Litigating against the Forced Sterilization of HIV-Positive Women: Recent Developments in Chile and Namibia

In response to rising Human Immunodeficiency Virus ("HIV")-infection rates, poverty, and overpopulation, some nations have resorted to a policy of forcibly sterilizing HIV-positive women in order to prevent the transmission of HIV during childbirth. Such forced sterilization violates a woman's fundamental right to control her own body and her right to make her own reproductive decisions. Forced sterilization "occurs when a procedure eliminating a woman's [or man's] ability to bear children is performed without her [or his] informed consent."[1] The term encompasses emotionally coerced sterilization, in which hospital professionals pressure a patient into consenting to the sterilization in a way that diminishes her autonomy. One way to prevent forced sterilizations is to require informed consent before a sterilization procedure. Traditional human rights approaches of naming and shaming through studies on forced sterilization have resulted in little change. Recently, advocates have begun to litigate coerced sterilization as a rights violation in domestic and international courts. Two such cases are presented below. Although the cases are still in the litigation process, they represent a promising new approach for anti-sterilization advocates and an important step toward recognizing the reproductive rights of HIV-positive women.

Government sterilization programs originally emerged in Europe and the United States in the 1920s as part of the eugenics movement.[2] The democratic legislatures of many nations authorized formal sterilization programs to prevent vulnerable groups of people from producing "undesirable" offspring.[3] In 1927, the United States Supreme Court upheld the constitutionality of a Virginia law requiring the sterilization of all mentally retarded persons in an 8-1 decision.[4] Writing for the majority, Justice Oliver Wendell Holmes stated, "It is better for all the world, if instead of

1. Amnesty Int'l USA, Reproductive Rights: A Fact Sheet (July 20, 2005), http://www.amnestyusa.org/women/pdf/reproductiverights.pdf.

2. *See generally* William Schneider, *Toward the Improvement of the Human Race: The History of Eugenics in France*, 54 J. MOD. HIST. 268-91 (1982); Paul Weindling, *International Eugenics: Swedish Sterilization in Context*, 24 SCAND. J. HIST. 179-97 (1992); GUNNAR BROBERG & NILS ROLL-HANSEN, EUGENICS AND THE WELFARE STATE (1997); Stephanie Hyatt, *A Shared History of Shame: Sweden's Four-Decade Policy of Forced Sterilization and the Eugenics Movement in the United States*, 8 IND. INT'L & COMP. L. REV. 475 (1998).

3. *See* Paul Popenoe, *The Progress of Eugenic Sterilization*, 25 J. HEREDITY 19, 21 (1934).

4. Buck v. Bell, 274 U.S. 200 (1927).

waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind."[5] After World War II, the eugenics movement lost support due to its close association with Nazism,[6] and government-sponsored sterilization programs were eventually eliminated in most Western countries.[7] However, some developing countries adopted and continue to use sterilization in an attempt to solve poverty by reducing overpopulation;[8] the practices of India and China have garnered the most international attention to date.[9]

In another modern incarnation of sterilization, some countries with high rates of HIV infection use forced sterilization to prevent mother-to-child HIV transmission.[10] Advocates of HIV-focused sterilization programs frame their efforts in the rhetoric of public health. Particularly, they note the risk that pregnant HIV-positive women will transmit the virus to their children during childbirth.[11] However, the development of new medication beginning in the 1990s has greatly reduced the risk of transmission during birth.[12] Such medications are inexpensively available even in coun-

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5. *Id.* at 209.

6. *See* Weindling, *supra* note 2, at 194.

7. *See* Robert A. Nye, *The Rise and Fall of the Eugenics Empire: Recent Perspectives on the Impact of Biomedical Thought in Modern Society*, 36 Hist. J. 687, 687-700 (1993).

