

# I.V. v. Bolivia

## ABSTRACT<sup>1</sup>

*This case is about the sterilization, by tubal ligation, of a woman without her prior consent. The Court found violations of both the American Convention and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (“Convention of Belém do Para”). It did not discuss, however, the violation of the Right to Health (Art. 26 of the Convention) implicated in the case.*

## I. FACTS

### A. Chronology of Events

**1982:** I.V., a Peruvian citizen, gives birth to her first daughter.<sup>2</sup>

**Late 1980’s–Early 1990s:** I.V. is the victim of physical, sexual and psychological harassment perpetrated by the National Directorate Against Terrorism of Peru (DINCOTE).<sup>3</sup>

**1989:** I.V. meets J.E., and they begin a romantic relationship.<sup>4</sup>

**1991:** Their daughter N.V. is born.<sup>5</sup>

**1993:** J.E. migrates to La Paz, Bolivia, from Peru where he is granted refugee status.<sup>6</sup>

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1. Sebastian Richards, Staffer; Edgar Navarette, Editor; Erin Gonzalez, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 336, ¶ 61 (Nov. 30, 2016). (Available only in Spanish).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

**1994:** N.V. and I.V. join him in La Paz in 1994 and receive refugee status two months later.<sup>7</sup> While in La Paz, I.V. obtains a hotel administration degree.<sup>8</sup>

**February 2000:** I.V., now age 35, is pregnant with her third daughter.<sup>9</sup> She applies for Bolivia's universal maternal and child health insurance, and basic health insurance and begins to receive pre-natal health care from the La Paz Women's Hospital.<sup>10</sup>

**July 1, 2000:** I.V. visits the La Paz Women's Hospital after experiencing an unplanned rupture of her cervical membrane during the thirty-eighth week of pregnancy.<sup>11</sup> Additionally, she still suffers from recurring abdominal pain caused by the caesarean birth of her first daughter in 1982.<sup>12</sup> The physician treating I.V. performs a cesarean section.<sup>13</sup> The physician decides this is the most appropriate treatment because of I.V.'s previous cesarean section, she is not in labor, and her unborn child is in a diagonal position.<sup>14</sup> The procedure is performed by the hospital's obstetrician gynecologist team, a third-year resident physician, an anesthesiologist, a technician, and two assistants.<sup>15</sup>

After 7:00 pm, I.V. receives epidural anesthesia, and the resident physician begins the cesarean section procedures.<sup>16</sup> Multiple adhesions are found in her lower uterus, making the procedure difficult and risky.<sup>17</sup> Given the delicate nature of operation, the head obstetrician gynecologist takes control of the surgery.<sup>18</sup> After the child, a baby girl, is delivered, the medical team ties I.V.'s fallopian tubes, which will prevent any future pregnancies.<sup>19</sup> All this occurs while I.V. is under epidural anesthesia.<sup>20</sup>

J.E. signs the "family authorization for surgery or special treatment" form pertaining to the cesarean section.<sup>21</sup> However, I.V. does

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7. *Id.*

8. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 61.

9. *Id.* ¶ 62.

10. *Id.* ¶ 5.

11. *Id.* ¶ 63.

12. *Id.*

13. *Id.*

14. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 63.

15. *Id.*

16. *Id.* ¶ 64.

17. *Id.*

18. *Id.*

19. *Id.*

20. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 64.

21. *Id.* ¶ 65.

not sign the authorization.<sup>22</sup> During the operation, the obstetrical gynecologist requests for J.E.'s presence so he may sign the authorization for the I.V.'s tubal ligation procedure.<sup>23</sup> However, J.E. is not found and the procedure is performed anyway.<sup>24</sup>

**July 2, 2000:** Doctor Marco Vargas informs I.V. that they performed a tubal ligation procedure during her child's delivery to preserve her life.<sup>25</sup>

**July 3, 2000:** The resident physician updates the hospital progress report that "[I.V.] was informed that bilateral tubal ligation was performed by medical suggestion."<sup>26</sup> I.V. is informed that if she became pregnant again, it would jeopardize her life.<sup>27</sup>

I.V. denies giving the doctors verbal permission to perform the tubal ligation.<sup>28</sup> She stated Dr. Torrico "never consulted me, [offered] no explanation at all ... the doctor inhumanely decided over my life, over my body, he tied my fallopian tubes with the most radical method... the Pomeroy method, mutilating my dreams ... and those of my family."<sup>29</sup> The physician claims to have received consent from I.V.<sup>30</sup>

**July 5, 2000:** I.V. and her newborn daughter are discharged from the hospital.<sup>31</sup>

**August 22, 2000:** The Audit Committee of the Women's Hospital (*Comité de Auditoria del Hospital de la Mujer*) issued a report from its first audit.<sup>32</sup> The report states that due to the complication during the surgery, the surgeons consulted the patient, who, although under anesthesia, was conscious and confirmed the procedure, after which the medical surgical team of Dr. Vargas, internal Dr. Arnez, and assistant Maria Modesta Ticona proceeded with the operation.<sup>33</sup> I.V.'s husband's authorization is determined to have been unavailable.<sup>34</sup>

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22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* ¶ 69.

26. *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, ¶ 67.

27. *Id.* ¶ 67.

28. *Id.* ¶ 68.

29. *Id.* ¶ 69.

30. *Id.* ¶ 70.

31. *Id.* ¶ 71.

32. *I.V. v. Bolivia*, Preliminary Objection, Merits, Reparations and Costs, ¶¶ 73-74.

33. *Id.* ¶ 74.

34. *Id.*

**August to September 2000:** I.V. is diagnosed with placental remnants in the endometrial cavity, acute endometritis, and an abdominal wall abscess.<sup>35</sup>

**March 9, 2001:** The Departmental Committee of Medical Audit of the Departmental Health Service of La Paz (*Comité Departamental de Auditoría Médica del Servicio Departamental de Salud de La Paz*; “SEDES”) performs a second medical audit.<sup>36</sup> The committee decides that “the procedure of bilateral salpingoclasia (i.e. tube ligation) was performed prophylactically and in the preservation of future maternal well-being.”<sup>37</sup> It also states that it “fully endorses the report prepared by the Audit Committee of the Women’s Hospital.”<sup>38</sup>

**March 13, 2001:** An audit committee prepares a third report to determine the cause of the procedure committee and then submits it to the Medical Audit Decisions Committee of the General Directorate of Health Services of the Ministry of Health and Social Welfare (*Comité de Decisiones de Auditoría Médica de la Dirección General de Servicios de Salud de Ministerio de Salud y Previsión Social*; “Medical Audit Decisions Committee”).<sup>39</sup> The Committee concludes the medical history contains mistakes and that I.V.’s life was not in jeopardy, and therefore her sterilization was not necessary.<sup>40</sup>

**October 5, 2001:** The Ethics Tribunal of the Departmental Medical College of La Paz (*Tribunal de Ética del Colegio Médico Departamental de La Paz*; “Ethics Tribunal”) issues a report.<sup>41</sup> The Ethics Tribunal’s findings are inconsistent with those determined by the Medical Audit Decisions Committee.<sup>42</sup> The Ethics Tribunal concludes that a bilateral salpingoclasia of the Pomeroy type would fall within the “special treatment” authorized in the form signed by J.E.<sup>43</sup> The Ethics Tribunal also finds that I.V. verbally consented to the bilateral salpingoclasia.<sup>44</sup> Furthermore, the Ethics Tribunal determines that the bilateral salpingoclasia had to be performed in the same procedure as

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35. *Id.* ¶ 114.

