INTER-AMERICAN COMMISSION OF HUMAN RIGHTS
AMICI CURIAE BRIEF

In the case of
F.S.
Petition No. P-112-09
against the state of Chile

Presented by

International Women's Human Rights Clinic
at the
City University of New York School of Law

Cynthia Soohoo
Director

Suzannah Phillips
Fellow

Olivia Carrano
Margaret O’Hora
Lauren Paulk
Legal Interns

City University of New York School of Law
2 Court Square
Long Island City, NY
Attorneys and Advocates for Amici Curiae
TABLE OF CONTENTS

Interest of the Amici..................................................................................................................3
Introduction.................................................................................................................................3
Statement of the Case................................................................................................................7
Argument................................................................................................................................10

I. Sterilization without informed consent constitutes forced sterilization................................10
II. Forced sterilization violates the right to be free from torture or cruel, inhuman or degrading treatment or punishment.........................................................................................12

A. Human rights bodies have emphasized the State’s obligation to address TCIDT violations in health care settings.................................................................
B. Forced sterilization committed by a public official is a form of TCIDT because it causes severe physical, mental, and psychological suffering...........................

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

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

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

ii. The harm suffered by F.S. constitutes CIDT and may constitute torture...........

   a. Physical/Mental Harm and Severity.................................................................

      1. Duration and Physical Effects.................................................................

      2. Mental and Psychological Effects...........................................................

      3. Sex, Age, and State of Health.................................................................

   b. Improper Purpose.........................................................................................

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

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

      3. Forced sterilization of women living with HIV constitutes discrimination on the basis of health status.............................................................

Conclusion...............................................................................................................................33
INTEREST OF THE AMICI

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

INTRODUCTION

Forced and coerced sterilization occurs when a person is sterilized without her knowledge or in the absence of informed consent.¹ Though women worldwide voluntarily use sterilization as

---

¹ Open Society Foundations, Against Her Will: Forced and Coerced Sterilization of Women Worldwide 2 (2011) [hereinafter Against Her Will]. Forced sterilization occurs when an individual is not given an opportunity to consent to the procedure. Coerced sterilization occurs when an individual is compelled to undergo sterilization as a result of financial or other incentives, misinformation, or intimidation, and therefore has not provided informed consent to the procedure. This brief uses the term “forced sterilization,” as the facts of the present case indicate that F.S. was forcibly sterilized. However, the arguments put forth apply equally to both forced and coerced sterilizations.
a form of birth control, when forced, this irreversible procedure causes severe physical and mental harm to women. Forced sterilization is disproportionally perpetrated against those from marginalized or stigmatized groups, such as women living with HIV, because some health care providers (“providers”) believe such women should not have children. These beliefs may be motivated by animus toward certain groups or stereotypes about them. Providers may presume that women from some marginalized groups are generally unfit parents due to stereotypes about health status or other factors, or providers may think that for these women, having a child would not be a “good” decision.

In order to ensure that states recognize and address violations of women’s human rights, it is critical that human rights bodies fully integrate a gender perspective into the analysis of torture, cruel, inhuman, and degrading treatment (“TCIDT”) and address issues such as forced sterilization. Applying a gender-inclusive framework has brought much-needed attention to many egregious human rights violations that women experience. For example, in November 2012 the Court ruled that a prohibition on in-vitro fertilization (“IVF”) disproportionately

---

2 Id.
5 See, e.g., Reproductive Rights Violations as Torture, supra note 4, at 19; INT’L CMTY OF WOMEN LIVING WITH HIV/AIDS, supra note 4, at 8-9; Against Her Will, supra note 1, at 5-6.
6 Manfred Nowak, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, ¶ 26, U.N. Doc. A/HRC/7/13 (Jan. 15, 2008).
interferes with women’s reproductive autonomy and constitutes a violation of mental integrity.\textsuperscript{8} Additionally, the European Court of Human Rights (“ECHR”) and the U.N. Special Rapporteur on Torture have determined that women who are forcibly sterilized are denied many basic human rights, including the right to be free from cruel, inhuman, and degrading treatment (“CIDT”) and in certain instances the right to be free from torture.\textsuperscript{9}

Forced sterilization is perpetrated disproportionately against women and is a form of gender-based violence. The inter-American system has been at the forefront of denouncing certain forms of gender-based violence as torture or CIDT\textsuperscript{10} and affording victims recognition and redress as justice demands. This case provides an opportunity for the Commission to continue to exercise leadership in addressing violations of the right to be free from gender-based violence and discrimination and to denounce the growing number of forced sterilizations occurring in marginalized communities.

International human rights standards establish that forced sterilization’s physically invasive, permanent harm coupled with the lasting psychological effects of forced infertility comprise an injury so extensive that it amounts to cruel, inhuman, and degrading treatment, and

\begin{flushleft}
\textsuperscript{10} For example, it is acknowledged that the inter-American system was the first regional body to recognize that rape constitutes torture, and began a domino effect for many other regional and international bodies to echo this conclusion. See Association for the Prevention of Torture & Center for Justice and International Law, Torture in International Law - A Guide to Jurisprudence 3-4 (2008) [hereinafter Torture in International Law Guide] (referring to Martín de Mejía v. Peru, Case 10.970, Inter-Am. C.H.R., Rep. No. 5/96, OEA/Ser.L/V/II.91, doc. 7 (1996)). Similarly, the inter-American system boasts the only treaty devoted exclusively to eliminating gender-based violence through a human rights-based approach. Organization of American States, Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, 33 I.L.M. 1534 [hereinafter Convention of Belém do Pará]. Although the Council of Europe has adopted the European Convention on preventing and combating violence against women and domestic violence, the treaty will not enter into force until August 2014.
\end{flushleft}
arguably torture. The gravity of this violation, together with reports of the systemic practice of forced sterilization throughout the region, underscores the urgency of the Commission recognizing that forced sterilization amounts to CIDT. It is also important that the Commission acknowledges—as the Special Rapporteur on Torture has—that the severity of the suffering caused by forced sterilization may amount to torture, particularly in instances like the present case where the sterilization is clearly driven by discrimination on prohibited grounds.

