



REPORT N° 40/08

PETITION 270-07

ADMISSIBILITY

I.V.^[1]

BOLIVIA

July 23, 2008

I. SUMMARY

1. On March 7, 2007, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by the Ombudsman (*Defensor del Pueblo*) of Bolivia, (hereinafter “the petitioner”) on behalf of I.V. (hereinafter “the alleged victim”) alleging the international liability of the State of Bolivia (hereinafter “the State,” or “the Bolivian State”) for having submitted I.V. without her consent to a sterilization and subsequently for having denied her access to justice in order to remedy the violations allegedly suffered. It is alleged in the petition that the events described constitute violations of the rights protected by Articles 5 (Humane Treatment), 8 (Fair Trial), 11 (Privacy), 13 (Freedom of Thought and Expression), 17 (Rights of the Family), and 25 (Judicial Protection), all in connection with the general obligations contained in Article 1(1) of the American Convention on Human Rights (hereinafter “the American Convention,” or “the Convention”). In addition, the petition alleges the violation of Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter “the Convention of Belém do Pará”).

2. The petitioner states that in 2000 the alleged victim was submitted to a surgical procedure in a public hospital involving the ligation of the fallopian tubes, without her informed consent, amounting therefore to an involuntary sterilization which permanently removed any reproductive capacity. The petitioner also claims that the acts have remained in a complete state of impunity because of undue and unjustified delays in the criminal process and that I.V. is still suffering the physical and psychological consequences of that operation. With regard to admissibility, the petitioner argues that the remedies available under domestic law were exhausted with Resolution 514/06 of the First Criminal Court of the Superior Court of Justice of La Paz on August 23, 2006, which resolved the incidental appeal lodged against Resolution 13/06 and confirmed the extinguishment of criminal proceedings.

3. The State, for its part, maintains that while carrying out a caesarean on the alleged victim, multiple adhesions presented causing the doctor who was carrying out the

procedure to tell the alleged victim of the risks she would be running if she were to become pregnant again. He then suggested to her that a ligature of her fallopian tubes should be carried out, to which she verbally assented. With regard to the exhaustion of domestic remedies, the State disputes the admissibility and argues, in accordance with Article 46(1)(a) and 47(a) of the American Convention, that the petitioner did not exhaust the remedies available under domestic law.

4. Having examined the information presented with regard to the admissibility requirements set forth in Articles 46 and 47 of the American Convention, the Commission concludes that it is competent to examine the petition and that the petition is admissible regarding the alleged violation of the rights protected under Articles 5(1), 8(1), 11(2), 13, 17, and 25 of the American Convention, in relation to the general obligations established in Article 1(1) of the American Convention. It also considers that the petition is admissible for the alleged violation of Article 7 of the Convention of Belém do Pará. Therefore the Commission decides to notify the parties, publish the present Admissibility Report, and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

5. The Commission received the petition on March 7, 2007 and assigned it number P-270-07. On May 7, 2007, the Commission transmitted the petition to the State and granted a period of two months for the State to present its observations. In communication dated July 10, 2007, the petitioner provided information concerning the case.

6. On July 18, 2007, the Commission remitted the previous communication to the State and required it to present information regarding the petition within one month. On July 17, 2007, the Bolivian State requested an extension in order to reply to the petitioners' observations. By means of a communication dated August 14, 2007, the IACHR informed the Bolivian State that the requested extension of thirty days had been granted.

7. By notes dated August 17, 2007, September 19 and 21, 2007, the State requested copies of pages 12 and 13 of the petition and an additional extension of one month to lodge observations. The petitioner, by communication dated August 21, 2007, provided information on the case.

8. On October 1, 2007, the Commission remitted to the State copies of pages 12 and 13 of the petition, and informed it that the requested extension had been granted. By communication dated November 1, 2007, the petitioner furnished information on the case. This information was transmitted to the State on November 26, 2007 and the State was granted one month in which to lodge its observations.

9. By communication dated December 4, 2007, the State lodged observations on the case which were transmitted by the IACHR to the petitioner on December 18, 2007, and a period of one month was granted for observations to be lodged. On January 29, 2008, the petitioner requested an extension to present observations to the information presented by the State. By communication dated February 25, 2008, the petitioner submitted information on the petition which was transmitted to the State on April 1, 2008, with a period of one month for observations to be lodged. As of the date of this report, the State had not presented observations.

III. POSITIONS OF THE PARTIES

A. Petitioner

10. The petitioner claims that the alleged victim was submitted to a surgical procedure of ligature of the fallopian tubes in a public hospital without her informed consent and this was therefore an involuntary sterilization, during which she permanently lost her reproductive capacity. The petitioner adds that I.V. and her partner were informed once the procedure had taken place. The petitioner also adds that the events have remained completely unpunished because of undue and unjustifiable delays in the criminal process and that I.V. is still suffering the physical and psychological consequences of that operation. The petitioner states that a decision such as that of a ligature of the fallopian tubes is for a woman to make personally, and not for the state or the doctor.

11. The petitioner states that the alleged victim, aged 35, had her prenatal checks during the first three months of her pregnancy at the San Gabriel public hospital, and that from February 22, 2000 she continued with her checks in the public hospital, Hospital de la Mujer, where she underwent several examinations. The petitioner states that the last check she had was on June 28, 2000, during which a caesarean was programmed for around July 3 because the baby was the wrong way up.

12. The petitioner claims that on July 1, 2000, at around 3:50 p.m., I.V. presented as an emergency at the Hospital de la Mujer, accompanied by her partner and her daughter because her waters had broken, and she was attended by the doctors on duty. The petitioner alleges that Dr. Rosario Arteaga carried out a vaginal sweep even though she had been warned by the alleged victim that they should program a caesarian delivery.

