

March 7, 2012

United Nations Committee against Torture
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10
Switzerland

Re: List of issues prior to the submission of the sixth periodic report of Chile.

Honorable Committee Members:

This letter is intended to assist the U.N. Committee against Torture (the "Committee") in its preparation of List Of Issues Prior to Reporting to be submitted to Chile for its sixth periodic review. The Center for Reproductive Rights, an independent non-governmental organization, hopes to further the work of the Committee by providing independent information concerning the rights protected in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention). This letter highlights the ways in which the State party has failed to take effective measures to prevent, investigate, punish, or redress the forced and coerced sterilization of women living with HIV.

Articles 2(1)¹ & 16(1)²

1. *Please provide specific information on measures being taken to prevent involuntary sterilization of women living with HIV in healthcare facilities, including information on the implementation of policies and programs to ensure that surgical sterilization procedures are carried out with the patients' voluntary and informed consent. Please provide specific data demonstrating the effectiveness of these measures, and any information on measures that the State party intends to implement, including to address the underlying stigma, discrimination, and misinformation that contributes to involuntary sterilizations in healthcare facilities.*

a. Chilean women living with HIV are subjected to involuntary sterilization

The rights of women living with HIV in Chile are routinely violated in health care institutions through stigmatization and discrimination based on their HIV-positive status and involuntary medical practices, including forced and coerced sterilization. In a 2004 study in Chile, 56% of women living with HIV reported being pressured by health services personnel to prevent pregnancy.³ 50% of women living with HIV who had been sterilized reported that the sterilization occurred without their consent or under pressure.⁴ The involuntary sterilization of women based on their HIV-positive status violates the prohibition against torture or cruel, inhuman, or degrading treatment. Involuntary sterilization has lasting physical and psychological

effects, as it permanently deprives women of their physical reproductive capabilities and can lead to physical and mental suffering,⁵ social isolation, fear of medical professionals and lifelong anguish.⁶ Furthermore, women who have been involuntarily sterilized may also experience alienation from their partners and/or their families due to the loss of their fertility, particularly in cultures that closely associate womanhood with motherhood.

Involuntary sterilization may take the form of coerced or forced sterilization. Coerced sterilization occurs when the individual does not provide free and informed consent prior to the sterilization. Coerced sterilization may result from the use of intimidation tactics, misinformation, directive counseling or financial or other incentives which compel a person to undergo sterilization. The conditioning of health services on consent to sterilization is another form of coercion. Forced sterilization occurs when a person does not consent to or is not informed of the sterilization prior to the procedure. Due to sterilization's permanent nature, it is critical that women provide informed consent prior to the procedure. Informed consent to sterilization entails that the consent is free and voluntary, and that the patient is provided counseling about the risks and benefits of sterilization, and about alternative, reversible forms of family planning, before consent is obtained.⁷

Involuntary sterilization is a physical manifestation of the stigma and discrimination against women living with HIV, based on the medical practitioner's belief that women living with HIV should not bear children. This stereotype may be based on two different misconceptions: that she will transmit the virus to her child or that she will soon leave behind orphan children because she will necessarily die from the virus. In fact, with proper treatment and by avoiding breastfeeding, the likelihood of a mother transmitting HIV to her child through labor can be reduced to less than 2%.⁸ Furthermore, scientific advancements have transformed the treatment regimen for HIV, and with appropriate care, HIV can be a chronic, manageable disease and is no longer a death sentence. Despite these developments, in a survey of women living with HIV in Chile, approximately 50% reported being discouraged by their doctor from having children.⁹

Women living with HIV may be particularly susceptible to the influence of their doctor, since they rely on medical practitioners for life-saving treatment;¹⁰ as such, it is particularly critical that healthcare workers treating women living with HIV provide unbiased counseling about sterilization, and do not unduly influence their patients' decisions, including by ensuring that women do not feel pressured to undergo sterilization and that the decision is not made in a time of crisis.¹¹ Surgical sterilizations often occur in tandem with cesarean deliveries, which is a time when women living with HIV's primary concern is the delivery of a healthy child without HIV. As such, this is not an appropriate time to weigh the issue of sterilization and provide informed consent.

i. *F.S. v. Chile*

The case of *F.S. v. Chile*, currently pending before the Inter-American Commission on Human Rights (IACHR), exemplifies the pervasive problem of involuntary sterilization in Chile. F.S., a rural woman living with HIV, was sterilized without her knowledge or consent following a cesarean section when she was only 20 years old. F.S. had not requested or discussed sterilization with her doctor prior to the procedure, nor did she receive counseling on the risks and benefits of sterilization or alternative methods of birth control. F.S. never consented verbally or in writing to the procedure. While she and her husband had planned to have more children, following the forced sterilization, this plan was no longer possible as the sterilization stripped F.S. of her reproductive capabilities. Although F.S. sought justice through the Chilean judicial system, the Public Prosecutor failed to adequately investigate her case and she was unable to obtain redress. To this day, F.S. suffers from depression resulting from the sterilization, and the physical and psychological effects of the sterilization have strained her and her husband's relationship. F.S. also has trouble receiving medical attention, as a result of the abuses she suffered at the hands of medical professionals.¹²

b. Involuntary sterilization on the basis of HIV status violates the Convention Against Torture

