

WHAT HAPPENED

F.S., a young woman from a rural town in Chile, was forcibly sterilized without her knowledge or consent when she was just 20 years old because she is HIV positive.

During the first trimester of her pregnancy, F.S. learned that she was HIV positive through a routine pre-natal test. Despite her initial dismay and fear on receiving this news, F.S. was relieved to learn that there was a good chance that her child would be born healthy and HIV negative—the risk of mother-to-child transmission is less than 2% when necessary precautions are taken.¹ Throughout her pregnancy, F.S. took all the necessary steps to carry to term a healthy child, seeking regular prenatal care, accessing antiretroviral therapy, and delivering through a cesarean.

In November 2002, F.S. checked into the Hospital of Curicó, the public hospital where her cesarean delivery was going to take place. The night before the operation, though, she went into labor, and shortly after midnight, F.S. was brought into the operating room and administered anesthesia. F.S. slept through the procedure, awaking only to learn that she had given birth to a boy. The following morning, F.S. awoke to learn that her son was born healthy and HIV negative. But then she received a shocking blow—the operating surgeon had decided to surgically sterilize her during the delivery without her knowledge and without ever discussing sterilization with her, and she and her husband would not be able to have any more children together. F.S. continues to suffer the physical and psychological harms of this forcible sterilization.

Over time, F.S. learned that the doctor's actions violated Chilean law and her rights. In March 2007, to vindicate her rights and to prevent other women from experiencing the same abuse she had suffered, F.S. filed a complaint against the operating surgeon. The complaint sought criminal sanctions against the surgeon and financial indemnification. A police investigation confirmed that F.S. had not given written consent for the sterilization as required by Chilean law, but the Public Prosecutor carried out a substandard investigation into F.S.'s complaint. The surgical team gave contradictory testimony either that F.S. had requested the sterilization or that the surgeon asked if she would be sterilized and she assented, and the nurse that completed F.S.'s medical chart said that she did not recall any request for sterilization. Ignoring these glaring discrepancies in the testimonies of the medical team, F.S.'s own testimony that she had never consented—verbally or otherwise—to be sterilized, and Chilean law requiring written consent, the Public Prosecutor recommended that the case be dismissed, saying that F.S. had verbally consented to the sterilization. The trial court followed the Public Prosecutor's recommendation and dismissed the case. F.S. and her lawyers appealed this decision, but the appellate court upheld the dismissal, leaving F.S. without any redress for the irreparable harm that she suffered.

On February 3, 2009, the Center for Reproductive Rights and VIVO POSITIVO, a Chilean nongovernmental organization, brought F.S.'s case to the Inter-American Commission on Human Rights (Inter-American Commission).

¹ WORLD HEALTH ORGANIZATION (WHO), PMTCT STRATEGIC VISION 2010-2015: PREVENTING MOTHER-TO-CHILD TRANSMISSION OF HIV TO REACH THE UNGASS AND MILLENNIUM DEVELOPMENT GOALS 6 (2010), *available at* http://www.who.int/hiv/pub/mtct/strategic_vision.pdf [hereinafter WHO, PMTCT STRATEGIC VISION 2010-2015].

A 2004 study on the reproductive rights of HIV-positive women in Chile revealed coercive or forced sterilization to be widespread: 50% of the women who had undergone sterilization after learning they were HIV positive had done so under pressure or had been sterilized without their knowledge.²

The UN Office of the High Commissioner for Human Rights and UNAIDS have expressed concern about the problem of coercion in programs treating pregnant women living with HIV, and the International Guidelines on HIV/AIDS and Human Rights emphasize that “HIV prevention and care programmes with coercive or punitive features result in reduced participation and increased alienation of those at risk of infection,” with attendant public health and human rights consequences.³

Women living with HIV encounter pervasive stigma and discrimination both on the basis of their gender and their HIV-status. Women account for slightly more than half of the 33.3 million people living with HIV/AIDS worldwide,⁴ and women’s share of new infections is increasing in several countries, including Chile. Socio-cultural norms, including power dynamics in relationships, high rates of gender-based violence and a lack of sexuality education, expose women to a heightened risk of contracting HIV, and gender-based discrimination can hinder women’s access to HIV prevention and treatment programs.⁵ When women do contract the virus, they are also particularly vulnerable to violations of their sexual and reproductive rights, including undue pressure not to bear children⁶ and forced sterilization.⁷