13. At around 7:00 p.m., the petitioner claims that Dr. Edgar Torrico introduced himself to the alleged victim and informed her that he would carry out the surgery but that she should wait a little while longer. He states that I.V. asked the doctor whether the caesarian would be done at the same scar as the one before, to which he responded that he would decide it in the operation room that and that he would see her later.

14. The petitioner alleges that at around 8:45 p.m., I.V. was taken to the surgeon, prepared for the operation, and given an epidural anesthetic. He claims that during the operation, Dr. Torrico asked I.V. where she had had her first caesarian to which she replied that it had been done in Lima, Peru. He also asked her whether she had previously had an infection, to which I.V. replied in the negative. The petitioner alleges that these were the only questions made by the doctor to I.V. during the operation and that at no time was she told or asked anything relating to the ligature of the fallopian tubes.

15. The petitioner claims that I.V. asked the anesthetist to tell her what time her child would be born. He alleges that a short time afterwards, I.V. realized that the caesarean had taken place and she asked the time. The anesthetist answered that it was 9.26 p.m. The petitioner says that she saw her baby being handed to the neonatologist. He also says that at about 22.40 the alleged victim was taken into another room where she remained for about one hour. The petitioner alleges that throughout this process her partner and daughter remained at the hospital.

16. The petitioner adds that on July 2, 2000, at around 9.30 a.m., during a medical round, I.V. asked the third year intern, Marco Vargas, about the caesarean. He states that it was at that time that the doctor told her that they had performed a fallopian tube ligature and that she would not be able to have more children. Having been told this, the petitioner alleges that I.V. asked why it had been done to her and whether perhaps her life or the life of her baby had been at risk, to which the doctor replied that no, they had discovered many adhesions and that a future pregnancy could be very dangerous for her. The petitioner alleges

that I.V. was left feeling very upset because at no time during the operation had they “spoken to her, informed her, or consulted her with regard to a ligature of the fallopian tubes” and she was only told about the operation the day after it had happened.

17. The petitioner says that I.V.’s partner asked for a written explanation concerning what had happened and that Dr. Vargas responded that the request should be made in duplicate, signed by a lawyer, addressed to the Hospital de la Mujer, and they would have the reply within 48 hours. The petitioner alleges that I.V.’s partner appealed to the Permanent Human Rights Assembly of Bolivia, organization which sent a note dated July 4, 2000, asking the hospital to report on the matter.

18. The petitioner states that on July 3, 2000, that is, two days after the operations, Dr. Vargas wrote on I.V.’s case history, “3/7/2000, 9.00 a.m.: The patient was told yesterday that the bilateral salpingo-oophorectomy^[2] was carried out for medical reasons, and this was accepted by the patient who understood that her life could be endangered by another pregnancy. Dr. Vargas.” The petitioner alleges that this act provides conclusive proof that I.V. was neither informed nor consulted about the fallopian tube ligature that was carried out on July 1 during a second surgical operation.

19. The petitioner claims that Bolivian Health Law MSPS-98^[3] insists on “informed choice” from the point of view of the client by which it means that persons who must make a healthcare decision do so on the basis of all the necessary information and with full comprehension. Equally, it refers to the definition of “informed consent” which it says is defined as the “act by which one agrees to receive medical care or treatment, after a process of informed choice.”

20. The petitioner claims that Bolivian Health Law MSPS-98 establishes that the fallopian tube ligature process “may be carried out as long as the client has been adequately counseled and that there is a record of their decision, with either their signature or finger print, on the Informed Consent document, and this should be included in the client’s medical record.” In this regard, the petitioner alleges that this document was never signed.^[4] The petitioner states that this document contains seven points and the client must declare that she has been informed about each method of family planning, including the benefits and limitations; be aware that surgical contraception is a definitive method; have been fully and clearly informed of the possible discomforts caused by the procedure, and it must be signed in the presence of a witness.

21. The petitioner says that during the prenatal checkups attended by I.V. and from the time that she went into the Hospital de la Mujer on July 1, 2000, she received no information of any sort concerning contraceptive methods and she was not asked to consent to a fallopian tube ligature. Nor was her partner either informed or consulted on the matter.

22. Furthermore, the petitioner says that the Code of Ethics and Medical Deontology of the Medical College of Bolivia states in its Article 37 that, “The sterilization of a person may only be carried out at the express, voluntary, and documented request of the person themselves, or when medical indications exist that have been strictly established by a specialist medical committee.”

23. The petitioner also adds that I.V.’s partner only signed an authorization in the Hospital de la Mujer for a caesarian to be carried out on I.V., not a fallopian tube ligature.^[5] According to this document, other procedures could only be authorized in a situation where there was a high risk of losing the life of either the mother or the child.

24. The petitioner also argues that it is not coherent to claim that the complications which resulted from the operation put I.V.'s health at immediate risk, necessitating a sterilization procedure, because attending physicians stated that the alleged risk to I.V.'s health would only materialize if she were impregnated again.

25. The petitioner mentions a range of international standards^[6] that protect the right of women to take decisions freely, voluntarily, and on an informed basis regarding their health, autonomy, and self-determination. The petitioner indicates that assuming, hypothetically, that the version presented by the members of the surgical team was correct – that I.V. was consulted during the operation and she agreed to it – her alleged consent would have been obtained under anesthesia and the stress of the operation, and would therefore not have met the basic requirements of the principle of informed consent. Therefore, the petitioner alleges that because Dr. Torrico had allegedly obtained a positive response from I.V. regarding the fallopian tube ligature during the operation itself, it cannot be considered informed consent.

