee for the Elimination of Discrimination against Women in its General Recommendation No. 24,<sup>213</sup> in the sense that the health services provided to women shall be acceptable only if women give their prior consent with full awareness of the facts; in other words, if the consent is prior to the medical intervention.

177. That said, the Court understands that exceptions exist where health personnel may act without requiring consent in cases in which the patient is unable to give their consent and an immediate, urgent or emergency surgical or medical procedure is necessary given the serious risk to the patient’s health or life. This exception has been established in the laws of several States Parties to the American Convention, as will be described below (*infra* para. 200), and has been recognized in the European sphere,<sup>214</sup> as well as by the Special Rapporteur on the right of everyone to enjoy the highest attainable standard of physical and mental health.<sup>215</sup> The Court considers that urgency or emergency refers to the imminence of a risk and, consequently, of a situation in which the intervention cannot be postponed, excluding those cases in which it is possible to wait to obtain consent. Regarding tubal ligation, the Court stresses that this surgical procedure, the purpose of which is to prevent a future pregnancy, cannot be characterized as an urgent or emergency procedure due to imminent risk, so that this exception is not applicable.

178. Indeed, it must be emphasized that the 2011 FIGO ethical recommendations on sterilization and the United Nations Inter-Agency statement corroborate this understanding, when they consider that, even if a future pregnancy would endanger the life and health of the woman, she would not become pregnant immediately, so that the measure can be taken subsequently.<sup>216</sup> Thus, sterilization is not an emergency medical procedure. This reasoning was also adopted by the European Court of Human Rights in the case of *V.C. v. Slovakia*, in which the facts took place on August 23, 2000. In its judgment, the European Court concluded that the tubal ligation procedure

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as the Universal Declaration on the Human Genome and Human Rights, adopted on November 11, 1997, that mentions the requirements of “prior, free and informed consent” in its articles 5 and 9.

<sup>211</sup> Cf. FIGO, Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women’s Health, November 2003, October 2012 and October 2015, which include the Guidelines regarding informed consent, adopted in 1995 and reaffirmed and supplemented in 2007, as well as the Ethical recommendations on female sterilization of 1989, 1990, 2000 and 2011.

<sup>212</sup> Cf. WHO, Female sterilization: a guide to provision of services, 1993 (evidence file, volume XIII, annex 3 to the State’s final arguments, folios 5517 to 5518). This document indicates that women must have sufficient time to make up their minds about sterilization before the surgical procedure. This period may vary according to the circumstances of each woman.

<sup>213</sup> Cf. UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 24, *Women and health*, 1999, paras. 20 to 22 (evidence file, volume VIII, annex 39 to the brief with motions, pleadings and evidence, folio 2711).

<sup>214</sup> Cf. A Declaration on the Promotion of Patients’ Rights in Europe, adopted by the WHO Regional Office for Europe in 1994, Article 3; Oviedo Convention, Article 8, and Explanatory Report on Article 8 of the Oviedo Convention, paras. 56 to 59.

<sup>215</sup> Cf. UN, Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, A/64/272, August 10, 2009, para. 12.

<sup>216</sup> Cf. FIGO, Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women’s Health of October 2012 and October 2015, which include the 2011 Ethical recommendations on female sterilization, and United Nations Interagency Statement “Eliminating forced, coercive and otherwise involuntary sterilization,” adopted by OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, 2014 (evidence file, volume VIII, annex 25 to the brief with motions, pleadings and evidence, folios 2452 and 2457). See also, 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, paras. 31 to 35, and Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/31/57, January 5, 2016, para. 45.

performed during a caesarean section did not constitute an imminent necessity from a medical point of view because the threat to the patient's life would materialize only in the event of a future pregnancy, so that such an intervention was not generally considered as life-saving surgery.<sup>217</sup>

179. Additionally, the Court cannot admit the argument submitted by the State during the hearing in this case, that the medical personnel acted in accordance with the parameters established in the 1993 WHO manual entitled: "Female sterilization: a guide to provision of services." The State indicated that, based on this document, there was a difference between voluntary surgical sterilizations and sterilizations for health reasons or medically indicated,<sup>218</sup> establishing that the latter – and always according to the State – constituted an exception to the requirement of informed consent in cases in which there was a high probability that another pregnancy would have fatal consequences. First, the Court notes that, even though the 1993 WHO manual established that sterilizations could be performed as a result of medical indication, even in that case, such surgical procedures must be voluntary. Consequently, informed consent must be obtained. Second, even though the text of this manual refers to cases of sterilization due to medical indication in which consent may be waived,<sup>219</sup> the Court considers that the wording of this alleged exception is imprecise, and open to two possible interpretations. On the one hand, as the wording was understood by I.V.'s representative, the exception was only applicable to situations of extreme gravity, such as if a woman arrived at the hospital in shock due to a ruptured uterus. On the other hand, in the sense understood by the State, the exception to the requirement of informed consent was applicable in cases where there was a high probability that another pregnancy would have a fatal outcome.

180. In this regard, the Court considers that the former interpretation would make that standard inapplicable to this case, because I.V. was not admitted to the hospital with a ruptured uterus or similar diagnosis. In addition, the Court notes that, if it accepted the interpretation made by the State, this would involve assuming an isolated standard that contradicts consistent and reiterated

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<sup>217</sup> Cf. ECHR, *Case of V.C. v. Slovakia*, No. 18968/07. Judgment of November 8, 2011, paras. 110 to 117. The same reasoning was adopted in the case of *N.B. v. Slovakia*, No. 29518/10. Judgment of June 12, 2012, para. 74, and the *Case of I.G., M.K. and R.H. v. Slovakia*, No. 15966/04. Judgment of November 13, 2012, para. 122 (evidence file, volume VIII, annexes 26, 27 and 28 to the brief with motions, pleadings and evidence, folios 2474 to 2577).

<sup>218</sup> In this regard, the Court understands from this document that voluntary surgical sterilizations would refer to the choice of sterilization as a permanent contraception method, without other reasons related to the patient's health. Moreover, the Court understands that sterilization for reasons of health or by medical indication would result from situations in which, owing to the woman's health (a high-risk pregnancy), the physician recommends that contraception method as the most appropriate. However, in that case, sterilization is also voluntary and requires informed consent. The manual establishes that: "[i]n almost all countries sterilization is provided for certain health indications, such as ruptured uterus, a multiple caesarean sections (usually after three or four) or other serious obstetric or medical problems. Some conditions that increase the health risks associated with pregnancy are multiparity, advanced maternal age, previous obstetric complications, medical conditions that can complicate the pregnancy [...] and previous abortions." It also indicates that: "[f]or some clients, pregnancy poses a serious health risk, and contraception is therefore recommended for medical reasons. Sterilization is often considered in these situations. As in other cases, these women should make voluntary, informed, well-considered decisions about contraception; family planning counselling is necessary. However, the nature of counselling is different when contraception has been recommended for medical reasons. When a woman is advised to undergo sterilization for medical reasons, the doctor and other staff members must ensure that she understands the comparative risks associated with pregnancy, sterilization, and other methods of contraceptive. Vasectomy for the partner and long-term methods (intrauterine devices and implantable contraceptives) should also be considered, particularly, if the sterilization surgery poses a significant risk for the woman. If the woman chooses to undergo tubal occlusion, informed consent is necessary." WHO, *Female sterilization: a guide to provision of services*, 1993, pp. 72 and 78 (evidence file, volume XIII, annex 3 to the State's final arguments, folios 5521 and 5527).

<sup>219</sup> The guide establishes that "[i]n a few instances sterilization is performed without family planning counselling and consent. For example, if a woman arrives at the hospital in shock due to a ruptured uterus, she must undergo emergency surgery, and a sterilization is often medically necessary because of the high risk of death if the woman becomes pregnant again. In such cases, postoperative counselling is essential to help the patient adjust to her loss of fertility and understand why the surgery was necessary." WHO, *Female sterilization: a guide to provision of services*, 1993, pp.72 and 73 (evidence file, volume XIII, annex 3 to the State's final arguments, folios 5521 and 5522).

standards contained in numerous other international documents cited by this Court. In any case and given the uncertainty about the interpretation, the Court concluded that the 1993 WHO manual should be read in connection with the American Convention in light of the autonomy and rights of patients, so that the exception to obtaining consent is only valid in situations where there are medical indications and in circumstances that meet the necessary requirements of urgency and emergency for it to be admissible.

ii) *The principle of free consent*

181. The second element emphasizes the aspect of the freedom of the manifestation of consent. Thus, the Court considers that consent must be given in a free, voluntary and autonomous manner, without pressure of any kind, without using it as a condition for submission to other procedures or benefits, without coercion, threats or disinformation. Furthermore, consent cannot be given as a result of actions by health personnel that persuade individuals to steer their decision in a certain direction, and it cannot be the result of any type of inappropriate incentive. Free consent has been referred to in numerous international documents concerning consent as a mechanism that protects patients' rights, from the Nuremberg Code of medical ethics to the United Nations Interagency Statement<sup>220</sup> (*supra* paras. 171 and 173). In particular, the Declaration of Helsinki emphasizes that "[w]hen obtaining informed consent, the physician should be particularly cautious if the subject is in a dependent relationship with the physician or may consent under duress."<sup>221</sup>

182. Consent is personal because it must be given by the person who will undergo the procedure. Indeed, according to the Declarations of Helsinki and of Lisbon, as well as the Declaration on forced sterilization, all adopted by the World Medical Association, only the patient may agree to undergo a medical procedure.<sup>222</sup> In addition, the UNESCO Universal Declaration on Bioethics and Human Rights refers to "consent by the person concerned, based on adequate information."<sup>223</sup> In the case of sterilization, the Court considers that, owing to its nature and the serious consequences on reproductive capacity, in relation to a woman's autonomy, which entails respecting her decision on whether or not to have children and the circumstances in which she wishes to have them (*supra* para. 162), she is the only person authorized to give consent, rather than third persons. Thus, it is

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<sup>220</sup> Cf. Declaration of Helsinki, Principles 25 to 32; Declaration of Lisbon on the rights of patients, Principles 3, 7 and 10; UN, Principles for the protection of persons with mental illness and the improvement of mental health care, A/RES/46/119, December 17, 1991, Principle 11(2); WHO, Female sterilization: a guide to provision of services, 1993 (evidence file, volume XIII, annex 3 to the State's final arguments, folios 5496 to 5499; 5510 to 5520 and 5530 to 5531); FIGO, Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health of November 2003, October 2012 and October 2015, which include the Guidelines regarding informed consent, adopted in 1995 and reaffirmed and supplemented in 2007, pp. 166 and 167 (2003), pp. 316 to 318 (2012) and pp. 399 to 401 (2015), as well as the Ethical recommendations on female sterilization of 1989, 1990, 2000 and 2011, pp. 55 to 57 and 213 to 218 (2003), pp. 436 to 440 (2012) and pp. 537 to 541 (2015); UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 24, *Women and health*, 1999, para. 22 (evidence file, volume VIII, annex 39 to the brief with motions, pleadings and evidence, folio 2711); Universal Declaration on Bioethics and Human Rights, Article 6; UN, Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, A/64/272, August 10, 2009, paras. 13 and 14; WMA, the World Medical Association Statement on Forced and Coerced Sterilisation, adopted by the 63rd General Assembly, Bangkok, Thailand, October 2012, which emphasizes that "consent to sterilization should be free of any material or social incentives which might distort freedom of choice" (evidence file, volume VIII, annex 31 to the brief with motions, pleadings and evidence, folios 2613 to 2614); United Nations Interagency Statement "Eliminating forced, coercive and otherwise involuntary sterilization," adopted by OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, 2014 (evidence file, volume VIII, annex 25 to the brief with motions, pleadings and evidence, folios 2452 to 2454 and 2457).

<sup>221</sup> Cf. Declaration of Helsinki, Principle 23.

<sup>222</sup> Cf. Declaration of Helsinki, Principle 22; Declaration of Lisbon on the rights of patients, Principle 3; the World Medical Association Statement on Forced and Coerced Sterilisation (evidence file, volume VIII, annex 31 to the brief with motions, pleadings and evidence, folios 2613 to 2614).

<sup>223</sup> Cf. Universal Declaration on Bioethics and Human Rights, Article 6(1).

not permissible to request the authorization of the partner or of any other person in order to perform sterilization.<sup>224</sup> The Court also considers that, as it has established, sterilization is usually not an emergency procedure (*supra* paras. 177 and 178), so that if the woman is unable to give her consent, it is not permissible to resort to a third person, but rather it is necessary to wait until she can give this. General Recommendation No. 21 (1994) of the Committee for the Elimination of Discrimination against Women, General Comment No. 28 (2000) of the Human Rights Committee, and also the 1993 WHO manual, FIGO and its recommendations from 1989 on, and the United Nations Interagency Statement all indicate that, although the decision on sterilization can be taken by the couple, this does not mean that the husband's authorization is required for the performance of this surgical procedure, because it is a decision that only the woman may make based on her reproductive freedom and autonomy.<sup>225</sup>

183. In the Court's opinion consent cannot be considered free if a woman is asked to provide it when she is not in a condition to take a fully informed decision because she is in a situation of stress and vulnerability, *inter alia*, such as, during or immediately after giving birth or undergoing a caesarean section. The 1993 WHO manual established that it was not appropriate for a woman to opt for sterilization if there were physical or emotional factors that could limit her capacity to take an informed and well-considered decision, such as, while she was in labor, receiving sedatives or going through a difficult situation before, during or after an incident or treatment related to her pregnancy.<sup>226</sup> This was ratified in the 2011 FIGO ethics considerations on sterilization,<sup>227</sup> in the World Medical Association Statement on Forced and Coerced Sterilisation<sup>228</sup> and in the United Nations Interagency Statement.<sup>229</sup> The Court notes that this standard was even included in Bolivia's domestic law in 1997 (*infra* para. 212). Also, the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health has emphasized that: "[c]oercion includes conditions of duress such as fatigue or stress."<sup>230</sup> Similarly, the European Court of Human

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<sup>224</sup> Cf. UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 21, 1994, paras. 21 to 23 (evidence file, volume VIII, annex 38 to the brief with motions, pleadings and evidence, folio 2700), and UN, Human Rights Committee, General Comment No. 28, *The equality of rights between men and women*, March 29, 2000, para. 20. Also, the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health considered that "any requirement for preliminary authorization by a third party is a violation of a woman's autonomy." Cf. UN, Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, A/64/272, August 10, 2009, para. 57.

<sup>225</sup> Cf. UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 21, 1994, para. 22 (evidence file, volume VIII, annex 38 to the brief with motions, pleadings and evidence, folio 2700); UN, Human Rights Committee, General Comment No. 28, *The equality of rights between men and women*, March 29, 2000, para. 20; WHO, Female sterilization: a guide to provision of services, 1993 (evidence file, volume XIII, annex 3 to the State's final arguments, folio 5518); FIGO, Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health of November 2003, October 2012 and October 2015, which includes the Ethical considerations on sterilization of 1989, 1990, 2000 and 2011, pp. 59 and 217 (2003), pp. 436 and 437 (2012) and p. 538 (2015), and United Nations Interagency Statement "Eliminating forced, coercive and otherwise involuntary sterilization," adopted by OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, 2014 (evidence file, volume VIII, annex 25 to the brief with motions, pleadings and evidence, folios 2452 to 2453).

<sup>226</sup> Cf. WHO, Female sterilization: a guide to provision of services, 1993 (evidence file, volume XIII, annex 3 to the State's final arguments, folio 5517).

<sup>227</sup> Cf. FIGO, Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's of October 2012 and October 2015, which include the 2011 Ethical recommendations on female sterilization, p. 437 (2012) and p. 539 (2015).

<sup>228</sup> Cf. WMA, WHO, Female sterilization: a guide to provision of services, 1993 (evidence file, volume VIII, annex 31 to the brief with motions, pleadings and evidence, folios 2613 and 2614).

<sup>229</sup> Cf. United Nations Interagency Statement "Eliminating forced, coercive and otherwise involuntary sterilization," adopted by OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, 2014 (evidence file, volume VIII, annex 25 to the brief with motions, pleadings and evidence, folio 2457).

<sup>230</sup> UN, Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, A/64/272, August 10, 2009, para. 14.

Rights has concluded that asking for consent while a woman is in labor or shortly before she undergoes a caesarean section clearly does not permit her to take a decision of her own free will.<sup>231</sup>

184. In the understanding that consent arises from the concept of autonomy and liberty, it is also understood that it can be withdrawn for any reason, without disadvantage or prejudice, even if it is only withdrawn verbally, because it is not definitive.<sup>232</sup> As previously described, obtaining consent is the product of a two-way process between doctor and patient,<sup>233</sup> so that health personnel must provide complete, objective information that is neither manipulative nor inductive, avoiding frightening the patient, because this could mean that the consent is not truly free. Uninformed consent is not a free decision.

185. The Court underscores that a woman's freedom to decide and to take responsible decisions with regard to her body and her reproductive health, especially in cases of sterilization, can be undermined by discrimination in access to health care; by the differences in power relationships with the husband, the family, the community and the medical personnel;<sup>234</sup> by the existence of additional factors of vulnerability,<sup>235</sup> and of gender and other stereotypes among health care providers<sup>236</sup> (*infra* para. 187). Factors such as race, disability and socio-economic status cannot be used as grounds to limit the patient's freedom of choice with regard to sterilization, or to circumvent obtaining her consent.<sup>237</sup>

186. The Court recognizes that the physician-patient power dynamic may be increased by the unequal power relations that have historically characterized relationships between men and women, as well as by the socially dominant and persistent gender stereotypes that, consciously or unconsciously, constitute the basis for practices that reinforce the position of women as

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<sup>231</sup> Cf. ECHR, *Case of V.C. v. Slovakia*, No. 18968/07. Judgment of November 8, 2011, paras. 111 and 112. The same reasoning was adopted in the *Case of N.B. v. Slovakia*, No. 29518/10. Judgment of June 12, 2012, para. 77, and *Case of I.G., M.K. and R.H. v. Slovakia*, No. 15966/04. Judgment of November 13, 2012, para. 122 (evidence file, volume VIII, annexes 26, 27 and 28 to the brief with motions, pleadings and evidence, folios 2474 to 2577).

<sup>232</sup> Cf. Declaration of Helsinki, Principle 26; Universal Declaration on Bioethics and Human Rights, Article 6; WHO, *Female sterilization: a guide to provision of services*, 1993 (evidence file, volume XIII, annex 3 to the State's final arguments, folios 5518 and 5523), and FIGO, *Guidelines regarding informed consent*, adopted in 2007, which reaffirm the indications in the 1995 document and add, above all, that "consent can be withdrawn at any time." In this regard, see *Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health* of October 2012 and October 2015, p. 317 (2012) and p. 400 (2015).

<sup>233</sup> Cf. WHO, *Female sterilization: a guide to provision of services*, 1993 (evidence file, volume XIII, annex 3 to the State's final arguments, folio 5512), and FIGO, *Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health* of November 2003, October 2012 and October 2015, which include the *Guidelines regarding informed consent*, adopted in 1995 and reaffirmed and supplement in 2007, pp. 166 and 167 (2003), pp. 316 to 318 (2012) and pp. 399 to 401 (2015).

<sup>234</sup> Cf. UN, *Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health*, Anand Grover, A/64/272, August 10, 2009, para. 17, and WHO, *Female sterilization: a guide to provision of services*, 1993 (evidence file, volume XIII, annex 3 to the State's final arguments, folio 5520).

<sup>235</sup> Cf. UN, *Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health*, Anand Grover, A/64/272, August 10, 2009, paras. 54 and 55. Similarly, article 8 of the UNESCO *Universal Declaration on Bioethics and Human Rights* establishes that "[i]n applying and advancing scientific knowledge, medical practice and associated technologies [...] individuals and groups of special vulnerability should be protected and the personal integrity of such individuals respected."

<sup>236</sup> Cf. *United Nations Interagency Statement "Eliminating forced, coercive and otherwise involuntary sterilization,"* adopted by OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, 2014 (evidence file, volume VIII, annex 25 to the brief with motions, pleadings and evidence, folios 2453 and 2455).

<sup>237</sup> Cf. FIGO, *Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health* of November 2003, October 2012 and October 2015, which include the 2011 *Ethical recommendations on female sterilization*, pp. 436 to 440 (2012) and pp. 537 to 541 (2015).

dependents and subordinates.<sup>238</sup> In this regard, the Court has recognized that the obligation to eliminate all forms of discrimination against women incorporates the obligation to eliminate discrimination based on gender stereotypes.<sup>239</sup>

187. Gender stereotypes refer to a preconception of the attributes, conducts or characteristics of men and women and the respective roles they play or should play.<sup>240</sup> In the health care sector, gender stereotypes may result in distinctions, exclusions or restrictions that impair or annul the recognition, enjoyment or exercise of human rights and, specifically, the sexual and reproductive rights of women, based on their condition as such. In particular, the Court notes that negative or prejudicial gender stereotypes may have an impact on and affect a woman's access to information on sexual and reproductive health, as well as the way in which her consent is obtained. A woman who is unaware of her sexual and reproductive rights may have a less assertive attitude towards her rights. This could lead her to have greater confidence in her doctor's criteria, or to health professionals adopting a paternalistic attitude towards their patient. Both situations could open the way to a situation of the exercise of power where health professionals take decisions without taking into account the autonomy and wishes of their patient. The Court identifies some of the gender stereotypes frequently applied to women in the health sector that have serious effects on the autonomy of women and their decision-making power: (i) women are seen as vulnerable beings, incapable of taking reliable or consistent decisions, which results in health professionals denying women the information they require in order to give their informed consent; (ii) women are considered impulsive and indecisive and in need of the guidance of a more stable person with better judgment, usually a protective man, and (iii) it is the woman who should bear the responsibility for the couple's sexual health, so that, within a relationship, it is the woman who has the task of choosing and using a method of contraception.<sup>241</sup> Consequently, in this case, the Court will pay special attention to this aspect in order to recognize and reject the stereotypes that lead to the impairment of the rights recognized in the Convention.

188. In addition, the Court finds it essential that medical personnel avoid inducing a patient to give her consent to sterilization because she fails to understand the information provided. Moreover, they must refrain from going ahead with the procedure without this consent – particularly in cases where the woman has scarce financial resources and/or low levels of education – on the pretext that the measure is necessary as a means of population and birth control. This may, in turn, lead to the situation in which a decision in favor sterilizing the woman and not the man is induced, based on the stereotype that it is the woman, who plays the main role in procreation, who should be responsible for contraception (*infra* para. 246).

*iii) The principle of full and informed consent*

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<sup>238</sup> Cf. FIGO, Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health of October 2012 and October 2015, which include the Recommendations on the human rights impact of gender stereotyping in the context of reproductive health care of 2011, pp. 332 to 336 (2012) and pp. 418 to 422 (2015).

<sup>239</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 401, and *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 268.

<sup>240</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico, supra*, para. 401, and *Case of Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2015. Series C No. 307, para. 180.

<sup>241</sup> Cf. FIGO, Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health of October 2012 and October 2015, which include the Recommendations on the human rights impact of gender stereotyping in the context of reproductive health care of 2011, pp. 332 to 336 (2012) and pp. 418 to 422 (2015).

189. Lastly, the Court emphasizes that consent must be full and informed. Full consent can only be obtained after adequate, complete, reliable, comprehensible and accessible information has been received and fully understood. After analyzing several sources, the Court considers that, at the very least, health care providers should offer the following information: (i) an evaluation of the diagnosis; (ii) the purpose, method, probable duration, and expected benefits and risks of the proposed treatment; (iii) the possible adverse effects of the proposed treatment; (iv) treatment alternatives, including those that are less invasive, together with the possible pain or discomfort, risks, benefits and secondary effects of the alternative treatments proposed; (v) the consequences of the treatment, and (vi) what may occur before, during and after the treatment.<sup>242</sup>

190. The State indicated that, in 2000, there was no consensus on whether a patient should be informed about alternative treatments; rather, agreement existed that information should be provided on the nature of the procedure, the purpose and risks. The Court considers it relevant to underscore that several international documents, and also the case law of the European Court of Human Rights, referred to the need to provide information on alternatives to the patient.<sup>243</sup> In the Court's opinion, if alternative treatments exist, this information forms part of the concept of necessary information in order to give informed consent, and providing information on these alternatives is considered a basic element of this consent.

191. That said, as already established, obtaining consent should be the result of a communication process, in which qualified personnel present clear, non-technical, impartial, exact, true, timely, complete, adequate, and reliable information; in other words, information that provides the necessary elements for the adoption of an informed decision. Health personnel should not act in a coercive or inducive manner in order to achieve the acceptance of the medical procedure, based on the understanding that the physician's opinion should prevail over the patient's desires and

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<sup>242</sup> Cf. Nuremberg Code of medical ethics, 1947; Declaration of Helsinki, Principles 25 to 27; Declaration of Lisbon on the rights of patients, Principles 3, 7 and 10; UN, Principles for the protection of persons with mental illness and the improvement of mental health care, A/RES/46/119, December 17, 1991, Principle 11(2); WHO, Female sterilization: a guide to provision of services, 1993 (evidence file, volume XIII, annex 3 to the State's final arguments, folios 5496 to 5499; 5510 to 5520 and 5530 to 5531); FIGO, Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health of November 2003, October 2012 and October 2015, regarding informed consent, adopted in 1995 and reaffirmed and supplemented in 2007, pp. 166 to 167 (2003), pp. 316 to 318 (2012) and pp. 399 to 401 (2015), as well as the Ethical recommendations on female sterilization of 1989, 1990, 2000 and 2011, pp. 55 to 57 and 213 to 218 (2003), pp. 436 to 440 (2012) and pp. 537 to 541 (2015); UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 24, *Women and health*, 1999, paras. 20 to 22 (evidence file, volume VIII, annex 39 to the brief with motions, pleadings and evidence, folio 2711); Universal Declaration on Bioethics and Human Rights, article 6; UN, Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, A/64/272, August 10, 2009, paras. 15 and 16; WMA, the World Medical Association Statement on Forced and Coerced Sterilisation, adopted by the 63rd General Assembly, Bangkok, Thailand, October 2012 (evidence file, volume VIII, annex 31 to the brief with motions, pleadings and evidence, folios 2613 and 2614), and United Nations Interagency Statement "Eliminating forced, coercive and otherwise involuntary sterilization," adopted by OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, 2014 (evidence file, volume VIII, annex 25 to the brief with motions, pleadings and evidence, folios 2452 to 2454 and 2457).