Under the Convention, States are required to take measures to prevent acts of torture or ill treatment.¹³ States must protect minorities and marginalized groups, and “ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection.”¹⁴ The Committee has emphasized that gender is a key factor in the infliction of torture or cruel, inhuman and degrading treatment, that “being female intersects with other identifying characteristics or status of the person,”¹⁵ and that women are particularly at risk for torture or ill-treatment involving medical treatment and reproductive decisions.¹⁶ In instances of sterilization based on seropositive status, the sex of the woman and her status as HIV positive intersect in order to result in the infliction of violence against her.

The Committee has repeatedly issued concluding observations recognizing involuntary sterilization as a violation of the Convention Against Torture. The Committee has expressed deep concern about allegations of involuntary sterilization,¹⁷ and has urged State parties to promptly and thoroughly investigate such allegations, prosecute perpetrators of involuntary sterilization, and provide victims with adequate compensation.¹⁸ The Committee has also urged State parties to train public officials on criminal liability for involuntary sterilizations and the proper means of obtaining informed consent.¹⁹ The Committee has urged State parties to “take whatever legal and other measures are necessary to effectively prevent acts that put women’s health at grave risk.”²⁰

In the case of *V.C. v. Slovakia*, the European Court of Human Rights addressed the involuntary sterilization of a Roma woman, ruling that coerced sterilization violates the right to be free from torture, cruel, inhuman and degrading treatment.²¹ The Court noted that “sterilization constitutes

a major interference with a person's reproductive health status"²² and "[a]s it concerns one of the essential bodily functions of human beings, it bears on manifold aspects of the individual's personal integrity including his or her physical and mental well-being and emotional, spiritual and family life."²³

The Human Rights Committee (HRC) considers forced sterilization a violation of the right to be free from cruel, inhuman and degrading treatment,²⁴ and the former Special Rapporteur on Violence against Women, Its Causes and Consequences has described forced sterilization as "battery of a woman," noting that it "is a method of medical control of a woman's fertility without the consent of a woman."²⁵ The Inter-American Commission on Human Rights has "indicated that inhuman treatment includes unjustifiable conduct that causes severe physical, mental or psychological pain or suffering."²⁶

Articles 12,²⁷ 13²⁸ & 14(1)²⁹

2. *Please provide information on the mechanisms available for women who have been sterilized without their consent to lodge complaints against healthcare providers. Please provide specific information on the policies and procedures in place to ensure adequate investigation, prosecution, and punishment of healthcare providers who perform involuntary sterilizations, specific data on reports of involuntary sterilization within medical institutions, the investigative process employed to respond to reports of involuntary sterilization, the number of criminal prosecutions for involuntary sterilization and the sanctions that have been imposed. Please indicate the mechanisms available to provide redress, including fair and adequate compensation and measures of rehabilitation, to women who have been involuntarily sterilized and provide specific data on the use of such mechanisms, their effectiveness, and the redress provided.*

a. Despite domestic legal provisions prohibiting involuntary sterilization, the practice persists with impunity

While Chile's domestic laws protect the rights of women living with HIV, the lack of implementation and enforcement of these regulations inhibit the effectiveness of these protections.³⁰ In 1998, Chile passed a law to implement the Convention of Belém do Pará, which provides domestic protection for the right to be free from gender-based violence.³¹ Chile's law on HIV/AIDS prohibits discrimination against people based on their HIV status and prohibits public health institutions from denying access to healthcare services based on a person's serological status.³² Furthermore, the law on surgical sterilization requires healthcare providers to offer counseling on alternative contraceptive methods, the irreversible nature of sterilization, and the potential risks, prior to obtaining consent from patients.³³ Voluntary, informed consent must be obtained in writing prior to the sterilization.³⁴