The *F.S.* case seeks to bring to light these egregious violations of the rights of HIV-positive women and to establish a powerful precedent that governments have an obligation to protect the sexual and reproductive rights of HIV-positive women. Presented before the Inter-American Commission, the *F.S.* case is the first international human rights case to address the sexual and reproductive rights of women living with HIV and to seek government accountability for these violations. The claims set forth in the complaint draw upon existing human rights standards, including those articulated in the regional and international human rights treaties to which Chile is a party. These include the American Convention on Human Rights, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, as well as the progressive interpretations of these treaties by the U.N. treaty-monitoring bodies, and standards established in consensus documents such as the 1994 International Conference on Population and Development’s Programme of Action and the Declaration of Commitment on HIV/AIDS, adopted by the U.N. General Assembly in 2001.

The *F.S.* case provides the Inter-American Commission the opportunity to develop and strengthen regional and international standards on women’s rights to free and informed decision-making around their reproductive health, irrespective of their HIV status. It also provides an opportunity to hold the Chilean government accountable for ignoring its obligation to respect, protect, and fulfill the rights of HIV-positive women on an equal basis with HIV-negative individuals.

² FRANCISCO VIDAL ET AL., MUJERES CHILENAS VIVIENDO CON VIH/SIDA: ¿DERECHOS SEXUALES Y REPRODUCTIVOS? [CHILEAN WOMEN LIVING WITH HIV/AIDS: SEXUAL AND REPRODUCTIVE RIGHTS?] 93 (2004), available at http://www.feim.org.ar/pdf/blog_violencia/chile/MujeresChilenas_con_VIH_y_DSyR.pdf [hereinafter MUJERES CHILENAS VIVIENDO CON VIH/SIDA].

³ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS & JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS (UNAIDS), INTERNATIONAL GUIDELINES ON HIV/AIDS AND HUMAN RIGHTS 2006 CONSOLIDATED VERSION para. 96 (2006).

⁴ UNAIDS, GLOBAL REPORT 2010: UNAIDS REPORT ON THE GLOBAL AIDS EPIDEMIC 7, 10 (2010), available at http://www.unaids.org/globalreport/Global_report.htm [hereinafter UNAIDS, GLOBAL REPORT 2010].

⁵ AMNESTY INTERNATIONAL, WOMEN, HIV/AIDS AND HUMAN RIGHTS (2004), available at <http://www.amnesty.org/en/library/info/ACT77/084/2004>.

⁶ See, e.g., Nisha Anand et al., Health Eq. & L. Clinic, U. Toronto Fac. L., *Bridging the Gap: Developing a Human Rights Framework to Address Coerced Sterilization and Abortion: Articulating the Principle of Free and Informed Decision Making* 3 (2009); CENTER FOR REPRODUCTIVE RIGHTS, DIGNITY DENIED: VIOLATIONS OF THE RIGHTS OF HIV-POSITIVE WOMEN IN CHILEAN HEALTH FACILITIES (2010) [hereinafter DIGNITY DENIED].

⁷ UNAIDS, GLOBAL REPORT 2010, *supra* note 4, at 134.

Women Living With HIV/AIDS in Chile

- The average increase in the rate of new HIV infections among Chilean women was 29.1% between 2001 and 2006, while for men it was only 15%.⁸
- New HIV cases occur most frequently among women between the ages of 20 and 49, “who live in poverty, have only an elementary education and are unemployed housewives.”⁹
- Violence against women is both a cause and consequence of HIV infection. A survey of HIV-positive women in Chile revealed that 56% of participants had been victims of gender-based violence before learning of their status.¹⁰
- HIV-positive women may be at greater risk of domestic violence, abandonment,¹¹ or institutional violence¹² on disclosure of their status.

Discrimination Surrounding Motherhood and HIV

Greater access to antiretroviral therapy has allowed HIV-positive women to either regain or retain their fertility and key medical interventions have reduced the risk of vertical transmission to less than 2% in countries where, as in Chile, adequate breast-milk substitute is available.¹³ Nevertheless, HIV-positive women encounter significant barriers to accessing quality and acceptable reproductive healthcare services. Because HIV-positive women are associated with passing HIV to their children through perinatal transmission and are often blamed for leaving behind orphans because of HIV-related illness and death, the pervasive stigma surrounding HIV and motherhood often translates into pressure or coercion not to become pregnant. One survey of HIV-positive women in Chile found that 66% of the respondents were informed by health care providers that “seropositive women should not get pregnant,” and 56% were pressured to prevent pregnancies.¹⁴ When HIV-positive women do become pregnant, they are often chastised or humiliated for having done so.¹⁵

Chile’s Failure to Ensure Informed Choice around Sterilization

Given the permanent nature of surgical sterilization, the World Health Organization (WHO) and United Nations Population Fund (UNFPA) have cautioned that “special care must be taken to ensure that every woman makes a voluntary informed choice of method....Health care workers should ensure that [HIV-positive] women are not pressured or coerced to undergo the procedure and that the decision is not made in a moment of crisis.”¹⁶ In contrast to international guidelines, though, Chilean women living with HIV often do not receive adequate counseling on surgical sterilization and are frequently pressured, coerced, or forced to sterilize.