8. *See, e.g.*, Calvin Sims, *Using Gifts as Bait, Peru Sterilizes Poor Women*, N.Y. Times, Feb. 5, 1998, *available at* http://www.nytimes.com/1998/02/15/world/using-gifts-as-bait-peru-sterilizes-poor-women.html (describing Peru's sterilization quota program); Alan Riding, *Battleground in Colombia: Birth Control*, N.Y. Times, Sept. 5, 1984, *available at* http://www.nytimes.com/1984/09/05/world/battleground-in-colombia-birth-control.html?scp=1&sq=colombia+Birth+Control&st=nyt (describing controversial government sterilization program in Colombia); Tibet Justice Ctr., *Violence and Discrimination against Tibetan Women*, December 1998, *available at* http://www.tibetjustice.org/reports/women/iv.html.

9. In China, the One Child policy has been in place since 1979, and sterilization still occurs to preserve birth targets. *See, e.g.,* Therese Hesketh, Li Lu & Zhu Wei Xing, *The Effect of China's One-Child Family Policy after 25 Years*, 353 New Eng. J. Med. 1171 (2005); Jim Yardley, *China Sticking With One-Child Policy*, N.Y. Times, Mar. 11, 2008, *available at* http://www.nytimes.com/2008/03/11/world/asia/11china.html; Susan Greenhalgh, *Controlling Births and Bodies in Village China,* 21 Am. Ethnologist 3 (1994). The Indian government has also endorsed an aggressive family planning policy and has targeted the impoverished rural population for sterilization. *See, e.g.,* Cecilia Van Hollen, *Moving Targets: Routine IUD Insertion in Maternity Wards in Tamil Nadu, India*, 6 Reprod. Health Matters 98, 100-103 (1998) (describing routine practice of sterilizing women in public maternity wards without their knowledge or consent); Dileep Mavalankar & Bharti Sharma, *The Quality of Care in Sterilization Camps: Evidence from Gujarat*, *in* Improving Quality of Care in India's Family Welfare Programme 303, 303-304 (Michael A. Koenig and M.E. Khan. eds., 1999).

10. *See, e.g.*, Int'l Community of Women Living with HIV/AIDS (ICW), HIV Positive Women in Thailand: Their Voices and Choices 7 (Bencha Yoddumnern-Attig et al. eds., 2004), *available at* http://www.hivpolicy.org/Library/HPP000687.pdf; Human Rights Watch, A Test of Inequality (2004) (describing forced sterilization of HIV-positive women in the Dominican Republic); Center for Reproductive Rights, Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia (2003).

11. *See, e.g.*, Int'l Community of Women Living with HIV/AIDS (ICW), HIV Positive Women, Pregnancy, and Motherhood (2008), *available at* http://www.appg-popdevrh.org.uk/Publications/Maternal%20Morbidity%20Hearings/Written%20Evidence/1.05.1%20ICW%20Evidence.pdf.

12. AVERT, Preventing Mother-to-Child Transmission of HIV (PMCT), http://www.avert.org/pmtct-hiv.htm (last visited Jan. 24, 2010) ("Since 1999, it has been known that much simpler, inexpensive courses of drugs can also cut mother-to-child transmission rates by at least a half.").

tries without fully developed health care systems,[13] and their use has reduced perinatal HIV transmission rate to only 1.8 percent.[14] However, despite significant medical progress, over 590,000 infants continue to acquire HIV each year, most commonly through postnatal breastfeeding.[15]

Sterilization is a surgical procedure that has significant physical and psychological effects on the patient. Women's health organizations emphasize the need for extensive counseling before undergoing sterilization because of the long-term psychological effects of the procedure.[16] Personal statements by victims of forced sterilization detail the adverse social consequences of sterilization, including restricted marriage prospects, stigmatization, and isolation.[17] Victims of forced sterilization face even more severe psychological harm because they never chose to be sterilized. This harm results from both the experience of a physical intrusion upon bodily autonomy and the cultural stigma associated with sterilization.[18]

To prevent the harm associated with unwanted physical invasions, medical professionals developed the doctrine of informed consent,[19] which requires that patients consent to all surgical procedures and that they understand the procedures and their consequences before they consent.[20]

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13. *C.f.* Lynne M. Mofenson, *Tale of Two Epidemics—The Continuing Challenge of Preventing Mother-to-Child Transmission of Human Immunodeficiency Virus*, 187 J. Infectious Diseases 721, 722 (2003); Warren E. Leary, *Progress Is Reported In Cutting AIDS Link From Mother to Child*, N.Y. Times, March 3, 1992, *available at* http://www.nytimes.com/1992/03/03/news/progress-is-reported-in-cutting-aids-link-from-mother-to-child.html?scp=21&sq=mother%20child%20hiv%20transmission&st=cse&pagewanted=1.