In recognizing forced sterilization as CIDT or torture, the Commission would be in line with numerous international bodies that have already made these pronouncements. In addressing previous claims that forced sterilizations violated Article 5 rights, the Commission has stated, “if it were proven that a sterilization procedure were carried out in a public hospital without consent...this could amount to a possible violation” of Article 5 rights. Amici urge the Commission to affirm these standards by clearly denouncing forced sterilization as torture or CIDT in violation of the American Convention’s Article 5 protections.

---

11 See, e.g., Report of the SR Torture 2013, supra note 9, ¶¶ 45-48; Against Her Will, supra note 1, at 2; Reproductive Rights Violations as Torture, supra note 4, at 19.
In order to demonstrate the seriousness of this particular case as well as the connected international standards on CIDT and torture, this brief (1) establishes that the failure to satisfy international standards on informed consent for surgical sterilization amounts to forced sterilization; (2) discusses the growing recognition of TCIDT in the health care setting due to the particular vulnerability of patients and disproportionate power of health care providers; and (3) analyzes why forced sterilization constitutes CIDT and may rise to the level of torture under inter-American jurisprudence and prevailing international law standards.

STATEMENT OF THE CASE

According to the petition, in early March 2002, petitioner F.S. and her husband welcomed the news that they were expecting the first of what they hoped would be many children.\textsuperscript{17} During her initial prenatal visit to the local public hospital, F.S. learned she was HIV positive.\textsuperscript{18} F.S. was then referred to her regional state hospital for specialized treatment throughout her pregnancy where she received antiretroviral treatment to reduce the risk of transmitting the virus to her fetus.\textsuperscript{19} According to the petition, at no time during her pregnancy was F.S. counseled on sterilization or any other contraceptive options.\textsuperscript{20} Under Chilean law, sterilization requires written consent memorializing the patient's decision and affirming that she received full information about the procedure, its irreversible character, and about existing

\textsuperscript{17} Petition of F.S. before the Inter-Am. C.H.R. ¶ 2 [hereinafter Petition].
\textsuperscript{18} Id. ¶ 3.
\textsuperscript{19} Id. ¶ 4.
\textsuperscript{20} Id. ¶¶ 5, 9.
alternative contraceptive methods.\textsuperscript{21} The document must be signed by the doctor and the director of the medical center.\textsuperscript{22}

A cesarean delivery was scheduled for November 5, 2002 with a doctor who had experience working with women living with HIV.\textsuperscript{23} When F.S. went into labor early on November 4, the surgery was moved up, and she was told that the surgical team on duty would substitute for the originally scheduled medical team.\textsuperscript{24} At the hospital, F.S. was placed in a gynecological room away from all other maternity patients, rather than a standard maternity room, possibly due to her HIV status.\textsuperscript{25} Then, medical staff administered antiretroviral treatment to reduce the risk of HIV transmission during childbirth.\textsuperscript{26} According to the petition, during these treatments, the attending nurse made demeaning comments to F.S., asking her how she could be so irresponsible as to bear children when she was HIV positive.\textsuperscript{27} At approximately 12:20 am on November 5, 2002, F.S. was transferred to the operating room for a caesarean delivery.\textsuperscript{28} F.S.’s son was delivered 15 minutes later at approximately 12:35 am, healthy and HIV negative.\textsuperscript{29}

According to the petition, upon waking from anesthesia in the hospital recovery room, F.S. learned from a nurse that the operating surgeon had performed a tubal ligation surgery on F.S., rendering her physically incapable of bearing any more children.\textsuperscript{30} Some members of the medical team claim that F.S. requested the sterilization after she was brought to the operating

\textsuperscript{21} República de Chile, Resolución Extenta 2326: Fija Directrices para los servicios de salud sobre esterilización femenina y masculina [Resolution 2326: Guidelines on feminine and masculine sterilizations for health care services], art. 4 (published Dec. 9, 2000).
\textsuperscript{22} Id.
\textsuperscript{23} Petition, supra note 17, ¶ 6.
\textsuperscript{24} Id., ¶¶ 6-7.
\textsuperscript{25} Id., ¶ 6.
\textsuperscript{26} Id., ¶ 8.
\textsuperscript{27} Id.
\textsuperscript{28} Id., ¶ 14.
\textsuperscript{29} Id., ¶ 15.
\textsuperscript{30} Id., ¶ 12.
room, but testimony of other members of the medical team contradict this version of events.\(^\text{31}\)

Her medical file contained a note that read, “patient requested sterilization,” but the file does not contain the signed consent document as required under Chilean law.\(^\text{32}\) F.S. states that she did not request the procedure or sign a form reflecting her consent to sterilization.\(^\text{33}\)

In the face of her inability to bear more children, the petition states that F.S. has suffered depression and has “felt like less of a woman.”\(^\text{34}\) She feels this loss acutely whenever she encounters other pregnant women or when her family members pressure her to have more children.\(^\text{35}\) Large families and female fertility are highly valued in Chile, particularly in agrarian communities like F.S.’s.\(^\text{36}\) In addition to depression, the petition reports that F.S. has felt severe shame and low self-esteem.\(^\text{37}\) The loss of F.S.’s fertility strained her relationship with her husband and caused her husband to become psychologically and physically abusive.\(^\text{38}\) The stress of infertility caused the couple to separate periodically.\(^\text{39}\) These facts, coupled with the applicable law, create a strong basis for the claim that F.S.’s forced sterilization violated her rights to physical and mental integrity and to be free from TCIDT under Articles 5(1) and 5(2) of the American Convention. Such a finding will help consolidate international standards integrating a gender perspective into the analysis of TCIDT.