Chile has a history of medical practitioners making decisions about surgical sterilization for their female patients.¹⁷ Prior to 2000, Chile’s law on sterilization authorized healthcare providers to decide to sterilize their patients in certain cases,¹⁸ and medical practitioners routinely read the law to permit them to sterilize HIV-positive women for “medical causes.” Despite a change in the sterilization law in 2000 requiring written, informed consent to sterilize and domestic legislation prohibiting discrimination against people on the basis of their HIV status in the healthcare setting, medical practitioners continue to pressure or coerce HIV-positive women to sterilize.¹⁹ A 2004 survey of women living with HIV/AIDS in Chile found that 50% of the women who sterilized after they learned they were HIV positive did so under pressure from healthcare providers.²⁰

- ⁸ MINISTERIO DE SALUD, COMISIÓN NACIONAL DEL SIDA & FLACSO-CHILE, PUERTAS ADENTRO: MUJERES, VULNERABILIDAD Y RIESGO FRENTE AL VIH/SIDA 25 (2006).
- ⁹ Rosina Cianelli et al., *HIV prevention and low-income Chilean women: machismo, marianismo and HIV misconceptions*, 10 CULT. HEALTH SEX. 3 297 (Apr. 2008).
- ¹⁰ FUNDACIÓN PARA ESTUDIO E INVESTIGACIÓN DE LA MUJER [FOUNDATION FOR THE STUDY AND INVESTIGATION OF WOMEN] (FEIM) ET AL., VÍNCULOS SILENCIADOS: VIOLENCIA Y VIH EN LAS MUJERES: UNA MIRADA A LA SITUACIÓN ACTUAL EN AMÉRICA LATINA Y EL CARIBE [SILENCED LINKS: VIOLENCE AND HIV IN WOMEN: A LOOK AT THE CURRENT SITUATION IN LATIN AMERICA AND THE CARIBBEAN] 8 (2009), available at http://www.feim.org.ar/pdf/violencia/WWW_2009.pdf.
- ¹¹ Report of the U.N. Secretary-General, *In-depth study on all forms of violence against women* (61st Sess.), U.N. Doc. A/61/122/Add.1 (July 6, 2006).
- ¹² See, e.g., DIGNITY DENIED, *supra* note 6.
- ¹³ WHO, PMTCT STRATEGIC VISION 2010-2015, *supra* note 1, at 6.
- ¹⁴ MUJERES CHILENAS VIVIENDO CON VIH/SIDA, *supra* note 2, at 57, 70, 107.
- ¹⁵ See, e.g., DIGNITY DENIED, *supra* note 6, at 25-26.
- ¹⁶ UNITED NATIONS POPULATION FUND (UNFPA) & WHO, SEXUAL AND REPRODUCTIVE HEALTH OF WOMEN LIVING WITH HIV/AIDS: GUIDELINES ON CARE, TREATMENT AND SUPPORT FOR WOMEN LIVING WITH HIV/AIDS AND THEIR CHILDREN IN RESOURCE CONSTRAINED SETTINGS 23 (2006), available at http://www.unfpa.org/webdav/site/global/shared/documents/publications/2006/srh_women_aids.pdf [hereinafter UNFPA & WHO, SRH GUIDELINES].
- ¹⁷ See, e.g., Lidia B. Casas, *Mujeres y Reproducción: ¿Del control a la autonomía?* [Women and Reproduction: From control to autonomy?], 18 Informe de Investigación 1 (2004).
- ¹⁸ República de Chile, Ministerio de Salud, Resolución 003: *Métodos Anticonceptivos Irreversibles o Esterilizaciones Quirúrgicas* [Republic of Chile, Ministry of Health, Resolution 003: *Irreversible Contraceptive Methods or Surgical Sterilizations*] (Sep. 1, 1975).
- ¹⁹ DIGNITY DENIED, *supra* note 6, 26-28.
- ²⁰ MUJERES CHILENAS VIVIENDO CON VIH/SIDA, *supra* note 2, at 105, 106.