26. The petitioner alleges that since July 4, 2000, the date on which I.V. was released from hospital, she has experienced pain in the area of the wound. He states that days afterwards, I.V. returned to the hospital for treatment, and days later so that her stitches could be removed, and complained to Dr. Vargas who dismissed it as unimportant.

27. The petitioner claims that after several weeks, I.V.'s pain and discomfort continued and she was then examined by Dr. Carlos Pérez Guzmán, who ordered her to have an ultrasound scan. He states that that examination established that I.V. was suffering from acute endometritis and that her uterus contained placental remains. This was subsequently confirmed by a pathologist.^[7] As a result of this, the petitioner alleges, I.V. needed to undergo two D and Cs (dilation and curettage) and was hospitalized in the Clínica Achumaní.^[8] Furthermore, he says that two weeks later, I.V. was again admitted into the same clinic because of an abscess in the wall of her womb and bruising around the caesarian wound.^[9] The petitioner alleges that I.V. continued to suffer psychological and physical repercussions from the fallopian tube ligature. He also alleges that she is currently experiencing problems of chronic adnexitis, and that this situation has affected her relationship with her partner from whom she has been separated since August 2002. The petitioner states that her daughters, especially N., have suffered greatly and experienced great trauma as a result of everything that has happened.

28. The petitioner claims that these violations of I.V.'s human rights arise from gender-based discrimination. He maintains that the doctors decided to submit I.V. to a fallopian tube ligature without her consent because they had a discriminatory, paternalistic, and patriarchal attitude to exploiting a woman's vulnerability. He also maintains that I.V.'s case is part of a widespread attitude of discrimination by Bolivian hospitals and health centers against women with regard to surgical contraception.

29. As a result of the events described, and at the request of the couple, the Permanent Human Rights Assembly of Bolivia, the Women's Committee (*Coordinadora de la Mujer*), the Ombudsman (*Defensor del Pueblo*), and the Ministry of Health, three medical inquiries were held, a statement was made by the Ethical Committee of the Medical College of La Paz, and administrative proceedings were taken against Drs. Edgar Torrico and Marco Vargas. The petitioners state that the results of these audits and proceedings were contradictory in that some established the doctors' liability while others did not.

30. Regarding the internal administrative proceedings, the petitioner claims that the Legal Advisory Services of the Departmental Health Unit of La Paz issued its final resolution 020/02 as part of Internal Administrative Proceeding against Drs. Edgar Torrico and Marco Vargas Terrazas, both officials of the Departmental Health Service of La Paz. Point 1 of this resolution established administrative liability against Dr. Edgar Torrico Ameller, and called for his dismissal from the institution. The petitioner also maintains that this resolution transcribes part of the statement made by Dr. Marco Vargas where he states that the fallopian tube ligation was necessary from a medical standpoint but incorrect from a legal standpoint because they had to wait until after surgery for I.V.'s decision to authorize the sterilization.

31. Subsequently, in Administrative Resolution (unnumbered) dated March 10, 2003, regarding the appeal lodged by Dr. Torrico, Giselle Caba Espada, the Head of the Legal Advisory Services Unit of SEDES, La Paz, in application of Article 29 of Law 1178, annulled point 1 of Resolution 020/2003 dated July 25, 2002, and disposed a stay of proceedings relating to Dr. Edgar Torrico on the grounds that there was no evidence against him..

32. The petitioner also claims that three criminal trials took place in which two judgments were issued against Dr. Edgar Torrico, the surgeon who took the decision to tie I.V.'s fallopian tubes without her informed consent. However, these judgments were allegedly annulled by the Superior Court of Justice of La Paz. The petitioner states that there was a series of irregularities and delays which affected the criminal trials, including "errors in handling the file; a failure to notify and convene the citizen judges (*jueces ciudadanos*); failings in constituting the courts; dispatching the case to different jurisdictions on several occasions (...) Moreover, it is inconceivable how long it took for the file to be sent from one court to another (*sic*)."^[10] He states that these combined failings caused the criminal proceedings to take more than three years and end in the extinguishment of the criminal proceedings. The petitioner alleges that this prevented I.V. from obtaining effective remedy of the events denounced and what had happened remained unpunished.

33. With regard to the first criminal trial, the petitioner maintains that on August 31, 2002, the Public Prosecutor's Office (*Ministerio Público*) brought a criminal charge against Dr. Edgar Torrico for the crime of serious injury. He states that on November 18, 2002, the Second Sentencing Court of La Paz passed Resolution 86/2002 unanimously sentencing Dr. Torrico to three years in prison for being guilty of the crime of serious injury. The petitioner says that in his opinion, the judgment considered that "pre-operative, written consent by either the patient or her family, as demanded by Articles 19 and 23 of the Code of Medical Ethics," did not exist. He also says that the judgment states that "neither a rational nor a medical justification exists for carrying out a bilateral salpingo-oophorectomy, because neither the multiple adhesions nor the incision in the wall of the womb implied any immediate risk or imminent loss of the patient's life. The patient might have experienced a complication to her health if she became pregnant again, which means in legal terms, that the condition was one that was pending, in suspense, that cannot be stated that it would come about (...)."

34. The petitioner alleges that this judgment was appealed by Dr. Edgar Torrico and the Third Criminal Court of the Superior Court of Justice of La Paz, on February 12, 2003, annulled the appealed judgment completely on the grounds of "absolute defects which imply nonobservances or violations of rights and guarantees," and ordered the case to be seen by another Sentencing Court.