14. Cristián González, *Querella por esterilización a mujer con VIH reabre debate,* [Complaint of sterilization by an HIV-positive woman reopens debate] El Mercurio, March 21, 2007, http://diario.elmercurio.cl/detalle/index.asp?id{ecd248cb-8f85-46c0-a997-793c8a32b0c9}.

15. Kevin M. De Cock et al., *Prevention of Mother-to-Child HIV Transmission in Resource-Poor Countries: Translating Research Into Policy and Practice*, 283 J. Am. Med. Ass'n 1175, 1177 (2000) ("[A] high proportion (one third to one half) of perinatal HIV infections in African settings is due to breastfeeding.").

16. *See generally* Jennifer Mallet & Veronica Kalambi, *Coerced and forced sterilization of HIV-positive women in Namibia*, 13 HIV/AIDS Pol. Rev. 77, 77 (2008); Sefa Kelekçi et al., *Risk factors for Tubal Ligation: Regret and Psychological Effects; Impact of Beck Depression Inventory,* 71 Contraception 417 (2005).

17. *See, e.g.,* Int'l Community of Women Living with HIV/AIDS (ICW), The Forced and Coerced Sterilization of HIV Positive Women in Namibia 7-12 (Mar. 2009), *available at* http://www.icw.org/files/The%20forced%20and%20coerced%20sterilization%20of%20HIV%20positive%20women%20in%20Namibia%2009.pdf; Geoffrey York, *HIV+ women in Africa sterilized, stigmatized*, Globe & Mail, June 16, 2009, *available at* http://www.theglobeandmail.com/news/world/sterilized-stigmatized/article1181722/.

18. Priti Patel & Brett Davidson, *Namibia Women Face Forced Sterilization*, Huffington Post, Nov. 12, 2009, http://www.huffingtonpost.com/priti-patel/namibia-women-face-forced_b_356245.html ("Given the stigma and discrimination they face at health centers, many pregnant women will stay away from hospitals—putting themselves and their children at risk.").

19. *See* American Medical Association, Patient Physician Relationship Topics: Informed Consent, http://www.ama-assn.org/ama/pub/physician-resources/legal-topics/patient-physician-relationship-topics/informed-consent.shtml (last visited Feb. 6, 2010) (describing the origins of the legal requirement for informed consent as a series of 1950s assault and battery cases).

20. Informed consent "is a process of communication between a patient and physician that results in the patient's authorization or agreement to undergo a specific medical intervention." *Id.*

The American Medical Association describes the informed consent requirement as "both an ethical obligation and a legal requirement."[21] Doctors and nurses must do "more than simply getting a patient to sign a written consent form" before claiming authorization for a medical procedure.[22] Relating to sterilization specifically, Family Health International emphasizes that "[b]ecause voluntary sterilization is surgical and intended to be permanent, it demands more [care] from health-care providers than other contraceptive methods."[23] Sterilization coerced either physically or emotionally violates this requirement for informed consent.

In addition to its physical, psychological, and social harms, forced sterilization is a violation of a woman's basic human rights as codified by the international community. Some international human rights documents specifically mention forced sterilization as a violation of human rights, while others establish more general rights to integrity of the body and freedom to make reproductive choices. For example, Article 7 of the Rome Statute of the International Criminal Court specifically categorizes forced sterilization as a crime against humanity, alongside "rape, sexual slavery, enforced prostitution, [and] forced pregnancy."[24] Likewise, the United Nations Human Rights Committee lists forced sterilization as a practice that violates the rights of women and should be eliminated.[25] Using more general language, Article 14 of the Protocol on the Rights of Women in Africa states that the sexual rights of women include "the right to control their fertility" and "the right to decide whether to have children, the number of children and the spacing of children."[26] Forced sterilization takes these decisions away from a woman.