<sup>243</sup> Some of these documents published up until 2000 are: UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 24, *Women and health*, 1999, paras. 20 and 22; UN, Principles for the protection of persons with mental illness and the improvement of mental health care, A/RES/46/119, December 17, 1991, Principle 11.2; FIGO, Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health of November 2003, which include the Guidelines regarding informed consent, adopted in 1995, pp. 166 to 167, as well as the Ethical recommendations on female sterilization of 1989, 1990 and 2000, pp. 55 to 57 and 213 to 218, and WHO, Female sterilization: a guide to provision of services, 1993 (evidence file, volume XIII, annex 3 to the State's final arguments, folios 5496 to 5498 and 5514 to 5516). In addition, see the rulings of the European Court of Human Rights, as in the case of *V.C v. Slovakia*, in which it referred to the fact that the patient had not been informed of alternative treatments to sterilization. Cf. ECHR, *Case of V.C. v. Slovakia*, No. 18968/07. Judgment of November 8, 2011, para. 112 (evidence file, volume VIII, annex 28 to the brief with motions, pleadings and evidence, folios 2531 to 2577). See also, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, *Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*. E/CN.4/1999/68/Add.4, January 21, 1999, para. 52.

autonomy. Health care providers are essential agents to ensure that adequate information is provided, so that the way in which the information is presented is very important, because both the health care personnel and the patient herself may have preconceived ideas about the treatment, added to the fact that people frequently have difficulty communicating ideas.<sup>244</sup>

192. In this regard, in order to ensure that the information is fully understood, the health care providers must take into account the particularities and needs of the patient,<sup>245</sup> such as their culture, religion, lifestyle, and level of education. This forms part of the obligation to provide culturally acceptable health care. The Court underlines that, since the Declaration of Helsinki the need was established that “[s]pecial attention should be given to the specific information needs of individual potential subjects as well as to the methods used to deliver the information.”<sup>246</sup> Similarly, the Declaration of Lisbon indicates that the information must be delivered “in a way appropriate to the patient’s culture and in such a way that the patient can understand.”<sup>247</sup> In this regard, the information should include not only what the physician may consider reasonable and necessary to share, but should also focus on what is important for the patient. In other words, the information provided must have both an objective and a subjective element. Taking into account the particularities of the person is especially important when patients belong to vulnerable groups with specific needs for protection owing to factors of exclusion, marginalization or discrimination, that are relevant for understanding the information. Furthermore, the Court considers that, to ensure that the information is fully understood and an informed decision can be taken, it is necessary to ensure a reasonable period of reflection, which could vary according to the conditions of each case and the circumstances of each person. This constitutes a guarantee that is especially effective to avoid non-consensual or involuntary sterilizations.<sup>248</sup>

193. The Court understands that the elements indicated in the preceding paragraph are relevant in the process to obtain informed consent for female sterilization, owing to the discrimination and negative or prejudicial stereotypes that women face in the area of health care (*supra* para. 187). Moreover, in these cases, the obligation to provide information is increased owing to the nature and entity of the procedure. The special considerations that health care personnel should take into account when obtaining informed consent to sterilization, and the necessary information that such personnel should provide so that the patient may take an informed decision, should include, in addition to the above, the information that sterilization constitutes a permanent method and, since the patient may subsequently regret her sterility, the provision of information on the existence of

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<sup>244</sup> Cf. UN, Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, A/64/272, August 10, 2009, para. 59.

<sup>245</sup> Cf. WHO, Female sterilization: a guide to provision of services, 1993 (evidence file, volume XIII, annex 3 to the State’s final arguments, folios 5510 to 5520), and FIGO, Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women’s Health of November 2003, October 2012 and October 2015, which include the Guidelines regarding informed consent, adopted in 1995 and reaffirmed and supplemented in 2007, pp. 166 to 167 (2003), pp. 316 to 318 (2012) and pp. 399 to 401 (2015), as well as the Ethical recommendations on female sterilization of 1989, 1990, 2000 and 2011, pp. 55 to 57 and 213 to 218 (2003), pp. 436 to 440 (2012) and pp. 537 to 541 (2015).

<sup>246</sup> Declaration of Helsinki, Principle 26.

<sup>247</sup> Declaration of Lisbon on the rights of patients, Principle 7.

<sup>248</sup> The ECHR considered in the case of *V.C v. Slovakia* that V.C. had given her consent while in labor, only two and a half hours after she had been brought to the hospital, and in circumstances that did not allow her to take a free decision, after having considered what was at stake and the implications of her decision on sterilization. Cf. ECHR, *Case of V.C. v. Slovakia*, No. 18968/07. Judgment of November 8, 2011, paras. 111 and 117 (evidence file, volume VIII, annex 28 to the brief with motions, pleadings and evidence, folios 2531 to 2577). Similarly, the Committee for the Elimination of Discrimination against Women, in the case of *A.S v Hungary*, concluded that the 17-minute timespan and the circumstances under which A.S. decided to undergo sterilization had not allowed her to give free, full and informed consent. Cf. UN, Committee for the Elimination of Discrimination against Women, *A.S. v. Hungary* (Communication No. 4/2004), CEDAW/C/36/D/4/2004, August 29, 2006, para. 11.3.

alternative, less invasive, methods of contraception, even male contraceptive methods, because these could be an appropriate alternative. Furthermore, it is desirable to take into consideration, and provide information on the fact that, since it involves a surgical procedure, sterilization could have risks or side effects, and that there is a measurable failure rate in any method of sterilization, but also that there could be consequences if the treatment is rejected.<sup>249</sup> However, it should be made clear that the decision corresponds to the woman alone, although it may be discussed with her partner (*supra* para. 182). Similarly, it is necessary to mention that, even though sterilization may be medically appropriate, it is neither an urgent nor emergency measure (*supra* paras. 177 and 178).

194. The Court considers that, in general, the special considerations inherent in informed consent for sterilization and the necessary aspects that health care personnel should address to enable the woman to take a prior, free, full and informed decision accord with the standards established by WHO since 1993 and FIGO since 1989.<sup>250</sup> Additionally, FIGO and the UN Interagency Statement have given great relevance to the obligation not to intentionally censure, retain or misinterpret information on sterilization and alternative contraceptive methods, in order to obtain consent, as this could endanger both health and basic human rights.<sup>251</sup>

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<sup>249</sup> Cf. WHO, Female sterilization: a guide to provision of services, 1993 (evidence file, volume XIII, annex 3 to the State's final arguments, folios 5496 to 5499; 5510 to 5520 and 5530 to 5531); FIGO, Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health of November 2003, October 2012 and October 2015, which include the Guidelines regarding informed consent, adopted in 1995 and reaffirmed and supplemented in 2007, pp. 166 to 167 (2003), pp. 316 to 318 (2012) and pp. 399 to 401 (2015), as well as the Ethical recommendations on female sterilization of 1989, 1990, 2000 and 2011, pp. 55 to 57 and 213 to 218 (2003), pp. 436 to 440 (2012) and pp. 537 to 541 (2015); UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 21, 1994, paras. 21 to 23 (evidence file, volume VIII, annex 38 to the brief with motions, pleadings and evidence, folio 2700); UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 24, *Women and health*, 1999, paras. 20 to 22 (evidence file, volume VIII, annex 39 to the brief with motions, pleadings and evidence, folio 2711); UN, Human Rights Committee, General Comment No. 28, *The equality of rights between men and women*, March 29, 2000, para. 20; UN, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, *Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, E/CN.4/1999/68/Add.4, January 21, 1999, para. 52; UN, Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, A/64/272, August 10, 2009, paras. 54 and 55; WMA, the World Medical Association Statement on Forced and Coerced Sterilisation, adopted by the 63rd General Assembly, Bangkok, Thailand, October 2012 (evidence file, volume VIII, annex 31 to the brief with motions, pleadings and evidence, folios 2613 and 2614), and United Nations Interagency Statement "Eliminating forced, coercive and otherwise involuntary sterilization," adopted by OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, 2014 (evidence file, volume VIII, annex 25 to the brief with motions, pleadings and evidence, folios 2452 to 2454 and 2457).

<sup>250</sup> Cf. WHO, Female sterilization: a guide to provision of services, 1993 (evidence file, volume XIII, annex 3 to the State's final arguments, folios 5510 to 5520 and 5530 and 5531); WHO, Ensuring human rights in the provision of contraceptive information and services; Guidance and recommendations, 2014; Ensuring human rights within contraceptive programmes. A human rights analysis of existing quantitative indicators, 2014, pp. 25 and 26; Framework for ensuring human rights in the provision of contraceptive information and services, 2014, pp. 3 to 6; Medical eligibility criteria for contraceptive use, first edition, 1996, pp. 87 and *ff.*; second edition, 2000, pp. 105 and *ff.*; third edition, 2005, pp. 105 and *ff.*; and fourth edition, 2009, pp. 105 and *ff.*; FIGO, Recommendations on ethics issues in obstetrics and gynecology by the FIGO Committee for the Study of Ethical Aspects of Human Reproduction and Women's Health of November 2003, October 2012 and October 2015, which include the Guidelines regarding informed consent, adopted in 1995 and reaffirmed and supplemented in 2007, pp. 166 and 167 (2003), pp. 316 to 318 (2012) and pp. 399 to 401 (2015), as well as the Ethical recommendations on female sterilization of 1989, 1990, 2000 and 2011, pp. 55 to 57 and 213 to 218 (2003), pp. 436 to 440 (2012) and pp. 537 to 541 (2015), and United Nations Interagency Statement "Eliminating forced, coercive and otherwise involuntary sterilization," adopted by OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, 2014 (evidence file, volume VIII, annex 25 to the brief with motions, pleadings and evidence, folios 2452 to 2457).

<sup>251</sup> Similarly, the World Medical Association Statement on Forced and Coerced Sterilisation establishes that a full range of contraception services, including sterilization, should be accessible and affordable to every individual. Cf. WMA, the World Medical Association Statement on Forced and Coerced Sterilisation, adopted by the 63rd General Assembly, Bangkok, Thailand, October 2012, which underlines that "[c]onsent to sterilisation should be free from material or social incentives which might distort freedom of choice" (evidence file, volume VIII, annex 31 to the brief with motions, pleadings and evidence, folios 2613 and 2614).

195. In addition, even though there is no international consensus or one resulting from the domestic law of the States with regard to whether consent should be given verbally or in writing, the Court considers that the evidence of its existence should be documented or recorded formally in some instrument.<sup>252</sup> This will evidently depend on each case and situation. However, the Court finds it relevant to stress that, pursuant to comparative law, all the States that regulated female surgical sterilization in their domestic law up until 2000, as well as the States that required informed consent in writing, required this, above all, for medical procedures that, owing to their invasive nature or gravity, warranted greater safety and formality in the process to obtain consent (*infra* para. 199).

196. Notwithstanding the above, the Court agrees with the Commission that, in cases of female sterilization, owing to the relevance and implications of the decision and for greater legal certainty, consent should be given in writing insofar as possible. The more important the consequences of the decision to be taken, the more rigorous should be the controls to ensure that valid consent is given.

*B.2.b The elements of consent derived from domestic legal systems*

197. The Court considers it relevant, from a comparative law perspective of domestic laws and jurisprudence, to reinforce the interpretation given to the rule of informed consent as a requirement prior to medical procedures and the specific guarantees, which have also been reflected in the domestic laws and practice of various Member States of the Organization of American States (OAS), in particular, most of the State that have ratified the American Convention.

198. The Court has corroborated that, by 2000, when the facts of this case occurred, many of the States for which information is available<sup>253</sup> had different domestic norms concerning informed consent, such as laws, technical guidelines or resolutions of health institutions, and even relevant jurisprudence. The vast majority had a general norm for every type of medical procedure,<sup>254</sup> while

<sup>252</sup> Principle 23 of the Declaration of Helsinki indicates that consent should be given “preferably in writing [but i]f the consent cannot be obtained in writing, the non-written consent must be formally documented and witnessed.” Similarly, see WHO, *Female sterilization: a guide to provision of services*, 1993 (evidence file, volume XIII, annex 3 to the State’s final arguments, folios 5518 to 5520), and UN, Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, A/64/272, August 10, 2009, para. 13.

<sup>253</sup> The States for which information for the year 2000 is available are: Argentina, Barbados, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, United States, Uruguay and Venezuela.

<sup>254</sup> (i) Argentina: Law on the Exercise of medicine, odontology and ancillary activities, National Law No. 17,132 of 1976, article 19, paragraph 3 and Basic Health Law of the Autonomous City of Law of Buenos Aires, Law No. 153/99 of 1999, article 4(d) and (h); (ii) Bolivia: Code of Medical Ethics, Law No. 728 of August 4, 1993, articles 19 and 23. Also, the Code of Medical Ethics and Deontology was adopted in Bolivia, according to information provided to this Court by the parties by Ministerial Resolution No. 047/04 of July 2004. This code reiterates several provides of the 1993 Ethics Code in its articles 8(6) and (10); 20, 22, 23, 25 and 37. Similarly, see current articles 16, 18 (previously articles 19 and 23) and 22 of the Code of Medical Ethics provided by the parties (file of the procedure before the Commission, volume II, folios 406 to 408 and 411 and 412); (iii) Canada: the Supreme Court handed down two important judgments concerning informed consent: *Reibl v. Hughes* and *Hopp v. Lepp* (1980) and *Malette v. Shulman* (1990). The former established the “reasonable patient test,” also known as the “subjective-objective test” to determine the information that should be provided to obtain informed consent; to this end, it was considered that doctors knew or should know what their patient wished to know about the medical procedure. The second established that the obligation to obtain informed consent resulted from the doctrine of individual autonomy and indicated that the information should include a description of the treatment, its benefits and risks, the urgency of the treatment and whether it was necessary or elective, the existing alternatives (their risks and benefits), the consequences of refusing the treatment, the medical opinion, and any other information that the patient requested. In addition, the provinces have enacted laws, as in the case of Ontario which enacted the Health Care Consent Act in 1996; (iv) Chile: Ethics Code of the Chilean Association of Physicians, of 1986, article 15; Supreme Decree No. 42 of 1986 (derogated in 2005), article 105; Charter of the patient’s rights of the National Health System (FONASA) of 1999, and Decree No. 570 of July 2000, article 20, applicable for public and private psychiatric in-patient establishments; (v)

some of them had norms applicable to more specific cases,<sup>255</sup> even norms that regulated consent in cases of female sterilization.<sup>256</sup>

199. The Court notes that domestic laws have considered different elements of informed consent, but, in 2000, they generally agreed that this must be prior, free and informed. Regarding access to

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Colombia: Medical Ethics Act, Law No. 23 of 1981, article 15; Decree No. 3380 of 1981, regulating Law No. 23; Constitutional Court of Colombia, Judgments Nos. T 401/94, T-477/95, SU-337/99, and Resolution No. 13437 on Patient's rights, adopted by the Ministry of Health in 1991, article 2; (vi) Costa Rica: General Health Act, No. 5395, articles 10 and 22; (vii) Ecuador: Cf. Code of Medical Ethics of 1992, articles 15 and 16; (viii) El Salvador: General Regulations for Hospitals of the Ministry of Public Health and Social Assistance of 1996, articles 114 and 115; (ix) United States of America: Consumer Bill of Rights and Responsibilities, also known as the "Patient's Bill of Rights." Adopted by the President's Advisory Commission on Consumer Protection and Quality in Health Care Industry. Similarly, since the beginning of the twentieth century, United States case law has referred to the obligatory nature of informed consent, for example, in the cases: *Mohr v. Williams (1905)*, *Pratt v. Davis (1906)*, *Rolater v. Strain (1913)*, and *Schloendorff v. Society of New York Hospitals (1914)*; (x) Mexico: General Health Act, articles 51 bis 1 and 2 (introduced by an amendment of April 2009); article 100, paragraph IV (concerning consent in research on human subjects); article 103 (concerning the treatment of those who are ill); article 77 bis 37, paragraphs V and IX. (introduced by an amendment of May 2003), and Regulations to the General Health Act on matters of health-related research of December 1981, article 14, paragraph V, among others; (xi) Paraguay: Criminal Code, Law No. 1160 of 1997, article 123; (xii) Peru: Cf. General Health Act, Law No. 26842 of 1997, which continues in force, articles 4; 6, 15(h), 27 and 40; (xiii) Uruguay: Bioethical Decree No. 258/92 of 1992, articles 5 and 36 to 39; and Code of Medical Ethics of April 1995, articles 15 and 38. Article 38 indicates that male and female sterilization must have the free and full consent of the person after they have been duly informed of the consequences of this medical procedure; (xiv) Venezuela: Medical Deontology Code of 1985, article 69(4).

<sup>255</sup> The laws of Barbados referred to informed consent in cases of termination of pregnancy; the laws of Panama and Brazil applied specifically to sterilization, and Brazil also had a law that recognized the right to free family planning without any form of coercion; the Honduran law applied to scientific research, and the Jamaican law referred to cases of sterilization but was applicable to a single health center. In this regard: (i) Barbados: Medical Termination of Pregnancy Act of 1983, article 8(1); (ii) Brazil: 1988 Federal Constitution, article 226(7), and articles 4 and 10 of Law No. 9,263 of January 1996, which developed article 226(7) of the Federal Constitution; article 10, paragraph II.6 also indicated that "[c]onsent expressed during changes in the capacity for discernment under the influence of alcohol, drugs, altered states of emotion or temporary or permanent mental disability shall not be considered an expression of will pursuant to § 1"; (iii) Honduras: Health Code, Decree No. 65-91, August 6, 1991, articles 10 and 176; (iv) Jamaica: informed and written consent voluntary female sterilization dates from 1989. The Glen Vincent Fertility Management Unit drew up a memorandum with standards for cases in which a woman desired to submit to tubal ligation which indicates that: "[w]omen who have had more than two children may elect to submit to tubal ligation. To this end, they shall receive appropriate counselling and sign a specific form of consent prior to the procedure." Memorandum, Fertility Management Unit - Glen Vincent H/C, Abortion Policy Review Advisory Group Final Report, May 2, 1989, p. 26, and (v) Panama: Law No. 48 which permits sterilization, May 1941, articles 3 and 8. Although this law differentiates between voluntary, necessary, eugenic and emergency sterilization, article 8 suggests that sterilization was applicable in most cases following a written request signed by the interested party and the authorization of a medical board. The Court underlines that this law was derogated by Law 7 of March 5, 2013.

<sup>256</sup> The countries that have a law on informed consent in the case of female sterilization are: (i) Argentina: the Reproductive Health and Responsible Procreation Act, Law No. 418, enacted by the City of Buenos Aires in June 2000, article 3(c), and Resolution No. 2492/2000, Surgical procedure for tubal ligation: terms and conditions for its implementation in the province's public hospitals, adopted by the province of Mendoza in October 2000, article 1; (ii) Bolivia: Bolivian Health standards NB-SNS-04-97 ("Voluntary surgical contraception for women at high reproductive risk"), approved by Secretariat Resolution No. 0/408 of August 4, 1997, and Bolivian Health standards MSPS-98 ("Voluntary surgical contraception. Bilateral tubal occlusion in cases of reproductive risk") adopted by Ministerial Resolution No. 0517 of November 17, 1998; (iii) Brazil: Law No. 9,263 of January 1996, which developed article 226(7) of the Federal Constitution; (iv) Chile: Resolution No. 2,326 which establishes guidelines for health services relating to female and male sterilization, adopted by the Ministry of Health on November 30, 2000, in force since February 2001, articles 2, 3, 4 and 6; (v) Costa Rica: Reproductive Health Decree No. 27913-S of 1999, article 5(d); (vi) Jamaica: Memorandum, Fertility Management Unit - Glen Vincent H/C, Abortion Policy Review Advisory Group Final Report, May 2, 1989; (vii) Mexico: General Health Act, amendment of June 1991, article 67(3); (viii) Panama, Law No. 48 permitting sterilization, May 1941, and (ix) Peru: General Health Act, Law No. 26842 of 1997, article 6; Regulations for the Family Planning Program of the Ministry of Health, 1999, paragraph (g) of Section G entitled "Female voluntary surgical contraception," stresses that care must be taken in the cases of postpartum women who have not given their prior consent; Manual of standards and procedures for activities of voluntary surgical contraception (AQV), pp. 7 to 11; Law on the National Population Policy, Legislative Decree No. 346, articles 3 and 28. In the year 2000, some of these norms only permitted sterilization in certain cases, either for medical reasons or because women had a sufficient number of children, but not as a contraception method to regulate fertility. However, the Court notes that, in recent years, the laws have included female sterilization as an option that can be freely chosen from among the different birth control methods.

information, the States have considered that there are different ways of classifying how information should be provided to the patient; namely, this should be full, clear, informed, autonomous, necessary and adequate, allowing for understanding and awareness.<sup>257</sup> The Court notes that, in 2000, the requirement for written consent was not included in the laws of all the States; nevertheless, it was included in those of Argentina, Honduras, Peru and Uruguay. Argentina required written consent in damaging procedures;<sup>258</sup> Honduras required this in order to submit to scientific research;<sup>259</sup> Peru requested it to apply special treatments, conduct unsafe tests or perform procedures that could affect the patient mentally or physically,<sup>260</sup> and Uruguay required it to authorize the use of a person's corpse for scientific purposes.<sup>261</sup> In addition, in the specific case of informed consent for female sterilization, the Court notes that all the States that had a law in this regard in 2000 required written consent in this case.

200. The Court also notes that, even though the general rule was to obtain informed consent, the laws of some States recognized the existence of exception to this rule, including cases of urgency or emergency in which consent could not be obtained. In 2000, various States regulated these exceptions.<sup>262</sup> In the case of female sterilization, however, the Court has corroborated that none of the countries that regulated it, established specific exceptions in this regard.

### *B.2.c Conclusion*

201. Based on the foregoing, the Court concludes that, at the time the facts of this case took place, the State had an international obligation to obtain, through its health personnel, the consent of patients for medical procedures and, especially, of women in the case of female sterilizations, and this should have complied with the characteristics of being prior, free, full and informed following a process of informed decision-making.

### *B.3 Determination of the scope of the State's international responsibility*

202. The Court notes that tubal ligation, in particular using the Pomeroy technique, is a surgical contraception method that causes sterilization; that is, it permanently deprives a woman of her biological reproductive capacity. A medical procedure of this type should be performed voluntarily, requiring prior, free, full and informed consent, as developed in the preceding section. Indeed, as expert witness Luisa Cabal indicated, "[s]terilization is a permanent contraceptive method that should form part of a wide range of contraception methods that everyone has the right to choose or refuse autonomously, in the exercise of their sexual and reproductive rights."<sup>263</sup>

203. In light of all the above, the Court must now determine whether the State of Bolivia had a clear regulation in order to prevent the performance of female sterilizations without prior, free, full and informed consent, because the State has argued before this Court that the laws and regulations cited by the Commission and the representative to substantiate the alleged violations, were not applicable in the case of I.V. Nevertheless, the Court will not determine the validity of

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<sup>257</sup> The laws of Brazil even granted a period of reflection to take a decision. *Cf.* Article 10 of Law No. 9,263 of January 1996, which established 60 days of reflection before undergoing sterilization.

<sup>258</sup> *Cf.* Article 19(3) of the Law on the Exercise of Medicine, Odontology and Ancillary Activities, Law No. 17,132 of 1976.

<sup>259</sup> *Cf.* Article 176 of the Health Code, Standard No. 65-91 of 1991.

<sup>260</sup> *Cf.* Article 27 of the General Health Act, Law No. 26842 of 1997.

<sup>261</sup> *Cf.* Article 1 of the Organ and Tissue Transplant Act, Law No. 14,005 of 1971.

<sup>262</sup> Namely: Argentina, Bolivia, Chile, Canada (Ontario), Colombia, Costa Rica, Ecuador, Paraguay, Peru, Uruguay and Venezuela.

<sup>263</sup> Expert opinion provided by Luisa Cabal by affidavit on April 28, 2016 (evidence file, volume XI, affidavits, folio 3973).

these norms, because it has not been alleged that Article 2 of the Convention was violated. The Court must also decide whether the tubal ligation procedure performed on I.V. constituted a case of sterilization that was contrary to Bolivia's international obligations resulting from the parameters defined previously with regard to the obligatory nature of ensuring that patients have given their informed consent based on their autonomy and dignity, in order to verify whether the international responsibility of the State has been generated by the actions of its public officials; in this case, its health care personnel in a public hospital.

204. The Court notes that, although the express prohibition of forced or involuntary sterilization has been established in international criminal law,<sup>264</sup> or in the definition of crimes at the domestic level,<sup>265</sup> the absence of informed consent in relation to the deprivation of a woman's biological reproduction capacity may constitute a violation of the rights recognized in the American Convention, as described previously. That said, in this case, a dispute exists about the appropriate terminology to be used. On the one hand, both the Commission and the representative classify the facts of this case as forced sterilization, while the State argued that this term belonged to international criminal law, so that, in this case, the Court should eventually refer to non-consensual or involuntary sterilization. The Court notes that, in the sphere of human rights, different wording has been used by regional and international human rights agencies. Thus, references has been made to non-consensual sterilization,<sup>266</sup> forced or non-consensual sterilization,<sup>267</sup> involuntary sterilization,<sup>268</sup> compulsory sterilization,<sup>269</sup> forced sterilization,<sup>270</sup> "esterilización forzada" ["forced sterilization" in English],<sup>271</sup> and coerced sterilization.<sup>272</sup> For the purposes of this judgment, the

<sup>264</sup> See Articles 7(1)(g), 8(2)(b)(xxii) and 8(2)(e)(vi) of the Rome Statute. Forced sterilization was recognized as a war crime in the Nuremberg trials of the perpetrators of acts committed in the context of medical experimentation.