35. With regard to the second criminal trial, the petitioner maintains that on March 14, 2003, the case was opened in the First Sentencing Court of La Paz and because two judges exempted themselves from the case, the file was sent to the Third Sentencing Court on May 9, 2003. The petitioner alleges that as the Third Sentencing Court could not be

constituted, on May 24, 2003, the case was ordered to be sent to a Sentencing Court in El Alto. The petitioner alleges that the Second Sentencing Court in El Alto, because it could not be constituted, remitted the file (*obrados*) to the Sentencing Court of Achacachí, which, on February 16, 2004, could not be constituted as a court and therefore remitted the case to the Sentencing Court of Copacabana. The petitioner alleges that it was only on April 30, 2004, that the Sentencing Court of Copacabana issued a writ to open proceedings.

36. The petitioner alleges that on August 13, 2004, the Sentencing Court of Copacabana by means of Resolution 32/2004, found Dr. Edgar Torrico guilty of the crime of culpable injury (*Lesión Culpable*). He states that Dr. Edgar Torrico contested the judgment. The petitioner maintains that on October 22, 2004, the Second Criminal Court of the Superior Court of Justice of La Paz totally annulled the judgment and ordered the trial to be seen by another Court. The petitioner adds that on November 22, 2004, I.V. lodged an appeal for reversal of the judgment (*recurso de casación*) which was declared inadmissible on February 1, 2005.

37. With regard to the third criminal trial, the petitioner maintains that on February 24, 2005, the Second Criminal Court of the Superior Court of Justice of La Paz, returned the court records to the Sentencing Court of Copacabana and this court remitted them to the Sentencing Court of Sica Sica on May 9, 2005. The petitioner adds that on August 10, 2005, I.V. asked the Second Criminal Court of the Court of Justice in La Paz for her case to be remitted to a court in the city of La Paz because of the distance and costs involved in having to travel. The petitioner indicates that on August 30, 2005, Dr. Edgar Torrico requested that criminal proceedings should be extinguished in application of Article 133 of the Code of Criminal Procedure. The petitioner adds that on September 21, the Court of Sica Sica was constituted and on March 16, 2006, the file was sent to the Fourth Sentencing Court of La Paz because it declared itself incompetent.

38. The petitioner states that on April 27, 2006, Dr. Edgar Torrico filed for the extinguishment of the criminal proceedings on the grounds that more than three years had passed during the proceedings. The petitioner alleges that on June 1, 2006, the Fourth Sentencing Court of La Paz issued Resolution No. 13/06 in which it found unanimously that the action had extinguished and disposed of the corresponding file. In the resolatory part of the Resolution, the Court states:

[t]he file makes it abundantly clear that there has been a delay, to the point of unworkability, firstly on the part of the officials charged with carrying out the notifications necessary to constitute a court with jury, with part of the responsibility lying with the jurisdictional agencies which, for baseless reasons, have suspended hearings or sent the case from one jurisdiction to another, and there is no reason for risking the interest of the parties to learn the outcome of their legal action, because it is evident that the defendant has complied with his duty to present himself before the courts to which he has been called and that the agencies in charge of administering justice have been playing with the law in such a way as to bring about real damage to the correct administration of justice.

39. The petitioner maintains that Resolution No. 13/06 was appealed by the prosecutor and by I.V. and that on 23 August, 2006, the Criminal Court of the Superior Court of Justice of La Paz confirmed the extinguishment of the public criminal proceedings because more than three years had passed. As grounds for the resolution, the petitioner indicates that the Criminal Court indicated that the proceedings had lasted more than six years since proceedings were first opened and that this procedural delay could be imputed to the Court where proceedings first opened because it twice incurred nullity of proceedings due to procedural failings. This resolution was notified to I.V. on September, 2006.

B. State

40. The State maintains that on July 1, 2000, I.V. was submitted to an emergency caesarian in the Hospital de la Mujer. The State alleges that in accordance with the information provided on the medical file, I.V. had been admitted on the basis of a diagnosis of premature rupture of the membrane without being in labor, which also presented complications during the operation. It states that during the operation multiple adhesions presented, and this was the reason why Dr. Edgar Torrico informed I.V. of the risk to her life if she were to become pregnant again, and why he suggested to her that a bilateral salpingo-oophorectomy should be carried out. The State alleges that when I.V. was verbally informed of these risks, she decided to give her verbal consent, but the doctors decided to search for the husband who was not in the hospital.

41. The State specifically refers to the statement made by Dr. Edgar Torrico who claims:

[.]the patient was immediately told about the complications in her womb, the risks of undergoing further surgery and the risk to her life that would be caused by any further pregnancy and she was recommended, from a medical point of view, to take the opportunity of having a salpingo-oophorectomy. A junior doctor was sent to look for the husband in order to tell him of this decision but he was not to be found in the hospital. Mrs. I.V. agreed and gave her consent to the operation to perform a bilateral fallopian tube ligature.

42. The State alleges that the ligature of the fallopian tubes did not result from harassment by public officials, but from a personal decision made by the alleged victim while the caesarian was being carried out. It also alleges that the anesthesia which she was given (an epidural) does not affect consciousness, and that I.V. had been given enough information appropriate to her circumstances at that time. The State also alleges that there was no evidence of additional anesthesiological procedures that would indicate that the patient was suffering from stress because of the operation.

43. The State adds that for the second surgical operation, that is, the ligature of the fallopian tubes, there existed no pre-operative, written, and signed consent by either the patient nor her family as demanded by Articles 19 and 23 of the Code of Medical Ethics. These articles establish that the sterilization of a person may only be undertaken at the express, voluntary, and documented wish of the patient, or when medical indications exist that have been strictly established by a specialist medical committee. It also states that I.V.'s expressed wish was not documented in writing because circumstances did not permit with regard to the dignity of the patient because the ligature of the fallopian tubes had not been scheduled but happened as a result of complications encountered during the surgical operation.