Despite the presence of such international standards and the general medical practice of acquiring informed consent, forced sterilization remains a common practice in nations with high HIV infection rates. However, recent developments in Chile and Namibia highlight the possibility of remedying the problem of forced sterilization through litigation. Cases are pending in the Inter-American Court of Human Rights regarding forced sterilization in Chile and in the Namibian High Court regarding its use in Namibia. These cases demonstrate how a new international movement is

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21. *Id.*

22. *Id. See also* American Medical Association, Code of Medical Ethics: Opinion 8.08 – Informed Consent, *available at* http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion808.shtml.

23. Lynn Bakamjian & Pamela Beyer Harper, *Opinion: Voluntary Sterilization—Six Lessons Learned*, 18 NETWORK (1997), *available at* http://www.fhi.org/en/RH/Pubs/Network/v18_1/NW181ch7.htm.

24. Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 90, 37 I.L.M. 1002.

25. U.N. Human Rights Committee, *General Comment No. 28: Equality of Rights between Men and Women (Art. 3)*, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

26. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, July 11, 2003, OAU Doc. CAB/LEG/66.6, *available at* http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf.

using both international and domestic courts to reduce the forced sterilization of HIV-positive women.

I. Case Study: Chile

To address the spread of HIV in Chile, the Chilean government has authorized the forcible sterilization of HIV-positive women.[27] A 2004 study conducted by Vivo Positivo,[28] Universidad Arcis, and Facultad LatinoAmericana de Ciencias Sociales found that 12.9 percent of sterilized HIV-positive women had been sterilized without their consent and that a further 29 percent had agreed to be sterilized only after being coerced by hospital staff.[29] Thus, almost 42 percent of HIV-positive women who were sterilized had not given their informed consent. In response to this study, the Chilean government announced that it was considering possible remedies for HIV-positive women who had been sterilized without their consent and that it was planning to institute firmer guidelines to ensure informed consent.[30] Although this initial response seemed promising, officials have yet to follow through.[31]

Litigation in domestic or international courts offers a more direct route to redress for victims of forced sterilization. Vivo Positivo and the Center for Reproductive Rights are currently suing on behalf of a 27 year-old woman, referred to only as F.S. to protect her privacy. F.S. found out she was pregnant in 2002 and was diagnosed with HIV shortly thereafter.[32] She sought HIV treatment and pregnancy services at the Curicó Hospital in order to avoid transmitting the virus to her unborn child. She eventually delivered a healthy baby through Caesarian section,[33] but while she was hospitalized following the delivery, doctors sterilized her without seeking

27. Molly Culver, *AIDS Victims Pressured Into Sterilization,* Santiago Times, May 17, 2004, *available at* http://www.santiagotimes.cl/index.php?option=com_content&view=article&id=4278:AIDS-VICTIMS-PRESSURED-INTO-STERILIZATION&catid=1:other&Itemid=38.

28. Vivo Positivo is a non-governmental organization dedicated to helping HIV-positive women.

29. Francisco Vidal & Marina Carrasco, *Mujeres Chilenas Viviendo Con VIH/SIDA: ¿Derechos Sexuales y Reproductivos?: Un Estudio de Correlaciones en Ocho Regiones del País* [Chilean Women Living with HIV/AIDS: What Are Their Sexual and Reproductive Rights?: A Study of Correlations in Eight Regions of the Country] (2004), *available at* http://www.Vivo Positivo.org/portal/sitio/_pag/ficha.asp?Id=69.

30. Sara Araya, Litigating reproductive rights: the case of forced sterilization of HIV positive women in Chile, Presentation at the XVI International AIDS Conference (Aug. 13-18, 2006) (summary and audio file available at http://www.aids2006.org/PAG/PSession.aspx?s=137) ("The government has committed to developing guidelines to prevent this occurring in future, but the guidelines have not been issued and advocacy efforts are continuing.").

31. *See, e.g.,* Araya, *supra* note 30.

32. Press Release, Ct'r for Reproductive Rights, Forcibly Sterilized Woman Files Int'l Case against Chile (Feb. 3, 2009), *available at* http://reproductiverights.org/en/press-room/forcibly-sterilized-woman-files-international-case-against-chile.