<sup>265</sup> Bolivia (2013), Brazil (1996), Ecuador (2014), Mexico (2012) and Venezuela (2007) have criminalized forced sterilization within their jurisdictions as an ordinary offense: forced sterilization in Bolivia and Brazil; forced deprivation of reproductive capacity in Ecuador, and induced sterility in Mexico.

<sup>266</sup> Cf. UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 24, *Women and health*, 1999, para. 22; UN, Committee for the Elimination of Discrimination against Women, *A.S. against Hungary* (Communication No. 4/2004), CEDAW/C/36/D/4/2004, August 29, 2006, para. 11.3; UN, Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, A/64/272, August 10, 2009, para. 55, and ECHR, *Case of V.C. v. Slovakia*, No. 18968/07. Judgment of November 8, 2011; *Case of N.B. v. Slovakia*, No. 29518/10. Judgment of June 12, 2012, and *Case of I.G., M.K. and R.H. v. Slovakia*, No. 15966/04. Judgment of November 13, 2012 (evidence file, volume VIII, annexes 26, 27 and 28 to the brief with motions, pleadings and evidence, folios 2474 to 2577).

<sup>267</sup> Cf. UN, Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, A/64/272, August 10, 2009, para. 55.

<sup>268</sup> Cf. Committee against Torture, Conclusions and recommendations with regard to Peru, CAT/C/PER/CO/4, July 25, 2006, para. 23, and Committee against Torture, Concluding observations with regard to Slovakia, CAT/C/SVK/CO/2, December 17, 2009, para. 14.

<sup>269</sup> Cf. UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 19, *Violence against women*, 1992, para. 22, and Committee for the Elimination of Discrimination against Women, Concluding observations with regard to The Netherlands, CEDAW/C/NLD/CO/5, February 5, 2010, paras. 46 and 47.

<sup>270</sup> Cf. UN, Human Rights Committee, Concluding observations with regard to Peru, CCPR/CO/70/PER, November 15, 2000, para. 21; UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 21, *Equality in marriage and family relations*, 1994, para. 22; UN, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, January 15, 2008, para. 39; Human Rights Committee, Concluding observations with regard to Slovakia, CCPR/CO/78/SVK, August 22, 2003, para. 12; Human Rights Committee, Concluding observations with regard to Slovakia, CCPR/C/SVK/CO/3, April 20, 2011, para. 13; Committee on the rights of persons with disabilities, Concluding observations with regard to Peru, CRPD/C/PER/CO/1, May 16, 2012, para. 35, and Committee against Torture, Concluding observations on the second periodic report of Kenya, CAT/C/KEN/CO/2, June 19, 2013, para. 27.

<sup>271</sup> Cf. UN, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, *Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, E/CN.4/1999/68/Add.4, January 21, 1999, para. 51; Human Rights Committee, Concluding observations with regard to Japan, CCPR/C/79/Add.102, November 19, 1998, para. 31; Report of the Special Rapporteur on

Court will consider sterilization without prior, free, full and informed consent as non-consensual or involuntary sterilization.

205. Accordingly, the Court must verify whether Bolivia complied with its obligation to respect and ensure, without discrimination, the rights to personal integrity, to personal liberty, to dignity, to private and family life, to raise a family and of access to information, in relation to personal autonomy and sexual and reproductive health, by prior, free, full and informed consent. Together with the foregoing, the Court must determine to what extent the facts of this case constituted an act of violence against women.

*B.3.a Duty of prevention with regard to the rights recognized in Articles 5, 7, 11, 13 and 17 of the American Convention and 7(b) of the Convention of Belém do Pará*

206. The Court reiterates that it is not sufficient that States merely refrain from violating rights; it is also essential that they take positive measures, determined based on the specific needs for protection of the subject of law, due either to their personal condition or to the specific situation in which they find themselves.<sup>273</sup>

207. With regard to the obligation to ensure rights, the Court has established that this may be complied with in different ways, based on the specific right that the State must ensure and the particular needs for protection.<sup>274</sup> This obligation entails the duty of States to organize the whole government apparatus and, in general, all the structures through which the exercise of public authority is exercised, so that they are able to legally ensure the free and full exercise of human rights.<sup>275</sup> As part of this obligation, the State has the legal obligation "to prevent, within reason, the violation of human rights, to investigate seriously with the means available to it any violations committed within its jurisdiction in order to identify those responsible, to impose the pertinent punishments on them, and to ensure that the victim receives adequate redress."<sup>276</sup>

208. Furthermore, the Court has established that the duty of prevention, which forms part of the general obligation to ensure rights, encompasses all those measures of a legal, political, administrative and cultural nature that promote the safeguard of human rights and that ensure that eventual violations of these rights are effectively considered and treated as a wrongful act that, as such, is liable to entail punishment for the person who commits it, as well as the obligation to compensate the victims for the adverse consequences. It is also clear that the duty of prevention is one of means or conduct and failure to comply with it is not proved by the mere fact

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violence against women, its causes and consequences, Rashida Manjoo, *Violence against women with disabilities*, A/67/227, August 3, 2012, para. 28.

<sup>272</sup> Cf. UN, Human Rights Committee, Concluding observations with regard to Slovakia, CCPR/CO/78/SVK, August 22, 2003, para. 12, and Committee against Torture, Concluding observations with regard to Kenya, CAT/C/KEN/CO/2, June 19, 2013, para. 27; Human Rights Committee, Concluding observations with regard to Slovakia, CCPR/CO/78/SVK, August 22, 2003, para. 12, and Committee for the Elimination of Discrimination against Women, Concluding observations with regard to Slovakia, CEDAW/C/SVK/CO/4, July 17, 2008, para. 31.

<sup>273</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits reparations and costs*. Judgment of January 31, 2006. Series C No. 140, para. 111, and *Case of Chinchilla Sandoval v. Guatemala, supra*, para. 168.

<sup>274</sup> Cf. *Case of Vargas Areco v. Paraguay. Merits reparations and costs*. Judgment of September 26, 2006. Series C No. 155, para. 73, and *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, Merits and Reparations*. Judgment of November 30, 2012. Series C No. 259, para. 189.

<sup>275</sup> Cf. *Case of Velásquez Rodríguez v. Honduras, Merits, supra*, para. 166, and *Case of Tenorio Roca et al. v. Peru, supra*, para. 142.

<sup>276</sup> *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 174, and *Case of Tenorio Roca et al. v. Peru, supra*, para. 142.

that a right has been violated.<sup>277</sup> Similarly, the Court has indicated that States are responsible for the regulation, supervision and monitoring of domestic health services, in both private and public centers, as well as for the implementation of a series of mechanisms addressed at ensuring that this regulation is effective.<sup>278</sup>

209. The Court considers that the existence of a clear and coherent regulation for the provision of health care services is essential to ensure sexual and reproductive health and the corresponding responsibilities for the provision of this service. The Court finds that the existence of standards that regulate access to information on family planning methods and every kind of information required on matters of sexual and reproductive health, as well as the creation of laws that ensure that informed consent is obtained and establish the elements that must be respected to ensure that this is valid, contribute to the prevention of violations of the human rights of women, especially in cases such as this one.

210. In this regard, the Court deems it pertinent that the laws of the States should include clear definitions of what constitutes informed consent. Also, States "should monitor public and private health centers, including hospitals and clinics, which perform sterilization procedures so as to ensure that fully informed consent is being given by the patient before any sterilization procedure is carried out, with the appropriate sanctions in place in the event of a breach."<sup>279</sup> In addition, Article 22 of the UNESCO Universal Declaration on Bioethics and Human Rights (*supra* para. 176) refers to the obligation of States to take all appropriate measures to give effect to the principles set out in the Declaration in accordance with international human rights law, which includes informed consent. The Court considers that, in cases of non-consensual or involuntary sterilization, measures to prevent such procedures are of vital importance because, although the creation of mechanisms for access to justice allows rights to be guaranteed, this cannot ensure in all cases the full restoration of the reproductive capacity, which has been lost owing to the surgical procedure.

211. The Court notes that, at the time of the facts, July 1, 2000, the regulations on informed consent in relation to surgical procedures for female sterilization in Bolivia were included in two specific norms: Bolivian Health Standard NB-SNS-04-97 ("Voluntary surgical contraception for women at high reproductive risk"),<sup>280</sup> adopted by the National Health Secretariat in August 1997 (hereinafter "the 1997 Bolivian standard"), and Bolivian Health Standard MSPS-98 ("Voluntary surgical contraception. Bilateral tubal occlusion in reproductive risks"),<sup>281</sup> adopted by the Ministry of Health and Social Services in November 1998 (hereinafter "the 1998 Bolivian standard").

212. Under the 1997 Bolivian standard, the purpose of voluntary surgical contraception for women was to reduce the cases of death due to high-risk reproductive factors,<sup>282</sup> and it was

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<sup>277</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 166, and *Case of Velásquez Paiz et al. v. Guatemala, supra*, para. 107.

<sup>278</sup> Cf. *Case of Ximenes Lopes v. Brazil, supra*, paras. 89 and 90, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 175.

<sup>279</sup> Cf. UN, Committee for the Elimination of Discrimination against Women, Concluding observations with regard to Slovakia, CEDAW/C/SVK/CO/4, July 2008, para. 31.

<sup>280</sup> Cf. Bolivian Health standards NB-SNS-04-97 ("Voluntary surgical contraception for women at high reproductive risk"), adopted by Secretariat Resolution No. 0/408 of August 4, 1997 (file of the procedure before the Commission, volume III, folios 887 to 898).

<sup>281</sup> Cf. Bolivian Health standards MSPS-98 ("Voluntary surgical contraception. Bilateral tubal occlusion in reproductive risks"), approved by Ministerial Resolution No. 0517 of November 17, 1998 (file of the procedure before the Commission, volume I, folios 186 to 200).

<sup>282</sup> The 1997 Bolivian standards defined high reproductive risk as the "probability that both the woman of child-bearing age, and also her potential fetus, might experience injury or death if she became pregnant." Cf. Bolivian Health standards NB-SNS-04-97, p. 17. The standards contained a list of medical reasons for sterilization, including: pulmonary diseases

addressed at women of child-bearing age, with an active sexual life, who had a high reproductive risk and desired a permanent contraceptive method. The 1997 Bolivian standard indicated that surgical contraception was a voluntary procedure that required the patient's prior consent, after being fully informed of the sterilization procedure, its consequences, and other methods of contraception and their characteristics, using simple language, by trained personnel, to ensure that the information received had been understood. This standard defined informed consent in cases of sterilization as "the decision of the user to undergo a voluntary surgical sterilization after having been fully informed of the procedure and its consequences,"<sup>283</sup> and, to this end, she had to sign an informed consent form, which constituted the legal authorization for the procedure. The standard specifically established that it should be ensured that "when obtaining the informed consent, the user is not subject to coercion or to physical or emotional factors that could affect her ability to take a careful and well-considered decision on contraception."<sup>284</sup>

213. However, despite the requirement of informed consent in cases of high reproductive risk, Rule 5 indicated that voluntary surgical contraception "[could be] performed by medical decision by a laparotomy in serious cases, duly documented by the patient's medical history and consulted with the family,"<sup>285</sup> without specifying what this risk involved. This rule was cited in the Administrative Resolution of March 10, 2003, which annulled the decision to dismiss the physician during the administrative procedure without any reasoning or substantiation (*supra* para. 90). Similarly, Rule 6 of the 1997 Bolivian standard established that, for a woman to be able to undergo surgical sterilization following counseling, the service authorized to perform the procedure should set up a medical committee composed of at least three professionals to analyze the case and, when they had analyzed the case, they had to prepare a decision justifying their approval.<sup>286</sup>

214. Meanwhile, the 1998 Bolivian standards were adopted to regulate the technique of bilateral tubal occlusion – a technique that results in permanent sterilization – in order to improve the quality of the comprehensive service for women with reproductive risks.<sup>287</sup> These standards expressly recognized reproductive rights including the "right of couples and individuals to decide freely and responsibly on the number and spacing of their children and to receive the necessary information, education and means to do this."<sup>288</sup> They also established that bilateral tubal occlusion would be performed, provided that the user had received adequate guidance and had confirmed her decision by signing or placing her fingerprint on the informed consent document.<sup>289</sup>

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which limited the respiratory capacity; severe rupture of the uterus, and a third caesarean section with three living offspring. It also listed "*paridad satisfecha*" which referred to cases of women who requested sterilization provided they had had five vaginal births with living offspring and were over 35 years of age (file of the procedure before the Commission, volume III, folios 892 to 895).

<sup>283</sup> Bolivian Health standards NB-SNS-04-97, p. 27 (file of the procedure before the Commission, volume III, folio 898).

<sup>284</sup> Bolivian Health standards NB-SNS-04-97, p. 27. They defined general informed consent as the voluntary decision of the patient to undergo a medical or surgical procedure with real awareness and understanding of the pertinent information and without pressure (file of the procedure before the Commission, volume III, folios 894 to 898).

<sup>285</sup> Bolivian Health standards NB-SNS-04-97, p. 19 (file of the procedure before the Commission, volume III, folio 894).

<sup>286</sup> Cf. Bolivian Health standards NB-SNS-04-97, p. 19 (file of the procedure before the Commission, volume III, folio 894).

<sup>287</sup> These standards defined reproductive risk as "the probability that a woman will suffer harm if she becomes pregnant in unfavorable health conditions. This is detected in women who are not pregnant." They also adopted concepts such as obstetric risk, defined as the "probability that a pregnant woman and/or her infant suffer harm due to the presence of risk factors of a biological, environmental or social nature." Bolivian Health standards MSPS-98, p. 15 (file of the procedure before the Commission, volume I, folio 193).

<sup>288</sup> Bolivian Health standards MSPS-98, p. 18 (file of the procedure before the Commission, volume I, folio 195).

<sup>289</sup> Bolivian Health standards MSPS-98, p. 21 (file of the procedure before the Commission, volume I, folio 196). The 1998 Bolivian standards describe informed choice as the "process by which a person takes a decision regarding health care. It should be based on access to all the necessary information and full comprehension of this. The process should result from

215. Despite the existence of these standards that required informed consent in writing, signed by the patient, the State argued that this was not applicable to the case of I.V., because the 1997 and 1998 Bolivian standards had been adopted for cases in which patients voluntarily, regardless of pregnancy, went to a medical center to request tubal ligation. The State argued that this was not the case of I.V., because her sterilization occurred following a medical incident on the occasion of the caesarean section. This was ratified by statements made by the doctors during the proceedings before this Court. In this regard, one of the doctors who intervened stated that, since the 1998 Bolivian standards were not applicable and the case of I.V. was a special case, verbal consent was permitted, stressing that, even in this situation, sterilization should be voluntary.<sup>290</sup> However, the other doctor indicated during the domestic administrative procedure that, although it was necessary to perform a tubal ligation from a medical perspective, it was incorrect from a legal perspective, because they should have waited until I.V., following the c-section, took the decision to undergo the said procedure.<sup>291</sup> Subsequently, in the statement he submitted to the Court, he asserted that what he had stated previously had been taken out of context and what he had meant to state was that, although the tubal ligation was absolutely advisable, “neither domestic law nor international protocols on the matter established a regulated and legal procedure for complex, difficult or exceptional cases,”<sup>292</sup> such as that of I.V.

216. The Court has corroborated that the Code of Medical Ethics, in force at the time of the facts, indicated that it was an obligation of doctors to obtain a patient’s written informed consent in order to perform any medical or surgical procedure, especially in situations that entailed a risk or resulted in damage (*mutilación*). The Code established that only in cases of emergency and when the consent could not be given, because clinical criteria recommended immediate treatment, was it possible to proceed without authorization. In the specific case of sterilization, this could only be performed at the express, voluntary and documented request of the patient, or in cases of therapeutic indication strictly determined by a medical board.<sup>293</sup>

217. The State also presented as evidence a letter from the Head of Obstetrics of the Women’s Hospital dated October 26, 2015, in which he indicated that “[o]bstetrics ha[d] no specific protocols for performing tubal ligations due to medical indication, because it [was] a non-protocolized alternative procedure, and constitute[d] a special obstetric situation where, based on his experience and the obstetric evidence and in order to prevent future obstetric complications

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a free and informed decision of the person about whether or not they wish to receive the health care service ad, if so, what method or procedure will they choose and do they agree to receive.” Similarly, it defines informed consent as “the act by which a person agrees to receive medical care or treatment, following a process of informed choice.” Bolivian Health standards MSPS-98, p. 17 (file of the procedure before the Commission, volume I, folio 194).

<sup>290</sup> Cf. Statement made by Edgar Torrico Ameller before the Inter-American Court during the public hearing held on May 2, 2016.

<sup>291</sup> Cf. Final decision No. 020/2002 issued by the Legal Advisory Services Unit of the La Paz Departmental Health Service on July 25, 2002 (evidence file, volume XIV, annex 3 to the representative’s final arguments, folio 5769).

<sup>292</sup> Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folios 3933 and 3939).

<sup>293</sup> Cf. Resolution No. 086/2002 issued by the Second Trial Court of La Paz on November 18, 2002 (evidence file, volume VII, annex 24 to the submission of the case, folio 2191). According to this Resolution, articles 19 and 23 of the Code of Medical Ethics at that time, adopted by Law No. 728 of August 4, 1993, indicated the obligation to obtain consent, including in cases of sterilization. The Court notes that the Code of Medical Ethics in the case file contains these obligations in its articles 16, 18, 19 and 22 (file of the procedure before the Commission, volume II, folios 411 and 412). The Court considers it necessary to stress that, for the purposes of the analysis in this section, it will not take into account the Code of Medical Ethics and Deontology, because according to information in the case file and provided by the parties, that Code was adopted by Ministerial Resolution No. 047/04 of July 2004, so that it was not in force at the time of the facts. Nevertheless, the Court underscores that articles 8(6) and (10), 20, 22, 23, 25 and 37 of that Code contain similar provisions to those of the 1993 Code of Medical Ethics (file of the procedure before the Commission, volume II, folios 406 to 408).

resulting in maternal and/or fetal death, the specialist decided to perform the corresponding surgical procedure."<sup>294</sup> The Court notes that, according to the corresponding standards, the Code of Medical Ethics in force at the time required informed consent, signed by the patient to be obtained, or else a decision by a medical board.

218. The Court concludes that the standards concerning informed consent and its regulation with regard to surgical procedures for female sterilization in force in Bolivia at the time of the facts were ambiguous, imprecise and even contradictory. On the one hand, written informed consent was required and, on the other, situations were established in which "by medical decision and in grave cases," sterilization could be performed without the conditions being clearly established in this case. The Court notes that, according to the statements referred to above, not even the health personnel themselves were clear about which standard should be applied in the case of I.V.

219. The Court considers that it could have been understood that the situation based on which I.V. was subjected to sterilization was regulated under the 1997 and the 1998 Bolivian standards which required a written and signed consent. The evidence before this Court reveals that the decision to perform the tubal ligation on I.V. was taken during the peri-operative period, and there is no record that she gave her consent in any written form.<sup>295</sup> However, the State itself has argued that the said standards were not applicable to the instant case, because the sterilization was not requested voluntarily, but responded to medical criteria.

220. Consequently, the Court concludes that, despite the existence of general standards on informed consent, the State of Bolivia had not adopted sufficient measure of prevention for health personnel to guarantee I.V. her right to take her own decisions on her reproductive health and the contraception methods that were most appropriate to her life project, so that she would not be subjected to sterilization without her prior, free, full and informed consent. Accordingly, the Court considers that the State failed to take the necessary regulatory preventive measures that would have established clearly the medical obligation to obtain consent in cases such as that of I.V. and, therefore, failed to comply with its obligation to act with due diligence to prevent a non-consensual or involuntary sterilization.

*B.3.b Obligation to respect the rights recognized in Articles 5, 7, 11, 13 and 17 of the American Convention and 7(a) of the Convention of Belém do Pará*

221. The Court has established that, pursuant to Article 1(1) of the Convention, States are obliged to respect and ensure the human rights recognized therein. The international responsibility of the State is based on acts or omissions of any of its powers or organs, regardless of their rank, that violate the American Convention.<sup>296</sup>

222. Regarding the obligation of respect, the Court has maintained that the foremost obligation assumed by the State under the said article is "to respect the rights and freedoms" recognized in the Convention. Thus, the restriction of the exercise of the power of the State is necessarily

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<sup>294</sup> Letter from the Head of the Obstetric Services of the Women's Hospital to the Director of this hospital dated October 26, 2015 (evidence file, volume X, annex 10 to the State's answering brief, folios 3619 and 3620).

<sup>295</sup> Cf. Record of the surgical procedure transcribed by the Women's Hospital (evidence file, volume VII, annex 8 to the submission of the case, folio 2138); Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folio 3937), and Statement made by Edgar Torrico Ameller before the Inter-American Court during the public hearing held on May 2, 2016.

<sup>296</sup> Cf. *Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile, supra*, para. 72, and *Case of García Ibarra et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 17, 2015. Series C No. 306, para. 107.

included in the protection of human rights.<sup>297</sup> Similarly, it is a principle of international law that the State responds for actions executed by its agents in their official capacity, and also for their omissions, even if they are acting outside the limits of their competence or in violation of domestic law.<sup>298</sup>

223. In this regard, contrary to previous decisions of the Court,<sup>299</sup> in which it declared the international responsibility of the State owing to the failure to regulate and monitor health care provided by third parties to individuals subject to its jurisdiction, this case refers to actions carried out by a State agent, because the sterilization of I.V. was performed in a public hospital by health care providers considered public servants.<sup>300</sup> Specifically, in the instant case, the Court notes that the health care personnel had the obligation to provide I.V. with adequate, comprehensible and accessible information on her health situation, ensure her autonomous decision on the choice of the contraceptive methods that were most appropriate for her life project, and ensure that they obtained her informed consent if she had opted for a permanent surgical procedure, such as tubal ligation using the Pomeroy technique, in order to avoid a sterilization contrary to the State's international obligations.

224. The Court will now make the corresponding determinations taking into account the dispute over the supposed verbal consent obtained during the peri-operative period for the performance of the tubal ligation.

225. The representative affirmed that I.V. was never consulted in a prior, free and informed manner with regard to the sterilization; rather, she found out that she had lost her reproductive capacity permanently the day after the procedure had been performed, when the resident doctor informed her<sup>301</sup> (*supra* para. 68). Meanwhile, the State rejected this argument and indicated that

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<sup>297</sup> Cf. *The Word "Law" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 21, and *Case of Gutiérrez and family v. Argentina. Merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 271, para. 76.

<sup>298</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 169 and 170, and *Case of García Ibarra et al. v. Ecuador, supra*, para. 107.

<sup>299</sup> Cf. *Case of Ximenes Lopes v. Brazil, supra*, paras. 86, 89 and 90; *Case of Albán Cornejo et al. v. Ecuador, supra*, paras. 121 and 122; *Case of Suárez Peralta v. Ecuador, supra*, paras. 149 and 150, and *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 175.

<sup>300</sup> Both Final decision No. 020/2002 and the 2003 Administrative Resolution considered the physician concerned to be a public servant. Cf. Final decision No. 020/2002 issued by the Legal Advisory Services Unit of the La Paz Departmental Health Service on July 25, 2002 (evidence file, volume XIV, annex 3 to the representative's final arguments, folio 5771), and unnumbered Administrative Resolution issued by the Legal Advisory Services Unit of the La Paz Departmental Health Service on March 10, 2003 (evidence file, volume VII, annex 21 to the submission of the case, folios 2175 and 2176).

<sup>301</sup> In her arguments, the representative considered the following probative elements: (i) the post-surgery evolution sheet of the patient's medical record, which records and states that, on July 2, 2000, in other words one day after I.V.'s tubal ligation, "the patient was advised that the bilateral tubal ligation had been performed by clinical indication, and this was accepted by the patient on understanding that a future pregnancy would endanger her life" (*supra* para. 67); (ii) the consistent statements by I.V. throughout the domestic criminal proceedings and before this Court, indicating that, at no time was she consulted as to whether she accepted to submit to this surgical procedure (*supra* paras. 68 and 69); (iii) the statement of J.E., who affirmed that, as her husband, he signed the authorization for the caesarean section, but the doctors never came to find him and inform him about the tubal ligation, even though he had seen the doctor immediately after the operation; rather he found out about the procedure the following day; (iv) N.V., the daughter of I.V., stated that she heard that the doctors said that they did not have "to find out about what they had done to that woman [referring to the sterilization of I.V.]"; (v) the disagreement, inconsistency, contradictions and inadequacies between the statements of the members of the medical team who were present when the caesarean section and tubal ligation were performed, and the position of I.V. and her husband, J.E., contradictions that were the grounds for the decisions of the Second Criminal Trial Court of La Paz and the Copacabana Criminal Court, concluding the lack of credibility of the existence of verbal consent. Cf. Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folios 3930 and 3938); Statement made by J.E. on July 27, 2004, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XII, annex 1(c)) to the State's final arguments, folios 4756 and 4757; Affidavit prepared by N.V. on April 22, 2016 (evidence file, volume XI, affidavits, folio 3910); Statement made by Corina Puente Cusimamani on

I.V. had given her verbal consent during the peri-operative period.<sup>302</sup> Consequently, there are contrary versions of the same fact, because while the State affirms that it had obtained the informed consent of I.V., she indicates the contrary and denies having provided this.