\(^{31}\) *Id.* ¶ 12-13, 29.

\(^{32}\) *Id.* ¶ 9.

\(^{33}\) *Id.* ¶ 11.

\(^{34}\) *Id.* ¶ 17.

\(^{35}\) *Id.* ¶ 16.

\(^{36}\) *Id.* ¶ 17.

\(^{37}\) *Id.*

\(^{38}\) *Id.*

\(^{39}\) *Id.* ¶ 18.
ARGUMENT

1. Sterilization without informed consent constitutes forced sterilization.

Forced sterilization occurs when a person is sterilized without her knowledge or is not given a chance to consent to the procedure. Forced sterilization is a major interference with a woman’s reproductive health, bearing on many aspects of her personal integrity, including her physical and mental wellbeing and family life.  

Both the European Court of Human Rights (“ECHR”) and the Committee on the Elimination of Discrimination Against Women (“CEDAW Committee”) have determined that without informed consent, a sterilization procedure constitutes forced sterilization and a grave violation of fundamental human rights. The Commission has similarly expressed its belief that medical procedures performed on women without their informed consent may constitute a violation of Article 5 of the American Convention.

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

---

42 I.V. v. Bolivia, Case 270-07, Inter-Am. C.H.R., Report No. 40/08, OEA/Ser.L/V/II.130, doc. 22 rev. ¶ 80 (2008) (stating that “if it were proven that a sterilization procedure were carried out in a public hospital without consent…this could amount to a possible violation” of Article 5 rights). See also, ORGANIZATION OF AMERICAN STATES, ACCESS TO MATERNAL HEALTH SERVICES FROM A HUMAN RIGHTS PERSPECTIVE, ¶ 39, OEA/Ser.L/V/II. Doc. 69 (2010).
43 World Health Organization (WHO), A Declaration on the Promotion of Patients' Rights in Europe, ICP/HLE 121, Art. 3.1 (1994) [hereinafter WHO Decl.]; UN Office of the High Commissioner for Human Rights, Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ¶ 63, U.N. Doc. HR/P/PT/8/Rev.1 (2004) (“an absolutely fundamental precept of modern medical ethics is that patients themselves are the best judge of their own interests.”); Convention for the
Informed consent has three essential components: physician disclosure of the risks and benefits of, and alternatives to, the medical procedure; the patient’s understanding of that disclosure; and voluntary patient choice. Informed consent is not a patient’s mere assent to an intervention, but rather a process of communication\textsuperscript{44} between a patient and her health care provider.\textsuperscript{45} The health care provider has an affirmative duty\textsuperscript{46} to provide relevant information to the patient in a mode and in a language that she understands, to her satisfaction.\textsuperscript{47} Information required to ensure informed consent to sterilization should include the permanency of the procedure, availability of reversible contraceptive methods, and recognition that life circumstances may change, which could lead to regret about the decision later in life.\textsuperscript{48} Ethical standards warn against requesting consent when a patient is under the pressure or stress of a medical condition, such as during labor and the period immediately preceding or following delivery, or otherwise particularly vulnerable,\textsuperscript{49} as such conditions preclude voluntary patient choice.

---


\textsuperscript{45} WHO Decl., supra note 43, at 15 (defining “health care providers” as “Physicians, nurses, dentists or other health professionals.”).

\textsuperscript{46} Inter-Am. C.H.R., \textit{Access to information on Reproductive Health from a Human Rights Perspective,} ¶¶ 44-45, 49 OEA/Ser.L/V/II. Doc. 61 (2011); see also FIGO, \textit{Guidelines regarding informed consent,} supra note 44, at 219 (“it is the ethical obligation of the physician to ensure her human right to self-determination is met by the process of communication that precedes any informed consent.”).

\textsuperscript{47} \textit{See, e.g., Convention on Human Rights and Biomedicine, supra note 46,} art. 5; Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, \textit{Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,} ¶ 59, U.N. Doc. A/64/272 (2009) (stating that health care providers are “critical actors” in facilitating women’s access to information, particularly regarding family planning considerations).

\textsuperscript{48} FIGO, \textit{Female Contraceptive Sterilization,} supra note 3, at 88.

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

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

The right to be free from TCIDT is a fundamental right that is guaranteed absolutely in international and regional human rights treaties. All major human rights bodies consider the prohibition of torture to be a *jus cogens* norm, and therefore peremptory and non-derogable. While the prohibition of CIDT has not been universally embraced as a *jus cogens* norm, the Inter-American Court of Human Rights (the “Court”) has found that the right to be free from CIDT—a right distinct from freedom from torture—has reached such a fundamental status.

---

54 See *Cantoral-Benavides v. Peru*, Inter-Am. Ct. H.R., (ser. C) No. 69, ¶ 95, (Aug. 18, 2000) (regardless of whether an act constitutes torture or cruel, inhuman or degrading treatment or both, “it must be clearly understood that... they
By ratifying the several inter-American human rights treaties that strictly prohibit TCIDT, Chile is obligated to respect and ensure the right to humane treatment and the rights to physical, mental, and moral integrity, and to take steps to prevent and punish torture and ill treatment. Both the American Convention and the Inter-American Convention to Prevent and Punish Torture require states to respect and ensure the right to be free from torture and CIDT.

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

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

Regional and international human rights bodies recognize that TCIDT can occur in non-detention contexts, such as hospitals and psychiatric institutions. The Court has found violations of Articles 5(1) and 5(2) in health care settings where health care providers failed to exercise the care necessary to safeguard a patient’s right to humane treatment. Where human rights abuses occur in state-run health care facilities, the State is responsible for the rights are strictly prohibited under international human rights law.”; Berenson-Mejia v. Peru, Inter-Am. Ct. H.R., (ser. C) No. 119, ¶ 100 (Nov. 25, 2004) (stating that “torture and cruel, inhuman or degrading punishment or treatment are strictly prohibited by international human rights law. The prohibition of torture and cruel, inhuman or degrading punishment or treatment is absolute and non-derogable, even under the most difficult circumstances....”).