33. Suzannah Phillips, *Without knowledge or consent,* Mujeres Adelante, July 20, 2009, *available at* http://www.athenanetwork.org/docs/Mujeres_Adelante_—_20_July_09.pdf.

her consent or even informing her about the operation.[34] This forced sterilization violated F.S.'s reproductive and bodily autonomy.

Domestic routes did not provide a satisfactory resolution to F.S.'s claim, as both the courts and the Ministry of Health found that her rights were not violated and failed to take any definitive action to protect the rights of HIV-positive women. Vivo Positivo brought F.S.'s case to the Chilean court system in 2002 as a domestic complaint.[35] The organization also brought a formal complaint before the Ministry of Health, to which the Ministry responded by sending a "memorandum to all centres to clarify HIV+ women should not be sterilized."[36] Initially, the government claimed to be searching for possible remedies to help affected women and admitted responsibility for not upholding clear standards.[37] Ministry of Health officials also stated that "health officials who administer sterilizations without the consent of the woman and her partner involved" would be punished.[38] F.S. did not receive any relief. The court found that F.S. had verbally consented to the sterilization and that any uncertainties about consent were due to an "administrative omission" by the hospital.[39]

After years of litigation in the Chilean courts Vivo Positivo and the Center for Reproductive Rights filed a complaint in the Inter-American Commission for Human Rights ("IACHR") in February 2009. The advocates have asked the IACHR to "recommend that Chile acknowledge the fact that F.S.'s human rights were violated, give her monetary compensation, and adopt policies that do not impinge upon reproductive choices of women with HIV."[40] Although Vivo Positivo and the Center for Reproductive Rights have written press releases about the pending case, coverage has been limited. F.S.'s story has drawn attention from several Internet-based media sources, but the mainstream press has not widely publicized her situation.[41] As the case continues to progress through the IACHR, it may

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34. *Id.*

35. Press Release, *supra* note 32.

36. Araya, *supra* note 30 ("Vivo Positivo filed complaint about health centres with Ministry of Health, which then sent a memorandum to all centres to clarify HIV+ women should not be sterilized.").

37. *See, e.g., Government to Compensate Women Forced to Sterilization*, SANTIAGO TIMES, Dec. 20, 2004, *available at* http://www.santiagotimes.cl/index.php?option=com_content&view=article&id=5931:GOVERNMENT-TO-COMPENSATE-WOMEN-FORCED-TO-STERILIZATION&catid=1:other&Itemid=38.

38. *Id.*

39. *Joven mujer con sida acusa esterilización contra su voluntad* [Young woman with AIDS accuses of sterilization against her will], EL MERCURIO, Feb. 4, 2009, *available at* http://diario.elmercurio.cl/detalle/index.asp?id{fa992f04-eece-4fb5-beb6-05d2543fe146}.

40. Anna Portela, *Forcibly Sterilized Woman Files Case Against Chile,* EMPOWHER, Dec. 24, 2009, http://www.empowher.com/news/herarticle/2009/12/24/forcibly-sterilized-woman-files-case-against-chile?page=0,0.

41. Internet media sources, particularly those with a progressive agenda and those focusing on feminist issues, picked up the story from the Center for Reproductive Rights Press Release. *See, e.g.*, Shawn Syms, *Birth rights,* XTRA.CA, Apr. 9, 2009, http://www.xtra.ca/public/National/Birth_rights-6590.aspx; Dorkys Ramos, *HIV Positive Chilean Women Suing Country for Forced Sterilization*, LATINA,

garner more attention and effectively advance reproductive rights domestically, regionally, and internationally.[42] 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.[43] 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.