226. In this case, the presumed victim had few means available to prove this fact. Her allegation is of a negative nature, indicating the inexistence of a fact that presumably occurred while she was in the absolute care of the health care personnel who were performing the caesarean section in a public health institution. The State's allegation is of a positive nature and, therefore, possible to prove, especially if medical personnel are obliged to record the existence of informed consent (*supra* para. 195).

227. Nevertheless, leaving to one side the evidentiary dispute on the factual circumstances, based on what it has previously indicated, the Court finds that the legal consequence of both factual versions is the same; in other words, that both in the hypothesis of the inexistence of consent, and in the hypothesis that verbal consent was obtained from I.V. during the peri-operative period, the physician failed to comply with his obligation to obtain a prior, free, full and informed consent as required by the American Convention.

228. Indeed, with regard to the version of the facts proposed by the representative, the Court considers that the physician's actions were not in keeping with the treaty-based requirements,

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November 13, 2002, according to the record of the oral hearing issued by the Second Trial Court of La Paz (evidence file, volume XIV, annex 1(a) to the State's final arguments, folios 4115 and 4116); Statement made by Virginia Mercado on August 17, 2000, according to the medical record of the surgical procedure performed on I.V. issued by the Medical Audit Committee of the Women's Hospital (evidence file, volume VII, annex 1 to the submission of the case, folio 2116); Resolution No. 086/2002 issued by the Second Trial Court of La Paz on November 18, 2002 (evidence file, volume VII, annex 24 to the submission of the case, folios 2191 and 2192), and Resolution No. 32/2004 issued by the Copacabana Trial Court on August 13, 2004 (evidence file, volume VII, annex 36 to the submission of the case, folios 2224 to 2230).

<sup>302</sup> The State supported its position with the following probative elements: (i) Record of I.V.'s surgical procedure (*supra* para. 66); (ii) the statements provided by four members of the medical team, who were present during I.V.'s caesarean section and the tubal ligation, during the internal audits, the administrative proceeding and the domestic criminal proceedings, as well as the proceedings before this Court. These statements all indicated that I.V. gave her verbal consent to the tubal ligation in the operating theater after the caesarean section had been completed and due to the request and the clinical indication that her life would be at risk if she became pregnant again. Similarly, two audits, the report of the Ethics Tribunal of the Departmental College of Physicians, and the decision on the review of the administrative proceeding instituted concluded that, based on those statements, I.V. had expressed her verbal consent for the tubal ligation procedure to be performed (*supra* paras. 74, 76, 81 to 83 and 90). *Cf.* Statement made by Edgar Torrico Ameller on August 2, 2000, according to the medical record of the surgical procedure performed on I.V. issued by the Medical Audit Committee of the Women's Hospital (evidence file, volume VII, annex 1 to the submission of the case, folio 2115); Statement made by Edgar Torrico Ameller on July 1, 2002, according to Final decision No. 020/2002 issued by the Legal Advisory Services Unit of the La Paz Departmental Health Service on July 25, 2002 (evidence file, volume XIV, annex 3 to the representative's final arguments, folio 5769); Statement made by Edgar Torrico Ameller on November 11, 2002, according to the record of the oral hearing issued by the Second Trial Court of La Paz (evidence file, volume XII, annex 1(a) to the State's final arguments, folios 4101 to 4103); Statement made by Edgar Torrico Ameller on July 26, 2004, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XII, annex 1(c)) to the State's final arguments, folio 4735); Statement made by Edgar Torrico Ameller before the Inter-American Court during the public hearing held on May 2, 2016; Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folios 3931, 3934, 3937 and 3938); Statement made by Marco Vladimir Vargas Terrazas on August 22, 2000, according to the medical record of the surgical procedure performed on I.V. issued by the Medical Audit Committee of the Women's Hospital (evidence file, volume VII, annex 1 to the submission of the case, folio 2116); Statement made by Marco Vladimir Vargas Terrazas on July 28, 2004, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XIV, annex 1(d)) to the State's final arguments, folio 4789); Statement made by María Modesta Ticona on August 17, 2000, according to the medical record of the surgical procedure performed on I.V. issued by the Medical Audit Committee of the Women's Hospital (evidence file, volume VII, annex 1 to the submission of the case, folio 2116); Statement made by María Modesta Ticona on August 13, 2004, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XIV, annex 1(d)) to the State's final arguments, folios 4819 to 4822), and Statement made by Rodrigo Arnez on August 17, 2000, according to the medical record of the surgical procedure performed on I.V. issued by the Medical Audit Committee of the Women's Hospital (evidence file, volume VII, annex 1 to the submission of the case, folio 2115).

because he did not obtain I.V.'s consent before performing the said medical procedure. This is so, because sterilization is a medical procedure with serious consequences, as it results in the permanent loss of a woman's reproductive capacity. Consequently, a female surgical sterilization should only be performed after having obtained the patient's prior, free, full and informed consent, above all because the procedure consists in a significant medical procedure, which entails an important interference in a woman's reproductive health, and also involves various aspects of her personal integrity and private life.

229. In this regard, the Court finds it relevant to point out that I.V.'s case was not of an urgent or emergency medical nature because she was not in a situation of imminent risk to her life. As the Court has established, there are exceptions to the obligation to obtain informed consent (*supra* paras. 177 and 178). However, female sterilization cannot be considered to fall within these exceptions. Moreover, this has been verified in the instant case because, different statements<sup>303</sup> have indicated that the tubal ligation was performed to protect I.V.'s life in the hypothesis of a future pregnancy owing to the danger of a possible rupture of the uterus. The physician even stated during the hearing that performing the tubal ligation after the caesarean section could have been one alternative and ratified that, at the time of the caesarean section, I.V. was not in imminent risk of losing her life, but rather the risk would occur if she became pregnant again.<sup>304</sup> In this regard, the Court considers that protection from a presumed risk that might or might not occur in the future, could never be considered urgent or a medical emergency in which there was an immediate possibility of risk. Thus, the Court finds that the medical recommendation of a procedure of this nature could have been postponed in order to obtain I.V.'s informed consent.

230. That said, if the Court accepts the version of the facts proposed by the State; that is, that I.V. gave her consent verbally in the operating theater prior to the procedure, it must determine whether this was given in a free, full and informed manner, because as explained above, the mere acceptance of a procedure does not equate affirming that consent was given (*supra* para. 166).

231. On this point, the Court underscores that I.V. was in an operating theater, with her abdomen open owing to the caesarean section, in a situation of pressure, stress and vulnerability evident in a patient undergoing a surgical procedure. Also, I.V. was very tired, not only because of the duration of the caesarean section that was complicated by the adhesions found (*supra* para. 64), but also because, before entering the operating theater, several hours had passed between the moment she was admitted to the hospital and when she entered the operating theater. In these circumstances, the Court considers that she was in a situation that would not ensure that her consent was free and full, and this prevented her from giving a valid consent.

232. Additionally, the Court considers that the information provided to I.V. was presented inopportunistically at an inappropriate moment, because she was on the operating table after having undergone a caesarean section. The Court finds that, even though the medical personnel provided I.V. with basic information on the Pomeroy-type tubal ligation procedure, the circumstances did not

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<sup>303</sup> Cf. Statement made by Edgar Torrico Ameller on November 11, 2002, according to the record of the oral hearing issued by the Second Trial Court of La Paz (evidence file, volume XII, annex 1(a) to the State's final arguments, folios 4101 to 4103); Statement made by Edgar Torrico Ameller on July 26, 2004, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XII, annex 1(c)) to the State's final arguments, folio 4735); Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folios 3931, 3934 and 3937 to 3938); Statement made by Marco Vladimir Vargas Terrazas on August 22, 2000, according to the medical record of the surgical procedure performed on I.V. issued by the Medical Audit Committee of the Women's Hospital (evidence file, volume VII, annex 1 to the submission of the case, folio 2116), and Statement made by Marco Vladimir Vargas Terrazas on July 28, 2004, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XII, annex 1(d)) to the State's final arguments, folio 4789).

<sup>304</sup> Cf. Statement made by Edgar Torrico Ameller before the Inter-American Court during the public hearing held on May 2, 2016.

allow this to be complete and adequate, or to cover essential and necessary issues such as the clear explanation of alternative and less invasive contraceptive methods to achieve the objective of preventing a unsafe future pregnancy.<sup>305</sup> Consequently, since I.V.'s sterilization constituted a surgical procedure that could have been postponed, the Court considers that the physician should have waited until she had been able to take a fully informed decision in this regard, in different circumstances, after having provided her with more information, particularly about alternative contraceptive methods, and after giving her more time to consider her options. In addition, the Court understands that in cases of female sterilization access to information on alternative contraceptive methods is essential, because tubal ligation is only one method among many that could have been evaluated to achieve the same end; that is, prevent a future pregnancy. The Court has already established in other cases that access to full and comprehensible information is a component of the accessibility of health services and, consequently, it is essential in order to ensure this right (*supra* para. 156). I.V. should have been informed not only of the success rate of other contraceptive methods, but also of whether they were appropriate in her specific case. Only then would she have had the necessary information to take a free and informed decision.

233. In this regard, the Court considers that I.V. did not have the opportunity to think about and completely understand the consequences of her decision in the context of her situation and based on what she was told by the doctors because the Court finds that it was not reasonable to suppose that she had been able to reflect and take a decision in only 10 minutes, or even in two hours,<sup>306</sup> based on the scant information provided and in the circumstances in which she found herself. Furthermore, the information that she could possibly die if she did not undergo sterilization and became pregnant again was presented at a moment of extreme stress and vulnerability, which could have contributed to the eventual acceptance of sterilization in a situation of coercion, intimidation and profound fear for her life<sup>307</sup> (*supra* paras. 183 and 231). I.V.'s failure to understand fully the magnitude and consequences of the medical procedure that she underwent is clear from the evidence in this case, because on July 2 and 3, 2000, she asked the doctors to explain to her again what had happened and why they had sterilized her without her consent.<sup>308</sup>

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<sup>305</sup> The Court notes that, according to the statements by the doctors, they indicated that they had informed I.V. in the most detailed way possible of the clinical picture found during the caesarean section, the risk in the case of a future pregnancy, and the tubal ligation procedure – that is, its benefits and consequences; they had also explained to the patient that it was a definitive procedure, so that she could not become pregnant again. The Court notes that one of the doctors also indicated that she was given information on other contraceptive methods, while the other doctor did not mention this. Similarly, they indicated in their statements in the domestic sphere, that other methods could not have been used successfully in the case of I.V. because the state of her uterus would not have permitted inserting the copper IUD without causing infections and, as she had just had a baby, she could not be prescribed pills immediately. *Cf.* Statement made by Edgar Torrico Ameller before the Inter-American Court during the public hearing held on May 2, 2016; Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folios 3931, 3934 and 3937 to 3938), and Statements made by Edgar Torrico Ameller and Marco Vladimir Vargas Terrazas on July 26 and 28, 2004, respectively, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XII, annexes 1(c) and d) to the State's final arguments, folios 4735 and 4789).

<sup>306</sup> One of the doctors stated that I.V. was provided with information for approximately 10 minutes, while the other stated that the conversation with the patient occurred during the approximately two hours that the procedure took (from 20:30 to 22:30 hours). *Cf.* Statement made by Edgar Torrico Ameller before the Inter-American Court during the public hearing held on May 2, 2016, and Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folio 3934).

<sup>307</sup> Dr. Edgar Torrico Ameller stated that sterilization was suggested to I.V. and she was "told that her life would be in danger if she became pregnant again because there was a risk of her uterus rupturing, leaving [her three] children orphans." Statement made by Edgar Torrico Ameller on July 26, 2004, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XII, annex 1(c)) to the State's final arguments, folio 4735).

<sup>308</sup> *Cf.* Statement made by I.V. before the Inter-American Court during the public hearing held on May 2, 2016; Affidavit prepared by Marco Vladimir Vargas Terrazas on April 28, 2016 (evidence file, volume XI, affidavits, folios 3931, 3934 and 3937 to 3938), and Statement made by Marco Vladimir Vargas Terrazas on July 28, 2004, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XII, annex 1(d)) to the State's final arguments, folio 4789).

234. Lastly, the Court emphasizes that the decision to perform the tubal ligation was a decision that related to I.V.'s most intimate sphere. Therefore, based on her right to reproductive freedom and autonomy, it was for I.V. to take the decision to undergo this surgical contraceptive method, rather than choose other less invasive methods, and not for the physician or her husband. In this regard, even though the Court considers it positive to allow I.V.'s partner to take part in this decision, if she had so wished, this does not mean that he could have either given or confirmed the consent when they tried to find him so that he could ratify a presumed verbal consent supposedly given previously by I.V. in the operating theater. Added to this, the Court finds that the form signed by J.E., I.V.'s husband, authorizing the caesarean section (*supra* para. 65), in no way involved authorization or consent for the tubal ligation procedure. Consequently, the Court considers that, taking into account the State's version of the facts, the verbal consent given by I.V. was contrary to the criteria of the Convention.

235. Based on all the above, the Court concludes that I.V. did not express her prior, free, full and informed consent to undergo the surgical procedure of Pomeroy-type tubal ligation and, consequently, she underwent a non-consensual or involuntary sterilization. The Court considers that the fact that I.V. was subjected to a tubal ligation procedure without providing her with complete, adequate and comprehensible information in order to obtain her free consent resulted in interference and intrusion in her body, the permanent loss of her reproductive capacity, and the violation of her autonomy in decisions related to her sexual and reproductive health. Furthermore, the non-consensual sterilization resulted in the annulment of her right to freely take decisions concerning her body and reproductive capacity, completely losing control over her most personal and intimate decisions. It also violated essential values and aspects of the dignity and private life of I.V., because this sterilization was an intrusion into her autonomy and reproductive freedom and an arbitrary and abusive interference in her private life, violating her right of decision regarding the number of children she wished to have and the spacing between them, and her right to raise a family through her right to procreate. Consequently, the State violated the I.V.'s rights to personal integrity, to personal liberty, to dignity, to private and family life, of access to information, and to raise a family.

236. The Court stresses the gravity of this violation of women's rights,<sup>309</sup> because it is necessary to highlight practices such as those verified in this case that may hide negative or prejudicial gender stereotypes associated with health care services and result in legitimizing, normalizing or perpetuating non-consensual sterilizations that disproportionately affect women.<sup>310</sup> In this case, the Court considers that the medical decision to perform the sterilization procedure on I.V. without her prior, free, full and informed consent was prompted by a logic of paternalist care and under the preconception that the sterilization had to be performed while I.V. was in the peri-operative period following a caesarean section – even though her case was not urgent or a medical emergency – based on the idea that she would not take proper decisions in the future to avoid another pregnancy. The physician acted in this way in an unjustified paternalistic manner, by failing to acknowledge her as a moral decision-making agent and considering that, based on his medical opinion, he had to protect I.V., by taking the decision that he considered pertinent, without giving her the opportunity to weigh the options available to her; thus, annulling her ability to decide based on her autonomy. In addition, the physician acted with a stereotype rationale according to

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<sup>309</sup> The Special Rapporteur on violence against women, its causes and consequences considered forced sterilization, "a method of medical control of a woman's fertility without the consent of a woman," to be a "severe violation of women's reproductive rights." Cf. UN, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, *Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, E/CN.4/1999/68/Add.4, January 21, 1999, para. 51.

<sup>310</sup> Sterilization without a woman's informed consent is a practice that has been verified in various countries and different contexts, as revealed by the cases that have been ruled on by other international organs (*supra* para. 204).

which only I.V. was responsible for the couple's contraceptive actions. The fact that, for example, they had not mentioned the option that her husband could undergo a vasectomy, reveals that the physician considered that I.V. was the partner who played the main role in reproduction. Accordingly, the Court understands that the physician acted based on the gender stereotypes frequently applied to women in the health sector, distrusting their decision-making powers.

237. In ending this section, the Court considers that the facts that substantiate the alleged violation of Article 3 of the Convention have already been duly considered in the findings in this chapter, without it being necessary to issue a specific ruling on the right to recognition of juridical personality. Regarding the allegation of the violation of Article 13 of the Convention related to the right to know the truth, the Court finds that the factual basis for this decision does not comply with conditions that would make it applicable. In particular, the Court notes that the only case in which it has analyzed this right under the said article related to a specific action filed by the next of kin concerning egregious human rights violations, in order to access specific information related to access to justice.<sup>311</sup> Therefore, the Court concludes that it is not appropriate to issue a ruling in that respect.

*B.3.c Duty not to discriminate when respecting and ensuring the rights recognized in Articles 5, 7, 11, 13 and 17 of the American Convention*

238. The Court has indicated that "the notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified."<sup>312</sup> At the actual stage of evolution of international law, the fundamental principle of equality and non-discrimination has entered the domain of *jus cogens*. The legal structure of national and international public order is based on this, and it permeates the whole legal system. States must refrain from executing actions that, in any way, are addressed, directly or indirectly, at creating situations of discrimination *de iure* or *de facto*.<sup>313</sup>

239. When interpreting Article 1(1) of the Convention, the Court has stipulated that it is a rule that is general in scope "which applies to all the provisions of the treaty, and imposes on the States Parties the obligation to respect and guarantee the free and full exercise of the rights and freedoms recognized therein "without any discrimination." In other words, regardless of its origin or the form it may assume, any treatment that can be considered to be discriminatory with regard to the exercise of any of the rights guaranteed under the Convention is *per se* incompatible with that instrument."<sup>314</sup>

240. That said, the Court recalls that not every difference in treatment will be considered discriminatory, but only those that are based on criteria that cannot rationally be considered objective and reasonable.<sup>315</sup> When the differentiating factor corresponds to one of those elements

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<sup>311</sup> Cf. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, para. 201.

<sup>312</sup> Cf. *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica.* Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 55, and *Case of Flor Freire v. Ecuador, supra*, para. 109.

<sup>313</sup> Cf. *Juridical Status and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03, *supra*, paras. 101, 103 and 104, and *Case of Flor Freire v. Ecuador, supra*, paras. 109 and 110.

<sup>314</sup> *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica.* Advisory Opinion OC-4/84, *supra*, para. 53, and *Case of Flor Freire v. Ecuador, supra*, para. 111.

<sup>315</sup> Cf. UN, Human Rights Committee, General Comment No. 18, *Non-discrimination*, November 10, 1989, para. 13.

protected by Article 1(1) of the Convention, which refer to: (i) permanent characteristics of the individual that he or she cannot renounce without losing their identity; (ii) groups that are traditionally marginalized, excluded or subordinated, and (iii) criteria that are irrelevant for an equitable distribution of social benefits, rights and charges, the Court is confronted with an indication that the State has acted arbitrarily. The Court has established, also, that the specific criteria based on which discrimination is prohibited according to Article 1(1) of the American Convention, do not constitute an exhaustive or limitative list; rather, this is merely illustrative.<sup>316</sup> Thus, the Court finds that the wording of this article leaves the criteria open with the inclusion of the expression "any other social condition," so that other categories may be included that were not explicitly indicated,<sup>317</sup> but which have a similar entity, such as refugees.<sup>318</sup>

241. On this basis, the Court consider that the criteria for determining whether the principle of equality and non-discrimination has been violated in a specific case may have a different weight depending on the reasons why there was a difference in treatment. The Court finds that, in the case of a measure that establishes a differentiated treatment and that involves one of these categories, it must examine this strictly, incorporating particularly demanding elements in its analysis; in other words, the different treatment must constitute a necessary measure to achieve an imperative purpose pursuant to the Convention. Thus, when analyzing the appropriateness of the differentiating measure, the objective pursued must be not only legitimate within the framework of the Convention, but also imperative. The measure chosen must not only be appropriate and effective, but also necessary; that is, it cannot be replaced by a less harmful alternative. Additionally, this includes the application of a consideration of proportionality *stricto sensu*, according to which the benefits of taking the measure in question must clearly outweigh the restrictions that it imposes on the treaty-based principles that it infringes.

242. The Commission has asserted that, "this case provides an example of the multiples forms of discrimination that affect the enjoyment and exercise of human rights of some groups of women, such as I.V., based on the intersection of various factors such as their sex, immigrant status, and economic situation." And, I.V.'s representative argued before this Court that, subjecting her to sterilization without her consent was discriminatory based on her condition as (i) a woman; (ii) poor; (iii) Peruvian, and (iv) a refugee.

243. The Court recognizes that, historically, a woman's liberty and autonomy as regards her sexual and reproductive health, has been limited, restricted or annulled<sup>319</sup> based on negative and prejudicial gender stereotypes, as described by the physician himself during the public hearing.<sup>320</sup> This is because, socially and culturally, men have been assigned a preponderant role in decision-making with regard to a woman's body, and women have been seen, above all, as a reproductive entity. In particular, the Court notes that non-consensual sterilization was influenced by the

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<sup>316</sup> Cf. *Case of Atala Riffo and daughters v. Chile, supra*, para. 85, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Merits reparations and costs*. Judgment of May 29, 2014. Series C No. 279, para. 202.

<sup>317</sup> Cf. *Case of Atala Riffo and daughters v. Chile, supra*, para. 85.

<sup>318</sup> Cf. ECHR, *Case of Bah v. The United Kingdom*, No. 56328/07. Judgment of September 27, 2011, paras. 44 to 47, and *Case of Hode and Abdi v. The United Kingdom*, No. 22341/09. Judgment of November 6, 2012, paras. 44 to 47.

<sup>319</sup> Cf. UN, Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, A/64/272, August 10, 2009, paras. 54 and 55.

<sup>320</sup> During the hearing, Dr. Torrico Ameller gave a historical review of the evolution of the autonomy of women with regard to consent in relation to medical procedures during his career as a gynecologist. He divided this evolution into three stages: a first stage where the doctor was "omnipotent" and the issue of informed consent was not discussed in the medical schools; a second stage where greater decision-making powers were assigned to the patient's doctor or husband, and a third stage, where women had greater autonomy over the decisions relating to their bodies. Cf. Statement made by Edgar Torrico Ameller before the Inter-American Court during the public hearing held on May 2, 2016.

historically unequal relationship between women and men. Even though sterilization was a contraceptive method used by both women and men, non-consensual sterilization affected women disproportionately, because they were women, and because society assigned the reproductive function and family planning to women.<sup>321</sup> Furthermore, the fact that women are the sex with the biological capacity to become pregnant and give birth means that, during a caesarean section, they were frequently subjected to non-consensual sterilization, because they were excluded from the process of taking informed decisions with regard to their body and reproductive health on the basis of the prejudicial stereotype that they were unable to take such decisions responsibly.<sup>322</sup> Consequently, the Court considers that the strict protection provided by Article 1(1) of the Convention is applicable based on sex and gender<sup>323</sup> because, traditionally, women have been marginalized and discriminated against in this regard. Therefore, the Court will examine this aspect of the case rigorously.

244. In this context, the Court emphasizes that “in the case of the prohibition of discrimination based on one of the protected categories contained in Article 1(1) of the Convention, the possible restriction of a right requires a weighty and rigorous justification, which means that the reasons used by the State to differentiate treatment must be particularly significant and based on a thorough substantiation. In addition, the burden of proof is inversed, which means that it is for the authority to prove that neither the purpose nor the effects of the decision were discriminatory.”<sup>324</sup>

245. When examining the facts of this case and the State’s arguments that the purpose of the sterilization procedure was to safeguard I.V.’s life in view of the danger that a future pregnancy could involve for the patient’s life, the Court notes that the differentiating measure – that is the tubal ligation performed on I.V. as a method of contraception – could, in principle, have had an objective that was not only legitimate, but even imperative, insofar as it was appropriate to protect her health and possibly her life in view of the risk of another pregnancy, because she was permanently deprived of her reproductive capacity. However, it was not strictly necessary, because the same objective could have been achieved with measures that were less harmful for her autonomy and reproductive freedom and less invasive of her private and family life.

246. Thus, the sterilization procedure denied I.V. the possibility of knowing and weighing up alternative contraceptive methods and the possibility of choosing a non-permanent and less invasive method. Moreover, she did not receive information on alternative contraceptive methods that could have been taken by her husband to avoid a future pregnancy, so that I.V. was assigned the burden of family planning and reproduction. The Court considers that the sterilization procedure annulled I.V.’s decision-making power and also her autonomy in a discriminatory manner because the physician only took into account his criteria and failed to take into consideration the specific wishes and needs of his patient. Also, the fact that the physician tried to locate the husband to obtain his authorization or, in the best-case scenario, ratify the consent supposedly obtained from I.V. during the peri-operative period (*supra* para. 65), reveals that he acted based on the stereotype that she was not capable of taking an autonomous decision about her body. The circumstances in which the State alleges that I.V.’s consent was obtained, denied her the opportunity to take a free and informed decision in keeping with her life project. Thus, the physician performed an unjustified paternalistic medical procedure, because curtailing her reproductive capacity without her prior, free, full and informed consent severely restricted I.V.’s

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<sup>321</sup> Cf. Expert opinion provided by Luisa Cabal by affidavit on April 28, 2016 (evidence file, volume XI, affidavits, folio 3960).

<sup>322</sup> Cf. UN, Report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Anand Grover, A/64/272, August 10, 2009, para. 55.

<sup>323</sup> Cf. *Juridical Status and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, *supra*, para. 101.

<sup>324</sup> *Case of Gonzales Lluy et al. v. Ecuador*, *supra*, para. 257, and *Case of Flor Freire v. Ecuador*, *supra*, para. 125.

autonomy and freedom to take a decision regarding her body and her reproductive health, and interfered abusively with her private and family life, motivated by the desire to avoid harm to her future health, but without taking into consideration her wishes and with grave consequences for her personal integrity (*infra* Chapter VIII-2) based on the fact that she was a woman.