53 American Convention, supra note 51, art. 5(1).
54 Inter-American Torture Convention, supra note 51, arts. 1, 7.
55 American Convention, supra note 51, arts. 1, 5; Inter-American Torture Convention, supra note 51, art. 6 (“The States Parties shall take effective measures to prevent and punish torture”); art. 7 (noting that States Parties shall take measures to prevent “cruel, inhuman or degrading treatment or punishment”).
violations. In addition, since health is a public interest, it is the duty of the State to affirmatively ensure that the right to physical and mental integrity is not violated when individuals are undergoing medical treatment or when a person is seeking or in need of medical care. In a 2013 report, the Special Rapporteur on Torture stressed the importance of “examining abuses in health care settings from a torture-protection framework [in order] to solidify the understanding of these violations and to highlight the positive obligation that states have to prevent, prosecute, and redress such violations.” Thus, the State’s obligations to respect and ensure the right to be free from TCIDT extend to health care settings, and the State is responsible for such violations that occur in this context.

The Court recognizes that the health care setting exposes patients to potential violations of fundamental rights—and gives rise to specific state obligations to respect and ensure these rights—because of the particularly vulnerable condition of a person seeking or being administered medical treatment. Indeed, all those who are subjected to TCIDT in either prisons or hospitals experience an imbalance of power—whether between prisoner and prison guard or patient and provider—that renders them uniquely vulnerable to the abuses those in control may wield against them.

The Court has explicitly warned about the potential for TCIDT of patients in health care settings, stating that “the staff in charge of the care of the patients exercise a strong control or

---

60 *I.V. v. Bolivia*, Case 270-07, Inter-Am. C.H.R., Report No. 40/08, OEA/Ser.L/V/II.130, doc. 22 rev. ¶ 80 (2008) (stating that “if it were proven that a sterilization procedure were carried out in a public hospital without consent…this could amount to a possible violation” of Article 5 rights).


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

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

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

Article 5(2) of the American Convention provides that every person has the right to be free from TCIDT. Jurisprudence from the Court further establishes the inter-American system’s commitment to ensuring that all people are treated humanely and that their human dignity is respected. The Special Rapporteur on Torture has recognized forced sterilization as an act of violence and a form of social control that constitutes CIDT and in certain circumstances

---

64 Id. ¶ 107.
65 Id.
66 Id. ¶ 103.
67 Id.
68 American Convention, supra note 51, art. 5(2).
constitutes torture.\textsuperscript{70} By permanently ending a woman’s reproductive capacity, causing infertility, and imposing a serious and lasting physical change without her consent, forced sterilization causes the severe mental and physical harm\textsuperscript{71} that amounts to CIDT or torture.

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

The Court has recognized that all individuals have a right to physical and psychological integrity and that treatment violating personal integrity can range from cruel, inhuman or degrading treatment to torture.\textsuperscript{72} Allegations of torture and CIDT require the Commission to assess the physical or mental pain that a victim suffered to first determine if it rises to the level of a rights violation and then to determine whether the violation is severe enough to constitute torture.\textsuperscript{73} Torture also requires an improper purpose.\textsuperscript{74} Torture and CIDT are defined through jurisprudence from the Court and the Commission, which is informed by TCIDT analyses by human rights treaty monitoring bodies, international tribunals, and other regional courts.\textsuperscript{75}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{70} Report of the SR Torture 2013, \textit{supra} note 9, ¶ 48.
\item \textsuperscript{75} See e.g., \textit{Miguel Castro-Castro Prison v. Peru}, Inter-Am. Ct. H.R. (ser. C) No. 160, ¶¶ 303, 310, 311 (Nov. 25, 2006) (referring to the jurisprudence of the CEDAW Comm., the International Criminal Tribunal for Rwanda, the ECHR, as well as the text of the Convention of Belém do Pará, in finding that a violation of Article 5 of the American Convention had occurred); \textit{Tibi v. Ecuador}, Inter-Am. Ct. H.R., (ser. C), No. 114, ¶ 144 (Sept. 7, 2004) (looking beyond the inter-American system and demonstrating attentiveness to the wording of other international instruments and developing trends in international case law).
\end{itemize}
\end{footnotesize}
a. CIDT is conduct that causes serious physical or mental pain, suffering, or humiliation to the victim.

In *Caesar v. Trinidad & Tobago*, the Court defined cruel or inhuman treatment as “an intentional act or omission that … causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity.”

The ECHR has repeatedly held that forced sterilization violates the right to be free from torture or cruel and inhuman treatment under Article 3 of the European Convention on Human Rights. In reaching its decisions, the ECHR found that sterilization without informed consent is incompatible with human freedom and dignity and that the physical and mental harm imposed by forced sterilization constituted ill-treatment.

In determining whether treatment has risen to the level of an Article 3 violation, the ECHR considers a non-exhaustive list of objective factors, such as the duration and the physical and mental effects of the conduct, and subjective factors, such as the victim’s age, sex and gender, and state of health. Citing precedent from the ECHR, the Inter-American Court has recognized that psychological and moral suffering alone in the absence of physical injuries can...

---


constitute inhuman or degrading treatment. In I.G., a forced sterilization case, the ECHR emphasized that the mental harm that an individual subjectively feels from undergoing a forced sterilization may be enough on its own to constitute CIDT. I.G. considered the case of an applicant who underwent a hysterectomy shortly after forced sterilization. In finding that the applicant’s Article 3 rights were violated, the ECHR emphasized that CIDT is established by degrading treatment that “humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority; it may suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others.”