Despite the legal framework surrounding involuntary sterilization, these regulations have not been adequately implemented, thereby hindering their effectiveness in protecting the rights of women living with HIV. Furthermore, mechanisms to provide a remedy for coercively sterilized women have been ineffective, resulting in violations of the right to redress. In a 2010 investigation into involuntary sterilization of women living with HIV in Chile for the report *Dignity Denied*, none of the women interviewed reported receiving redress for their sterilization.³⁵ A search for information on investigations, prosecutions, punishment and redress for involuntary sterilizations did not yield any results, exemplifying the need for the State to enhance efforts to redress involuntary sterilizations and to monitor the use and effectiveness of mechanisms for redress. The case of *F.S. v. Chile* further demonstrates the State's failure to take steps to conduct prompt and impartial investigations into reports of involuntary sterilization and provide redress for women who were involuntarily sterilized. In the aforementioned case of *F.S. v. Chile*, F.S. filed a complaint against the operating surgeon who sterilized her without her consent, seeking criminal sanctions and financial reparations. A police investigation determined that F.S. did not give written consent for the sterilization, as required by Chilean law. Despite F.S.'s testimony that she never consented to sterilization in any form and Chile's law requiring written consent, the Public Prosecutor failed to adequately investigate F.S.'s complaint and recommended that the case be dismissed. F.S. and her lawyers unsuccessfully appealed this decision, leaving F.S. without any source of redress.

b. Standards on investigating, prosecuting, punishing and redressing involuntary sterilization

Under the Convention, State parties are obligated to “eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment; and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented.”³⁶ If such measures are ineffective, the State is required to revise the measure or implement more effective measures.³⁷ Under Articles 13 and 14 of the Convention, State parties are obligated to ensure that victims of torture or cruel, inhuman or degrading treatment obtain access to justice and legal redress which includes “fair and adequate compensation, including the means for as full rehabilitation as possible.”³⁸ Furthermore, States must educate their general populations on the prohibition of torture and ill-treatment, and provide law enforcement and other personnel with training on recognizing and preventing torture and ill-treatment.³⁹

As such, Chile is responsible for implementing effective measures to ensure women living with HIV who are involuntarily sterilized can access a complaint mechanism, that reports of involuntary sterilization are adequately and appropriately investigated and prosecuted, and that women who are involuntarily sterilized receive compensation and rehabilitation. Chile must also educate those actors who may contribute to providing redress for victims, such as police officers, public prosecutors and judges, on involuntary sterilization of women living with HIV as a form of torture and cruel, inhuman or degrading treatment.

There remains a significant gap between the rights afforded to women living with HIV under the Convention and the reality for women in Chile. We applaud the Committee for its commitment to advancing and protecting the reproductive rights of all women. We hope that this information will be useful in the Committee's preparation of its list of issues prior to reporting for Chile. In case any questions in regard to this letter should arise, or if the Committee would like further information, please do not hesitate to contact the undersigned.

Sincerely,



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¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, G.A. Res. 39/46, UN GAOR, 39th Sess., Supp. No. 51, at 197, Art. 2(1), U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (entered into force June 26, 1987) [hereinafter CAT] (Article 2(1): "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction").

² *Id.* art. 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 as defined in article I, 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. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment").

³ CENTER FOR REPRODUCTIVE RIGHTS AND VIVO POSITIVO, DIGNITY DENIED, VIOLATIONS OF THE RIGHTS OF HIV POSITIVE WOMEN IN CHILEAN HEALTH FACILITIES 9 (2010) [hereinafter DIGNITY DENIED] (citing FRANCISCO VIDAL ET AL., MUJERES CHILENAS VIVIENDO CON VIH/SIDA: ¿DERECHOS SEXUALES Y REPRODUCTIVOS? 68, 106 (2004), available at <http://www.vivopositivo.org/portal/datos/ftp/MujeresChilenas.pdf>).

⁴ *Id.* at 9.

⁵ Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 19: Violence against Women*, 11th Sess., ¶ 22, U.N. Doc. A/47/38 at 1(1993) [hereinafter CEDAW Committee, *General Recommendation No. 19*].

⁶ See OPEN SOCIETY FOUNDATIONS, AGAINST HER WILL, FORCED AND COERCED STERILIZATION OF WOMEN WORLDWIDE 2 (2011).

⁷ International Federation of Gynecology and Obstetrics (FIGO), *Ethical Considerations in Sterilization*, in *Ethical Issues in Obstetrics & Gynecology* 98, 98 (Oct. 2009), available at <http://www.figo.org/files/figo-corp/Ethical%20Issues%20-%20English.pdf>.

⁸ WORLD HEALTH ORGANIZATION (WHO), PREVENTION OF MOTHER-TO-CHILD TRANSMISSION (PMTCT), BRIEFING NOTE 3 (2007), available at <http://www.who.int/hiv/pub/toolkits/PMTCT%20HIV%20Dept%20brief%20Oct%2007.pdf>.

⁹ DIGNITY DENIED, *supra* note 3, at 25.

¹⁰ *Id.* at 27.

¹¹ UNFPA, 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.who.int/hiv/pub/guidelines/sexualreproductivehealth.pdf>.