247. That said, the Court has also been asked to determine whether, in the case of I.V., multiple forms of discriminations occurred, and whether the different criteria alleged (*supra* para. 242) converged and intersected to configure a particular and specific situation of discrimination.<sup>325</sup> The Court has recognized that identifiable subgroups of women suffer from discrimination throughout their lives based on more than one factor combined with their sex, which increases their risk of suffering acts of violence and other human rights violations.<sup>326</sup> On this point, the Court underlines that non-consensual sterilization is a phenomenon that, in different contexts and parts of the world has had a greater impact on women who form part of subgroups with greater vulnerability to suffer this human rights violation, due either to their socio-economic status, their race, their disabilities, or to the fact that they are living with HIV.<sup>327</sup>

248. In this case, the Court notes that I.V. had access to the Bolivian State's public health care services (*supra* paras. 62 and 63), even though the health care provided disregarded the elements of accessibility and acceptability (*supra* paras. 156 and 164). Despite this, the facts of this case do not reveal that the decision to perform the tubal ligation on I.V. was based on her nationality of origin, her situation as a refugee, or her socio-economic status. Nevertheless, the Court considers that these aspects had an impact on the magnitude of the harm suffered by I.V. in the sphere of her personal integrity. And this is notwithstanding what the Court establishes below in relation to the search to obtain justice (*infra* paras. 318 to 321).

249. Based on the above, the Court concludes that the State incurred international responsibility owing to the discrimination experienced by I.V., on the basis of her condition as a woman, with regard to the enjoyment and exercise of the rights established in Articles 5(1), 7(1), 11(1), 11(2), 13(1) and 17(2) of the Convention.

*B.3.d The right of women to a life free from violence (Article 7(a) of the Convention of Belém do Pará)*

250. In the inter-American sphere, the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará" establishes the right of every woman to be free from violence, and that this right includes the right to be free of all forms of discrimination.<sup>328</sup> In addition, it indicates that States must "refrain from engaging in any act or practice of violence against women and [...] ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation."<sup>329</sup> In this regard, the Court recalls that the protection of human rights is based on affirming the existence of certain sacrosanct attributes of the human being that cannot be legitimately impaired by the exercise of

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<sup>325</sup> Cf. *Case of Gonzales Lluy et al. v. Ecuador*, *supra*, para. 290.

<sup>326</sup> Cf. *Case of Gonzales Lluy et al. v. Ecuador*, *supra*, para. 288.

<sup>327</sup> Cf. UN, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, *Multiple and intersecting forms of discrimination and violence against women*, A/HRC/17/26, May 2, 2011, para. 72, and 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, para. 48.

<sup>328</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 394, and *Case of Velásquez Paiz et al. v. Guatemala*, *supra*, para. 175, both citing the Convention of Belém do Pará, Preamble and Article 6.

<sup>329</sup> Convention of Belém do Pará, Article 7(a).

public powers. These are individual spheres that the State may not violate.<sup>330</sup> In order to ensure this protection, the Court has considered that it is not sufficient for States to refrain from violating rights; rather, it is imperative that they adopt positive measures, determined in function of the specific needs for protection of the subjects of law, due either to their personal condition or to the specific situation in which they find themselves.<sup>331</sup> The Court considers that this State obligation acquires special relevance when violations of the sexual and reproductive rights of women are involved, as in the case of non-consensual sterilizations performed in public hospitals.

251. The Convention of Belém do Pará has established parameters to identify when an act constitutes violence and its Article 1 defines this as follows: "violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."<sup>332</sup> In addition, the Court has indicated that gender-based violence "includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty."<sup>333</sup>

252. Bearing in mind the definition of violence against women adopted in the Convention of Belém do Pará, the Court considers that the physician should have foreseen that the intentional alteration of I.V.'s physical capacity for biological reproduction, with total disregard for her autonomy and reproductive freedom would cause her intense emotional suffering and, despite this, he did not modify his conduct in the belief that it was he who was in the best position to take the decision that he considered most beneficial for I.V. The Court finds that an intrusion of this magnitude into the body and the personal integrity of I.V., without her consent, foreseeably caused a significant suffering for the victim, especially given that the physician assumed for himself an extremely person decision that belonged to I.V. – which was not a life or death decision. In addition, the Court has underlined that sterilization affects women disproportionately because they are women and, also, based on the perception of their primarily reproductive role and that they are not capable of taking responsible decisions on their reproductive health and family planning (*supra* paras. 187 and 243).

253. The right of women to live free of violence is closely related to the right to non-discrimination. The Committee for the Elimination of Discrimination against Women has indicated that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."<sup>334</sup> This "[g]ender-based violence [...] inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality."<sup>335</sup>

254. The Declaration and Platform for Action of the Fourth World Conference on Women, held in

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<sup>330</sup> Cf. *The Word "Law" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86, *supra*, para. 21, and *Case of Castillo Petruzzi et al. v. Peru. Merits reparations and costs*. Judgment of May 30, 1999. Series C No. 52, para. 120.

<sup>331</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia*, *supra*, para. 111, and *Case of Chinchilla Sandoval v. Guatemala*, *supra*, para. 168.

<sup>332</sup> Convention of Belém do Pará, Article 1.

<sup>333</sup> *Case of the Miguel Castro Castro Prison v. Peru. Merits reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 303, and *Case of Espinoza González v. Peru*, *supra*, para. 223, both citing UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 19, *Violence against women*, 1992, para. 6.

<sup>334</sup> UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 19, *Violence against women*, 1992, para. 1.

<sup>335</sup> UN, Committee on Economic, Social and Cultural Rights, General Comment No. 16, *The equal right of men and women to the enjoyment of economic, social and cultural rights*, August 11, 2005, para. 27.

Beijing in 1995, recognized that forced sterilization is an act of violence against women.<sup>336</sup> This has been reaffirmed by several of the United Nations Special Rapporteurs, the Committee for the Elimination of Discrimination against Women, and the Human Rights Committee, indicating that forced, obligatory, coercive, non-consensual or involuntary female sterilization constitutes an act of violence against women.<sup>337</sup>

255. Based on the above, the Court determines that the non-consensual or involuntary sterilization that I.V. underwent in a public hospital, while under stress and without her informed consent, caused her serious physical and psychological harm and entailed the permanent loss of her reproductive capacity, thus constituting an act of violence and discrimination against her. Consequently, the Court concludes that the State failed to comply with its obligation to refrain from any action or practice involving violence against women and to ensure that the State's authorities, officials, personnel, agents and institutions conduct themselves in conformity with this obligation, in violation of Article 7(a) of the Convention of Belém do Pará.

### **C. Conclusion**

256. Based on the above, the State of Bolivia is responsible for violating the obligations to respect and to ensure rights and not to discriminate with regard to the rights recognized in Articles 5(1), 7(1), 11(1), 11(2), 13(1) and 17(2), in relation to Article 1(1) of the American Convention, to the detriment of I.V. The State is also responsible for failing to comply with its obligations under Article 7(a) and b) of the Convention of Belém do Pará.

## **VIII-2**

### **RIGHT TO PERSONAL INTEGRITY AND THE PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT,<sup>338</sup> IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE RIGHTS**

#### **A. Arguments of the parties**

257. The **representative** indicated that the State had violated the three dimensions of I.V.'s personal integrity. With regard to her physical integrity, she indicated that, as a result of the non-consensual sterilization, I.V. permanently lost her reproductive function, and this led to the mental and moral dimensions, because I.V. felt damaged, mistreated and traumatized since she considered that she was no longer a "whole woman." The arbitrary deprivation of her reproductive function destroyed her hope of conceiving a male child and produced a series of physical, sexual, psychological and psycho-social effects, as well as feelings of profound anguish and suffering because an essential part of her desired life project had been taken from her. The representative

<sup>336</sup> Cf. The Beijing Declaration and Platform for Action of the Fourth World Conference on Women, A/CONF.177/20, 1995, para. 115.

<sup>337</sup> Cf. UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 19, *Violence against women*, 1992, para. 22; the Beijing Declaration and Platform for Action of the Fourth World Conference on Women A/CONF.177/20, 1995, para. 115; Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, *Policies and practices that impact women's reproductive rights and contribute to, cause or constitute violence against women*, E/CN.4/1999/68/Add.4, January 21, 1999, para. 51; Human Rights Committee, General Comment No. 28, *The equality of rights between men and women*, March 29, 2000, paras. 11 and 22, and 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, para. 48.

<sup>338</sup> The pertinent part of Article 5 of the American Convention stipulates that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

indicated that to this was added a feeling of guilt with regard to her daughters, because as a result of the sterilization and her search for justice, they had to endure her irritability and absence during their childhood and in later years. The representative considered that these aftereffects resulted in I.V. being diagnosed with an organic schizophreniform disorder in 2013.

258. The representative, based on the factual framework set out in the Merits Report, argued that Article 5(2) of the American Convention had been violated to the detriment of I.V. The first part of this paragraph establishes that: “[n]o one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.” Following the reasoning of the Special Rapporteur on torture or cruel, inhuman or degrading treatment or punishment,<sup>339</sup> she indicated that it was important to identify certain abuses in medical and hospital care not as mere violations of the right to health, but also as forms of torture and ill-treatment, while recognizing that “[t]he conceptualization of the abuses committed in health-care settings as torture or ill-treatment is a relatively recent phenomenon.”

259. In particular, she argued that, on July 1, 2000, I.V. “was in a situation of [...] total defenselessness, on an operating table, under the absolute control of a medical team who took the decision on her behalf, without prior, full, free and informed consent, to subject her to a tubal ligation.” She indicated that the procedure performed on I.V. was totally invasive and irreversible, because in I.V.’s case, “there was no need, urgency or vital reason related to the patient’s survival for the doctors to proceed as they did.” Therefore, she argued that I.V. “was a victim of cruel, inhuman and degrading treatment, if it was not torture.” She supported her argument and petition on “the consistent case law” of the European Court of Human Rights which, in cases relating to sterilizations performed on women who had not given their prior, full, free and informed consent, has established the perpetration of inhuman and degrading treatment prohibited by Article 3 of the European Convention.

260. She added that, “as the doctrine and case law of international human rights law establishes, for an act to be considered one of the conducts prohibited by Article 5(2) of the [American Convention], special attention must be paid to the situation and particular circumstances of the victim.” In this case, reviewing I.V.’s life history, she affirmed that “[a] woman with a history of torture in Peru; arbitrary imprisonment because of her ideas; persecution that obliged her to take refuge in a foreign country; losses of people close to her in violent circumstances [...], this is someone with regard to whom the threshold to consider her a victim of torture and cruel, inhuman or degrading treatment is much lower than that of most people [...], in addition to the severity of the harm caused to I.V., her intense suffering for more than 15 years as an aftereffect of the forced sterilization to which she was subjected without being consulted and without obtaining her prior, full, free and informed consent, and in light of the preceding considerations, especially those formulated by the European Court’s Rapporteurs on Torture, it is clear that the right of I.V. contained in Article 5(2) of the [American Convention] was also violated.”

261. The **State** indicated that “[t]he arguments presented by the representative, attributing presumed facts to the State combine two contexts: the first, regarding the psycho-social situation of I.V. as a result of the actions carried out by the DINCOTE in Peru, and the second, the catharsis undergone by I.V. presumably as a result of the tubal ligation.” In this regard, it indicated that: (i) the alleged acts of torture were committed in Peru; (ii) the surgical procedure of tubal ligation was a voluntary decision by I.V., and not an act of torture; (iii) the presumed acts of torture that took place in Peru cannot be compared to the said surgical procedure, and (iv) the Bolivian State should not have to repair the consequences of the alleged acts of torture. Consequently, the State

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<sup>339</sup> Cf. UN, 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 (evidence file, volume VIII, annex 24 to the brief with motions, pleadings and evidence, folios 2412 to 2437).

repudiated the claim “to attribute international responsibility [to the Bolivian State] for the facts narrated by the representative, which all respond to actions allegedly suffered in Peru, which reveals that they occurred outside the jurisdiction of the Bolivian State [...].”

### **B. Considerations of the Court**

262. The Court recalls that the representative may allege the violation of rights other than those submitted to the Court’s consideration by the Commission, provided they are based on the factual framework established by the latter (*supra* para. 48).

263. Historically, the framework of protection against torture and ill-treatment has been developed in response to acts and practices that were verified, above all, during interrogations in the course of an inquiry or procedure in relation to the perpetration of a crime, as well as in the context of deprivation of liberty, as an instrument of punishment or intimidation. However, the international community has gradually come to recognize that torture and other inhuman treatment can also occur in other contexts of custody, domination or control in which the victim is defenseless, such as in the sphere of health care and, specifically, reproductive health care services.<sup>340</sup> In this regard, the Court underscores the significant role played by discrimination when analyzing whether violations of women’s human rights equate gender-based torture and ill-treatment.<sup>341</sup>

264. The Court has already emphasized the vulnerability to torture and other forms of cruel, inhuman or degrading treatment of individuals in institutional setting such as public and private hospitals, because the medical personnel in charge of patient care exercise strong control or power over those in their care.<sup>342</sup> When torture and other forms of cruel, inhuman or degrading treatment are inflicted on those individuals, it affects their mental, physical and moral integrity and is an affront to their dignity, as well as a serious constraint to their autonomy.<sup>343</sup> Similarly, the Court has stressed the important role of physicians and other health-care professionals in safeguarding personal integrity and preventing torture and ill-treatment.<sup>344</sup>

265. Evidently, the context of health-care services may signify a greater risk of women being subjected to acts contrary to Article 5(2) of the American Convention, especially in relation to those practices or policies addressed primarily against women, which affect them disproportionately, or those that women are particularly vulnerable to, owing to negative or prejudicial gender-based stereotypes, including the social and cultural assignation to women of responsibility for reproductive functions and for contraception. In this regard, the Committee against Torture has recognized that the situations in which women run the risk of being subjected to torture or cruel, inhuman or degrading treatment, include medical treatment, particularly involving reproductive

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<sup>340</sup> Cf. UN, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, *Policies and practices that impact women’s reproductive rights and contribute to, cause or constitute violence against women*, E/CN.4/1999/68/Add.4, January 21, 1999, para. 44; 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, para. 15, and Committee against Torture, General Comment No. 2, *Application of Article 2 by the States Parties*, January 24, 2008, para. 15.

<sup>341</sup> Cf. UN, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/31/57, January 5, 2016, paras. 5 and 9.

<sup>342</sup> Cf. *Case of Ximenes Lopes v. Brazil*, *supra*, paras. 106 and 107.

<sup>343</sup> Cf. *Case of Ximenes Lopes v. Brazil*, *supra*, para. 106.

<sup>344</sup> Cf. *Case of Tibi v. Ecuador*, *supra*, paras. 152 to 156; *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Merits reparations and costs*. Judgment of July 5, 2006. Series C No. 150, para. 102, and *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 26, 2012. Series C No. 244, para. 137.

decisions.<sup>345</sup>

266. The Committee for the Elimination of Discrimination against Women has stated that compulsory sterilization adversely affects women's physical and mental health.<sup>346</sup> In the case of an involuntary sterilization, the European Court has also recognized that this was liable to arouse feelings of fear, anguish and inferiority and entail lasting suffering, and that the victim may feel degraded and humiliated on finding this out, as well as suffering depression and feelings of isolation and humiliation.<sup>347</sup> The Inter-American Court considers that non-consensual or involuntary sterilization may cause severe mental and physical suffering by permanently ending a woman's reproductive capacity, causing infertility, and imposing serious and lasting physical changes without her consent.

267. This Court has indicated that the violation of a person's right to physical and mental integrity has diverse connotations of degree, which range from torture to other types of abuse or cruel, inhuman or degrading treatment, the physical and mental effects of which vary in intensity based on endogenous and exogenous factors (including duration of the treatment, age, sex, health situation, context, and vulnerability), which must be analyzed in each specific situation.<sup>348</sup> In other words, the personal characteristics of a supposed victim of torture or cruel, inhuman or degrading treatment must be taken into account when determining whether his or her personal integrity has been violated, because these characteristics may change the individual perception of the reality and, consequently, increase the suffering and feelings of humiliation when subjected to certain treatment.<sup>349</sup> In this regard, the Court stresses that every individual experiences suffering in a different way and, thus, it will depend on the multiple factors that make each person unique. Thus, it would be unreasonable to excise past experiences from the way an individual feels suffering. On this basis, the Court will take into account the endogenous and exogenous factors when evaluating the intensity of the suffering.<sup>350</sup>

268. On analyzing the intensity of the suffering experienced by I.V., the Court concludes that: (i) I.V. lost her reproductive capacity permanently, and the functioning of her reproductive organs was modified; (ii) I.V. also experienced physical consequences that involved a subsequent surgical procedure because she was diagnosed with placental remains in the endometrial cavity<sup>351</sup> (*supra*

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<sup>345</sup> Cf. UN, Committee against Torture, General Comment No. 2, *Application of Article 2 by the States Parties*, January 24, 2008, para. 22.

<sup>346</sup> Cf. UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 19, *Violence against women*, 1992, para. 22.

<sup>347</sup> Cf. ECHR, *Case of V.C. v. Slovakia*, No. 18968/07. Judgment of November 8, 2011, para. 118; *Case of N.B. v. Slovakia*, No. 29518/10. Judgment of June 12, 2012, para. 80, and *Case of I.G., M.K. and R.H. v. Slovakia*, No. 15966/04. Judgment of November 13, 2012, para. 123 (evidence file, volume VIII, annexes 26, 27 and 28 to the brief with motions, pleadings and evidence, folios 2474 to 2577).

<sup>348</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits, supra*, paras. 57 and 58, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 87.

<sup>349</sup> Cf. *Case of Ximenes Lopes v. Brazil, supra*, para. 127, and *Case of Quispialaya Vilcapoma v. Peru. Preliminary objections, merits, reparations and costs. Judgment of November 23, 2015. Series C No. 308, para. 127.*

<sup>350</sup> The endogenous factors refer to the characteristics of the treatment (duration, method used, way in which the suffering was inflicted, and the physical and mental effects that this may cause), while the exogenous factors refer to the conditions of the person who undergoes such suffering (age, sex, health situation, as well as any other personal circumstances). Cf. *Case of Bueno Alves v. Argentina. Merits reparations and costs. Judgment of May 11, 2007. Series C No. 164, para. 83, and Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile, supra, para. 388.*

<sup>351</sup> Cf. Intravaginal gynecological ultrasound scan of August 14, 2000 (evidence file, volume VII, annex 11 to the submission of the case, folio 2150); Laboratory of Pathology and Cytology Report of August 17, 2000 (evidence file, volume VII, annex 12 to the submission of the case, folio 2152); Intravaginal gynecological ultrasound scan report of August 23, 2000 (evidence file, volume VII, annex 13 to the submission of the case, folio 2154), and Medical certificate signed on

para. 114); (iii) I.V. suffered severe psychological effects that required psychiatric treatment (*supra* para. 115), including feelings of anguish, frustration and guilt, as well as of devaluation as a woman that have aroused feelings of shame;<sup>352</sup> (iv) non-consensual sterilization prejudiced her private life, and led to the temporary separation from her husband, a situation which caused emotional suffering;<sup>353</sup> (v) non-consensual sterilization had different kinds of effects on her family and, in particular, on her daughters,<sup>354</sup> which led to feelings of guilt<sup>355</sup> (*supra* para. 115); (vi) non-consensual sterilization resulted in a financial burden for I.V. arising from the subsequent medical care in a setting that inspired her confidence, and from the search for justice,<sup>356</sup> and (vii) the lack of response from the judicial system (*supra* paras. 111 to 113 and *infra* para. 314), led to her feeling powerless and frustrated.<sup>357</sup> In sum, it is clear that non-consensual or involuntary sterilization, with the consequent impossibility to conceive, caused I.V. lasting physical and mental suffering, as well as considerable emotional pain, on a personal, family and social level.

269. In this regard, the Court notes that the sterilization had a radical effect on I.V.'s life. Thus, I.V. stated before the Court:<sup>358</sup>

[...] this tubal ligation, which was arbitrary, non-consensual, inhuman and without my consent exhausted me profoundly, and also my family. It also resulted in the break-up of the family, my separation from my husband. In addition, it led to my young daughter N.V. cutting her veins due to all the problems resulting from this sterilization that they did to me and, even today, I feel profound anguish that I was unable to take proper care of my girls, who were so young, because I was concentrating on this fight, in my trust in justice, that these things should not remain unpunished. I was involved in the administrative procedure and in the judicial proceedings and this has even caused my little girl to feel guilty, because even when she was very little, she thought that it was owing to her birth that she was to blame for what happened to me. The State doesn't know all the suffering, all the pain, all the sacrifice we have been through. The State doesn't know the difficulties we have faced, owing to all the effort, all the struggle, so much pain. My body couldn't resist this; my mind could bear it no longer and I had a mental health crisis in November 2013 and this is why they had to put me in a mental health hospital. I was interned there for three weeks and my children have seen all this pain, all this suffering, seeing how their mother escaped from the house, fleeing from the house barefoot and in pajamas, and now the doctors who have seen me have told me that I must take carbamazepine and alopurinol for as long as I live, owing to all the suffering I have experienced, for the non-consensual sterilization that they did to me. They destroyed my reproductive system; they curtailed my right to be a mother again, they prevented me from having a male child; they caused pain and suffering to two children; they harmed me in a number of ways, I could even have died, because they left placental remains which resulted in endometritis, and if this had not been treated promptly it could have led to my death.

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September 3, 2000 (evidence file, volume VII, annex 14 to the submission of the case, folio 2156).

<sup>352</sup> Cf. Institute of Therapy and Research on the Aftereffects of State Torture and Violence (ITEI), Psychological examination of I.V. of August 11, 2015 (evidence file, volume VIII, annex 21 to the brief with motions, pleadings and evidence, folios 2374, 2377 and 2379), and Affidavit prepared by Emma Bolshia Bravo Cladera on April 21, 2016 (evidence file, volume XI, affidavits, folios 3923 to 3928).

<sup>353</sup> Cf. Institute of Therapy and Research on the Aftereffects of State Torture and Violence (ITEI), Psychological examination of I.V. of August 11, 2015 (evidence file, volume VIII, annex 21 to the brief with motions, pleadings and evidence, folio 2379).

<sup>354</sup> Cf. ITEI, Psychological evaluation of N.V. of August 3, 2015 (evidence file, volume VIII, annex 22 to the brief with motions, pleadings and evidence, folios 2386 to 2397); ITEI, Psychological evaluation of L.A. of July 28, 2015 (evidence file, volume VIII, annex 23 to the brief with motions, pleadings and evidence, folios 2399 to 2410); Affidavit prepared by N.V. on April 22, 2016 (evidence file, volume XI, affidavits, folios 3910 to 3918), and Affidavit prepared by Andre Alois Frederic Gautier on April 21, 2016 (evidence file, volume XI, affidavits, folios 3919 to 3922).

<sup>355</sup> Cf. Affidavit prepared by Emma Bolshia Bravo Cladera on April 21, 2016 (evidence file, volume XI, affidavits, folios 3923 to 3928).

<sup>356</sup> Cf. Affidavit prepared by Emma Bolshia Bravo Cladera on April 21, 2016 (evidence file, volume XI, affidavits, folios 3923 to 3928).

<sup>357</sup> Statement made by I.V. before the Inter-American Court during the public hearing held on May 2, 2016.

<sup>358</sup> Statement made by I.V. before the Inter-American Court during the public hearing held on May 2, 2016.

270. Based on all the above, the Court concludes that the non-consensual or involuntary sterilization to which I.V. was subjected, in the particular circumstances of this case that have been described, constituted cruel, inhuman and degrading treatment, contrary to human dignity and, therefore, constituted a violation of Article 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of I.V.

### VIII-3

#### **RIGHTS TO JUDICIAL GUARANTEES<sup>359</sup> AND TO JUDICIAL PROTECTION,<sup>360</sup> IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE RIGHTS WITHOUT DISCRIMINATION AND ARTICLE 7 OF THE CONVENTION OF BELÉM DO PARÁ<sup>361</sup>**

271. In this chapter, the Court will analyze the alleged violations of Articles 8(1) and 25(1) of the American Convention and the supposed failure to comply with the obligations established in paragraphs (b), (c), (f) and (g) of Article 7 of the Convention of Belém do Pará. It will also address the arguments relating to the supposed discrimination in access to justice based on gender and economic status, in the terms of Article 1(1) of the American Convention. In addition, it will consider the arguments of the representative in relation to Article 25(2)(a) of the American Convention, regarding the obligation to ensure that the competent authority established by the laws of the State will determine the rights of everyone who files a remedy (*supra* para. 49).

#### **A. Arguments of the parties and of the Commission**

##### *A.1 Arguments on access to justice*

272. The **Commission** recalled that the criminal proceedings “went on for four years without a final judgment being handed down on the merits of the case.” The Commission also underlined that, during the proceedings two judgments were handed down that explicitly recognized that

<sup>359</sup> Article 8(1), stipulates that “[e]very 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.

<sup>360</sup> The relevant part of Article 25 establishes that:

1. 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.

2. Los The States Parties undertake: to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State.”

<sup>361</sup> The relevant part of Article 7 of the Convention of Belém do Pará stipulates that: “[t]he States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

[...]

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;

[...]

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.

during the trial process various procedural errors and delays had taken place that can be attributed to the organs responsible administering justice, as a result of which the criminal proceedings were declared to have extinguished and the case was archived. The Commission considered that "the way the Judiciary acted was ineffective, because the procedural defects and unwarranted delays verified during the criminal proceedings, as a result of which the criminal action was declared to have extinguished, resulted in a denial of justice for I.V., depriving her of her right to judicial determination of responsibilities derived from the human rights violation to which she had been subjected and to reparation for the harm done." Consequently, the Commission concluded that "the State, through the actions of the Judiciary and its health care system, violated I.V.'s right of access to justice and her right to judicial guarantees and judicial protection in violation 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 this instrument".