44. The State alleges that Article 4.10 of the Bolivian Code of Medical Ethics concerning sterilization states that the doctor should strictly observe the legal provisions in force in the country, as well as the recommendations of the World Medical Association. The State refers to Articles 14, 19, and 22 of the Code of Medical Ethics with regard to sterilization: "The sterilization of a person may only be carried out at the express, voluntary, and documented request of the person themselves, or when medical indications exist that have been strictly established by a specialist medical committee." The State claims that Dr. Torrico acted in accordance with the terms of the Code of Medical Ethics and medical deontology and in line with recommendations by the World Medical Association and the Latin American Medical Confederation because before carrying out the salpingo-oophorectomy he described the surgical operation to I.V. and she gave her verbal consent. The State therefore sustains that

Dr. Torrico proceeded to carry out the sterilization with the prior consent of I.V. in compliance with Bolivian medical laws regarding obstetric risk.

45. Moreover, the State claims that the purpose of a medical committee is to establish specialist criteria relating to the health of a patient, and that in this case, Dr. Torrico and Dr. Marco Vargas had the knowledge and degree of specialization to arrive at a specialist opinion.

46. The State claims that it would have been inadequate to have carried out an administrative procedure to complement the authorization in addition to that already made by her partner to carry out the caesarian and special procedures. The State claims that the doctors acted in accordance with the circumstances already affecting I.V.'s situation. Furthermore, the State alleges that the purpose of the procedure carried out on I.V., which was with her verbal consent, was "to protect the right to life of the patient who already had three daughters at that time."

47. The State alleges that according to I.V.'s medical record after the caesarian, her recovery was clinically stable with poor lactation, whereas if she had suffered an "acute endometritis with placental remains, post caesarian and abscess in the abdominal wall" as claimed by the petitioner, she would have lost a lot of blood because she would have been constantly hemorrhaging, which did not happen. Also, the State claims that during the recovery process, I.V. had little vaginal discharge. Regarding the petitioner's claims that I.V. was admitted into a private clinic, the State maintains that the petitioner does not state in which clinic she was treated, and only certificates supplied by private professionals were provided and the information in these is not reliable.

48. In relation to the internal proceedings, the State claims that the Medical Audits Committee of the Hospital de la Mujer carried out an internal medical audit as part of which they took statements from those who had taken part in the caesarian. The State alleges that these statements reveal that I.V.'s partner was not in the hospital all the time that I.V. was undergoing surgery. It also claims that they took statements from Dr. Edgar Torrico, María Modesta Ticona, junior doctor Rodrigo Arnez, and Dr. Marco Vargas, who all confirmed that I.V. was informed about the procedure during surgery and gave her verbal consent.

49. The State says that it is important that the IACHR takes into consideration that according to the statements made by Dr. Virginia Mercado who stated that the caesarian lasted longer than usual (more than one hour), this shows how complicated the operation was.

50. Once the Audits Committee of the Hospital de la Mujer had published its report, the State alleges that the Medical Audits Committee of the Department of Health was set up. The State claims that this committee backed up the report issued by the Audits Committee of the Hospital de la Mujer. The State claims that the Medical Audits Committee of the Department of Health acknowledged the serious complications that presented during the operation and which obliged the doctor to carry out a salpingo-oophorectomy. It also claims that they observed that the ligature was carried out to ensure her well-being once verbal consent was granted by I.V.

51. The State alleges that Dr. Edgar Torrico behaved prophylactically (preventatively) as obliged to in order to protect the health of I.V. and safeguard her complete recovery and rehabilitation after the caesarian, by deploying the technical means at his disposal where appropriate. It also alleges that if he had forgotten to inform I.V. and not suggested the tube ligature he would have been subject to appropriate disciplinary regime.

52. The State alleges that the petitioner has lodged no information concerning the reversibility of the tube ligation. The State claims that now that medicine has progressed this is now possible and is carried out at the request of patients who want to restore their reproductive capability, with a high level of success (70%).

53. The State adds that the petitioner has not lodged any information to suggest that there is any coercion or mass birth control policies in Bolivia. Furthermore, the State places on record that the petitioner has not demonstrated in any way that the Bolivian State is operating public policies of forcible sterilization, much less aimed at vulnerable groups such as indigenous women, women from rural areas and/or refugee women. It claims that the petitioner has not lodged any information to establish the existence of coercion or mass birth control policies in the Bolivian State.

54. With regard to the exhaustion of remedies available under domestic law, the State claims that administrative proceedings were held against Dr. Edgar Torrico and Dr. Marco Vargas. The State alleges that these proceedings ruled in favor of the dismissal of Dr. Edgar Torrico while the case against Dr. Marco Vargas was dismissed. Subsequently, in view of the appeal lodged by Dr. Edgar Torrico via Administrative Resolution (unnumbered), dated March 10, 2003, point 1 of the Administrative Resolution which established the administrative responsibility of Dr. Torrico, was set aside on the grounds that there was no evidence against him.

55. In addition, the State claims that criminal proceedings were brought against Dr. Edgar Torrico for the crime of causing serious injury. The State alleges that in its Resolution 86/2002, the Second Sentencing Court of La Paz, called for a prison sentence of three years. Subsequently, the State informs that on December 5, 2002, Dr. Edgar Torrico lodged an appeal against the sentence. In addition it states that the petitioner lodged a restricted appeal alleging the nonobservance and erroneous interpretation of procedural law and demanded a prison sentence of 8 years rather than the three laid down. On February 12, 2003, the State adds that the Third Criminal Court of the Court of Justice of La Paz published its Hearing Writ (*Auto de Vista*) Resolution 21/2003 which annulled the appealed judgment and ordered the case to be passed to another sentencing court.