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

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

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The Court has also relied on Article 1 of the Convention Against Torture (CAT) in interpreting

---

84 Inter-American Torture Convention, supra note 51, art. 2.

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

The purpose requirement is discussed below in section II.B.ii.b. The primary distinction between torture and CIDT in the inter-American system is the severity of treatment;\footnote{Diego Rodríguez-Pinzon & Claudia Martin, The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System: A Handbook for Victims and Their Advocates 107 (2006).} torture is essentially a more brutal and intense form of CIDT.\footnote{See, Loayza-Tamayo v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 22, ¶ 57 (Sept. 17, 1997).} The Court employs a sliding scale rule that includes severe forms of torture at one end, and “cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects,” on the other end.\footnote{Loayza-Tamayo v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 22, ¶ 57 (Sept. 17, 1997).}

Human rights bodies and commentators have acknowledged that torture does not fit any single model and is typically a fact-intensive finding.\footnote{UNFVT, supra note 86, at 2; see CAT Comm., General Comment No. 2: Implementation of article 2 by States parties, ¶¶ 3, 10, U.N. Doc. CAT/C/GC/2 (2008) (in explaining how CIDT may be identified, the Committee recognizes that there is no complete definition of it); see also Loayza-Tamayo, Inter-Am. Ct. H.R. (ser. C) No. 22, ¶ 57 (Sept. 17, 1997) (explaining that there is no definitive way to violate Article 5 of the American Convention). The preponderance of guides to analyze torture in different international and regional systems also evidences the fact that the definition of torture has been and is being interpreted differently by different international bodies, although the
international bodies the freedom and flexibility to classify new acts as torture that were not recognized or conceived of as torture when it initially became a *jus cogens* norm.\(^9^1\) Additionally, this means that acts that were formerly classified as CIDT may now, in some cases, be classified as torture.\(^9^2\) Related to this, the flexibility of the definition of torture also allows international bodies to consider the circumstances under which acts occur, such that an act may constitute torture in some circumstances, but not in others.\(^9^3\)

Human rights bodies and experts have increasingly recognized that some specific harms only experienced by women and girls constitute TCIDT and have serious consequences for their lives.\(^9^4\) Given the inter-American system’s jurisprudence on the right to be free from TCIDT, as well as its respect for other regional and international human rights case law, the Commission should rule that forced sterilization is categorically a form of CIDT that may amount to torture in certain instances.

**ii. The harm suffered by F.S. constitutes CIDT and may constitute torture.**

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

a. Physical/Mental Harm & Severity

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

1. Duration and Physical Effects

Though the duration of the sterilization procedure is relatively short—and, here, it occurred while F.S. was under anesthesia—the physical and mental effects of undesired fertility loss, particularly in societies that prize motherhood, can be life-long. Sterilization causes a

---

95Petition, supra note 17, ¶ 4 (stating that the hospital where F.S. was sterilized is a public hospital). See also, supra, (II)(A) (Human rights bodies have emphasized the State’s obligations to address TCIDT violations in health care settings).
97 Petition, supra note 17, ¶¶ 15-16.
98 Against Her Will, supra note 1, at 2.
permanent physical harm by altering the functioning of reproductive organs, and results in the loss of the ability to conceive a biologically related child and to experience pregnancy and childbirth. The physical effects of pregnancy are easily seen and felt by everyone around an individual, and these physical aspects of pregnancy can be an important part of the experience of having a child.

Forced sterilization permanently disables reproductive capacity and is tantamount to the constructive removal of organs that provide reproductive capacity. The ECHR has found that permanent harm—such as harm to or removal of organs—violates Article 3. For example, in the case of Virabyan v. Armenia, Virabyan’s testicle was damaged after an incident of police brutality and it had to be surgically amputated. The court took into account that this mistreatment by the authorities had “lasting consequences for his health,” including the permanent loss of his left testicle. The Court further found that this harm was inflicted intentionally in order to punish or humiliate the applicant, and held that, “having regard to the nature, degree, and purpose of the ill-treatment, the Court finds that it may be characterized as an

99 FIGO, Female Contraceptive Sterilization, supra note 3, at 88.
100 Id.
101 Lori B. Andrews & Lisa Douglass, Alternative Reproduction, 65 S. Cal. L. Rev. 623, 629 (1991) (People who are unable to birth a biological child “experience feelings of anxiety, guilt, depression, anger, denial and isolation ... [people suffering from infertility] describe it as “the most upsetting experience in their lives.”).
102 See, e.g., Ianoș v. Romania, No. 8258/05, Eur. Ct. H.R. (Oct. 12, 2011) (beating by a police officer resulted in harm to and subsequent removal of applicant’s spleen, violating article 3); Necdet Bulut v. Turkey, No. 77092/01, Eur. Ct. H.R. (Nov. 20, 2007) (noting that although a single gunshot wound to applicant’s non-vital organ during arrest did not cause lasting physical damage, it “must have led to severe pain and suffering, particularly when account is taken of his young age [16] at the time of events,” violating article 3); Muta v. Ukraine, No. 37246/06, Eur. Ct. H.R. (July 31, 2012) (applicant was subjected to grievous bodily harm, including the loss of sight in one eye, falling under the scope of article 3).
104 Id.
Here, F.S. suffered a permanent physical harm that clearly violates Article 5. F.S. was forcibly deprived of her ability to naturally conceive a child. F.S.’s harm, like that in *Virabyan*, was a permanent deprivation of functioning reproductive organs that had lasting consequences for her health, including the permanent loss of reproductive capacity. Thus, the physical effects of the harm to F.S. are exceptionally severe.

2. Mental and Psychological Effects

The permanent physical harm of forced sterilization also causes lasting mental and psychological harm. The loss of the ability to conceive, carry, and give birth to a biologically related child can deprive a woman and her partner of the marital and familial closeness that can result from a wanted pregnancy. The mental and psychological suffering of women who have been forcibly sterilized is similar to the suffering of victims in cases where human rights bodies have found torture—such as *Mejia v. Peru*, where Raquel Mejia reported that a sexual assault by the armed forces caused her “physical and mental pain and suffering[,] … fear of suffering public ostracism,” and humiliation. The Commission ruled that the abuses committed against Mejia constituted torture and a violation of Article 5.