273. In its final observations, the Commission argued that, in cases related to human rights violations as a result of a medical procedure, an investigation should be conducted with due diligence, with the proper guarantees and within a reasonable time. Regarding due diligence in the conduct of the criminal proceedings, the Commission indicated that, during the years it lasted, numerous procedural defects and errors occurred, and also additional delays to establish a court with lay judges and due to the filing of the case far from where the facts had occurred and from I.V.'s places of residence, hampering the participation of victim, expert witnesses and witnesses. According to the Commission, these flaws and delays not only resulted in the ineffectiveness of the investigation, but also the extinction of the criminal proceedings, preventing I.V. from being able to have recourse to civil proceedings to obtain reparation because, according to the information available, domestic law subordinated this possibility to the existence of a guilty verdict. This situation engaged the international responsibility of the State of Bolivia under Articles 8 and 25 of the Convention and 7 of the Convention of Belém do Pará.

274. The **representative** agreed with the legal grounds and conclusions relating to the violation of Articles 8(1) and 25(1) the American Convention developed in the Commission's Merits Report. In addition, she argued "that the denial of justice and violations of due process suffered by I.V. during the said criminal case, not only involve the judicial officials and, therefore, the Judiciary of the Bolivian State, they also involved the Public Prosecution Service and its prosecutors." She indicated that the complaints and requests that I.V. filed before the La Paz District Prosecutor asking him to change the prosecutor assigned to the case because she had abandoned it, was evidence that not only the judges who intervened in the proceedings had violated I.V.'s human rights with their delaying actions, but also the prosecutors of the Public Prosecution Service were responsible for that outcome. In the representative's opinion, both the Judiciary and the Public Prosecution Service were responsible for the fact that the proceedings were archived without a decision on the merits, ensuring the impunity of the State agents who violated the rights of I.V. and, at the same time, the presumed victim was not provided with effective judicial protection.

275. The **State** argued that the criminal proceedings were undertaken diligently and decisions were taken within a reasonable time until it culminated with a decision that extinguished the criminal action. Regarding the evaluation of the reasonable time in criminal proceedings, the State affirmed that, "taking into account the complexity of the matter, the lack of interest of I.V., the activation of the parties' procedural guarantees, and that the overall duration of the proceedings was in keeping with the standards of a reasonable time, there are no objective elements that would determine any violation of Article 8(1) of the Convention to the detriment of I.V."

276. In its final arguments, the State indicated, citing case law of the European Court of Human Rights, that this case "did not warrant criminal proceedings to decide it," and that the disciplinary administrative procedure was sufficient to ensure I.V.'s access to justice. According to the State, during the said procedure, which had all the characteristics of a judicial proceeding, "all the

judicial guarantees were realized.” The State also indicated that, since it had a disciplinary vocation, this procedure could have ended in the definitive dismissal of the physician. However, did not happen because, in a substantiated decision to acquit him that is now final, it was determined that the physician “acted pursuant to Bolivian health laws and to preserve I.V.’s future and maternal well-being. In sum, the State considered that it would be contradictory to criminally convict a physician for a medical act carried out in the absence of malice. Therefore, it concluded that it had complied with its obligation to provide proper judicial guarantees and judicial protection to I.V. through the administrative procedure that was implemented.

277. Additionally, the State indicated that it was not the function of the Inter-American Court to act as a “fourth instance,” in the sense that it was not for it to act as a high court with regard to domestic proceedings, and it could only review a decision handed down by domestic courts if there had been a flagrant violation of the Convention, which had not occurred in this case. In this regard, it argued that the domestic proceedings not only corresponded to a serious, just and impartial trial, but that the hypothesis finally accepted was the result of all the evidence collected during the proceedings. Consequently, the State argued that “the Court should respect the decisions made in the domestic sphere, since there was no evidence of a defect related to the treaty-based guarantees.” The State also argued that I.V. had not become a complainant in the case, which revealed a lack of diligence on her part in the processing of the case. Furthermore, it indicated that I.V. had not filed a disciplinary complaint against the domestic judges because she considered that they had unjustifiably delaying her criminal action, and this should be taken into account in the analysis of the reasonable time.

#### *A.2 Arguments on the Convention of Belém do Pará*

278. In light of the relationship between violence and discrimination, the **Commission** noted that “the failure to punish an act of violence against women may also constitute a form of discrimination.” Accordingly, the Commission argued that, “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.” However, in this case, “no punishment was ordered against those responsible for the non-consensual sterilization performed on I.V.” Consequently, the Commission considered 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.” It also considered “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 extinction of the criminal action, violated the obligations established in paragraphs (f) and (g) of the said Article 7 of the Convention of Belém do Pará.” On this basis, the Commission concluded “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.”

279. The **representative** agreed with the legal grounds and conclusions set forth by the Commission in its Merits Report in relation to the violation of Article 7 (a, b, c, f and g) of the Convention of Belém do Pará.

280. With regard to the obligation to act with due diligence to prevent, investigate and punish violence against women, the **State** indicated that it had “acted with due diligence to prevent, investigate and punish the presumed violence against I.V., because she had been able to have recourse to the corresponding instances to assert her right” and it had “complied with its obligations established in Article 7(b) of the Convention, because in light of treaty-based law, the State had not promoted or consented to any type of violence against I.V.”

281. Regarding the obligation to establish fair and effective legal procedures for women who have been subjected to violence, which include measures of protection, a prompt trial, and effective access to such proceedings and also to establish the necessary administrative and judicial mechanisms to ensure that a woman who has been the subject of violence has effective access to redress, reparation of the harm, or other just and effective measures of compensation, the State observed that “using the appropriate remedies, at both the administrative and the judicial level, I.V. was able to assert her claims in accordance with the legal framework in force and, although the result was not favorable to her, this does not mean that the State had not provided adequate and effective remedies for her protection; to the contrary, I.V. was provided with both ordinary and special remedies that she failed to file or exhaust.” Based on these considerations, the State concluded that it was not responsible for the alleged violation of Article 7 of the Convention of Belém do Pará, because it had complied with its treaty-based obligations to protect women and, in particular, to ensure that I.V. had full access to justice.

### *A.3 Arguments on discrimination in access to justice*

282. The **Commission** reiterated that “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. 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. [...] 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 of 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.” Consequently, in this case, the Commission argued that “the denial of justice for I.V. derived from procedural deficiencies during the criminal proceedings, and the fact that the violations of her human rights, including her reproductive rights, went unpunished, constituted a form of discrimination in the exercise of her rights to judicial guarantees and judicial protection.”

283. The **representative** indicated that the elements described in the Inter-American Commission's report on “Access to Justice for Women Victims of Violence in the Americas,” which “reflect [...] open gender-based discrimination against women, characterized the investigations and the criminal proceedings against those who wronged I.V., and resulted in promoting total impunity.” She argued that “[t]he violations of [Articles] 8 and 25 of the American Convention established by the Commission in Merits Report 72/14 are ‘the result’ of the perverse criminal proceedings by which I.V. tried to obtain justice, but ‘the reason’ for that result [...] was [...] the gender-based discrimination against her and her modest financial situation.” She noted that “neither at the domestic level, nor before the [Commission], had the State contested the fact that the judicial guarantees of a reasonable time and the celerity that judicial proceedings should respect had been violated to the detriment of I.V.” In this regard, she argued that the mere fact that the criminal proceedings had been archived in the domestic sphere because it had lasted more than the three years established by the code of criminal procedure, and that responsibility for this extinction of the criminal action and termination of the proceedings had been attributed by the Judiciary itself to the organs of the Bolivian criminal justice system, “exempts the victim and her representatives from having to provide further evidence to prove a fact that has been amply proved (and confessed).” She indicated that “[t]he indifference towards I.V.'s case is reflected perfectly in the two judicial decisions mentioned previously (Ruling No. 13/06 of the Fourth Criminal Trial Court and Ruling No. 514/06 of the First Criminal Chamber of the La Paz Superior Court of Justice), which refer to the ‘lack of action’ of the agents of justice who failed to give priority to the case for ‘trivial reasons,’ that were ‘deficient’ and that ‘played around with the law.” She added that “[a]nother inconceivable fact” was that, given that the offense of forced sterilization had not been criminalized at the time, the criminal charges were filed for the offense of “severe injuries”; however, in the second criminal trial, the Copacabana Trial Court convicted the

physician of the offense of culpable injury, sentencing him to a fine, rather than to imprisonment, which in the representative's opinion revealed "I.V., discredited victim, woman without credibility, and offense reduced to the very minimum."

284. She indicated that, in addition to the gender-based discrimination, "the agents of justice who took part in I.V.'s proceedings were deficient, ineffective and played around with the law, because they considered the victim to be woman with few financial resources and, therefore, doubly vulnerable, doubly discriminable, and doubly victim." Accordingly, she concluded that the relationship between the provisions of the American Convention violated in this case and Article 1(1) of this instrument should necessarily take into account the reasons that led the different State agents to violate each of the rights that were infringed in the case of I.V. On this basis, she asked that the Court, in its judgment, for each article of the Convention that Bolivia had violated, note its connection to Article 1(1) of the American Convention comprehensively; in other words, also stressing the discriminatory nature of each violation, discrimination based on sex, gender, economic status, national origin and refugee status (as "any other social condition").

285. The **State** indicated, in its final arguments, that there was no evidence of any discriminatory intention on the part of the State. In this regard, it asserted that both the judicial and the administrative proceedings had agreed on the physician's absence of malice. Therefore, Bolivia had complied fully with its obligations related to the principle and right of non-discrimination.

*A.4 Arguments on the obligation to ensure that the competent authority established by the laws of the State will determine the rights of everyone who files a remedy*

286. The **representative** submitted additional arguments concerning the violation of Article 25(2)(a) of the Convention. In this regard, she asked that "the Court declare this [...] additional violation when it hands down judgment, in the understanding that the Bolivian jurisdictional authority did not take a decision on I.V.'s rights; [rather] instead of this, it archived the criminal case on the grounds that the proceedings had gone beyond the temporal limit of three years that proceedings on a matter such as this should take." Therefore, the representative argued that the Bolivian court had not taken a decision as it was supposed to do under Article 25(2)(a) because, on procedural grounds caused by the court itself, it granted impunity to those who had violated I.V.'s rights.

287. The **State** asserted that the arguments presented by the representative regarding the presumed violation of Article 25(2)(a) of the Convention, corresponded to "citations from reports and documents that were not pertinent and that did not provide appropriate grounds for violations of the said article or reveal, by specific acts, the presumed failure to comply with the obligation to decide on a right when a remedy is filed." Accordingly, "the Court should not take this allegation into account." Regarding the right to judicial protection, it argued that the laws of Bolivia guaranteed I.V. access to simple, effective and prompt remedies, specifically, cassation and the constitutional amparo, "which were neither filed nor exhausted." Regarding the remedies used by I.V., the incidental appeal, the cassation procedure, and the appeal against the extinction, the State argued that they were processed in accordance with the established legal procedure, ensuring her right to due process, so that the State had not violated the guarantees and the right to judicial protection of I.V.

**B. Considerations of the Court**

288. Before proceeding to analyze the merits in relation to Articles 8 and 25 of the Convention, the Court finds it pertinent to provide some clarifications in relation to the different arguments presented. First, the Court notes that the State changed its legal arguments, starting during the public hearing, in relation to its answering brief. In particular, the arguments described above

concerning the inappropriateness of criminal proceedings in this case, the alleged failure of I.V. to become a complainant in the proceedings, and the fact that she did not denounce the domestic judges, were submitted for the first time in its final oral and written arguments before this Court. The Court recalls that the final arguments are essentially an opportunity to systematize the legal and factual arguments that have already been presented at the proper opportunity.<sup>362</sup> In this case, the Court considers that these arguments, even though they were submitted in relation to the merits of the matters, refer to questions of admissibility and could be considered partially contradictory to the objection of failure to exhaust domestic remedies filed by the State. Hence, they will not be taken into account, because their presentation was time-barred.

289. In addition, regarding the State's arguments concerning the fourth instance, the Court finds it pertinent to recall that the international jurisdiction does not exercise the functions of a court of "fourth instance," nor is it a higher court or a court of appeal to resolve disagreements between the parties regarding aspects of assessment of the evidence or application of domestic law on matters that are not directly related to compliance with international human rights obligations.<sup>363</sup> On this point, it is pertinent to recall that the Court has stated that, if the intention is for the Court to act as a higher court in relation to the scope of the evidence and of domestic law, this would involve submitting to the Court a matter regarding which it could not rule and does not have jurisdiction owing to the subsidiary competence of an international court. In this regard, the scope for the Inter-American Court to review a ruling of a domestic court relates to whether that decision violated international treaties for which the Court has jurisdiction.<sup>364</sup> If this is the case, the determination of whether or not the actions of administrative or judicial organs constituted a violation of the State's international obligations may result in the Court having to examine the respective domestic proceedings to establish whether they were compatible with the American Convention.<sup>365</sup>

290. The Court recalls that, regarding the facts of this case, three audits were conducted; the Ethics Tribunal of the La Paz Departmental Medical Association issued a ruling; an administrative proceeding was conducted before the Legal Advisory Services Unit of the La Paz Departmental Health Service and also criminal proceedings for the offense of injuries that ended with the extinction of the criminal action (*supra* paras. 72 to 113). Despite the different measures taken by the State as a result of I.V.'s complaints, no one has been declared responsible, in either the disciplinary, administrative or criminal processes, for the non-consensual sterilization to which I.V. was subjected, and she has not received civil reparation owing to the decision that extinguished the criminal action.

291. The Court notes that, based on this factual framework, the arguments concerning Articles 8(1) and 25(1) were centered on the criminal proceedings. In their main briefs, the Commission and the representative argued that the criminal proceedings filed owing to the complaints made by I.V. constituted a denial of justice pursuant to the American Convention, because they were not conducted with due diligence and because a series of irregularities existed that resulted in their culmination without a decision on the merits in application of the extinction of the criminal action,

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<sup>362</sup> Cf. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits reparations and costs*. Judgment of October 24, 2012. Series C No. 251, paras. 19 and 22, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 34.

<sup>363</sup> Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 16, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 173.

<sup>364</sup> Cf. *Case of Cabrera García and Montiel Flores v. Mexico, supra*, para. 18, and *Case of García Ibarra et al. v. Ecuador, supra*, para. 19.

<sup>365</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 222, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 173.

four years after the proceedings had been initiated. However, at a later stage, the State included arguments aimed at proving the effectiveness of the administrative proceeding conducted in this case. Accordingly, the Commission, in its final observations, also referred to the effectiveness of the administrative proceeding. Consequently, the Court finds it opportune, before examining the State's actions in the context of the criminal proceedings in light of the arguments of the parties concerning the alleged violations of the Convention, to begin by including some brief general considerations on access to justice in cases of violation of sexual and reproductive rights. However, the Court will not rule on possible violations in the context of the administrative proceeding, because no specific arguments have been presented relating to a violation of Articles 8 and 25 of the Convention in that sphere.

### *B.1 Access to justice in cases of violation of sexual and reproductive rights*

292. This Court has repeatedly indicated that the right of access to justice must ensure, within a reasonable time, the right of the presumed victims or their next of kin that everything necessary is done to know the truth of what happened, establish the respective responsibilities, and punish those responsible.<sup>366</sup> To this end, and pursuant to the American Convention, the States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), remedies that must be executed in accordance with the rules of due process of law (Article 8(1)),<sup>367</sup> all of this within the general obligation of the States to ensure the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)).<sup>368</sup>

293. Consequently, Articles 8 and 25 of the Convention signify that the victims of human rights violations should have appropriate judicial remedies to establish whether a human rights violation has been committed and to provide appropriate means to rectify this. Such remedies must also be effective pursuant to Article 25(1) of the Convention; that is, "able to produce the result for which they were conceived."<sup>369</sup>

294. When interpreting the text of Article 25(1) of the Convention, the Court has affirmed on other occasions, that the obligation of the State to provide a judicial remedy is not limited to the mere existence of the courts or the formal proceedings or even to the possibility of having recourse to the courts. Rather, the State is obliged to take positive measures to ensure that the remedies it provides through its judicial system are "truly effective to establish whether or not a violation of human rights has occurred and to provide reparation."<sup>370</sup> This means that the mere formal existence of the remedies is not sufficient; rather, in order for them to be considered effective, they must recognize and resolve the factors of real inequality of the justiciables, providing results or responses to the violations of the human rights recognized in the Convention. Thus, the Court has declared that "the inexistence of an effective remedy against violations of the rights recognized in the Convention constitutes a violation of this instrument by the State Party in which this

<sup>366</sup> Cf. *Case of Bulacio v. Argentina. Merits reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of Quispialaya Vilcapoma v. Peru, supra*, para. 161.

<sup>367</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra*, para. 91, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, paras. 174 and 175.

<sup>368</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections, supra*, para. 91, and *Case of Chinchilla Sandoval v. Guatemala, supra*, para. 233.

<sup>369</sup> *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 66, and *Case of the Punta Piedra Garífuna Community and its members v. Honduras. Preliminary objections, merits, reparations and costs*. Judgment of October 8, 2015. Series C No. 304, para. 241.

<sup>370</sup> *Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2007. Series C No. 172, para. 177, and *Case of Ruano Torres et al. v. El Salvador. Merits reparations and costs*. Judgment of October 5, 2015. Series C No. 303, para. 177.

situation exists."<sup>371</sup>

295. In cases of violence against women, the general obligations established in Articles 8 and 25 of the American Convention are supplemented and reinforced for those States that are parties, by the obligations arising from the specific inter-American treaty, the Convention of Belém do Pará.<sup>372</sup> Article 7 of the Convention of Belém do Pará requires that States take action to prevent, punish and eradicate violence against women by the adoption of a series of measures and public policies that include:

- 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;
- [...]
- 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[.]

296. The Court has indicated that, when an act of violence is committed against a woman, it is particularly important that the authorities in charge of the investigation conduct it effectively and with determination, taking into account the duty of society to reject violence against women and the obligations of the State to eradicate it and to ensure that the victims have confidence in the State institutions for their protection.<sup>373</sup>

297. Non-consensual or involuntary sterilization is one of the many practices encompassed by the concept of violence against women (*supra* para. 254) and, to this extent, the standards development in this Court's case law regarding the obligation to investigate in cases of violence against women become applicable. However, contrary to previous cases which related to rape, death, ill-treatment and violations of personal liberty committed in a general context of violence against women,<sup>374</sup> the Court notes that this cases refers to a violation of sexual and reproductive rights, in which the physician deprived I.V. of her reproductive function without her informed consent in a public hospital during a caesarean section. According to the evidence that has been presented, this non-consensual sterilization did not form part of a State policy and did not take place during an armed conflict or as part of a general and systematic attack on the civilian population. However, in this Court's opinion, this does not mean that the said act should be classified merely as the ineptitude of the physician, but rather it constitutes a significant violation of human rights and, in particular, a crass disregard for the sexual and reproductive rights and the autonomy of women.

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<sup>371</sup> *Judicial Guarantees in States of Emergency (Arts. 27.2, 25 and 8 The American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24, and *Case of the Kaliña and Lokono Peoples v. Suriname*, *supra*, para. 237.

<sup>372</sup> *Cf. Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 258, and *Case of Velásquez Paiz et al. v. Guatemala*, *supra*, paras. 108 and 145.

<sup>373</sup> *Cf. Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 193, and *Case of Velásquez Paiz et al. v. Guatemala*, *supra*, para. 108.

<sup>374</sup> *Cf. Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 344; *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, para. 287; *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 193; *Case of Rosendo Cantú et al. v. Mexico*, *supra*, paras. 176 and 177; *Case of J. v. Peru*, *supra*, para. 350; *Case of Veliz Franco et al. v. Guatemala*, *supra*, para. 185; *Case of Espinoza Gonzáles v. Peru*, *supra*, paras. 241 and 242, and *Case of Velásquez Paiz et al. v. Guatemala*, *supra*, paras. 145 and 146.

298. Indeed, as stressed by the Special Rapporteur on violence against women, its causes and consequences, “[v]iolence and violations of women’s reproductive health may result either from direct State action, via harmful reproductive policies, or from State failure to meet its core obligations to promote the empowerment of women[, and this implies] the State’s obligation to act with due diligence to prevent, investigate, and punish violation.”<sup>375</sup>

299. Therefore, the protection of the rights of women by access to opportune, adequate and effective remedies to redress such violations comprehensively and to avoid a recurrence of such facts in future is extremely relevant if it is considered that, nowadays, in the context of medical care and access to health care services, women continue to be vulnerable to violations of their sexual and reproductive rights, in most cases through discriminatory practices that are the result of the application of prejudicial stereotypes.

300. That said, the Court considers that the need to criminalize certain violations of sexual and reproductive rights, as well as the evaluation of cases in which a criminal investigation is appropriate, should respond to a careful and balanced examination of the circumstances of the case, since some criminal offenses may be openly incompatible with human rights obligations because they limit or deny access to sexual and reproductive health.<sup>376</sup>

301. It is clear that international criminal law establishes an obligation, as a domestic legal reflection of the Rome Statute, to define forced sterilization as a crime against humanity and a war crime (*supra* para. 204), and this practice may even constitute an act of genocide.<sup>377</sup> That obligation evidently involves an obligation to investigate *ex officio* such conduct.

302. Regarding international practice, the Committee for the Elimination of Discrimination against Women has ruled on the obligation of States to adopt effective measures to prevent and remedy non-consensual, involuntary, coerced or forced sterilizations, including establishing appropriate sanctions and measures of compensation.<sup>378</sup> Thus, in its General Recommendation No. 24 of 1999, it indicated that “States parties should not permit forms of coercion, such as non-consensual sterilization, [...] that violate women’s rights to informed consent and dignity.”<sup>379</sup>

303. Meanwhile, the Human Rights Committee has recognized the importance of establishing in domestic law a right to compensation of people subjected to forced sterilization,<sup>380</sup> as well as

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<sup>375</sup> UN, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, *Policies and practices that impact women’s reproductive rights and contribute to, cause or constitute violence against women*, E/CN.4/1999/68/Add.4, January 21, 1999, paras. 44 and 47.

<sup>376</sup> Cf. UN, Committee on Economic, Social and Cultural Rights, General Comment No. 22, *The right to sexual and reproductive health*, March 4, 2016, para. 40.

<sup>377</sup> Even though it is not expressly established as genocide, forced sterilization may constitute a genocidal act if, based on paragraphs (b) and (d) of Article 6 of the Rome Statute, it is performed on individuals of a specific “national, ethnical, racial or religious group,” irrespective of the means used to perform the sterilization and provided that the intent is to destroy this group, in whole or in part.

<sup>378</sup> In a case of non-consensual sterilization, the Committee for the Elimination of Discrimination against Women recommended: “[m]onitor public and private health centres, including hospitals and clinics, which perform sterilization procedures so as to ensure that fully informed consent is being given by the patient before any sterilization procedure is carried out, with appropriate sanctions in place in the event of a breach.” UN, Committee for the Elimination of Discrimination against Women, *A.S. v. Hungary* (Communication No. 4/2004), CEDAW/C/36/D/4/2004, August 29, 2006, para. 11.5. In another case, it urged the State “to adopt a comprehensive law protecting women, including disabled women, from forced sterilization and abortion.” Committee for the Elimination of Discrimination against Women, Concluding observations with regard to Kuwait, CEDAW/C/KWT/CO/3-4, November 8, 2011, para. 49.

<sup>379</sup> UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 24, *Women and health*, 1999, para. 22.

<sup>380</sup> Cf. UN, Human Rights Committee, Concluding observations with regard to Japan, CCPR/C/79/Add.102, November 19,

mechanisms to ensure that all procedures are following in obtaining the full and informed consent of women and, to investigate what happened if this has not been obtained.<sup>381</sup>

304. Furthermore, the Committee against Torture has accorded particular importance to rapid, impartial, exhaustive and effective investigation in cases in which persistent reports of involuntary, forced or coerced sterilizations are verified in order to identify and punish those involved in such practices, and provide the victims with fair and adequate compensation.<sup>382</sup>

305. In its General Comment No. 22 of 2016 on the right to sexual and reproductive health, the Committee on Economic, Social and Cultural Rights indicated that States Parties “must put in place laws, policies and programmes to prevent, address and remediate violations of the right of all individuals to autonomous decision-making on matters regarding their sexual and reproductive health, free from violence, coercion and discrimination.”<sup>383</sup>

306. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also called upon States to adopt measures with regard to abuses in health care settings and, in particular, to:

72. [...] (e) Outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups; and ensure that health-care providers obtain free, full and informed consent for such procedures and fully explain the risks, benefits and alternatives in a comprehensible format, without resorting to threats or inducements, in every case[.<sup>384</sup>]

307. Additionally, the United Nations Interagency Statement established that access should be provided “to administrative and judicial redress mechanisms, remedies and reparations for all people who were subjected to forced, coercive or involuntary sterilization procedures, including compensation for the consequences” and that States should “[p]romptly, independently and impartially investigate all incidents of forced sterilization and ensure appropriate sanctions where responsibility has been established.”<sup>385</sup>

308. The Inter-American Commission of Women in its Second Hemispheric Report on the Implementation of the Convention of Belém do Pará<sup>386</sup> recommended making forced sterilization “a common crime, so that the individual perpetrator can be prosecuted for forcibly sterilizing individual victims.”

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1998, para. 31.

<sup>381</sup> Cf. UN, Human Rights Committee, Concluding observations with regard to Slovakia, CCPR/C/SVK/CO/3, April 20, 2011, para. 13.