56. The State claims that the criminal proceedings taken by I.V. were transferred to other courts on various occasions because of excuses made by different judges. It alleges that on August 13, 2004, the Sentencing Court of Copacabana issued Resolution 32/2004 which provided for a fine as the main punishment for the crime of serious injury levied against Edgar Torrico. The State adds that Dr. Edgar Torrico made a restricted appeal against this judgment on August 28, 2004, and on October 22, 2004, by Resolution 265/2004, the judgment was wholly annulled and the case was ordered back to another Court.

57. The State alleges that on April 10, 2006, Dr. Edgar Torrico lodged a motion before the Fourth Sentencing Court requesting the extinguishment of criminal proceedings in application of Article 133 of the Code of Criminal Proceedings which determines the maximum length of proceedings as three years. The State alleges that the Fourth Sentencing Court, on June 1, 2006, via Resolution 13/2006 declared proven the motion of the extinguishment of criminal proceedings and ruled that the case should be filed.

58. The State alleges that this resolution was appealed at secondary level by the Prosecutor assigned to the case and by the alleged victim. The State claims that on August 23, 2006, the First Criminal Court of the Superior Court of Justice of La Paz issued Resolution 514/2006 confirming the extinguishment of the public criminal proceedings.

59. The State claims that in accordance with Article 19, paragraph 2 of the Political Constitution, I.V. had the power to file an action for enforcement of constitutional rights (*recurso de amparo constitucional*) because a final judgment existed that extinguished criminal proceedings. The State claims that the aforementioned article establishes that all persons may bring an extraordinary *amparo* (*recurso extraordinario de amparo constitucional*) against a Resolution, undue act or omission by an authority or officer whenever there exists no other medium or remedy for the immediate protection of rights and guarantees.

60. Based on the foregoing, the State alleges that the petition should be declared inadmissible because it claims that the petitioner did not exhaust the remedies available under domestic law because no use was made of the extraordinary constitutional appeal.

IV. ANALYSIS

A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis*, *ratione loci*

61. The petitioner is empowered by Article 44 of the American Convention to lodge petitions on behalf of the alleged victim. The alleged victim in the case was within the jurisdiction of the Bolivian State on the date the events which are the subject of the petition took place. With regard to the State, the Commission notes that Bolivia has been a State party to the Convention since July 19, 1979, the date on which it deposited its instrument of ratification. Consequently, the Commission has competence *ratione personae* to examine this petition.

62. In addition, the Commission notes that Bolivia has been a State party to the Convention of Belém do Pará since December 5, 1994, the date on which it deposited its instrument of ratification. Consequently, the IACHR has competence *ratione temporis* to examine at the merits stage the alleged violations of this international instrument.

63. The Commission has competence *ratione loci* to examine the petition because it alleges violations of rights protected under the American Convention and the Convention of Belém do Pará, which took place within the territory of a State party to the Convention.

64. Furthermore, the Commission has competence *ratione temporis* because the obligation to respect and protect the rights enshrined in the American Convention and the Convention of Belém do Pará was already in force for the State at the date on which the violations of rights alleged in the petition took place.

65. Finally, the Commission has competence *ratione materiae* because the petition alleges violations of human rights enshrined in the American Convention and the Convention of Belém do Pará.

B. Other requirements for admissibility

1. Exhaustion of remedies under domestic law

66. Article 46 of the American Convention states that for a petition lodged before the Commission to be admissible it is necessary that “the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” The purpose of this requirement is to ensure that the State in question has the possibility to resolve disputes within its own legal jurisdiction.

67. The parties in the present case dispute whether or not the remedies available under domestic law were exhausted. The State alleges that the petition is inadmissible because the petitioner neither lodged nor exhausted an extraordinary constitutional appeal in the Constitutional Court. The petitioner, for his part, indicates that he exhausted all the necessary remedies. The petitioner claims that the judgment contained in Resolution 514/06 from the First Criminal Court of the Superior Court of Justice of La Paz on August 23, 2006 which resolved the secondary appeal lodged against Resolution 13/06 and confirmed the extinguishment of criminal action, constituted the definitive judgment in the case. He also states that on September 20, 2006, Edgar Torrico requested the Fourth Technical Sentencing Court to implement Resolution 13/06, to which he says the response was as follows: "The resolution is final as disposed by law, and needs no express writ of execution." Therefore he claims that there remains no further remedy to be exhausted in the domestic jurisdiction.

68. The petitioner also claims that there is not a single case among the jurisprudence of the Constitutional Court of Bolivia that by means of an *amparo* action has declared null the extinguishment of a criminal action because of a due process violation.

69. It is appropriate at this point of the examination to clarify which are the remedies in domestic law that should be exhausted in each particular case. The Inter-American Court of Human Rights has indicated that only those remedies capable of remedying the violations that are alleged to have been committed must be exhausted. For a remedy to be capable means that:

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.^[11]

70. The Commission has also stated that the requirement of exhaustion of remedies available under domestic law does not mean that the alleged victim is obliged to exhaust all the remedies that are available. The Court, as well as the Commission, has stated on many occasions the "(...) the rule that requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means."^[12] Consequently, if the alleged victim lodged her case with one of the valid and adequate alternatives in the domestic jurisdiction and the State had the opportunity of remedying the matter by internal means, the aim of the international norm would have been observed.^[13]