36. *Id.* ¶ 75.

37. *Id.* ¶ 76.

38. *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, ¶ 76.

39. *Id.* ¶ 77.

40. *Id.* ¶ 78.

41. *Id.* ¶ 80.

42. *Id.*

43. *Id.* ¶ 81.

44. *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, ¶ 82.

the caesarean section because there was no prior indication that the bilateral salpingoclasia would have been necessary.<sup>45</sup> The Ethics Tribunal also concludes that written consent was not available, and overlapping statements confirm verbal consent was obtained for the procedure.<sup>46</sup> The Ethics Tribunal also finds that the inconsistencies in the auditing procedures lead to structural issues.<sup>47</sup> As a result, the Ethics Tribunal finds it unnecessary to sanction the doctor who performed the tubal ligation.<sup>48</sup>

**March 2002:** I.V. is diagnosed with atrophic endometritis, an abnormally thin lining of the uterus.<sup>49</sup>

**May 12, 2002:** The Technical Director of the Department of Peace Health Services (SEDES) receives recommendations from the Ombudsman and the Minister of Health and Social Welfare.<sup>50</sup> Subsequently, the Technical Director instructs the Legal Department of the Department of Health Service of La Paz to begin an administrative process.<sup>51</sup>

**May 17, 2002:** The administrative process against the doctor and the resident physician begins.<sup>52</sup>

**July 25, 2002:** The Chief of the Legal Counseling Unit of SEDES delivers the final decision in the administrative process.<sup>53</sup> The decision establishes administrative accountability of the doctor.<sup>54</sup> In addition, the decision dismisses the resident physician because of his lower status as a resident, and the fact that he complied with internal regulations that prohibit him from performing surgery without input from a Professor.<sup>55</sup> The same resolution confirms that although the doctor may have been correct from a medical perspective to perform the tubal ligation surgery, the decision to perform the surgery was incorrect from a legal perspective because the procedure requires patient consent.<sup>56</sup>

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45. *Id.* ¶ 83.

46. *Id.*

47. *Id.* ¶ 84.

48. *Id.*

49. *Id.* ¶ 114.

50. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 86.

51. *Id.*

52. *Id.*

53. *Id.* ¶ 87.

54. *Id.*

55. *Id.*

56. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 88.

**August 31, 2002:** Criminal charges are filed against the doctor in the Second Court of La Paz for not obtaining patient consent prior to performing the tubal ligation procedure.<sup>57</sup>

**October 26, 2002:** I.V. requests to become a civil party in the action against the doctor.<sup>58</sup>

**November 18, 2002:** The doctor is sentenced to three years in prison, with a conditional suspension of the prison term.<sup>59</sup> The Second Court of La Paz determines that there is no valid medical justification to perform the tubal ligation, that the testimony about verbal consent was contradictory, and that any verbal consent would have no legal basis.<sup>60</sup>

**December 5, 2002:** The judgment is subject to limited appeal.<sup>61</sup>

**2002:** I.V. and J.E. separate and she becomes solely responsible for her children.<sup>62</sup> She undergoes psychotherapy, and experiences an emotional crisis that leads to the Inter American Commission to grant precautionary measures on her and her daughters' behalf.<sup>63</sup>

**February 12, 2003:** The doctor appeals the Second Court of La Paz' decision and argues that J.E.'s statements made it clear that he consented to I.V.'s procedure, and that he complied with the State's health regulations in an effort to preserve I.V.'s life.<sup>64</sup>

**February 12, 2003:** The Third Criminal Chamber of the Superior Court of the Judicial District of La Paz resolves the appeal by cancelling the judgment.<sup>65</sup> The Court contemplates that the decision being appealed has not observed the rights and guarantees offered in the Constitution, the international conventions and treaties in force, and the Code of Criminal Procedure.<sup>66</sup>

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57. *Id.* ¶ 92.

58. *Id.*

59. *Id.* ¶ 93.

60. *Id.*

61. *Id.* ¶ 94.

62. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 115.

63. *Id.*

64. *Id.* ¶ 89.

65. *Id.* ¶ 94.

66. *Id.*

**March 10, 2003:** A new administrative resolution reverses the decision to hold the doctor accountable.<sup>67</sup> This decision is influenced by a State health regulation protecting the lives of individuals in high-risk circumstances, that I.V. gave her consent and was under anesthesia, and that the procedure was done to preserve her well-being.<sup>68</sup>

**March 14, 2003:** The administrative resolution enacted on March 10, 2003 is deemed enforceable.<sup>69</sup>

**March 14, 2003:** The First Judgment Court of the Judicial District of La Paz receives the case.<sup>70</sup>

**March 17, 2003:** The First Judgment Court issues a writ of judgment.<sup>71</sup>

**April 22, 2003:** The First Judgment Court determines that the jury selection process and composition of the Court are defective due to a malfunction in the court's computer system.<sup>72</sup> Therefore, a new date and time is set for the oral hearing, to determine the public hearing, select judges and hear the Court's Constitution.<sup>73</sup>

**May 9, 2003:** The Chief Judge of the First Judgment Court removes himself from the case because he extra-judicially declared his opinion in an interview.<sup>74</sup> Additionally, a Technical Judge of the First Judgment Court removes himself because he is accused of prevarication in the present case.<sup>75</sup> Accordingly, the Report of Procedural Proceedings is forwarded to the Third Sentencing Court of La Paz.<sup>76</sup>

**May 12, 2003:** The Third Sentencing Court of La Paz sends the case to the original court due to procedural deficiencies.<sup>77</sup>

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67. *Id.* ¶ 213.

68. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 90.

69. *Id.* ¶ 91.

70. *Id.* ¶ 95.

71. *Id.*

72. *Id.*

73. *Id.*

74. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 96.