<sup>382</sup> Cf. UN, Committee against Torture, Concluding observations with regard to Slovakia, CAT/C/SVK/CO/2, December 17, 2009, para. 10; Committee against Torture, Concluding observations with regard to Peru, CAT/C/PER/CO/5-6, January 21, 2013, para. 15, and Committee against Torture, Concluding observations with regard to Kenya, CAT/C/KEN/CO/2, June 19, 2013, para. 27.

<sup>383</sup> Cf. UN, Committee on Economic, Social and Cultural Rights, General Comment No. 22, *El derecho a sexual and reproductive health*, March 4, 2016, para. 29.

<sup>384</sup> UN, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/31/57, January 5, 2016, para. 72.e).

<sup>385</sup> Cf. United Nations Interagency Statement “Eliminating forced, coercive and otherwise involuntary sterilization,” adopted by OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO, 2014 (evidence file, volume VIII, annex 25 to the brief with motions, pleadings and evidence, folio 2459).

<sup>386</sup> Cf. OAS, Second Hemispheric Report on the Implementation of the Convention of Belém do Pará, Mechanism to Follow Up on the Implementation of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (MESECVI), April 2012, p. 43, Available at: <https://www.oas.org/es/mesecvi/docs/MESECVI-SegundoInformeHemisferico-FN.pdf>.

309. Meanwhile, the case law of the European Court of Human Rights, which was abundantly cited in the arguments of the parties, has referred mainly to the positive obligations in cases of non-consensual sterilization, which were examined under the procedural obligation of the prohibition of ill-treatment. The European Court argued that:

123. Articles 1 and 3 of the Convention impose positive obligations on the Contracting Parties, designed to prevent and provide redress for various forms of ill-treatment. In particular, in a similar manner to cases raising an issue under Article 2 of the Convention, there is a requirement to conduct an effective official investigation [...].

124. The investigation in such cases must be thorough and expeditious. However, the failure of any given investigation to produce conclusions does not, by itself, mean that it was ineffective: an obligation to investigate "is not an obligation of result, but of means" [...].

125. In cases raising issues under Article 2 of the Convention in the context of alleged medical malpractice the Court has held that where the infringement of the right to life or to personal integrity is not caused intentionally, the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case. In the specific sphere of medical negligence the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability of the doctors concerned to be established and any appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained [...].<sup>387</sup>

310. Ultimately, a review of international practice reveals that a wide range of measures are considered appropriate to remedy a non-consensual, involuntary, coerced or forced sterilization, depending on the circumstances of the case and the context in which the facts occurred. Nevertheless, the Court considers it necessary to indicate that, if prior, free, full and informed consent is an essential requirement to guarantee that a sterilization is not contrary to international standards, the possibility should also exist to file a claim before the corresponding authorities in those cases in which the physician has failed to comply with that ethical and legal requirements of medical practice, in order to establish the corresponding responsibilities and have access to compensation. These measures should include the availability of and access to administrative and judicial remedies to file claims if prior, free, full and informed consent has not been obtained, and the right for such claims to be examined promptly and impartially. To the contrary, this would deny the practical effects of the rule of informed consent .

311. In brief, the Court considers that there is growing recognition that the practice of non-consensual, involuntary, coerced or forced sterilization cannot remain unpunished, because this would lead to perpetuating discriminatory stereotypes in the area of reproductive health at the institutional level based on the belief that women are not competent to take decisions concerning their own bodies and health. This does not necessarily mean that criminal proceedings are required in every case, but that the State should provide mechanisms for filing complaints, which are adequate and effective to establish individual responsibilities, in either the disciplinary, administrative or judicial sphere, as appropriate, so as to ensure adequate redress to the victim.

312. That said, in its case law this Court has established that the obligation to conduct a criminal investigation and the corresponding right of the presumed victims or their next of kin derives not only from the treaty-based norms of international law that are binding for the States Parties, but is also derived from domestic law relating to the obligation to investigate, *ex officio*, certain wrongful acts, and from the laws that permit victims or their next of kin to file actions and submit complaints, evidence and motions or any other element in order to play a procedural role in the

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<sup>387</sup> ECHR, *Case of V.C. v. Slovakia*, No. 18968/07. Judgment of November 8, 2011, paras. 123 to 125. Similarly, *Case of N.B. v. Slovakia*, No. 29518/10. Judgment of June 12, 2012, para. 84, and *Case of I.G., M.K. and R.H. v. Slovakia*, No. 15966/04. Judgment of November 13, 2012, para. 129 (evidence file, volume VIII, annexes 26, 27 and 28 to the brief with motions, pleadings and evidence, folios 2474 to 2577).

criminal investigation with the aim of establishing the truth of the facts.<sup>388</sup> Given the fact that, in this case, criminal proceedings were instituted for the offense of injuries, the Court will now examine whether the corresponding actions aimed at establishing the criminal responsibility of the physician for the non-consensual sterilization of I.V. were in accordance with the American Convention.

### *B.2 Determination of the effects of the closure of the criminal proceedings*

313. According to the widely disseminated jurisprudence of the countries of this hemisphere surgical procedures of a therapeutic nature (curative or palliative) do not correspond to the offense of "injuries." Even though this circumstance has not been alleged, and considering that it would be an effective plea for the defense, it is an inherent duty of a rigorous judicial process to examine and discard this possibility, in order to make it clear that the closure of the criminal proceedings prejudiced the victim.

314. In this case, the purpose of the procedure performed on I.V. was of a preventive, therapeutic nature, which would not constitute "injuries" if it had been carried out in accordance with the rules of medical practice; that is, respecting the obligation of care that corresponds to the profession, because, to the contrary, the physician would have incurred fault liability (imprudence or negligence). The non-criminal nature of procedures is conditioned by the observance of the duty of care in accordance with the rules of medical practice. This duty obliges doctors to take special care to ensure that their interventions will improve the patient's health and will not cause new and greater harms or paradoxical effects. Health, according to the classic definition of the WHO,<sup>389</sup> is a state of biological and psychological balance. In the case of I.V., it has been proved that, as a result of the sterilization, even though the risk of a possible future pregnancy was neutralized, she has suffered very severe and real psychological harm, consisting in psychotic or similar episodes, characterized especially by intermittent persecutory delusions that required her internment in a psychiatric ward. These considerations allow the Court to conclude that the victim was harmed as a result of being deprived of the possibility of obtaining a judgment.

### *B.3 Determination of the scope of the State's international responsibility owing to the criminal proceedings*

315. In its consistent case law, the Court has indicated that the obligation to investigate is an obligation of means and not of results that must be assumed by the State as an inherent legal duty and not as a mere formality preordained to be ineffective, or as a measure taken by private interests that depends on the procedural initiative of the victims or their next of kin or on the contribution of probative elements by private individuals.<sup>390</sup> In addition, due diligence requires that the investigating agency should take all the steps and make all the inquiries necessary to achieve the result pursued. To the contrary, the investigation is ineffective in the terms of the Convention.<sup>391</sup>

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<sup>388</sup> Cf. *Case of García Prieto et al. v. El Salvador. Preliminary objection, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 168, para. 104, and *Case of Velásquez Paiz et al. v. Guatemala, supra*, para. 144.

<sup>389</sup> The Preamble to the Constitution of the World Health Organization, which was adopted by the International Health Conference held in New York from June 19 to July 22, 1946, signed on July 22, 1946 and entered into force on April 7, 1948, defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."

<sup>390</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Quispialaya Vilcapoma v. Peru, supra*, para. 161.

<sup>391</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits reparations and costs*. Judgment of March 1, 2005. Series C No. 120, para. 83, and *Case of Velásquez Paiz et al. v. Guatemala, supra*, para. 143.

316. The Court considers that the State had the obligation to act with due diligence and to adopt the pertinent measures to avoid delays in the processing of the proceedings, and to ensure the prompt settlement of the case in order to prevent the facts remaining unpunished, as occurred in this case. However, on examining the State's actions during the criminal proceedings conducted into the facts, the Court finds that a series of obstacles and flaws were verified that undermined the effectiveness of the proceedings and resulted in a declaration that the criminal action had extinguished after four years had passed without a final decision. First, the Court notes that, on four separate occasions, it was not possible to constitute the court that was supposed to hold the oral trial (*supra* paras. 95, 97, 98 and 99), thereby delaying the proper progress of the proceedings. This was because the candidates for the posts of lay judges had not received notification or because, on the day that the court was supposed to be constituted, an insufficient number of citizens came forward to constitute the court jury. In the Court's opinion, this reveals a systemic problem because, although this situation had been verified in this case, it was repeated in different jurisdictions. Also, on another occasion, the defense counsel and the prosecutor established that the lay judges had been elected improperly and this resulted in a criminal complaint for malfeasance against one of the judges<sup>392</sup> (*supra* para. 96). Lastly, it is noticeable that, on two occasions, convictions were struck down owing to procedural flaws; once for a deficient action of the court itself when recording the proceedings of the oral trial, and the other when delivering the judgment (*supra* paras. 94 and 102). In conclusion, the Court considers that the authorities failed to ensure that I.V. had effective access to justice to remedy the violations of her rights.

317. The Court reiterates that the ineffectiveness of the judicial system in individual cases of violence against women promotes a culture of impunity that facilitates and encourages the repetition of acts of violence, in general, and sends a message that violence against women may be tolerated and accepted, and this leads to its perpetuation and the social acceptance of the phenomenon, to the feeling and sensation of insecurity for women, and also to their persistent lack of confidence in the system for the administration of justice.<sup>393</sup> This ineffectiveness or indifference constitutes, in itself, discrimination against women in access to justice.

318. The Court also notes that, in the case of I.V., multiple factors of discrimination in access to justice converged intersectionally, associated with her condition as a woman, her socio-economic situation, and her condition as a refugee.

319. Indeed, in this case, this discrimination also resulted in a violation of access to justice based on I.V.'s socio-economic situation, because the changes in jurisdiction for hearing the case at the stage of the second and third criminal trial, created a geographical obstacle to the accessibility of the court. This involved the high socio-economic cost of having to travel a great distance – and even having to travel approximately 255 km. in the case of the proceedings before the Sica Sica Court – and having to pay for the transportation, accommodation and other costs of the journey not only for herself but also for the witnesses, which evidently resulted in an unjustified impairment of her right to obtain justice. This constituted discrimination in access to justice based on socio-economic status pursuant to Article 1(1) of the Convention.

320. In addition, the Court notes that the fact that she had refugee status, in other words, that she was a person who had been forced to flee from her country of origin and seek international

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<sup>392</sup> Cf. Brief requesting the annulment of the constitution of the lay court of April 15, 2003 (evidence file, volume X, annex 26 to the answering brief, folio 3702), and Brief submitted by Dr. Raúl Gastón Huaylla Rivera, Technical Judge of the First Trial Court, in the case FIS No. 894, of May 9, 2003 (evidence file, volume VII, annex 29 to the submission of the case, folio 2209).

<sup>393</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico*, *supra*, paras. 388 and 400, and *Case of Velásquez Paiz et al. v. Guatemala*, *supra*, para. 176.

protection because she had a well-founded fear of persecution, meant that I.V. and her husband again felt unprotected in their search to obtain justice because, as a result of their claims, they were subject to different types of pressure, including inquiries about the terms and conditions of their residence in Bolivia.<sup>394</sup>

321. The discrimination experienced by I.V. in access to justice was caused not only by numerous factors, but also arose from a specific form of discrimination resulted from the intersection of these factors; that is, if any of these factors had not existed, the discrimination would have been of a different nature.<sup>395</sup>

#### B.4 Conclusion

322. Based on the above, the Court concludes that the State failed to comply with its obligation to ensure, without discrimination, the right of access to justice pursuant to Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument. In addition, the State of Bolivia failed to comply with its positive obligation to take measures to prevent and to remedy discriminatory situations in violation of Article 7(b), (c), (f) and (g) of the Convention of Belém do Pará.

323. Regarding the alleged violation of Article 25(2)(a) of the American Convention, the Court considers that there is insufficient evidence to substantiate a ruling on its alleged violation.

### IX REPARATIONS (Application of Article 63(1) of the American Convention)

324. Based on the provisions of Article 63(1) of the American Convention,<sup>396</sup> the Court has indicated that any violation of an international obligation that has produced harm results in the obligation to redress this adequately and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>397</sup>

325. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the

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<sup>394</sup> During the domestic oral trial, when asked if he had felt pressured during the investigation, J.E. stated that “[f]rom the start of the investigation, I believe this was so; I was summoned by the Immigration Directorate to inquire about my presence [...]. [After some inquiries had been made], the report indicated by the representative of the Directorate [...] indicated that they were investigating my legal residence status at the request of Dr. Edgar Torrico. During the proceedings, my wife received telephone calls and threats, when the preceding trial ended, we were photographed by someone [...], who was a member of the police force [...].” Statement made by J.E. on July 27, 2004, according to the record of the oral hearing issued by the Copacabana Trial Court (evidence file, volume XII, annex 1(c)) to the State’s final arguments, folio 4757). See also, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), Consideration of reports submitted by States Parties under Article 73 of the Convention, List of issues to be taken up in connection with the consideration of the initial report of Bolivia, CMW/C/BOL/Q/1, November 30, 2007, para. 11 (evidence file, volume VIII, annex 40 to the brief with motions, pleadings and evidence, folios 2716 to 2720).

<sup>395</sup> Cf. *Case of Gonzales Lluy et al. v. Ecuador, supra*, para. 290.

<sup>396</sup> Article 63(1) of the Convention stipulates that “[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.”

<sup>397</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 210.

Court will determine measures to ensure the rights that have been violated and to redress the consequences of such violations.<sup>398</sup> Accordingly, the Court has considered the need to grant diverse measures of reparation in order to redress the harm comprehensively so that, in addition, to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition are particularly relevant for the harm caused.<sup>399</sup>

326. The Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the damage proved, and the measures requested to redress the respective harm. Consequently, the Court must observe the concurrence of these factors to rule appropriately and pursuant to the law.<sup>400</sup> In addition, the Court considers that the reparations should include an analysis that takes into account not only the right of the victim to obtain redress, but also incorporates a gender perspective, in both their establishment and implementation.

327. Based on the violations of the Convention declared in the preceding chapters, the Court will now proceed to examine the claims presented by the Commission and the representative, in light of the criteria established in its case law with regard to the nature and scope of the obligation to make reparation, in order to establish measures aimed at repairing the harm caused to the victim.<sup>401</sup>

### **A. Injured party**

328. According to Article 63(1) of the Convention, the injured party is considered to be the person who has been declared a victim of the violation of any of the rights recognized therein. Therefore, the Court considers that I.V. is the “injured party” and, in her capacity as a victim of the violations declared in this judgment, she will be considered the beneficiary of the reparations that the Court orders.

### **B. Rehabilitation**

329. The **Commission** asked that the Court order the State to provide I.V. with high-quality medical care, tailored to her individual needs and appropriate to treat her medical conditions.

330. The **representative** asked the Court to order the State, following a medical, psychological and psychiatric appraisal, to provide, free of charge, through its specialized health care institutions, and immediately, adequately and effectively, medical, psychological and/or psychiatric treatment, if I.V., N.V. and L.A. requested this, following their prior informed consent. The representative also asked that this assistance should include the supply, free of charge, of any medicines that they might require, taking into consideration medical conditions related to the facts of this case. In addition, she asked that the respective treatment be provided, insofar as possible, in the center nearest to their place of residence, for as long as necessary. Lastly, the representative asked that the treatment or therapy provided should be paid for by the State, respond to the needs of the victims, and result from mutual agreement between the State and the beneficiaries.

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<sup>398</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, *supra*, para. 26, and *Case of Herrera Espinoza et al. v. Ecuador*, *supra*, para. 210.

<sup>399</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, paras. 79 to 81, and *Case of Herrera Espinoza et al. v. Ecuador*, *supra*, para. 214.

<sup>400</sup> Cf. *Case of Ticona Estrada v. Bolivia. Merits reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Herrera Espinoza et al. v. Ecuador*, *supra*, para. 211.

<sup>401</sup> Cf. *Case of Velásquez Rodríguez. Reparations and costs*, *supra*, paras. 25 to 27, and *Case of Herrera Espinoza et al. v. Ecuador*, *supra*, para. 213.

331. The **State** noted with concern that the representative had requested comprehensive measures of reparation in favor of I.V., N.V. and L.A., without considering that “[t]he aftereffects that I.V. is alleging today, are the result, as she herself has acknowledged, of the acts of torture to which she was subjected in Peru and, therefore, do not correspond to the surgical procedure that is the subject of these proceedings” and that “[a]ny problems that N.V. and L.A. may display cannot be considered a result of a State intervention; [but rather] a consequence of their way of life owing to I.V.’s psychological traumas, resulting from the alleged torture suffered in Peru.” In this regard, the State argued that “since consent is a categorical requirement for the absence of international responsibility, [it] considers the request for comprehensive reparation for I.V., N.V. and L.A. to be totally inadmissible.” The State asked the Court to “take into account that I.V. never requested a reversal of the tubal ligation and this, at the very least, calls into question the presumed victim’s statements on the serious harm done to her life project.”

332. Having verified the serious harm to her personal integrity suffered by I.V. as a result of the facts of this case (*supra* Chapter VIII-2), the Court finds, as it has in other cases,<sup>402</sup> that it is necessary to establish a measure of reparation that provide adequate care for the victim’s physical and psychological ailments, according to her gender specificity<sup>403</sup> and history. To contribute to redressing this harm, the Court establishes the obligation of the State to provide medical care to I.V., free of charge, through its specialized health institutions and immediately, adequately and effectively, specifically in the area of sexual and reproductive health, as well as psychological and/or psychiatric treatment, including the free supply of any medicines she might eventually require, taking into account her conditions. This signifies that I.V. must receive differentiated treatment in relation to the process and procedure required to be attended in public hospitals. Also, the respective treatments must be provided, insofar as possible, in the centers nearest to her place of residence in Bolivia, for as long as necessary. In particular, the psychological treatment should be provided by State personnel and institutions specialized in attending to victims of facts such as those that occurred in this case related to the victim’s sexual and reproductive health.<sup>404</sup> When providing the psychological and/or psychiatric treatment, the particular circumstances and needs of the victim must be considered, so that she is provide with family and individual treatment, as agreed with her and following an individual evaluation. In this regard, and based on I.V.’s condition, an evaluation should be made of whether to include the members of her family in the treatment. I.V. has six month from notification of this judgment to advise the State of her intention to receive psychological and/or psychiatric treatment, and the State shall have two months from the date it receives this request to provide the psychological and/or psychiatric treatment requested.

### C. Satisfaction

333. The **representative** asked the Court to order the State to publish the judgment in one of the two La Paz newspapers with the most widespread circulation throughout out the country (“*La Razón*” and “*Página Siete*”); in the Government’s official newspaper (“*Cambio*”), and in the Official Gazette. In addition, the representative requested that the State organize an act to offer a public apology to I.V. for the violations suffered in relation to non-consensual sterilization and the denial of justice. In this regard, the representative asked that the apology should be made by a senior State official, and that the act be organized and carried out in coordination with I.V. During the public

<sup>402</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of Tenorio Roca et al. v. Peru, supra*, para. 284.

<sup>403</sup> Cf. *Case of Fernández Ortega et al. v. Mexico, supra*, para. 251, and *Case of Rosendo Cantú et al. v. Mexico, supra*, para. 252.

<sup>404</sup> Cf. *Case of Rosendo Cantú et al. v. Mexico, supra*, para. 252, and *Artavia Murillo et al. (“In vitro fertilization”) v. Costa Rica, supra*, para. 326.

hearing, the **Commission** asked the Court to include measures of satisfaction among the reparations in this case, and the **State** did not present any specific arguments on this point.

### *C.1 Publications*

334. The Court finds, as it has in other cases,<sup>405</sup> that the State should publish, within six months of notification of this judgment: (a) the official summary of the judgment prepared by the Court, once, in the Official Gazette in an appropriate and legible font size; (b) the official summary of the judgment prepared by the Court, once, in a newspaper with widespread national circulation in an appropriate and legible font size, and (c) the judgment in its entirety, available for one year, on an official website.

335. The State must inform this Court immediately after making each of the publications ordered, regardless of the one-year time frame for the presentation of its first report established in the fifteenth operative paragraph of the judgment.

### *C.2 Act to acknowledge responsibility*

336. As it has previously,<sup>406</sup> the Court finds it necessary, in order to repair the harm caused to the victim and to avoid a repetition of facts such as those of this case, to establish that the State must organize a public act to acknowledge international responsibility for the facts of this case. During the act, reference must be made to the human rights violations declared in this judgment. Also, the public act must be held in the presence of senior State officials and the victim. The State must reach agreement with I.V. or her representative regarding the way in which the public act to acknowledge responsibility is implemented, as well as all the necessary details, such as the place and date. The State has one year to comply with this reparation as of notification of this judgment.

## **D. Guarantees of non-repetition**

337. The **Commission** asked the Court to order the State to take all necessary steps to avoid the repetition of similar facts and, in particular, to review policies and practices applied in all hospitals to obtain the informed consent of all patients. The Commission also requested that the State adopt laws, public policies, programs and directives to ensure that the right of everyone to be informed and counseled in matters relating to their health is respected, as well as the right not to be subjected to procedures or treatments without having given their informed consent, when this is applicable. These measures should give special consideration to the particular needs of those who are in a situation of vulnerability owing to the intersection of factors such as their sex, race, economic situation, or immigrant status.

338. The **representative** asked the Court to order Bolivia to prepare, through the Ministry of Health, a publication of general scope on the prohibition of forced sterilization and the rights of women, as well as on the relevant national and international mechanisms of protection.

339. The **State** argued that the requests for guarantees of non-repetition were inadmissible because Bolivia had laws and public policies to counteract any manifestation of discrimination against women and immigrants. The State indicated that these measures included the promulgation of the "Law against racism and all forms of discrimination" and The National Strategic

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<sup>405</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs, supra*, para. 79, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 227.

<sup>406</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs, supra*, para. 81, and *Case of Tenorio Roca et al. v. Peru, supra*, para. 293.

Plan on Reproductive Health 2009-2015. In this regard, the State considered that it had complied fully with its obligations with regard the right to non-discrimination for reasons of sex or national origin, both in the treatment accorded to I.V. since she arrive in Bolivia, in the operating theater where the caesarean section and the tubal ligation were performed, and in the protection afforded by the laws of Bolivia.

340. The Court has already verified the impact on I.V.'s right to personal integrity produced by the tubal ligation without her prior, free, full and informed consent (*supra* Chapters VIII-1 and VIII-2). Bearing in mind that the State has a legal framework that may prevent the repetition of situations such as those of this case,<sup>407</sup> the Court considers that it is important to put in practice the obligation of active transparency in relation to the sexual and reproductive health care services to which women in Bolivia have a right. This imposes on the State the obligation to officially provide the public with the maximum amount of information, including the information required to access such services. This information should be complete, comprehensible, current, and provided in an accessible language. In addition, since important sectors of the population do not have access to the new technologies and since many of their rights may depend on such sectors having information on how to make those rights effective, the State must identify effective ways in which to comply with the obligation for active transparency in these circumstances.<sup>408</sup>

341. Consequently, the Court considers that, in the context of implementation of the Bolivian laws that regulate access to sexual and reproductive health care, the State must adopt the necessary measures to ensure that, in all public and private hospitals, the prior, free, full and informed consent of women is obtained in the case of procedures that involve sterilization. To this end, the Court, as in another case,<sup>409</sup> finds it pertinent to order the State to produce a publication or leaflet that sets out in a synthetic, clear and accessible form, the rights of women in relation to their sexual and reproductive health established in the international standards, and those established in this judgment and in the domestic laws of Bolivia, as well as the obligations of medical personnel when providing care in the area of sexual and reproductive health. This publication should specifically mention the need for prior, free, full and informed consent. It must be available in all Bolivian public and private hospitals for both patients and medical personnel, and on the website of the Ministry of Health and Social Services. In addition, access to this leaflet or publication should be provided through the Office of the Ombudsman and civil society organizations working in this area. Following implementation, the State must provide an annual report on this measure for three years.

342. Also, taking into account that the violations of I.V.'s autonomy and reproductive freedom were due to negative gender-based stereotypes in the health sector (*supra* para. 236), a measure of reparation must be ordered to avoid the repetition of facts such as those of this case. To this end, the Court orders the State, within one year, to adopt permanent education and training programs for medical students and professionals, as well as for all personnel who are members of the health and social security system, on issues relating to informed consent, gender-based discrimination and stereotypes, and gender-based violence.

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<sup>407</sup> Cf. Ministerial Resolution No.789 of December 2003 "Manual of technical contraception techniques"; Law 3131 of August 8, 2005, on the exercise of the medical profession; Ministerial Resolution No. 090 of February 26, 2008, adopting the technical document on "Obtaining informed consent"; Ministerial Resolution No. 1 of January 5, 2010, adopting the "Contraception standards, rules, protocols and procedures"; Ministerial Resolution No. 579 of May 7, 2013, issuing the "National standards for clinical care"; Ministerial Resolution No. 47 of 2004, issuing the "Bolivian Code of Medical Ethics and Deontology."

<sup>408</sup> Cf. *Case of Furlan and family v. Argentina*, *supra*, para. 294.

<sup>409</sup> Cf. *Case of Furlan and family v. Argentina*, *supra*, para. 295.

### **E. Other measures requested**

343. The **Commission** asked the Court to order the State to investigate the facts surrounding the sterilization of I.V. without her consent and to establish the appropriate responsibilities and sanctions. The Commission also asked that the State investigate the flaws in the practices of the Judiciary and its auxiliary organs that permit excessive delays in judicial proceedings, and adopt the necessary measures to ensure effective access to justice through due process of law and an expedite and efficient administration of justice.