71. In view of the parties' position regarding exhaustion of remedies, the Commission observes that the petitioner opted to resort to criminal proceedings. In the criminal proceedings, the petitioner claims that the decision contained in Resolution 514/06 of the First Criminal Court of the Superior Court of Justice of La Paz on August 23, 2006, which resolved the secondary appeal and confirmed the extinguishment of the criminal case resolved by the Fourth Sentencing Court (see reasoning paragraph 38, *supra*) constitutes the definitive judgment in the case. The Commission observes that the First Criminal Court of the Superior Court of Justice of La Paz confirmed that the delay in the criminal process was due to causes directly attributable to the administration of Bolivian justice because it had twice incurred nullity because of procedural failings:

It is evident that the processing of the writs has lasted more than six years since the

first proceedings in the case, in contravention of the provisions of Article 133 which defines the maximum duration as 3 years. A review of the proceedings shows that the delay is attributable to the Court dealing with the case because twice it incurred nullity because of procedural failings. The statement of the errors by both the prosecutor and the accuser neither justify nor contradict the foundation of the resolution which is being appealed, which has correctly applied procedural norms.^[14]

72. With regard to the extinguishment of the criminal action, the Constitutional Court of Bolivia has indicated that when an organ of the administration of justice system fails to process a case with the necessary procedural and juridical guarantees and as a result of it the process exceeds the legal period during which time it should be resolved, the State loses its power to punish the case and should pronounce that the criminal action is extinguished. The purpose of the extinguishment for the Constitutional Court of Bolivia is to avoid possible violations of the rights of those involved in the proceedings, including legal certainty:

[p]revent undue delay in the proceedings caused by the omission or lack of due diligence of the competent organ of the criminal system, may occasion injury to the defendant's other rights, including his right to dignity and legal certainty, which may not be repairable (...) In accordance with this, when the administrative or judicial organ does not process a case with the diligence established by constitutional and legal order, or publishes unnecessary or unlawful resolutions or decrees, an unjustified delay to the case is occasioned, damaging the right of the defendant to the conclusion of proceedings within the time limit established by law; in these circumstances the State loses its power to legitimately punish, thus bringing about the extinguishment of criminal action (...)^[15]

73. In the present case, the Commission considers that the petitioner has exhausted the ordinary remedies available under domestic law. The remedy which, according to the State, should have been exhausted is a constitutional action (*Amparo Constitucional*).^[16] The Commission observes firstly that this remedy is, by its nature, extraordinary, while the duty of the petitioners is, in principle, to interpose and exhaust all ordinary remedies. Secondly, the Commission observes that the State has not indicated to what extent the aforementioned extraordinary remedy would have been able to respond to, or remedy the violations of due process complained of by the petitioner. In this sense, the petitioner alleges that the criminal proceedings were affected by a series of irregularities and delays and the purpose of the aforementioned extraordinary remedy is not to remedy the suspected violations alleged by the petitioner. Therefore, having taken into account the jurisprudence established by the Constitutional Court of Bolivia quoted in the previous paragraph, the Commission observes scant prospect of success to be achieved by interposing the said remedy.

74. The adequacy of a civil or criminal action concerning the facts alleged on this petition is a matter that will be analyzed in the merits stage.

75. Therefore, the Commission considers that the petitioner has exhausted the remedies available under domestic law and therefore the requirement enshrined in Article 46(1)(a) of the Convention has been met from the date on which I.V. was notified of the Judgment concerning the extinguishment of criminal proceedings on September 13, 2006.

2. Deadline for presentation of petitions

76. Article 46(1) of the Convention states that for a petition to be admissible it must have been lodged within the period of six months from the date on which the party alleging violation of his rights was notified of the final judgment which exhausted the remedies

available under domestic law.

77. The Commission has established that the remedies under domestic law were exhausted with Resolution 514/06 dated August 23, 2006 issued by the First Criminal Court of the Superior Court of Justice of La Paz, which was notified to the alleged victim on September 13, 2006. The petition was lodged on March 7, 2007. By virtue of this, the Commission concludes that this requirement has been satisfied.

3. Duplication of procedures and *res judicata*

78. Article 46(1)(c) of the Convention establishes that the admission of petitions is subject to the requirement that the subject of the petition “is not pending in another international proceeding for settlement,” and Article 47(d) of the Convention states that the Commission shall consider inadmissible any petition that is substantially the same as one previously studied by the Commission or by another international organization. In the present case, the parties have not argued that either of these circumstances apply in this case, and nor are they evident in the file.

4. Description of the alleged facts

79. The Commission must decide for the purposes of admissibility whether the petition describes events that tend to establish a violation of rights, as stipulated by Article 47(b) of the American Convention, or if the petition is “manifestly groundless” or “obviously out of order” according to sub-paragraph c of the same Article. The standard of judgment of these two extremes differs from that required to decide on the merits of a petition. The Commission must carry out a *prima facie* examination to examine whether or not the petition establishes the apparent or potential violation of a right protected by the Convention, not to establish the existence of a violation. This examination is a summary analysis that does not imply a prejudgment or anticipation of findings on the merits.^[17]

80. The Commission considers that if it were proven that a sterilization procedure were carried out in a public hospital without consent, and if this resulted in the physical and psychological effects on I.V., this could amount to a possible violation of the rights enshrined in Article 5(1) of the American Convention in relation to the obligations enshrined in Article 1(1) of the same instrument. Equally, the facts could amount to a possible violation of Article 11(2) of the American Convention in relation to the obligations enshrined in Article 1(1) of the same instrument, with regard to the allegations made by the petitioner concerning the arbitrary interference by state employees in the private life of I.V. regarding whether or not to maintain her reproductive function, invading her private life.^[18]

81. The Commission also considers that the facts could amount to a possible violation of Article 13 of the American Convention in relation to the obligations enshrined in Article 1(1) of the same instrument, allegedly for not having been adequately informed of the effects, risks and consequences of the surgical operation she was submitted to, and/or alternative methods as demanded by Bolivian law and the international standards of human rights in this area.^[19]

82. Furthermore, the facts could amount to a possible violation of Article 17 of the American Convention in relation to the obligations established in Article 1(1) of the same instrument, regarding the arbitrary interference of state employees in the right of I.V. to decide freely and responsibly on the number of her children, and consequently the size of her family.