75. *Id.*

76. *Id.*

77. *Id.*

**May 28, 2003:** The case is referred to the nearest judicial seat, the City of El Alto, because there are not enough citizens to form the Third Court of Judgment.<sup>78</sup>

**May 31, 2003:** The case is filed in the Second Judgment Court of El Alto, and a date is set for the oral hearing and for the public hearing of a citizens' drawing to select the jury.<sup>79</sup>

**July 15, 2003:** The Second Judgment Court of El Alto hears reports that citizens have not been notified about the drawing.<sup>80</sup> Subsequently, the Tribunal refers the case to the nearest judicial seat in the city of Achacachi.<sup>81</sup>

**February 16, 2004:** The Achacachi Court of Appeal hears the case, and determines that it should be referred to the nearest judicial seat, in Copacabana, because the Achacachi Court of Appeal could not compose a Court comprised of citizen judges.<sup>82</sup>

**February 19, 2004:** The case is referred to the Court of Appeal of Copacabana.<sup>83</sup>

**April 30, 2004:** An indictment is issued.<sup>84</sup>

**August 13, 2004:** The Copacabana Sentencing Court finds the doctor liable for causing I.V. wrongful injury.<sup>85</sup> They impose a fine of 64,000 *bolivianos* (approximately \$9,260 US Dollars), in addition to costs and reparation of civil damages to I.V.<sup>86</sup> The doctor subsequently files a "restricted appeal" to claim the exception that a medical examiner is subject to specific rules.<sup>87</sup> In turn, I.V. asks the Sentencing Court to affirm the decision.<sup>88</sup>

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78. *Id.* ¶ 97.

79. *Id.*

80. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 98.

81. *Id.*

82. *Id.* ¶ 99.

83. *Id.*

84. *Id.*

85. *Id.* ¶ 100.

86. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 100. *Bolivianos* to US Dollars calculation determined here: <http://www.xe.com/currencytables/?from=BOB&date=2004-04-04>.

87. *Id.* ¶ 101.

88. *Id.*



**October 22, 2004:** The Second Criminal Chamber of the Superior Court of Justice of La Paz (“Chamber”) resolves the appeal.<sup>89</sup> The Chamber nullifies the decision appeals and orders the trial by another Court to resume.<sup>90</sup>

**February 1, 2005:** I.V. appeals the Chamber’s judgment.<sup>91</sup>

**August 2, 2005:** The case is returned to the Copacabana Court of Appeal by the Superior Court of Justice.<sup>92</sup> The Copacabana Court of Appeal referred the case to the Court of Judgment of Sica Sica, Province of Aroma.<sup>93</sup>

**August 3, 2005:** The case is filed before the tribunal in compliance with provisions established by the Second Criminal Chamber of the Superior Court of Justice of La Paz.<sup>94</sup>

**August 10, 2005:** I.V. requests the case be transferred to the city of La Paz because of increased costs associated with prosecuting the case far from the location where the crime occurred, and travel time from where the parties live.<sup>95</sup>

**August 23, 2005:** I.V. files a complaint with the District Attorney in opposition to the prosecutor who oversees her case, because she had to pay for the transfer of doctors and witnesses to the Copacabana Court, and as a result, she suffered economic harm.<sup>96</sup> Therefore, she requests the appointment of a new prosecutor to oversee her case.<sup>97</sup>

**August 30, 2005:** The doctor asks the Sica Sica Court of Appeal to dismiss the criminal case.<sup>98</sup>

**September 6, 2005:** I.V. reiterates her request and asks the Sica Sica Court to transfer the case to La Paz.<sup>99</sup>

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89. *Id.* ¶ 102.

90. *Id.*

91. *Id.* ¶ 103.

92. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 104.

93. *Id.*

94. *Id.*

95. *Id.* ¶ 105.

96. *Id.* ¶ 107.

97. *Id.*

98. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 106.

99. *Id.*

**September 23, 2005:** The doctor asks the Sica Sica Court to postpone the oral hearing scheduled on October 3, 2005.<sup>100</sup> In turn, the Sica Sica Court sets the new hearing date for October 12, 2005.<sup>101</sup>

**January 20, 2006:** The Sica Sica Court of Appeal transfers the case to the Superior Court of Justice of La Paz after determining that it is incompetent to hear the case.<sup>102</sup>

**February 10, 2006:** The Second Criminal Chamber of the Superior Court of Justice of La Paz transfers the case to the Fourth Sentencing Court of La Paz.<sup>103</sup>

**March 16, 2006:** The Second Criminal Chamber of the Superior Court sends the case to the Fourth Sentencing Court of La Paz.<sup>104</sup>

**March 20, 2006:** The Fourth Sentencing Court of La Paz transfers the case back to the Criminal Chamber of the Superior Court of Justice of La Paz to cure the procedural defect.<sup>105</sup>

**April 10, 2006:** The Criminal Chamber of the Superior Court of Justice of La Paz nullifies the March 20, 2006 order.<sup>106</sup>

**April 28, 2006:** The doctor's attorney requests the Criminal Chamber of the Superior Court of Justice of La Paz to dismiss the criminal action since over three years have passed since the incident.<sup>107</sup>

**May 7, 2006:** The oral trial begins.<sup>108</sup>

**June 1, 2006:** The Fourth Sentencing Court of La Paz closes the criminal case.<sup>109</sup>

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100. *Id.* ¶ 108.

101. *Id.*

102. *Id.* ¶ 109.

103. *Id.*

104. *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, ¶ 109.

105. *Id.* ¶ 110.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

**August 23, 2006:** Both I.V. and the prosecutor appeal the close of the criminal case.<sup>110</sup> The First Criminal Chamber of the Superior Court of the District of La Paz determines the appeal is inadmissible.<sup>111</sup>

**September 21, 2006:** The Fourth Court of Appeal of La Paz signifies the prior resolution was established by law, and therefore it is unnecessary to explicitly state an executory judgment.<sup>112</sup>

**November 2, 2013–December 2, 2013:** I.V. is admitted to the Clinical Hospital of La Paz (“*Hospital de Clinicas de La Paz*”) for three weeks after experiencing a mental crisis following the destruction of documents at her home.<sup>113</sup>

**August 2015:** I.V. undergoes a psychological evaluation which shows that her mental and psychological health are negatively impacted by the unwarranted medical procedure, the subsequent criminal proceedings, and the State’s reluctance to resolve her case.<sup>114</sup>

### B. Other Relevant Facts

Between 1996 and 2000, 260,874 women undergo tubal ligation procedures,<sup>115</sup> according to data released by Peru’s Health Ministry.<sup>116</sup> It is estimated that as few as 10 percent of women give their consent for this operation.<sup>117</sup> Overall, thousands of women recount being coerced, threatened, or extorted into undergoing the procedure.<sup>118</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

**March 7, 2007:** The Ombudsman of Bolivia, on behalf of I.V., submits the petition to the Commission.<sup>119</sup>

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110. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 112.

111. *Id.*

112. *Id.* ¶ 113.

113. *Id.* ¶ 115.

114. *Id.* ¶ 116.

115. Javier Lizarzaburu Lima, Forced sterilization haunts Peruvian women decades on, BBC, (Dec. 2, 2015), <http://www.bbc.com/news/world-latin-america-34855804>.

116. *Id.*

117. *Id.*

118. *Id.*

119. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 2(a).