The Court has further recognized that state interference with reproductive autonomy—for instance, state restrictions on access to reproductive technology that precludes a woman from

---

105 *Id.*
106 See, e.g., Keith Alan Byers, *Infertility and In Vitro Fertilization*, 18 J. LEGAL MED. 265, 270-73 (1997) (describing the deeply painful and emotional experience couples undergo when faced with the inability to have a biological child).
108 *Id.*
being able to carry and give birth to biologically related children—carries significant mental and psychological harm, such that it violates the right to mental integrity.\textsuperscript{109} While the Court has noted that the role of a woman in society should not be defined only by her reproductive capacity, in \textit{Murillo v. Costa Rica} the Court also recognized that some women define their femininity through their ability to bear children, and the mental and psychological suffering of an infertile woman who wants to become pregnant is exacerbated when she is denied access to a medical procedure that would enable her to do so.\textsuperscript{110} The Court’s holding in this case established that the denial of the opportunity to make informed choices concerning health care, and particularly concerning the ability to conceive and bear children, causes mental suffering in contravention of Article 5 of the American Convention.\textsuperscript{111}

In addition to the mental and psychological harms brought on by forced infertility, sterilization without consent can carry a number of collateral mental and psychological harms. The Open Society Foundation has documented that the after-effects of forced sterilization can include depression, “social isolation, family discord or abandonment, fear of medical professionals, and lifelong grief.”\textsuperscript{112} In the case of \textit{V.C. v. Slovakia}, the ECHR recognized the harmful after-effects of forced sterilization, including community ostracism and marital difficulties, in finding a violation of the Article 3 right to be free from torture or cruel, inhuman or degrading treatment in the European Convention on Human Rights.\textsuperscript{113}

Here, the petition states that F.S. and her husband “were shocked and dismayed” at the

\textsuperscript{110} Id. ¶ 296.
\textsuperscript{111} Id. ¶ 317.
\textsuperscript{112} Against Her Will, supra note 1, at 2.
sterilization because they “had always planned to have a big family.” According to the petition, F.S. continues to suffer from depression, shame, and low self-esteem due to the fact that she can no longer bear children. F.S. has stated that she views fertility as a “vital part of being a woman” and feels “like less of a woman” since her forcible sterilization. The sight of other pregnant women causes F.S. to remember her own loss of fertility. This pain is exacerbated by the fact that family members—who do not know F.S. is living with HIV and infertile, due to her fear of stigma and discrimination—have routinely pressured F.S. to have more children. Chilean society places a high value on big families and female fertility, which are particularly important in rural communities like the one where F.S. lives.

Moreover, the petition states that F.S. and her husband separated periodically due to the stress of the sterilization, and under this stress F.S.’s husband became psychologically and physically abusive. In addition to this, F.S. is now “uncomfortable” seeking medical care at the hospital where she was sterilized, where she must seek routine care to manage her HIV, because the staff “has treated her with contempt and discrimination.” F.S. has been unable to access psychological care to help her cope with the loss of her fertility and the abuses committed against her, as state health care does not cover these services. Thus, the mental effects of the harm to F.S. are severe.

114 Petition, supra note 17, ¶ 16.
115 Id. ¶ 17.
116 Id.
117 Id.
118 Id.
119 Id.
120 Id. ¶ 18. This is not the first time the inter-American system has heard a case where violence against women begat more violence against women. In Ines Fernandez Ortega v. Mexico, where the victim was raped by soldiers, the stress of the incident affected the victim’s husband in such a way that he was “more violent” toward his wife. See Ines Fernandez Ortega v. Mexico, Inter-Am. Ct. H.R. (ser. C) No. 215, ¶ 140 (Aug. 30, 2010).
121 Petition, supra note 17, ¶ 19.
122 Id.
3. Sex, Age, and State of Health

The final part of the severity analysis is the consideration of subjective factors that may influence the impact of the state act or omission on the victim, including his or her sex, age, and state of health. Forced sterilization has a profound and disproportionate impact on women. Tubal ligation causes permanent infertility.\textsuperscript{123} The Court has acknowledged that this effect of forced sterilization—that is, infertility—disproportionately impacts women. In \textit{Murillo v. Costa Rica}, the Court noted WHO findings that “femininity is often defined by motherhood,”\textsuperscript{124} such that women are often blamed for infertility and may face serious consequences of infertility, including a heightened risk of violence, partner abandonment, and social ostracism.\textsuperscript{125} As the Court recognized in \textit{Murillo}, while these gender stereotypes conflict with human rights standards, it is important to “recognize[] and define[] them in order to describe the disproportionate impact” that the effects that infertility, and correspondingly forced sterilization, have on women.\textsuperscript{126} The ECHR has further noted that the subjective experience of the mental harm should be taken into consideration in determining violations of the right to be free from TCIDT.\textsuperscript{127} For women who define their femininity through their ability to bear children, as F.S. does, the subjective experience of these harms is further exacerbated. In this particular case, F.S.’s joy at giving birth to a much wanted child turned traumatic when she learned that she had been sterilized and would never be able to have children again.\textsuperscript{128}

Further, F.S.’s state of health as a woman living with HIV should be taken into account in

\textsuperscript{125} \textit{Id.} ¶¶ 295-296.
\textsuperscript{126} \textit{Id.} ¶ 302.
\textsuperscript{128} Petition, \textit{supra} note 17, ¶ 17.
the severity analysis. Individuals living with HIV are dependent on medical providers for access to antiretroviral medicines to be able to live healthy and normal lives, and abusive treatment of individuals living with HIV by medical providers can carry significant collateral consequences for the prevention and treatment of HIV. The *International Guidelines on HIV/AIDS and Human Rights* acknowledge that coercive or punitive components in the treatment of patients living with HIV can deter patients from seeking care, noting that “people will not seek HIV-related counselling, testing, treatment and support if this would mean facing discrimination … and other negative consequences.” Abusive and discriminatory care can also contribute to self-stigmatization, which can carry lasting negative physical and psychological consequences for people living with HIV. Here, the petition notes that F.S.’s experiences with discrimination and forced sterilization at the hospital where she was sterilized have made it uncomfortable for her to seek necessary medical treatment for her HIV.