This section provides an overview of some of the key human rights issues raised in the *F.S.* case.

Right to Physical and Mental Integrity and to Be Free from Cruel, Inhuman or Degrading Treatment

American Convention on Human Rights

Article 5: 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

International Covenant on Civil and Political Rights

Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 16(1): Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture... when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Inter-American Convention to Prevent and Punish Torture

Article 6: The States Parties shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

Right to Be Free from Gender-Based Violence

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women

Article 2: Violence against women shall be understood to include physical, sexual and psychological violence... (b) that occurs in the community and is perpetrated by any person [in] health facilities, or any other place.

Article 3: Every woman has the right to be free from violence in both the public and private spheres.

Article 7: The States Parties condemn all forms of violence against women and undertake to ... a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation.

Rights to Dignity, Privacy and Family Life

American Convention on Human Rights

Article 11: 1. Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life.

Article 17(1): The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

International Covenant on Civil and Political Rights

Article 17: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Convention on the Elimination of All Forms of Discrimination against Women

Article 16: States parties ... shall ensure a basis of equality of men and women ... e. [t]he 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 their rights.

Right to Health

International Covenant on Economic, Social and Cultural Rights

Article 10(2): Special protection should be accorded to mothers during a reasonable period before and after childbirth.

Article 12(1): [E]veryone [has the right] to the enjoyment of the highest attainable standard of physical and mental health.

Convention on the Elimination of All Forms of Discrimination against Women

Article 12: 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. 2. States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period.

American Declaration of the Rights and Duties of Man

Article XI: Every person has the right to the preservation of his health through ... medical care, to the extent permitted by public and community resources.

Right to Effective Protection of the Law

American Convention on Human Rights

Article 8(1): Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

Article 25(1): Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention.

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women

Article 7: The States Parties condemn all forms of violence against women and ... undertake to ... b. apply due diligence to prevent, investigate and impose penalties for violence against women; ... f. establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; g. establish the necessary legal

and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies.

Convention on the Elimination of All Forms of Discrimination against Women

Article 2(c): States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake ... [t]o establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

Right to Equality and Non-Discrimination

American Convention on Human Rights

Article 1(1): The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of ... sex ... or any other social condition.

Article 24: All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

International Covenant on Civil and Political Rights

Article 2(1): Each State Party ... undertakes to respect and to ensure to all individuals . . . the rights recognized in the present Covenant, without distinction of any kind, such as ... sex ... or other status.

International Covenant on Economic, Social and Cultural Rights

Article 2(2): The States Parties ... undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to ... sex... or other status.

Convention on the Elimination of All Forms of Discrimination against Women

Article 1: [T]he term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 3: States Parties shall take in all fields ... all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

F.S. sought legal redress through the Chilean justice system, filing a criminal complaint against the surgeon who forcibly sterilized her. Unable to obtain any relief within the domestic legal system, F.S., in conjunction with the **Center for Reproductive Rights** and **VIVO POSITIVO** filed an individual complaint before the Inter-American Commission on February 3, 2009. The petition alleges that the forced sterilization of F.S. violated her rights to be free from torture or cruel, inhuman, or degrading treatment, to privacy, to be free from discrimination, to an effective judicial remedy, and other interrelated rights. Chile is obligated to respect and ensure these rights, which are protected in both Chile's constitution and regional and international human rights treaties, particularly the American Convention and the Convention of Belém do Pará. Below is an overview of some of the key allegations contained in the complaint:

Chile has a Duty to Respect and Protect Women's Rights to Freedom from Torture or Cruel, Inhuman or Degrading Treatment and to Privacy

Chile's obligations under articles 5 and 11 of the American Convention—to respect women's equal rights to be free from torture or cruel, inhuman or degrading treatment and to freedom from undue interference with privacy—became binding on Chile's ratification of the American Convention. As such, the government and its agents must refrain from acting in a way that would infringe these rights, and Chile must take steps to prevent non-state actors from violating these rights. Sterilization without informed consent has lasting physical and psychological consequences, permanently robbing patients of their reproductive capabilities and inflicting mental distress. Decisions around whether and when to form a family are protected by the right to privacy,²¹ and forcible sterilization constitutes unlawful interference with this right to make autonomous decisions about motherhood and family life.