¹² For more information on the case of *F.S. v. Chile*, see <http://reproductiverights.org/en/lbs-fs-vs-chile>.

¹³ CAT, *supra* note 1, arts. 2(1) & 16(1).

¹⁴ Committee Against Torture, *General Comment No. 2, Implementation of Article 2 by States parties*, ¶ 20, U.N. Doc. CAT/C/GC/2 (2008) [hereinafter Committee Against Torture, *General Comment No. 2*].

¹⁵ *Id.* ¶ 22.

¹⁶ *Id.*

¹⁷ Committee Against Torture, *Concluding observations of the Committee against Torture, Slovakia*, ¶ 14, U.N. Doc. CAT/C/SVK/CO/2 (2009); Committee Against Torture, *Conclusions and recommendations of the Committee against Torture, Peru*, ¶ 23, U.N. Doc. CAT/C/PER/CO/4 (2006).

¹⁸ Committee Against Torture, *Concluding observations of the Committee against Torture, Slovakia*, ¶ 14, U.N. Doc. CAT/C/SVK/CO/2 (2009); *Conclusions and recommendations of the Committee against Torture, Czech Republic*, ¶ 6, U.N. Doc. CAT/C/CR/32/2 (2004).

¹⁹ Committee Against Torture, *Concluding observations of the Committee against Torture, Slovakia*, ¶ 14(b), U.N. Doc. CAT/C/SVK/CO/2 (2009).

²⁰ Committee Against Torture, *Conclusions and recommendations of the Committee against Torture, Peru*, ¶ 23, U.N. Doc. CAT/C/PER/CO/4 (2006).

²¹ *V.C. v. Slovakia*, App. No. 18968/07 Eur. Ct. H.R. ¶ 120.

²² *Id.* ¶ 106.

²³ *Id.*

²⁴ See Human Rights Committee (HRC), *General Comment No. 28 Equality of Rights between Men and Women (article 3)*, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000). See also HRC, *Concluding observations of the Human Rights Committee, Slovakia*, ¶ 12, U.N. Doc. CCPR/CO/78/SVK (2003); HRC, *Concluding Observations of the Human Rights Committee, Japan*, ¶ 31, U.N. Doc. CCPR/C/79/Add.102 (1998); and HRC, *Concluding Observations of the Human Rights Committee, Peru*, ¶ 21, U.N. Doc. CCPR/CO/70/PER (2000).

²⁵ Radhika Coomaraswamy, *Report of the Special Rapporteur on Violence against Women, 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*, ¶ 51, U.N. Doc. E/CN.4/1999/68/Add.4 (Jan. 21, 1999).

²⁶ *Michael Gayle v. Jamaica*, Case 12.418, Inter-Am. Comm'n H.R., Report No. 92/05, OEA/Ser.L/V/II.124, doc. 5 ¶ 61 (2005).

²⁷ CAT, *supra* note 1, art. 12 (“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”).

²⁸ CAT, *supra* note 1, art. 13 (“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities”).

²⁹ CAT, *supra* note 1, art. 14(1) (“Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.”).

³⁰ See República de Chile, Ministerio de Relaciones Exteriores [Ministry of Foreign Relations], Decreto No. 1640: *Promulga la Convención Interamericana para Prevenir, Sancionar y Erradicar la Violencia contra la Mujer* [Decree No. 1640: Promulgation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women] (*published* Nov. 11, 1998) [hereinafter Convention of Belém do Pará Law (Chile)]; República de Chile, Ministerio de Salud, Ley 19.779: *Establece normas relativas al virus de inmuno deficiencia humana y crea bonificación fiscal para enfermedades catastróficas*, art. 7 [Law 19.779: Establishing norms regarding the HIV virus], art. 5 (*published* Dec. 14, 2001) [hereinafter HIV/AIDS Law (Chile)]; República de Chile, Resolución Exenta 2326: *Fija Directrices para los servicios de salud sobre esterilización femenina y masculina* [Resolution 2326: Guidelines on feminine and masculine sterilization for healthcare services], arts. 2-4 (*published* Dec. 9, 2000) [hereinafter Sterilization Law (Chile)].

³¹ Convention of Belém do Pará Law (Chile), *supra* note 30.

³² HIV/AIDS Law (Chile), *supra* note 30.

³³ Sterilization Law (Chile), *supra* note 30.

³⁴ *Id.* arts. 2 - 4.

³⁵ DIGNITY DENIED, *supra* note 3.

³⁶ Committee Against Torture, *General Comment No. 2*, *supra* note 14, ¶ 4.

³⁷ *Id.* ¶ 4.

³⁸ CAT, *supra* note 1, art. 14.

³⁹ Committee Against Torture, *General Comment No. 2*, *supra* note 14, ¶ 25.