**July 23, 2008:** The Commission adopts Admissibility Report No. 40/08, in which it declares the petition admissible.<sup>120</sup>

**August 15, 2014:** The Commission adopts Merits Report No. 72/14.<sup>121</sup> In this report, the Commission determined that through I.V.'s tubal ligation procedure and subsequent litigation against the doctor, the State violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), 13(1) (Right to Seek, Receive, and Impart Ideas), 17(2) (Right to Marry and Raise a Family), and 25(1) (Right of Recourse Before a Competent Court) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention and Articles 7(a) (Duty to Refrain from Acts of Violence), 7(b) (Duty to Prevent, Investigate, and Punish Violence), 7(c) (Duty to Adopt Administrative Measures to Prevent, Punish, and Eradicate Violence), 7(f) (Duty to Adopt Fair and Effective Legal Procedures), and 7(g) (Duty to Adopt Legal and Administrative Measures for Reparations) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women ("Convention of Belém do Para").<sup>122</sup>

The Commission recommends the State perform the following: (1) offer sufficient reparations to I.V., providing for both the physical and emotional harm suffered; (2) provide I.V. with adequate medical care; (3) investigate I.V.'s sterilization, and prosecute and punish those responsible; (4) take steps to guarantee non-repetition; (5) reform legislation and public policies to ensure patients' right to informed consent is respected; and (6) investigate causes of excessive judicial and administrative delays.<sup>123</sup>

**December 24, 2014:** The State presents information on the implementation of the recommendations issued by the Commission in its Report No. 72/14.<sup>124</sup>

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120. *Id.* ¶ 2(b).

121. *See generally* I.V. v. Bolivia, Report on Merits, Report No. 72/14, Inter-Am. Comm'n H.R., Case No. 12.655 (Aug. 15, 2014).

122. *Id.* ¶ 186.

123. *Id.* ¶ 187.

124. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 2(d).

**March 6, 2015:** I.V. replaces her representation from the State's Ombudsman's Office with the organization Rights in Action's Executive Director, Ms. Rielma Mencías Rivadeneira.<sup>125</sup>

*B. Before the Court*

**April 23, 2015:** The Commission submits the case to the Inter-American Court after the State failed to adopt its recommendations.<sup>126</sup>

The Commission considers the State's report, the lack of supporting reports, and extension request.<sup>127</sup> Upon doing so, the Commission submits all facts and violations of human rights to the jurisdiction of the Court.<sup>128</sup> The facts submitted are those articulated in the Report on Merits, "on the need to obtain justice," and questions of Inter-American public order related to the rights to health and sexual and reproductive autonomy, as well as to informed consent in matters concerning reproductive autonomy.<sup>129</sup>

1. Violations Alleged by Commission<sup>130</sup>

Article 5(1) (Right to Physical, Mental and Moral Integrity)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence and of Unlawful Attacks on Honor, and Dignity)

Article 13(1) (Right to Seek, Receive, and Impart Information and Ideas)

Article 17(2) (Right to Marry and Raise a Family)

Article 25(1) (Right of Recourse Before a Competent Court)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

Article 7(a) (Duty to Refrain from Acts of Violence)

Article 7(b) (Duty to Prevent, Investigate, and Punish Violence)

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125. *Id.* ¶ 2(a).

126. *Id.* ¶ 2(e).

127. *Id.*

128. *Id.*

129. *Id.*

130. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 2(c)(a).

Article 7(c) (Duty to Adopt Administrative Measures to Prevent, Punish, and Eradicate Violence)

Article 7(f) (Duty to Adopt Fair and Effective Legal Procedures)

Article 7(g) (Duty to Adopt Legal and Administrative Measures for Reparations) of the Convention of Belém do Para.

## 2. Violations Alleged by Representatives of the Victims<sup>131</sup>

Same Violations Alleged by Commission, plus:

Article 3 (Right to Juridical Personality)

Article 5 (Right to Humane Treatment).

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

Article 11(1) (Right to Honor and Dignity)

Article 25(2) (Right to Judicial Protection) of the American Convention.

**April 22, 2016:** The Legal Clinic of International Law of Human Rights of the Faculty of Law of Aix-en-Provence in France submits an *amicus curiae* brief to the Court.<sup>132</sup>

**May 10, 2016:** The Human Rights and Gender Justice Clinic of the New York City University School of Law and Women Enabled International submit an *amicus curiae* brief to the Court.<sup>133</sup>

**May 13, 2016:** The Human Rights Clinic of the Faculty of Law of Santa Clara University and the Resource Center for International Justice submit an *amicus curiae* brief to the Court.<sup>134</sup>

**May 14, 2016:** The University of Sussex, and the Center for Studies on Rights, Justice and Society submit an *amicus curiae* brief to the Court.<sup>135</sup>

**May 16, 2016:** Yale University's International Human Rights Law Clinic Law and Women's Link Worldwide submit an *amicus curiae* brief to the Court.<sup>136</sup>

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131. *Id.* ¶ 5.

132. *Id.* ¶ 10.

133. *Id.*

134. *Id.*

135. *Id.*

136. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 10.

**May 17, 2016:** The Center for Reproductive Rights submits an *amicus curiae* brief to the Court.<sup>137</sup>

### III. MERITS

#### A. *Composition of the Court*<sup>138</sup>

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

Pablo Saavedra Alessandri, Secretary  
 Emilla Segares Rodriguez, Deputy Secretary

#### B. *Decision on the Merits*

**November 20, 2016:** The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.<sup>139</sup>

The Court unanimously rejected the State's first preliminary objection *rationae loci*,<sup>140</sup> because:

*The Court dismissed the State's argument that claims under Article 5(2) (Prohibition of Torture and Cruel, Inhumane or Degrading Treatment) lacked rationae loci because some of the alleged activity occurred in Peru.<sup>141</sup> The Court determined that the surgical ligation occurred at a hospital within the State, and therefore, the Court had proper jurisdiction to determine whether a violation occurred in this matter.<sup>142</sup>*

The Court unanimously rejected the State's second preliminary objection regarding exhaustion of domestic remedies,<sup>143</sup> because:

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137. *Id.*

138. *See generally Id.*

139. *See generally Id.*

140. *Id.* "Decides" ¶ 1.

141. *Id.* ¶ 21.

142. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 21.

143. *Id.* "Decides" ¶ 2.