Chile has a Duty to Guarantee Human Rights without Discrimination on the Basis of Gender or HIV Status

American Convention articles 1 and 24 require States Parties to combat discriminatory practices and “to establish norms and other measures that recognize and ensure the effective equality before the law of each individual,”²² irrespective of sex or HIV status. Forced sterilization disproportionately affects women and constitutes gender-based violence,²³ a form of discrimination against women.²⁴ HIV-positive women experience heightened vulnerability to forced sterilization and other forms of discrimination in the healthcare setting, despite the fact that “health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, ... without discrimination.” The Inter-American Commission has further acknowledged that the denial of justice in cases alleging gender-based violence is rooted in discrimination against women.²⁵

Chile has a Duty to Provide an Effective Remedy and Exercise Due Diligence by Preventing, Investigating, Punishing and Redressing Human Rights Violations

States have an obligation to provide an effective judicial remedy, as established in articles 8 and 25 of the American Convention. The Inter-American Commission has explained that, both in law and in fact, “access to judicial guarantees and protections is essential to eradicating the problem of violence against women and is a necessary precondition” for compliance with States' due diligence obligations.²⁶ The Chilean government has a duty to create legislative and policy safeguards to protect against forced or coerced sterilization of HIV-positive women, to establish effective mechanisms for investigating and punishing such abuses when they occur, and to provide adequate redress.

Remedy Sought

The petition calls for compensation to F.S. for the harm that she suffered, criminal sanctions for those responsible for violating F.S.'s rights, and guarantees against coercive or forced sterilizations of HIV-positive women in the future. The petition also seeks the legislative and policy changes necessary to fully protect the sexual and reproductive rights of individuals living with HIV/AIDS.

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- ²¹ See Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Comment No. 21: Equality in marriage and family relations* (13th Sess.), para. 22, U.N. Doc. A/49/38 at 1 (1994), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 250 (2003). See also, Human Rights Committee (HRC), *K.L. v. Peru*, Communication No. 1153/2003, para. 6.4, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); *Tysiąc v. Poland*, Application No. 5410/03, Eur. Ct. H.R., paras. 106-107 (Mar. 20, 2007); HRC, *General Comment No. 28: Equality of rights between men and women (Art. 3)* (68th Sess.), para. 20, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000); *I.V. v. Bolivia*, Petition 270-07, Inter-Am. C.H.R., Report No. 40/08, para. 80 (2008).
- ²² Inter-Am. Ct. H.R., *Case of Yatama v. Nicaragua*, Ser. C, No. 127 (Preliminary Objections, Merits, Reparations and Costs), paras. 185-186 (June 23, 2005), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_127_ing.pdf.
- ²³ Radhika Coomaraswamy, *Report of the Special Rapporteur, Its Causes and Consequences, Integration of the Human Rights of Women and the Gender Perspective, Addendum: Policies and practices that impact women's reproductive rights and contribute to cause or constitute violence against women*, para. 51, U.N. Doc. E/CN.4/1999/68/Add.4 (1999).
- ²⁴ See, e.g., CEDAW Committee, *General Recommendation No. 19: Violence against Women* (11th Sess.), 1993, para. 1, U.N. Doc. A/47/38 at 1 (SUPP) (1993).
- ²⁵ Organization of American States, Inter-Am. C.H.R., *Access to Justice for Women Victims of Violence in the Americas*, para. 151, OEA/Ser.LV/II.doc (2007), available at <http://www.cidh.org/women/Access07/chap2.htm>.
- ²⁶ *Id.* para. 2, available at <http://www.cidh.org/women/Access07/chap1.htm>.

Glimpses of national and international media coverage around the prevalence and implications of mistreatment of HIV-positive women in Chile and globally, and *F.S. v. Chile*

“There are about 3,500 women in Chile with HIV or AIDS, many of whom face widespread abuse in public health centers, discrimination and sterilization without consent, according to a report ‘Dignity Denied: Violations of the Rights of HIV-Positive Women in Chilean Health Facilities,’ published last month by the New York-based Center for Reproductive Rights and the Chilean NGO Vivo Positivo.”

[Pascale Bonnefoy, *HIV-positive women in Chile face forced sterilization*, Nov. 8, 2010, GLOBAL POST, available at <http://www.globalpost.com/dispatch/chile/101028/forced-sterilization-hiv-aids#>]

“[T]he attending surgeon sterilised [F.S.] during her cesarean section operation without any prior discussion and without her permission because [F.S.] is HIV-positive. ‘They treated me like I was less than a person,’ she said. ‘It was not my decision to end my fertility; they took it away from me.’ ... Because of the stigma surrounding HIV/AIDS and fear of retribution, women are often reluctant to speak out about being mistreated because of their HIV status while receiving maternal care.”