83. Also, the Commission considers that the sterilization procedure that was allegedly carried out by public officials without the consent of the alleged victim, as well as the physical and psychological consequences of the medical operation, could amount to a possible violation of Article 7 of the Convention of Belém do Pará. Similarly, the alleged delay in the criminal proceedings against those alleged to be responsible attributed to the judicial authorities could also amount to a violation of the same Article.

84. The Commission also considers that the alleged irregularities and delays that characterized the criminal proceedings, attributed to the judicial authorities, could amount to a possible violation of the rights enshrined in Articles 8(1) and 25 of the American Convention in relation to the obligations defined in Article 1(1) of the same instrument.

V. CONCLUSIONS

85. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case, the Commission concludes that the present case meets the requirements for admissibility in accordance with Articles 46 and 47 of the American Convention and therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible in relation to Articles 5(1), 8(1), 11(2), 13, 17, and 25 of the American Convention in relation to Article 1(1) of the same instrument.
2. To declare this case admissible in relation to Article 7 of the Convention of Belém do Pará.
3. To give notice of this decision to the parties.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of July, 2007. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.

[1] By special request of the petitioner, in communication dated March 7, 2007, the name of the alleged victim (hereinafter "I.V") is withheld.

[2] Bilateral salpingo-oophorectomy or tubular occlusion, also known as surgical contraception and fallopian tube ligation.

[3] According to the petitioners, the Bolivian Health Law MSPS-98: *Voluntary Surgical Contraception, Volume 1, Bilateral tubular occlusion in reproductive risk*, approved by the Ministry of Health by Ministerial Resolution No. 517, November 17, 1998.

[4] "Voluntary surgical contraception – Bilateral tubular occlusion. Informed Consent." According to the petitioners included in the Bolivian Health Law MSPS-98: *Voluntary surgical contraception, Volume 1, Bilateral Tubular Occlusion in Reproductive Risk*, approved by the Ministry of Health in Ministerial Resolution No. 517, November 17, 1998.

[5] Authorization by a member of the family for Surgery or Special Treatment, Appendix 45 of the

communication dated March 7, 2007 from the petitioner.

[6] The petitioner refers to the World Health Organization. Medical Criteria governing contraceptive eligibility, (3rd edition), 2005, page 4: United Nations, Committee on the Elimination of Discrimination against Women, Communication 4/2004, A.S. vs. Hungary, CEDAW/C/36/D/4/2004, August 29, 2006; United Nations, Committee on the Elimination of Discrimination Against Women, Final Observations of the Committee on the Elimination of Discrimination against Women. Peru A/53/38/Rev.1, July 8, 1998; United Nations, Final Observations of the Committee on Human Rights; Peru, CCPR/CO/70/PER, November 15, 2000, paragraph 21.

[7] Pathology and Cytology Laboratory, Result of test on I.V. Dr. Wilge J Panoza Meneces, doctor-pathologist. La Paz, August 17, 2000.

[8] Medical Certificate from the Clínica Achumaní, September 3, 2000.

[9] Medical Certificate from the Clínica Achumaní, September 3, 2000.

[10] Petition lodged by the Ombudsman of Bolivia, March 7, 2007, paragraphs 147-148

[11] I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C, No. 4, paragraph 64.

[12] I/A Court H.R., In the matter of *Viviana Gallardo et al.* Series A, No. G, 101/81, paragraph 26.

[13] IACHR, Report No. 57/03, Admissibility, petition 12,337, Marcela Andrea Valdés Díaz (Chile), October 10, 2003, paragraph 40.

[14] First Criminal Court of the Superior Court of Justice of La Paz, Judgment 514/2006, dated August 23, 2006.

[15] Constitutional Court, Constitutional Writ 0079/2004-ECA, September 29, 2004.

[16] See IACHR, Report No. 17/06, Admissibility, Sebastián Claus Furlan and Family (Argentina), March 2, 2006; IACHR, Report No. 5/02, Admissibility, Sergio Schiavina and María Teresa Schnak de Schiavini (Argentina), February 27, 2002; IACHR, Report No. 51/02, Admissibility, Janet Espinoza Feria *et al.* (Peru), October 2002.

[17] See IACHR, Report No. 128/01, Case No. 12,367, Herrera and Vargas (“La Nación”), Costa Rica, December 3, 2001, paragraph 50; Report No. 4/04, Petition 12,324, Rubén Luis Godoy, Argentina, February 24, 2004, paragraph 43 and Report No. 29/07, Petition 712-03, Elena Tellez Blanco, Costa Rica, April 26, 2007, paragraph 58.

[18] The IACHR has previously stated that the right to privacy “guarantees that each individual has a sphere into which no one can intrude a zone of activity which is wholly one’s own.” It has also stated that, “Article 11.2 specifically prohibits “arbitrary or abusive” interference with this right. The article states that in addition to the condition of legality, which should always be observed when a restriction is imposed on the rights of the Convention, the state has a special obligation to prevent “arbitrary or abusive” interferences.” See IACHR, Report No. 38/96, Case 10,506, Argentina, October 15, 1996, paragraph 91.

[19] Article 16 e) of the Convention on the Elimination of All Forms of Discrimination against Women establishes that States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.