344. The **representative** asked the Court to order Bolivia to re-open the criminal proceedings against the medical team responsible for I.V.'s forced sterilization and to investigate, prosecute and sanction, by both disciplinary and criminal proceedings, all the agents of justice, judicial officials, prosecutors, judges and magistrates who acted with a lack of diligence in the criminal proceedings against the authors of the forced sterilization suffered by I.V.

345. The **State** indicated that it was not appropriate to re-open the extinguished criminal proceedings, because this was impossible *de facto* and *de iure*. It also indicated that the administrative disciplinary proceeding underway against the physician was sufficient to ensure I.V.'s access to justice and that the mechanism of the extinction of the criminal action protected the physician because it constitutes a guarantee of due process recognized by the inter-American system. The State considered that the Court had only required that the statute of limitations be declared inadmissible in cases of egregious human rights violations and that the case of I.V. did not constitute a grave violation of human rights. Regarding the prosecution of the agents of justice, the State indicated that I.V. had not filed charges against the judges and judicial officials involved in the proceedings alleging a violation of her rights and judicial guarantees owing to the presumed actions of these officials; therefore, respecting the time frame established for the prescription of the action in disciplinary proceedings, it was not feasible to open an investigation to this end. Similarly, the State indicated that it was working on strengthening the institutional capacity of its organs of justice by the implementation of a series of policies under the Sectoral Plan for Plural Justice (2012-2015).

346. The **representative** also asked this Court to order the State to name the operating theater in the La Paz Women's Hospital after the victim. It indicated that this designation should be made in a public act in the presence of the victim, the members of her family and senior representatives of the State, including from the Judiciary. She also asked the Court to order Bolivia to take the following measures of non-repetition: (i) inclusion of this judgment in the curriculum of the deontology course in the Faculties of Medicine and of Law of the country's public and private universities and in the curriculum for training judges of the State's School for Judges, and also in the training program for prosecutors of the School of Prosecutors; (ii) adoption of measures to provide training on the rights of women for all public officials involved in the processing of cases of violence against women so that they are able to apply domestic laws and international standards when prosecuting such crimes adequately, and that they respect the integrity and dignity of the victims and their next of kin when they report these facts and during their participation in the proceedings; (iii) adoption of public policies aimed at reframing stereotypes about the role of women in society and promoting the eradication of discriminatory socio-cultural patterns that prevent full access to justice, which include training programs and comprehensive prevention policies; (iv) strengthening the institutional capacity of the Judiciary, the Public Prosecution Service, the Forensic Research Institute, and the Police with financial and human resources to combat the pattern of impunity in cases of violence against women; (v) systematization of the decisions of regional and international agencies for the protection of the human rights of women concerning investigation processes in cases of violence against women, permitting this information to be accessible to agents of justice throughout the country; (vi) adoption, as soon as possible after notification of the judgment, of all the draft bills indicated by the State in its report on

compliance with the Commission's recommendations of December 22, 2014, including: the bill on "Declaration of national priority of criminalization of medical negligence in Bolivia"; the bill regulating the provision of services by public health, social welfare, and private health entities; the bill on medical responsibility; the bill against medical malpractice, and the contributions to the second draft by the Ombudsman and the observations of the Bolivian Medical Association, provided these are compatible with international human rights standards, and (vii) appropriate implementation, as soon as possible following notification of the judgment, of all the public policies indicated by the State in its report on compliance with the Commission's recommendations of December 22, 2014, provided they are compatible with international human rights standards; these include: (a) the technical document on "Obtaining informed consent" adopted by Ministerial Resolution No. 090 on February 26, 2008, which contains basic standards, protocols and forms for obtaining consent; (b) the "Rights-based contraception standards, rules, protocols and procedures" adopted by Ministerial Resolution No. 517 on December 30, 2003; (c) the Standard for voluntary surgical contraception-bilateral tubal ligation in cases of reproductive risk MSPS 4-98, adopted by Ministerial Resolution No. 789 on November 17, 1998, and (d) the National Strategic Plan for Sexual and Reproductive Health, 2009-2015.

347. With regard to the measures requested that have been described previously, the Court finds that the delivery of this judgment, together with the other measures ordered, are sufficient and adequate to remedy the violations suffered by the victim and does not find it necessary to order additional measures.

#### ***F. Compensation for pecuniary and non-pecuniary damage***

348. The **Commission** asked the Court to order the State "to provide comprehensive reparation to I.V. for the human rights violations established in [its Merits] Report, taking into consideration her prospects and her needs, including compensation for the pecuniary and non-pecuniary damage suffered."

349. The **representative**, in her final written arguments, asked for the State to comply with payment of the financial reparations as soon as possible, taking into consideration the significant financial problems that I.V. and her family have faced. The representative also asked that none of the payments made by the State be subject to any taxes of charges, so that the victims and their representatives receive the sums ordered by the Court in full.

350. The representative indicated, with regard to pecuniary damage, that "I.V. had destroyed most of the documentation supporting the expenses she had incurred since 2000 during an emotional crisis in 2013 as a result of which she had to be interned in a psychiatric establishment diagnosed with organic schizophreniform disorder." This disorder, and the 2013 crisis, were the result of the facts of this case. Therefore, as evidence, the representative only attached a few documents to support the expenses incurred by I.V. and asked the Court to calculate the pecuniary damage taking into account objective and reasonable parameters and the criteria for the principle of equity. Also, the representative requested: (i) for loss of or detriment to the earnings of I.V. over the last 15 years of emotional instability and her personal commitment to obtain justice, which resulted in her being unemployed for most of the time and made it impossible for her to obtain permanent, stable, reliable and well-paid employment and to promote her life project, the sum of 308,772 bolivianos, equivalent to US\$44,363, and (ii) for health care expenses incurred by I.V., the sum of US\$4,500.<sup>410</sup> To this end, she asked that the Court take into account as a

<sup>410</sup> Regarding the health care expenses, the representative presented a report on the minimum expenses incurred by I.V., which indicated that, despite attempts to recover the information lost during the incident, it was not possible to recover all the information required to determine the specific items of expenditure. She therefore asked that the Court consider the other medical services justified in annexes 11, 13, 14 to the Merits Report, the expense report presented, the parameters for medical fees in the department of La Paz, and the expenditure that it had not been possible to justify.

minimum parameter for “some of the health care expenses” incurred by I.V., the sum of US\$1,088, calculated based on certifications from several health care centers, pharmacy invoices, and medical fees, and (iii) for the expenses incurred in the search to obtain justice before diverse administrative entities of the State, the sum of US\$862. In conclusion, with regard to the pecuniary damage caused to the victim and established under the three headings described above, the representative requested the sum of US\$49,725. However, she also asked that “[i]f the Court [...] did not agree with the calculation of the pecuniary damage requested, [...] it make a calculation based on the principle of equity, taking into account the amounts mentioned and the parameters suggested.”

351. The representative requested the sum of US\$400,000 for all the non-pecuniary damage caused to I.V. and her two daughters, specifying US\$300,000 for I.V. and a total of US\$100,000 for the two daughters. The representative indicated that, in addition to the psychological harm that the victim experienced owing to the sterilization and judicial discrimination, she had to support and confront social, psycho-social and family consequences as a result of the facts. Among these, the representative underscored: (i) the disintegration of the relationship with her partner; (ii) the abandonment of the care of her daughters owing to the need to advance the judicial proceedings at the national and international levels; (iii) the alteration of her life project because she had to devote her time to the judicial proceedings and psychological therapy, which meant that she was unable to obtain stable, reliable and permanent employment; (iv) the fact that she had to cope with the attempted suicide of her daughter N.V., who was overwhelmed by the circumstances arising from her mother’s situation, and (v) the re-victimization, discrimination and stigmatization over the last 15 years because she had claimed her rights and would not remain silent and passive regarding all that happened. Also, the representative asked that “[i]f the Inter-American Court did not agree with the calculation of the non-pecuniary damage requested, [...] it make a calculation based on the principle of equity, taking into account the amounts mentioned.”

352. The **State** argued, with regard to the pecuniary damage, that the petition indicates that I.V. decided to stop working to devote herself to her family, so it could not be claimed that the State was responsible for the results of that choice. It also argued that it was not coherent to allege that with two diplomas, one in hotel administration and the other in law, “she could only obtain ‘casual work’ that ‘did not last long’ owing to her health complications that, as the State has proved, cannot be attributed to facts that took place in Bolivia, or because she had to devote her time to following up on the criminal proceedings, in the understanding that she had a lawyer and, under no circumstances, had to spend all her time on this.”

353. The State argued that “the sum requested by the representative (US\$300,000) as reparation for presumed non-pecuniary harm caused to I.V. is inadmissible, because the bilateral tubal ligation procedure was performed with her consent.” The State argued that it was not responsible for repairing the non-pecuniary harm suffered by I.V., because it was not caused either by its officials, or by indirect actions carried out to the detriment of I.V., so that the ailments and supposed aftereffects that she has at present cannot and should not be attributed to the State. In its final written arguments, the State indicated that it was not possible to differentiate between the aftereffects of the facts that occurred in Peru from supposed aftereffects of the medical procedure of tubal ligation. Thus, it argued that the I.V.’s psychological disorders that triggered a sensation of persecution related to various factors prior to the sterilization, so that it was impossible to isolate these from the facts of this case to explain her psychological reactions. The State also argued that there were factors unrelated to the sterilization that influenced I.V.’s separation and the break-up of her family. Consequently, the State asked the Court to reject the harm alleged by I.V.

354. In its case law, the Court has developed the concept of pecuniary damage and the circumstances in which it should be compensated. The Court has established that pecuniary damage supposes “the loss of, or detriment to, the victims’ income, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus with the

facts of the case."<sup>411</sup>

355. The Court has also developed the concept of non-pecuniary damage in its case law and has established that this "may include both the suffering and anguish caused by the violation, and the impairment of values that have great significance for the individual, and any alteration of a non-pecuniary nature in the living conditions of the victims."<sup>412</sup> Since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated, for the purposes of full reparation to the victim, by the payment of a sum of money or the delivery of goods and services with a monetary value, which the Court determines by the reasonable application of sound judicial criteria and based on the equity principle.<sup>413</sup>

356. In Chapters VIII-1, VIII-2 and VIII-3, the Court has established the international responsibility of the State for the non-consensual sterilization to which I.V. was subjected, which annulled her autonomy and possibility of taking decision that accorded with her life project, causing her severe physical and psychological suffering. The Court has also determined that the facts constituted a case of denial of justice.

357. The Court takes note that the specific harm indicated by the representative referred to the loss of earnings, the expenditure for medical and psychological treatments to date, and the expenses associated with processing the domestic proceedings and the procedure before the Inter-American Commission. The Court notes that the representative did not submit any evidence about I.V.'s salary before the surgical procedure or her wages following this event, and did not provide specific information about the time she was unemployed. Regarding the other expenses, it should be noted that the representative advised that the victim destroyed various documents during an emotional crisis.

358. The Court does not have sufficient probative elements to determine the precise pecuniary and non-pecuniary damage caused in this case. However, based on the criteria established in its consistent case law, the circumstances of the case, the nature and severity of the violations committed, as well as the suffering caused to the victim's physical, moral and mental well-being, the Court finds it pertinent to establish, in equity, for pecuniary and non-pecuniary damage the sum of US\$50,000.00 (fifty thousand United States dollars) which must be paid within the time frame established by the Court.

### **G. Costs and expenses**

359. The **representative** indicated that: (i) regarding the costs and expenses of the domestic criminal case, I.V. does not have documentation to support her disbursements. However, she calculated that the global amount disbursed for the criminal case, including the three oral trials and the appeals (in addition to the expenses for transportation, photocopies, transcripts, telephone calls, etc.) amounted to US\$6,000 over four years. If the Court did not agree with this request, she asked that it make a calculation based on criteria of equity, but taking into account as a "minimum parameter" the tariff of the La Paz Lawyers' Professional Association, which equaled US\$3,922. She asked that this sum be paid to I.V.; (ii) regarding the costs and expenses relating to the disbursements made by I.V. in the international procedure before the Commission, up until March

<sup>411</sup> *Case of Bámaca Velásquez v. Guatemala. Reparations and costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Flor Freire v. Ecuador, supra*, para. 251.

<sup>412</sup> *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 241.

<sup>413</sup> *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs, supra*, para. 53, and *Case of Chinchilla Sandoval v. Guatemala, supra*, para. 308.

6, 2015, she asked for reimbursement of US\$862, or that the Court calculate the amount corresponding to this item based on equity, and (iii) regarding the costs and expenses relating to the disbursements in the procedure before the Commission since March 6, 2015, and during the proceedings before the Court, she indicated that the cost for *Derechos en Acción* of representing I.V. before the inter-American system amounted to US\$6,143.

360. In her final written arguments, the representative presented a table updating the information on "expenses and costs" and established that the final amount for costs and expenses amounted to US\$18,290 (or Bs. 127,298). Regarding the State's request that the Court reject the amount of costs and expenses for *Derechos en Acción* as it was a non-profit organization, the representative indicated that "non-profit" did not mean that this association did not require financial recognition of its specialized work in the area of international legal matters and the reimbursement of duly authenticated disbursements, so that this argument should be rejected. She also asked that the payment in favor of *Derechos en Acción* be made directly to this association.

361. The **State** considered that "[b]ased on the information on the domestic proceedings submitted to the Court and the evident negligence of I.V. by failing to file the corresponding appeals against the ruling that decided the extinction of the criminal action, it was not appropriate for the Court to determine costs and expenses for an extinct criminal case." Regarding the representation expenses of *Derechos en Acción*, the State argued that "[a]ccording to the power of attorney attached to the [motions and pleadings brief], *Derechos en Acción* is a non-profit organization; thus, the request for US\$6,143 is totally contrary to the nature of this organization." Consequently, it asked the Court to reject all aspects of the financial claim made by the representative.

362. The Court reiterates that, pursuant to its case law, costs and expenses form part of the concept of reparation, because the actions taken by the victims in order to obtain justice, at both the national and the international level, involve disbursements that should be compensated when the international responsibility of the State has been declared in a judgment convicting it. Regarding the reimbursement of expenses, it is for the Court to assess their scope prudently, and this includes those arising before the authorities of the domestic jurisdiction and also those generated during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the principle of equity and taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.<sup>414</sup> As it has indicated on other occasions, the Court recalls that it is not sufficient merely to forward probative documents; rather the parties are required to include arguments that relate the evidence to the fact that it is considered to represent and, in the case of alleged financial disbursement, the items and their justification must be clearly established.<sup>415</sup>

363. In this case, the expenses incurred by I.V. were taken into account to determine the compensation for pecuniary damage. However, the representative provided evidence to authenticate the expenditure incurred by *Derechos en Acción*. The table of expenditure presented included: (i) cost of legal representation; (ii) cost of time spent on legal work specific to this case by the staff of *Derechos en Acción*; (iii) miscellaneous administrative expenses; (iv) external legal advice, and (v) travel to the public hearing in San José by the representatives (Rielma Mencias, Fernando Zambrana and Marcelo Claros). Based on the authenticated expenses related to the case,

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<sup>414</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Tenorio Roca et al. v. Peru, supra*, para. 342.

<sup>415</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 277, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 248.

the Court determines that the State should deliver the sum of US\$18,290 (eighteen thousand two hundred and ninety United States dollars) to *Derechos en Acción*. At the stage of monitoring compliance with this judgment, the Court may require the State to reimburse the victim or her representative for subsequent reasonable and duly authenticated expenses.<sup>416</sup>

#### **H. Reimbursement of expenditure to the Victims' Legal Assistance Fund**

364. In 2008, the General Assembly of the Organization of American States created the Victims' Legal Assistance Fund of the inter-American human rights system "to facilitate access to the inter-American human rights system by persons who currently lack the resources to bring their cases before the system."<sup>417</sup> In this case, the Fund provided the financial assistance required to cover the necessary transportation and accommodation expenses for I.V. to take part in the public hearing, as well as the reasonable expenditure for preparing and forwarding the affidavits of N.V., Emma Bolshia Bravo and Andre Gautier. The State did not submit any observations on the report on this expenditure.

365. Owing to the violations declared in this judgment and because the requirements for access to the Fund were met, the Court orders the State to reimburse this Fund the sum of US\$1,623.21 (one thousand six hundred and twenty-three United States dollars and 21 cents) for the necessary expenses incurred to ensure the appearance of the deponent at the public hearing of this case, as well as for the preparation and forwarding of the affidavits. This amount must be reimbursed within six months of notification of this judgment.

#### **I. Method of complying with the payments ordered**

366. The State must make the payments of compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the person and organization indicated herein, within one year of notification of this judgment in accordance with the following paragraphs.

367. If the beneficiary is deceased or dies before she receives the respective compensation, this shall be delivered directly to her heirs, pursuant to the applicable domestic law.

368. The State must comply with its monetary obligations by payment in United States dollars or the equivalent in Bolivian currency using the exchange rate in force in the Central Bank of the Plurinational State of Bolivia, the day before the payment to make the respective calculation.

369. If, for reasons that can be attributed to the beneficiary of the compensation or her heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit the said amounts in her favor in a deposit account or certificate in a solvent Bolivian financial institution, in United States dollars, and in the most favorable financial conditions permitted by banking law and practice. If the corresponding compensation is not claimed after ten years, the sums shall be returned to the State with the interest accrued.

370. The amounts established in this judgment as compensation and to reimburse costs and

<sup>416</sup> Cf. *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits reparations and costs*. Judgment of August 24, 2010. Series C No. 214, para. 331, and *Case of Herrera Espinoza et al. v. Ecuador, supra*, para. 251.

<sup>417</sup> AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the 38<sup>th</sup> OAS General Assembly, during the fourth plenary session held on June 3, 2008, "Establishment of the Legal Assistance Fund of the Inter-American Human Rights System," Operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the OAS Permanent Council, "Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System," Article 1(1).

expenses shall be delivered to the persons and organizations indicated integrally, as established in this judgment, without any deductions arising from possible taxes or charges.

371. If the State should fall in arrears, including in the reimbursement of disbursements to the Victims' Legal Assistance Fund, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Plurinational State of Bolivia.

**X**  
**OPERATIVE PARAGRAPHS**

372. Therefore,

**THE COURT**

**DECIDES,**

Unanimously,

1. To reject the preliminary objection filed by the State in relation to the alleged lack of jurisdiction *ratione loci* of the Inter-American Court, pursuant to paragraph 21 of this judgment.

2. To reject the preliminary objection filed by the State in relation to the alleged failure to exhaust domestic remedies, pursuant to paragraphs 30 to 38 of this judgment.

**DECLARES:**

Unanimously, that:

3. The State is responsible for the violation of the rights to personal integrity, to personal liberty, to dignity, to private and family life, of access to information, and to raise a family, recognized in Articles 5(1), 7(1), 11(1), 11(2), 13(1) and 17(2) of the American Convention on Human Rights, in relation to the obligations to respect and to ensure, without discrimination, these rights contained in Article 1(1) of this instrument, and also for failing to comply with its obligations under Article 7(a) and b) of the Convention of Belém do Pará, to the detriment of I.V., pursuant to paragraphs 147 to 256 of this judgment.

4. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to the obligation to respect this right contained in Article 1(1) of this instrument, to the detriment of I.V., pursuant to paragraphs 262 to 270 of this judgment.

5. The State is responsible for the violation of the rights to judicial guarantees and judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to the obligations to respect and to ensure these rights without discrimination contained in Article 1(1) of this instrument, and also for failing to comply with its obligations under Article 7(b), c), f) and g) of the Convention of Belém do Pará, to the detriment of I.V., pursuant to paragraphs 288 to 322 of this judgment.

6. It is not incumbent on the Court to issue a ruling on the alleged violations of Articles 3 and 25(2)(a) of the American Convention on Human Rights, or on the right to know the truth, pursuant to paragraphs 237 and 323 of this judgment.

**AND ESTABLISHES:**

Unanimously, that:

7. This judgment constitutes, *per se*, a form of reparation.
8. The State shall provide I.V. with medical care, and specifically with regard to sexual and reproductive health, as well as psychological and/or psychiatric treatment, free of charge, through its specialized health care institutions and immediately, adequately and effectively, pursuant to paragraph 332 of this judgment.
9. The State shall make the publications indicated in paragraph 334 of this judgment.
10. The State shall organize a public act to acknowledge international responsibility for the facts of this case, pursuant to paragraph 336 of this judgment.
11. The State shall produce a publication or leaflet that explains synthetically, clearly and accessibly the rights of women in relation to their sexual and reproductive health, which should specifically mention prior, free, full and informed consent, pursuant to paragraph 341 of this judgment.
12. The State shall adopt permanent education and training programs for medical students and medical professionals, and also for all personnel who are members of the health and social security system on the issues of informed consent, gender-based discrimination and stereotypes, and gender-based violence, pursuant to paragraph 342 of this judgment.
13. The State shall pay the amounts established in paragraphs 358 and 363 of this judgment, as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, pursuant to the said paragraphs and to paragraphs 366 to 371.
14. The State shall reimburse the sum disbursed during the processing of this case to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, pursuant to paragraphs 365 and 371 of this judgment.
15. The State shall, within one year of notification of this judgment, provide the Court with a report on the measures adopted to comply with it, without prejudice to the provisions of paragraph 335 of this judgment.
16. The Court will monitor full compliance with this judgment, in the exercise of its attributes and in compliance with its duties under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with all its provisions.

Judge Eduardo Ferrer Mac-Gregor Poisot advised the Court of his concurring opinion, which is attached to this judgment.

Done, at San José, Costa Rica, on November 30, 2016, in the Spanish language.

Judgment of the Inter-American Court of Human Rights. Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs.

Roberto F. Caldas  
President

Eduardo Ferrer Mac-Gregor Poisot

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri  
Secretary

So ordered

Roberto F. Caldas  
President

Pablo Saavedra Alessandri  
Secretary

**CONCURRING OPINION OF  
JUDGE EDUARDO FERRER MAC-GREGOR POISOT**

**CASE OF I.V. v. BOLIVIA**

**JUDGMENT OF NOVEMBER 30, 2016  
(Preliminary objections, merits, reparations and costs)**

1. Although I am essentially in agreement with the decisions made in the judgment and adopted unanimously, I find it necessary to place on record, as I stated during the respective deliberations, that the case clearly involves the right to health, so that it could have been examined in light of Article 26 of the American Convention on Human Rights in application of the *iura novit curia* principle, instead of subsuming this right in other precepts of the Pact of San José that were declared to have been violated in the judgment. As I have stated on other occasions, this traditional approach of subsuming rights by connectivity does not contribute to the interdependence and indivisibility of the rights, whether civil, political, economic, social, cultural or environmental, especially at the current stage of development of international human rights law.

2. In the judgment, the Court chose to consider "health as an integral part of the right to personal integrity."<sup>1</sup> Whereas an approach that focused on the social rights would have provided greater conceptual clarity to the real reason for the violations suffered by the victim. Indeed, it should not be overlooked that the central dispute in this case consisted in determining whether the medical procedure of bilateral tubal ligation performed on I.V. by a public official in a State hospital, was contrary to the State's international obligations. Thus, the crucial aspect was to elucidate whether this procedure was performed following the patient's informed consent, under the parameters established in international law for this type of medical act at the time of the facts. The Court found it "pertinent to proceed, first, to provide content to the scope of the rights established in the American Convention that have been alleged in this case and that are applicable with regard to sexual and reproductive health."<sup>2</sup>

3. The Inter-American Court considered that, at the time of the facts (2000), "the State had an international obligation to obtain, through its health personnel, the consent of patients for medical procedures and, especially, of women in the case of female sterilizations, and this should have complied with the characteristics of being prior, free, full and informed following a process of informed decision-making";<sup>3</sup> and that, for the effects of this case, sterilization without consent that had these characteristics was considered "as non-consensual or involuntary sterilization," over and above the different terminology adopted by different regional and international human rights agencies.<sup>4</sup>

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<sup>1</sup> Para. 155 of the judgment.

<sup>2</sup> Para. 147 of the judgment.

<sup>3</sup> Para. 201 of the judgment.

<sup>4</sup> See para. 204 of the judgment.

4. A careful reading of the judgment is sufficient to note that, in reality, the *right to health (sexual and reproductive)* is one of the core aspects of the case, as can be seen from the numerous references made to it in the considerations<sup>5</sup> and in the operative paragraphs of the judgment.<sup>6</sup>

5. Consequently, if the Court had chosen an approach focused on social rights, I consider that it would have clarified some aspects of the decision; for example, the distinction between the right of access to information (Article 13 of the American Convention), and the guarantee of the accessibility of information as a means or instrument to implement the right to health (under Article 26 of this treaty).<sup>7</sup>

Eduardo Ferrer Mac-Gregor Poisot  
Judge

Pablo Saavedra Alessandri  
Secretary

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<sup>5</sup> See, in particular, paras. 147, 157, 158, 163, 165, 187, 205, 209, 235, 243, 300, 305, 332, 340 and 341 of the judgment.

<sup>6</sup> Operative paragraphs 8 and 11 of the judgment.

<sup>7</sup> Thus, from a perspective of the right to health (sexual and reproductive), I understand that, when reference is made to access to information, and through this to informed consent, the intention is not to indicate that matters of lack or scant information in relation to health (sexual and reproductive) has to be analyzed in light of the right of access to information, because in cases of lack of prior informed consent and enforced or involuntary sterilization, it is the right to sexual and reproductive health that is violated directly and, interdependently, access to information, and not vice versa. Informed consent by means of the accessibility of information is a principle and a fundamental right that, in turn, protects personal autonomy, personal liberty, personal dignity, and the right to raise a family and forms part of the right to sexual and reproductive health.