*In alleging a lack of exhaustion of domestic remedies, the State's representative only claimed that the petitioner did not proceed with a constitutional amparo action.<sup>144</sup> Additionally, the State did not timely meet its evidentiary burden to show that the domestic remedies not only existed, but were effective and suitable, and thus, the Court rejected the second preliminary objection.<sup>145</sup>*

The Court found unanimously that the State had violated:

Articles 5(1) (Right to Humane Treatment), 7(1) (Right to Personal Liberty and Security), 11(1) (Right to Honor and Dignity), 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), 13(1) (Right to Seek, Receive, and Impart Information and Ideas), 17(2) (Right to Marry and to Raise a Family) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of I.V.,<sup>146</sup> because:

*The Court's primary focus is whether the tubal ligation procedure performed on I.V. in 2000 in a public hospital violated international law by not obtaining proper informed consent.<sup>147</sup> First, the Court parses the language of Article 11 (Right to Privacy), and notes that the first phrase "is built on the both the principle of the autonomy of the person as in the idea that those individuals should be treated as equals" and live "according to their intentions, will and own life decisions."<sup>148</sup> The second paragraph protects "abusive or arbitrary" invasions by State actors or third parties into the private sphere of life.<sup>149</sup> This relates to Article 7 (Right to Personal Liberty) which protects "every person to organize, according to law, his or her individual and social life in accordance with [his or her] own choices and convictions."<sup>150</sup> Articles 7 (Right to Personal Liberty) and 11 (Right to Privacy) together protect private life which "encompasses aspects of physical and social identity, including the right to personal autonomy, personal development, and the right to establish and develop relationships with"*

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144. *Id.* ¶ 33.

145. *Id.* ¶ 38.

146. *Id.* "Declares" ¶ 3.

147. *Id.* ¶ 147.

148. *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, ¶ 149.

149. *Id.* ¶¶ 149-50.

150. *Id.* ¶ 151.



others.<sup>151</sup> *The right to private life also directly relates to Article 17 (Rights of the Family), including protecting the ability to procreate.*<sup>152</sup>

*The Court emphasized the connection between the rights to privacy and the integrity of people's health.*<sup>153</sup> *The Court reasoned that unsatisfactory medical care could violate Article 5(1) (Right to Physical, Mental, and Moral Integrity).*<sup>154</sup> *The Court stated that to prevent violations of the right to humane treatment, States must develop criteria for both private and public institutions to prevent any violation of personal integrity during medical treatment.*<sup>155</sup> *Additionally, States must supervise and maintain control of healthcare facilities, management procedures, and legal safeguards for those seeking treatment.*<sup>156</sup> *The Court determined that the ultimate success of this system depends on capable organizations applying these provisions.*<sup>157</sup>

*The Court also reasoned that an individual's health is a core component of the right to personal integrity, which includes access to quality medical services, and allows individuals to determine their health and bodily needs.*<sup>158</sup> *The Court reasoned that information is a core component of having a choice.*<sup>159</sup> *In addition, this involves the right to make this determination without the obstruction of torture or non-consensual medical treatments.*<sup>160</sup>

*In the present case, the Court determined that the decision to perform a tubal ligation on I.V., without first obtaining her "free, full, and informed consent, was the product of paternalism by her doctor."*<sup>161</sup> *Here, the doctor decided to perform the procedure while I.V. was under anesthesia, despite the fact that tubal ligation is an elective procedure that could have been done at a later time.*<sup>162</sup> *The Court reasoned that the doctor made this decision by assuming I.V. would fail to exercise precaution and inevitably get pregnant again in the future.*<sup>163</sup>

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151. *Id.* ¶ 152.

152. *Id.* ¶ 153.

153. *Id.* ¶ 154.

154. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 154.

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.* ¶ 155.

159. *Id.*

160. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 155.

161. *Id.* ¶ 236.

162. *Id.*

163. *Id.*

Furthermore, no one presented I.V. with any alternative choice or treatment.<sup>164</sup> The Court denounced the doctor's decision because it was based on negative gender stereotypes depicting women as having poor decision-making capabilities.<sup>165</sup>

The Court noted that a patient's informed consent is a prerequisite for practicing medicine.<sup>166</sup> This is particularly important in medical cases, because information allows access to health services and the ability for people to make "free, informed, and full decisions."<sup>167</sup> As such, the State has a duty to provide patients the information allowing them to exercise their rights and make a properly informed decision.<sup>168</sup>

The Court reasoned that decisions that could have a permanent impact on the reproductive health of a patient are solely for the patient to decide and particularly, women's reproductive health, because these decisions could impact a woman's ability to bear children.<sup>169</sup> These decisions first relate to the patient's freedom of choice regarding their life choices and their body.<sup>170</sup> Additionally, these decisions also implicate their access to services, education, and their empowerment to exercise decisions about their own maternity.<sup>171</sup> Not having preventative measures for reproductive health issues may cause female patients to lose their freedom of choice.<sup>172</sup>

The Court also found that the "relationship between the doctor and the patient is a critical one."<sup>173</sup> The doctor wields power over their patient because they have specialized professional knowledge relied upon by the patient.<sup>174</sup> Although the relationship is guided by ethical boundaries, a doctor's opinions may conflict with a patient's wishes because a doctor can have his own beliefs and inclinations founded on their medical training.<sup>175</sup> It is for these reasons that measures protecting

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164. *Id.*

165. *Id.*

166. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 197.

167. *Id.* ¶ 156.

168. *Id.* ¶ 157.

169. *Id.*

170. *Id.*

171. *Id.*

172. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 157.

173. *Id.* ¶ 160.

174. *Id.*

175. *Id.*

patient autonomy exist – to strike a balance and maintain the dignity of the patient against the paternalistic inclinations of their doctors.<sup>176</sup>

In determining whether the State violated I.V.'s rights, the Court considers three elements that could have yielded informed consent for the medical procedure: (1) prior nature of consent; (2) free nature of consent; and (3) full and informed consent.<sup>177</sup>

(i) *Prior Nature of Consent*

Prior nature of consent indicates permission must be obtained prior to the start of any medical procedure.<sup>178</sup> The Court emphasized that consent cannot be given at the end of the medical procedure.<sup>179</sup> Here, although a pregnancy at a later date would have jeopardized the health of the I.V. and her unborn child, I.V. was in no immediate danger so the procedure could have been delayed until I.V. could have consciously provided her consent.<sup>180</sup>

(ii) *Free nature of consent*

The second element requires that consent be free, voluntary, autonomous, and without pressure, coercion, threats, or deception.<sup>181</sup> In sterilization cases, the woman must be the one to give consent since any procedure will permanently affect her ability to have children.<sup>182</sup> Furthermore, consent cannot be considered free if the woman is in a vulnerable position, i.e. during or immediately after giving birth.<sup>183</sup> Ultimately, consent without information is not considered consent because it is not the product of free choice by a patient.<sup>184</sup>

The Court also emphasized that traditional stereotypes can contribute to a denial of access to information by women.<sup>185</sup> These stereotypes include: (1) women are not reliable decision makers, which limits the information healthcare providers give them; (2) women are impulsive

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176. *Id.*

177. *Id.* ¶¶ 176, 181, 189.

178. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 176.

179. *Id.*

180. *Id.* ¶ 177.

181. *Id.* ¶ 181.

182. *Id.* ¶ 182.

183. *Id.* ¶ 183.

184. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 184.