Finally, at the time of her forced sterilization, F.S. was 20 years old and wanted to have many more children with her husband. The ECHR held in *V.C. v. Slovakia* that the young age of the applicant, who was also 20 at the time of the forced sterilization procedure, should be considered regarding the severity of a personal integrity violation. F.S.’s status as a young woman made her particularly vulnerable to abuses by health care providers and heightens the severity of the harm caused by her forced sterilization.

---

131 Petition, *supra* note 17, ¶ 19.
132 *Id.* ¶¶ 2, 16.
The level of severity in this case—as evidenced by the physical and mental effects of forced sterilization, and by F.S.’ young age, her sex and gender, and her status as a woman living with HIV—constitutes CIDT and arguably amounts to torture.

b. Improper Purpose

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

---


135 Inter-American Torture Convention, supra note 55, art. 2.


137 UNFVT, supra note 86, at 4 (citing MANFRED NOWAK & ELIZABETH McARTHUR, UN CONVENTION AGAINST TORTURE, A COMMENTARY 75 (2008)).

138 Id.

139 CAT, supra note 51, art. 1.
1. Forced sterilization constitutes an improper “preventative measure” designed to obliterate an essential component of a woman’s personality and diminish her physical capacities by permanently ending her reproductive capacity without her consent.

Forced sterilization of women living with HIV stems from a belief that their HIV status makes them unfit to be mothers.\textsuperscript{140} The express and sole purpose of female sterilization is “to end a woman’s ability to become pregnant.”\textsuperscript{141} As such, forced sterilization constitutes an improper “preventative measure” designed to prevent their future parenthood.\textsuperscript{142} Indeed, although it occurs in the health care setting, forced sterilization constitutes precisely the type of purposeful state action designed to obliterate the personality of the victim and diminish her physical capacity that the prohibition on torture is designed to address.

The Court has recognized that “motherhood is an essential part of the free development of a woman’s personality” and that a crucial component of this is “the decision of whether or not to become a mother … in the genetic or biological sense.”\textsuperscript{143} The State’s purpose in sterilizing F.S without her consent was to take away her reproductive capacity and ability to decide whether or not to become a biological parent. The sterilization irrevocably deprived her of the autonomy to pursue motherhood as a part of her personality. Forced sterilization also intentionally took away her physical capability to reproduce. The State’s intentional obliteration of F.S.’s personality and diminishment of her physical capabilities as a preventative measure satisfies the purpose requirement for torture in the inter-American system.\textsuperscript{144}

\textsuperscript{140} See, e.g., Against Her Will, supra note 1, at 5.
\textsuperscript{142} Inter-American Torture Convention, supra note 51, art. 2 (“torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted … as a preventive measure….”).
\textsuperscript{144} Inter-American Torture Convention, supra note 51, art. 2.
2. Forced sterilization constitutes discrimination on the basis of gender.

The Special Rapporteur on Torture has stated that the improper purpose prong is always fulfilled in instances of gender-based violence, which are “inherently discriminatory,”\(^\text{145}\) and has classified forced sterilization as a gender-based violation of the right to be free from TCIDT.\(^\text{146}\) The U.N. Special Rapporteur on Violence against Women has noted that forced sterilization constitutes a violation of physical integrity and is a form of gender-based violence.\(^\text{147}\) The Beijing Platform for Action similarly affirms that forced sterilization constitutes violence against women.\(^\text{148}\)

In the *Cotton Field* case, the Court recognized that violence against women is closely related to gender-based discrimination.\(^\text{149}\) In its decision, the Court highlighted that the CEDAW Committee defines gender-based violence as inherently discriminatory when it is either directed against a woman because she is a woman or when it disproportionately affects women.\(^\text{150}\) Similarly, under the Convention of Belém do Pará,\(^\text{151}\) gender-based violence is defined 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.”\(^\text{152}\) As discussed above and as available data demonstrates, the violence of forced sterilization—and the resulting infertility—


\(^{146}\) *Id.* ¶ 48.


\(^{150}\) *Id.* ¶ 395.

\(^{151}\) Chile has promulgated into domestic law the entirety of the Convention of Belém do Para, and is thus bound domestically and internationally to uphold its principles. See República de Chile, Promulga de la Convención Interamericana para Prevenir, Sancionar, y Erradicar la Violencia contra la Mujer, Decreto No. 1640 (*published* Nov. 11, 1998).

\(^{152}\) Convention of Belém do Pará, *supra* note 10, art. 1.
disproportionately affects women,\textsuperscript{153} putting it squarely within CEDAW’s definition of inherently discriminatory gender-based violence. Additionally, in \textit{A.S. v. Hungary}, the CEDAW Committee found involuntary sterilization to be inherently discriminatory under Article 16, paragraph 1(e) of CEDAW.\textsuperscript{154}

Additionally, the Court has determined that prioritization of an embryo or fetus over the rights of a woman constitutes gender discrimination. In \textit{Murillo v. Costa Rica}, the Court recognized that the prioritization of embryos used in IVF over the rights of a woman who wants to become pregnant perpetuates improper stereotypes of the role of women in reproduction, recognizing this as a form of gender-based discrimination.\textsuperscript{155} The CEDAW Committee similarly recognized the prioritization of the health of a fetus over the rights and health of the pregnant woman as a form of gender-based discrimination in the case of \textit{L.C. v. Peru}.\textsuperscript{156} In the instant case, the forced sterilization of F.S. to prevent her from becoming pregnant in the future similarly prioritizes the health of potential future children over the physical and psychological integrity of F.S. in contravention of international standards on non-discrimination.