[Aprille Muscara and Daniela Estrada, *Chile: Women Sterilised Over HIV Status*, Oct. 22, 2010, Inter Press Service, available at <http://www.globalissues.org/news/2010/10/22/7350>]

“The potential ramifications of mistreatment, stigma and discrimination of HIV positive women are serious in all countries... the systematic abuse of HIV positive women in hospital settings could deter women from trusting service providers and drive them away from hospital settings – making it increasingly difficult to reach HIV positive women, or indeed *any* pregnant women who fear they *might* have HIV... The cases of forced and coerced sterilization... [are] indicative of an attitude held by many that HIV positive women and men should not be allowed to have children.”

[Aziza Ahmed, *Sterilized: Against Our Will*, June 2, 2010, openDemocracy, available at <http://www.opendemocracy.net/5050/aziza-ahmed/sterilized-against-our-will>]

“A finding that the hospital violated F.S.’s rights could pressure the Chilean government to enforce an informed consent requirement and respect existing laws protecting women. The ruling could also affect the policies of the other countries within the jurisdiction of the IACHR and could prompt a widespread crackdown on forced sterilization.”

[Pooja Nair, *Litigating Against the Forced Sterilization of HIV-Positive Women: Recent Developments in Chile and Namibia*, 23 HARV. HUM. RIGHTS J. 223, 229 (Spring 2010)]

International standards mandate that women living with HIV be able to decide freely the number and spacing of their children free from discrimination, coercion, and violence. The WHO and UNFPA have explained that “[b]ecause of the stigma and discrimination so often attached to HIV, it is particularly important that health service providers be able to protect the reproductive rights of women living with HIV,”²⁷ and the International Federation of Gynecology and Obstetrics has emphasized that “HIV-positive women should not be discouraged from becoming pregnant.”²⁸

The Committee on Economic, Social and Cultural Rights has recommended that the Chilean government strengthen measures to promote education programmes on sexual and reproductive health” and “intensify its efforts, including through public information campaigns, to control the spread of HIV/AIDS,”²⁹ while the CEDAW Committee “calls on [Chile] to take concrete measures to enhance women’s access to health care, in particular to sexual and reproductive health services.”³⁰

Chilean Government

- Ensure appropriate redress for F.S. and her family in the form of financial indemnification, accountability for the surgeon who sterilized her, and a formal apology for the human rights violations suffered.
- Develop and implement laws and policies necessary to guarantee that the sexual and reproductive rights of HIV-positive women are respected and protected, and that HIV-positive women have access to acceptable, quality sexual and reproductive health services.
- Ensure that proper testing, counseling, and confidentiality procedures are followed to guarantee informed choice and consent in HIV-testing and in decisions around reproduction.
- Strengthen structures to protect patients’ rights and to hold providers accountable for human rights violations.
- Conduct a public awareness campaign to combat stigma and discrimination around HIV/AIDS.

Civil Society

- Hold the government accountable for its failure to protect the human rights of women living with HIV. Monitor the development and implementation of national laws and policies on the sexual and reproductive rights of individuals living with HIV.
- Support public awareness campaigns and capacity-building efforts.

International Donor Community

- Institutions financing public and private reproductive health, family planning, and HIV/AIDS programs should ensure that such programs are designed to improve healthcare and promote the exercise of, and respect for, women’s rights.

International and Regional Human Rights Bodies and Experts

- Urge Chile to protect the rights of HIV-positive women seeking reproductive healthcare services and to provide redress and remedies for violations of these rights.

²⁷ UNFPA & WHO, SRH GUIDELINES, *supra* note 16, at 6.

²⁸ INTERNATIONAL FEDERATION OF GYNECOLOGY AND OBSTETRICS, *Pregnancy and HIV-Positive Patients*, Recommendation 1, 107 INT. J. GYNECOL. OBSTET. 77-78 (Oct. 2009).

²⁹ Committee on Economic, Social and Cultural Rights, *Concluding Observations: Chile*, paras. 54-55, U.N. Doc. E/C.12/1/Add.105 (2004).

³⁰ CEDAW Committee, *Concluding Comments: Chile*, para. 20, U.N. Doc. CEDAW/C/CH/CO/4 (2006).