185. *Id.* ¶ 187.

and need a stable man to manage them; and (3) women should be responsible for sexual health and should choose which form of protection to use.<sup>186</sup> In rendering its decision, the Court considered these stereotypes and vowed to rebut them.<sup>187</sup> The predominance of these stereotypes in Latin American society, along with low levels of income and education for women, exacerbate the lack of information provided to many women.<sup>188</sup> In addition, the Court reasoned that sterilization is not an emergency procedure and therefore the doctor should have waited to obtain consent directly from I.V. to perform the irreversible procedure.<sup>189</sup>

(iii) Full and informed consent

The Court ruled that consent must be full and informed.<sup>190</sup> This is possible once the patient has sufficient, full, dependable, understandable, and accessible information that they understand.<sup>191</sup> The Court encourages health providers to provide patients with: (1) diagnostic evaluations; (2) notice of the proposed treatment and the likely duration; (3) benefits and expected risks of the proposed treatment; (4) notice of potential adverse effects of the proposed treatment; (5) treatment alternatives, including less intrusive, and possibly less painful or discomfoting or risky treatments with fewer side effects than the proposed treatment; (6) notice of “the consequences of the treatments; and (7) what is expected to occur before, during and after treatment.”<sup>192</sup> Furthermore, the medical provider should consider the needs of the patient to determine what is required for them to understand the information provided.<sup>193</sup> The more serious the decision, the more aggressive the medical provider should be to acquire consent.<sup>194</sup>

In this matter, the State obtained no consent from I.V., let alone free and full consent, and did not give her the opportunity to pursue less invasive contraceptive measures prior to permanent sterilization.<sup>195</sup> Since the

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186. *Id.*

187. *Id.*

188. *Id.* ¶ 188.

189. *Id.* ¶ 182.

190. *I.V. v. Bolivia*, Preliminary Objections, Merits, Reparations and Costs, ¶ 189.

191. *Id.*

192. *Id.*

193. *Id.* ¶ 192.

194. *Id.* ¶ 186.

195. *Id.* ¶ 246.

*tubal ligation procedure occurred in a public hospital, the State is responsible for violations of Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 7(1) (Right to Personal Liberty and Security), 11(1) (Right to Honor and Dignity), 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), 13(1) (Right to Seek, Receive, and Impart Information and Ideas) and 17(2) (Right to Marry and to Raise a Family) to the detriment of I.V.*<sup>196</sup>

*Additionally, the sterilization of I.V. without full and free consent in a public hospital and the subsequent excessively delayed court case against the doctor who performed the procedure violated her rights under Articles 7(a) (Duty to Refrain from Acts of Violence) and 7(b) (Duty to Prevent, Investigate, and Punish Acts of Violence) of the Convention of Belém do Para which specifically obliges States to protect women from acts of violence.*<sup>197</sup>

Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane, and Degrading Treatment), in relation to Article 1(1) (Obligation of Non-Discrimination) to the detriment of I.V.<sup>198</sup>, because:

*Although the international legal framework regarding humane treatment developed around interrogations and detentions, it has developed to apply to other situations including those “contexts of custody, domination, or control in which the victim is defenseless,” such as healthcare, particularly when related to reproductive health.*<sup>199</sup> *Hospital patients are particularly vulnerable to inhumane treatment or torture due to the power and control that medical personnel can exert over them, and doctors, therefore, have an important role in protecting personal integrity and preventing torture or inhumane treatment.*<sup>200</sup> *The United Nations Committee Against Torture has noted that women are especially at risk of being subjected to torture or inhumane treatment when receiving medical care, especially when it pertains to reproductive health.*<sup>201</sup>

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196. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 248-49.

197. *Id.* ¶¶ 250-56.

198. *Id.* “Declares” ¶ 4.

199. *Id.* ¶ 263.

200. *Id.* ¶ 264.

201. *Id.* ¶ 265.

Numerous international legal bodies, including the United Nations Committee on the Elimination of Discrimination Against Women, the European Court of Human Rights, and prior decisions from the Inter-American Court of Human Rights, have held that forced sterilization implicates the rights to physical, mental, and moral integrity, and the prohibition of torture or inhumane treatment, and can cause mental and physical pain.<sup>202</sup>

The Court analyzed the suffering that I.V. experienced as a result of her forced sterilization and concluded that she endured the following: (1) permanent loss of functioning reproductive organs; (2) a necessary subsequent surgery to remove tissue from the endometrial cavity; (3) psychological harm requiring professional assistance; (4) temporary separation from her husband as a result of her operation that caused further emotional harm; (5) psychological harm to her daughters, specifically feelings of guilt; (6) economic harm in subsequent medical care and litigation expenses; and (7) lack of judicial recourse.<sup>203</sup> As such, the Court concluded that this suffering rose to the level to implicate violations of I.V.'s rights under Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) of the American Convention.<sup>204</sup>

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, and Articles 7(b) (Duty to Prevent, Investigate, and Punish Violence), 7(c) (Duty to Adopt Administrative Measures to Prevent, Punish, and Eradicate Violence), 7(f) (Duty to Adopt Fair and Effective Legal Procedures), and 7(g) (Duty to Adopt Legal and Administrative Measures for Reparations) of the Convention of Belém do Para, to the detriment of I.V.,<sup>205</sup> because

*The right of access to justice, comprised of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court), requires that States provide alleged victims and their families with*

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202. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 266.

203. *Id.* ¶ 268.

204. *Id.* ¶ 270.

205. *Id.* "Declares" ¶ 5.

“everything necessary to know the truth of what happened, establish the respective responsibilities, and sanction those responsible” within a reasonable time.<sup>206</sup> Article 25(1) (Right of Recourse Before a Competent Court) requires more than just the existence of formal courts and remedies, but imposes a positive obligation on States “to ensure that the resources provided within the judicial system are ‘truly effective [to] establish whether or not there has been a violation of human rights and to provide a reparation.’”<sup>207</sup>

In the context of violence against women, the Convention of Belém do Para establishes additional obligations on States to provide access to justice in Articles 7(b) (Duty to Prevent, Investigate, and Punish Violence), 7(c) (Duty to Adopt Administrative Measures to Prevent, Punish, and Eradicate Violence), 7(f) (Duty to Adopt Fair and Effective Legal Procedures), and 7(g) (Duty to Adopt Legal and Administrative Measures for Reparations).<sup>208</sup> The Court emphasized that “in the event of an act of violence against a woman, [it is] particularly important that the authorities in charge of the investigation carry it forward with determination and effectiveness,” considering the societal duty to reject violence against women, and to provide confidence to victims.<sup>209</sup> The Court noted that forced sterilization is considered an act of violence against women.<sup>210</sup>

Although no evidence suggested the non-consensual forced sterilization suffered by I.V. was part of a systematic problem or a State-orchestrated scheme, “it constitute[d] a significant human rights violation... and, in particular, a gross ignorance of sexual and reproductive rights and of the autonomy of women.”<sup>211</sup> Therefore, the protection of women’s rights requires “access to timely, adequate, and effective remedies to remedy these violations comprehensively and [to] avoid the recurrence of these events in the future.”<sup>212</sup>

The duty to investigate is one of means and not of result.<sup>213</sup> An effective investigation requires the State to not treat it as a simple formality, or one doomed to fail before it starts, but requires the investigatory

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206. *Id.* ¶¶ 292-93.