As found by numerous international bodies, forced sterilization constitutes violence against women and gender-based discrimination. Further, where the purpose of a forced sterilization reflects a prioritization of the interests of potential future children over a woman’s rights, it constitutes gender discrimination. Thus, the ‘purpose’ prong for finding an act to be torture is also satisfied because of the gender discrimination inherent in the State’s actions.


3. Forced sterilization of women living with HIV constitutes discrimination on the basis of health status.

It is widely recognized that forced sterilization disproportionately affects women who are already marginalized in their societies.\(^{157}\) Pervasive discrimination against individuals living with HIV exists throughout the region, prompting the Commission to “call on OAS Member States to remove all legal and factual barriers that hinder the full enjoyment of human rights by … persons living with HIV and AIDS.”\(^{158}\)

There have been reports that involuntary sterilization of women living with HIV is a systemic problem in Chile\(^ {159}\) and is an increasingly global phenomenon.\(^ {160}\) International human rights experts have reported that because of the high level of stigma that exists around HIV and AIDS, health care providers often justify forced or coerced sterilization on the basis that they do not think individuals living with HIV should be able to have children.\(^ {161}\) This stigma persists despite well-established evidence of low transmission rates of HIV when women and hospital staff take the proper precautions\(^ {162}\) and despite the recognition that everyone has the right to marry and found a family.\(^ {163}\)

\(^{157}\) Against Her Will, supra note 1, at 2, 5; Statement by Michael Sidibe, Joint United Nations Programme on HIV/AIDS (UNAIDS), Thematic Panel Discussion on HIV, Giving Voice to People Living with and Affected by HIV 3, 19th Sess. of the Human Rights Council, Geneva (Mar. 20, 2012); Human Rights Watch, Sterilization of Women and Girls with Disabilities 1-2, (2011); Report of the SR Torture 2013, supra note 9, at ¶ 48; Namibian Women’s Health Network et al., At the Hospital There Are No Human Rights, 27 (2012); FIGO Female Contraceptive Sterilization, supra note 3, at 88; Reproductive Rights Violations as Torture, supra note 4, at 19.

\(^{158}\) Press Release, The IACHR, the CIM, UNAIDS, and PAHO call on OAS Member States to eradicate stigma and discrimination surrounding HIV in the Americas (Dec. 17, 2012).

\(^{159}\) Against Her Will, supra note 1, at 5 (citing FRANCISCO VIDAL AND MARINA CARRASCO, MUJERES CHILENAS VIVIENDO CON VIH/SIDA: DERECHOS SEXUALES Y REPRODUCTIVOS? [available in Spanish] (2004)).

\(^{160}\) See, e.g., HUMAN RIGHTS WATCH, supra note 12, at 39-41; Kendall, supra note 12, at 84; INT’L CMTY OF WOMEN LIVING WITH HIV/AIDS, supra note 4; Anna-Maria Lombard, South Africa: HIV-positive Women Sterilised Against Their Will, City Press, June 7, 2010; Ertürk, supra note 12, ¶ 69.

\(^{161}\) Report of the SR Torture 2013, supra note 9, ¶ 48; Anand Grover, supra note 47, ¶ 55.


\(^{163}\) American Convention, supra note 51, art. 17(2).
In this case, an attending nurse who was caring for F.S. belittled her on the basis of her HIV status.\textsuperscript{164} This fact, coupled with the ongoing sterilization of—and pervasive discrimination against—women living with HIV in Chile,\textsuperscript{165} suggests that the sterilization was conducted with a discriminatory purpose based on F.S.’ health status. Just as \textit{Cotton Field} highlighted a culture of gender-based discrimination,\textsuperscript{166} this case, and the data on forced sterilization of women living with HIV in Chile and around the world, highlights a culture of HIV-based discrimination.\textsuperscript{167} Due to the increasing recognition of HIV status as a basis for discriminatory forced sterilization, the Commission should—as a leader in the human rights field and as a protector and promoter of justice—set a strong precedent that warns states the world over that forced sterilization constitutes a grave human rights violation. Amici urge the Commission to make such a finding specific to the forced sterilization of individuals living with HIV.

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

\section*{CONCLUSION}

Forced sterilization is cruel, inhuman, and degrading treatment, and in certain instances

\begin{footnotesize}
\begin{enumerate}
\item Petition, \textit{supra} note 17, ¶ 8.
\item Against Her Will, \textit{supra} note 1, at 5 (citing \textsc{Francisco Vidal, et al.}, \textit{supra} note 159).
\item See generally \textsc{Francisco Vidal, et al.}, \textit{supra} note 159; \textsc{Dignity Denied}, \textit{supra} note 162; \textsc{Human Rights Watch}, \textit{supra} note 12, at 39-41; Kendall, \textit{supra} note 12, at 84; \textsc{Int’l Cmtys of Women Living with HIV/AIDS}, \textit{supra} note 4; Anna-Maria Lombard, \textit{supra} note 160; Ertürk, \textit{supra} note 12, ¶ 69.
\end{enumerate}
\end{footnotesize}
amounts to torture, particularly where the reason for the sterilization is inherently discriminatory. Forced sterilization constitutes violence against women and is an egregious human rights violation, especially where the victim belongs to a marginalized group, such as women living with HIV. Based on the standards outlined above as well as the facts in this case, the forced sterilization of F.S. constitutes cruel, inhuman, and degrading treatment, violates her physical and mental integrity, and arguably amounts to torture. The Commission should thus find Chile in violation of Articles 5(1) and 5(2) of the American Convention and establish clear precedent that forced sterilization of women living with HIV constitutes a grave violation of human rights.