207. *Id.* ¶ 294.

208. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 295.

209. *Id.* ¶ 296.

210. *Id.* ¶ 297.

211. *Id.*

212. *Id.* ¶ 299.

213. *Id.* ¶ 315.

authority to perform all actions necessary and investigate all avenues to reach the required result.<sup>214</sup> The State also has the duty to act with due diligence and enact necessary measures to prevent procedural delays to guarantee an early resolution of the case and prevent the facts from remaining “in a state of impunity.”<sup>215</sup>

In this case, the Court noted that the tribunal could not proceed with the oral trial on four separate occasions.<sup>216</sup> This indicated a systemic problem of an inability to notify lay judges and citizens which contributed to the procedural delay.<sup>217</sup> Additionally, there was an irregular judicial election which resulted in a criminal malfeasance complaint against a citizen judge which further delayed I.V.’s case.<sup>218</sup> Finally, the domestic tribunal annulled two of its judgments in this case for procedural defects, and thus, the State violated I.V.’s rights to effective access to justice.<sup>219</sup>

Additionally, the Court concluded that I.V. faced discrimination in the justice system due to her gender and lower socio-economic status since she faced stigma of being a poor decision maker and had limited access to resources to improve the status of her claim.<sup>220</sup>

Therefore, the Court concluded that the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, and Articles 7(b) (Duty to Prevent, Investigate, and Punish Violence), 7(c) (Duty to Adopt Administrative Measures to Prevent, Punish, and Eradicate Violence), 7(f) (Duty to Adopt Fair and Effective Legal Procedures), and 7(g) (Duty to Adopt Legal and Administrative Measures for Reparations) of the Convention of Belém do Para, to the detriment of I.V.<sup>221</sup>

The Court unanimously decided to not analyze whether violations of Articles 3 (Right to Juridicial Personality) and 25(2)(a) (Rights Must be Enforced by Competent Authorities), in relation to Article 1(1)

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214. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 315.

215. *Id.* ¶ 316.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 317-21.

221. *Id.* ¶ 322.



(Obligation of Non-Discrimination) of the American Convention, occurred to the detriment of I.V.,<sup>222</sup> because:

*The Court determined that it was not necessary to make a statement regarding the alleged violations of Article 3 (Right to Juridical Personality) of the American Convention because the facts supporting this allegation were fully considered in the prior analysis.<sup>223</sup> Therefore the Court did not issue a ruling on this point.<sup>224</sup> Additionally, the Court did not separately analyze Article 25(2)(a) (Rights Must be Enforced by Competent Authorities) due to insufficient evidence.<sup>225</sup>*

### *C. Dissenting and Concurring Opinions*

#### 1. Concurring Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot

In a separate opinion, Judge MacGregor Poisot disagreed in part with the Court's reasoning.<sup>226</sup> He stated that it was necessary to identify that this case also deals with the right to health, and therefore may have been considered through the lens of Article 26 of the American Convention on Human Rights (Duty to Progressively Develop Economic, Social and Cultural Rights).<sup>227</sup> As such, he stated that analyzing health as a social right could offer more clarification as to the true reason for the encroachment suffered by the victim rather than analyzing the right to health as an integral part of the right to personal integrity.<sup>228</sup> In addition, consent is necessary despite varying terminologies used by different international and regional human rights bodies because there is an international obligation to obtain consent.<sup>229</sup> Therefore, Judge Mac-Gregor Poisot argued that analyzing through the social rights approach would have clarified certain aspects such as "the guarantee of the accessibility of information as a means, or instrument to materialize the right to health (through Article 26 of the same treaty)."<sup>230</sup>

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222. *Id.* "Declares" ¶ 6.

223. *Id.* ¶ 237.

224. *Id.*

225. *Id.* ¶ 323.

226. I.V. v. Bolivia, Concurring Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 336, ¶ (Nov. 30, 2016). (Available only in Spanish).

227. *Id.* ¶ 1.

228. *Id.* ¶ 2.

229. *Id.* ¶ 3.

230. *Id.* ¶ 5.

## IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

*A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Provide Medical Treatment for Psychological and Physical Suffering

The Court ordered the State to provide free, immediate, and effective medical treatment through its specialized facilities to I.V. and her family.<sup>231</sup> The care must address sexual and reproductive health.<sup>232</sup> Free medications must be provided as needed.<sup>233</sup> The State must also provide sufficient psychological and physical care in a way that considers their genders, needs, and background.<sup>234</sup>

2. Publish the Decision Reached in the Court's Judgment

The Court ordered the State to publish the following: (1) the Court's official summary of the Judgment, one time, in the Official Gazette using a readable font size; (2) the Court's official summary of the Judgment, one time, in a newspaper that has broad circulation using a readable font size, and (3) publish the full Judgment, accessible for one year, on an official website.<sup>235</sup>

3. Perform a Public Act of Recognition

The Court ordered the State to publicly recognize their international responsibility in relation to this case.<sup>236</sup> During this act, the State must reference this human rights violation.<sup>237</sup> The act shall be done in a public ceremony in front of high officials in I.V.'s territory.<sup>238</sup> The State must also receive approval from I.V. or her representatives on the manner, place, date, and other specifications.<sup>239</sup>

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231. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 332.

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.* ¶ 334.

236. *Id.* ¶ 336.

237. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 336.

238. *Id.*

239. *Id.*

#### 4. Provide Non-Repetition Guarantees

The Court ordered the State to offer the public the greatest amount of information possible, in any manner needed to access medical treatments.<sup>240</sup> The information must be in full, comprehensible, in the appropriate language, and current.<sup>241</sup> In addition, to offset the lack of technology in some areas, the State must look for ways to provide transparency.<sup>242</sup>

To provide access to information, the State must ensure that all hospitals, both public and private, obtain free, full, and informed consent prior to performing sterilization.<sup>243</sup> Accordingly, the Court must design promotional material to provide women with information of their reproductive rights.<sup>244</sup> This material should be offered in public and private hospitals in the State, for patients, medical employees, and on the website of the Ministry of Health and Social Welfare.<sup>245</sup> In addition, the material should be offered through the Ombudsman's Office and to any civil society organizations associated with this topic.<sup>246</sup> The State must annually report on the implementation of this requirement for a period of three years.<sup>247</sup>

#### 5. Provide Ongoing Training Programs

The Court ordered the State to implement lasting training and training curriculums directed at medical scholars and medical professionals, in addition to the personnel in the health and safety system community, pertaining to issues of informed consent, gender and stereotype based discrimination, and gender violence.<sup>248</sup>

#### *B. Compensation*

The Court awarded the following amounts:

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240. *Id.* ¶ 340.

241. *Id.*

242. *Id.*

243. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 341.

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.* ¶ 342.

### 1. Pecuniary and Non-Pecuniary Damages

The Court awarded I.V. \$50,000 for both pecuniary and non-pecuniary damage.<sup>249</sup>

### 2. Costs and Expenses

The Court awarded \$18,290 to I.V. as reimbursement for costs and expenses.<sup>250</sup> The Court noted that the costs incurred by I.V. were already considered in assessing the amount compensated for material damage.<sup>251</sup> The Court awarded \$18,290 to the Rights in Action organization who represented I.V.<sup>252</sup> The Court may also order the state to repay I.V. for further expenses that are reasonable and proven at the compliance monitoring.<sup>253</sup>

The Court awarded \$1,623.21 to the Legal Assistance Fund for Victims for the expenses incurred for the appearance of the declarant in the public hearing, and for the formalization and sending of the affidavits.<sup>254</sup>

### 3. Total Compensation (including Costs and Expenses ordered):

\$69,913.21

### C. Deadlines

Within one year from the Judgment, the State must pay pecuniary and non-pecuniary damages, and reimburse fees and expenditures directly to the persons and organizations as indicated in this Judgment.<sup>255</sup>

Within two months from I.V.'s request, the State must provide the requested psychological and psychiatric care.<sup>256</sup> Likewise, I.V. has six months, from the date of this Judgment, to inform the State of her intention to receive care.<sup>257</sup>

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249. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 358.

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.* ¶ 363.

254. *Id.* ¶ 365.

255. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 366.

256. *Id.* ¶ 332.

257. *Id.*

The State must immediately inform this Court once it has carried out each required publication, regardless of the period of one year to present its first report.<sup>258</sup>

Within one year from this Judgment, the State must publicly recognize its international responsibility in relation to this case.<sup>259</sup>

The State must annually report on the implementation of the access to information requirement.<sup>260</sup> The State must report three years once it begins the implement of this requirement.<sup>261</sup>

Within a period of one year, the State must provide permanent education and training programs aimed at medical students and medical professionals, as well as all personnel that make up the health and safety system, on issues of informed consent, discrimination based on gender and stereotypes, and gender violence.<sup>262</sup>

#### V. INTERPRETATION AND REVISION OF JUDGMENT

**March 19, 2017:** Representatives of the victim asked the Court to clarify three aspects of the judgment: (1) the legal basis for the Court's use of the term "non-consensual or involuntary sterilization" rather than the term "forced sterilization"; (2) clarification on the reason for not issuing a decision regarding an alleged violation of Article 3 (Right to Juridical Personality); and (3) clarification regarding the reparation requiring the State pay special attention to I.V.'s physical and psychological harm.<sup>263</sup>

##### A. *Composition of Court*<sup>264</sup>

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  
 L. Patricio Pazmiño Freire, Judge

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258. *Id.* ¶ 335.

259. *Id.* ¶ 336.

260. *Id.* ¶ 341.

261. I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, ¶ 341.

262. *Id.* ¶ 342.

263. I.V. v. Bolivia, Interpretation on the Judgment of Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C), No. 336, ¶ 2 (May 25, 2017).

264. *See generally Id.*

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

### III. Merits

**May 25, 2017:** The Court unanimously decided:

To declare the request for interpretation of the Judgment admissible<sup>265</sup>, because:

*I.V.'s representative requested the interpretation of Judgment on March 19, 2017, which falls within the ninety-day limit following notification of judgment to file the request as established in Article 67 of the American Convention.*

To dismiss the three points of clarification requested by the victim's representatives<sup>266</sup>, because:

*The Court emphasized, regarding the first point of clarification for the legal basis for the use of the phrase "non-consensual or involuntary sterilization" in the Judgment, that international organizations use different terminology, and that this phrasing does not present any ambiguity regarding the facts surrounding I.V.'s tubal ligation performed without full and free consent.<sup>267</sup> Therefore, the Court declined to provide any further basis for its choice of language.<sup>268</sup>*

*The Court dismissed the second point of clarification regarding the Court's unwillingness to separately analyze Article 3 (Right to Juridical Personality), and affirmed its decision that the facts used to sustain violations of the rights to personal liberty, personal freedom, dignity, privacy, family life, access to information, and founding a family.<sup>269</sup>*

*Finally, the Court dismissed the third point of clarification regarding the reparations considering I.V.'s physical and psychological harm because I.V.'s representative specifically asked for the healthcare to be provided by the State's specialized services which inherently requires*

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265. *Id.* "Decides" ¶ 1.

266. *Id.* "Decides" ¶ 2.

267. *Id.* ¶ 17.

268. *Id.* ¶ 18.

269. *I.V. v. Bolivia*, Interpretation on the Judgment of Preliminary Objections, Merits, Reparations and Costs ¶¶ 22-24.

*an analysis of both physical and psychological harm to give I.V. proper healthcare.*<sup>270</sup>

*D. Dissenting and Concurring Opinions*

[NONE]

VI. COMPLIANCE AND FOLLOW-UP

[NONE]

VII. LIST OF DOCUMENTS

*A. Inter-American Court*

1. Preliminary Objections

[NONE]

2. Decisions on Merits, Reparations and Costs

[I.V. v. Bolivia, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 336 \(Nov. 30, 2016\). \(Available only in Spanish\).](#)

[I.V. v. Bolivia, Official Summary, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. \(ser. C\) No. 336 \(Nov. 30, 2016\). \(Available only in Spanish\).](#)

[I.V. v. Bolivia, Concurring Opinion of Judge Eduardo Ferrer MacGregor Poisot, Inter-Am. Ct. H.R. \(ser. C\) No. 336 \(Nov. 30, 2016\). \(Available only in Spanish\).](#)

3. Provisional Measures

[I.V. v. Bolivia, Provisional Measure, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. C\) \(Mar. 29 2016\).](#)

[I.V. v. Bolivia, Provisional Measure, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. C\) \(Jan. 13, 2016\).](#)

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270. *Id.* ¶ 31.

## 4. Compliance Monitoring

[NONE]

## 5. Review and Interpretation of Judgment

[I.V. v. Bolivia, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. \(ser. C\) No. 336 \(May 25, 2017\). \(Available only in Spanish\).](#)

*B. Inter-American Commission*

## 1. Petition to the Commission

[Not Available]

## 2. Report on Admissibility

[I.V. v. Bolivia, Report on Admissibility Report 40/08, Inter-Am. Comm'n H.R., Case No. 270.07 \(July, 23, 2008\).](#)

## 3. Provisional Measures

[NONE]

## 4. Report on Merits

[I.V. v. Bolivia, Report on Merits, Report No. 72/14, Inter-Am. Comm'n H.R., Case No. 12.655 \(Aug. 15, 2014\). 009](#)

## 5. Application to the Court

[Not Available]

## VIII. BIBLIOGRAPHY

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