II. Case Study: Namibia

Activists in Namibia are currently seeking remedies for victims of forced sterilization in the domestic courts. The International Community of Women Living with HIV/AIDS (ICW) conducted a survey of HIV-positive women in Namibia and found that 40 out of their 230 subjects had been sterilized without their informed consent.[44] Women reported being given forms to sign when they were "minutes from giving birth" and at other moments of extreme duress.[45] In some instances "patients were forced to undergo the operation as the only means of gaining access to medical services."[46] ICW also documented cases of women who were given false information about the need for sterilization and the rate of mother-to-child HIV transmission.[47] In interviews by media sources, patients said they were afraid to question hospital workers and doctors about the sterilization because they feared losing access to lifesaving medical treatment if they antagonized the medical professionals.[48] These narratives reveal that patients were unable to make informed decisions regarding their medical treat-

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Feb. 5, 2009, http://www.latina.com/lifestyle/health/hiv-positive-chilean-women-suing-country-forced-sterilization; *Forcibly Sterilized Woman Sues Chilean Government*, Open Forum, Apr. 21, 2009, http://www.hhropenforum.org/2009/04/chile/; *Chile: Forcibly Sterilized Woman Files International Case*, Huffington Post, Feb. 3, 2009, http://www.huffingtonpost.com/2009/02/03/chile-forcibly-sterilized_n_163565.html. However, there was no significant coverage of the case in any traditional print sources.

42. Phillips, *Without knowledge or consent, supra* note 32.

43. Emails from Suzannah Phillips, Legal Fellow, International Legal Program, Center for Reproductive Rights, to author (Nov. 4, 2009) (on file with author).

44. The Forced and Coerced Sterilization of HIV Positive Women in Namibia, *supra* note 17.

45. *Namibian women with HIV 'coerced into sterilization'*, Mail & Guardian, June 23, 2009, *available at* http://www.mg.co.za/article/2009-06-23-namibian-women-with-hiv-coerced-into-sterilisation.

46. *Id.*

47. The Forced and Coerced Sterilization of HIV Positive Women in Namibia, *supra* note 17. ("In some instances women are told that they are putting the health and lives of future children at risk. Creating mental anguish and inspiring guilt, HIV positive women are coerced into agreeing to procedures they otherwise would not consent to. For example, women were told that future children will die during birth due to HIV."). *See also* Wezi Tjaronda, *Women Robbed of Motherhood*, New Era, Feb. 12, 2008, *available at* http://www.newera.com.na/article.php?db=oldarchive&articleid=19419 (recording that some nurses told patients that sterilization was "done to women living with HIV at all the hospitals because there was no point in having children in the future.").

48. *See, e.g.,* Tjaronda, *supra* note 47.

ment.[49] Such lies, manipulation, and fear are especially dangerous because they may prevent HIV-positive women from seeking necessary medical treatment and thus increase the risk of HIV transmission.[50]

The government's response to such studies revealed a lack of interest in reforming the system. The government did conduct its own investigation of ICW's allegations, but it found that health institutions followed all necessary procedures.[51] Health officials continue to maintain that "all procedures were consented to and therefore legal,"[52] and the government has refused to categorically ban the practice of coerced sterilization or to institute further patient protections.[53] Furthermore, the government has sought to limit publicity about forced sterilizations by punishing foreign journalists who "illegally" investigate forced sterilization claims.[54]

Working together, the ICW and the Legal Aid Centre have filed fifteen cases from the Katutura State, Windhoek Central, and Oshakati hospitals.[55] The first two cases before the High Court of Namibia allege "violations of [the victims'] right to life, human dignity and equality, and the right to be free from cruel, inhuman and degrading treatment."[56] In all cases, the key point of contention is the meaning of "consent." The government insists that the mothers provided written consent to the sterilization procedure and that the mechanisms for ascertaining informed consent were adequate.[57] The attorney defending the Namibian Ministry of Health has stated publicly that the government "will deny that sterilisations happened without consent and have the medical files and consent forms to prove it."[58] In response, the Legal Aid Centre and other advocacy groups point to language barriers and illiteracy as flaws in the current consent procedures that reduce

49. *See generally* Jennifer Gatsi-Mallet, Int'l Community of Women Living with HIV/AIDS - Namibia, Presentation, Namibia Women Denied Motherhood—A Sexual Reproductive Health Violation, *available at* http://arasa.info/sites/default/files/Namibia%20Women%20Denied%20Motherhood-%20Jenny.pdf ("women were told or given the impression that they had to consent to sterilization in order to obtain another medical procedure such as an abortion or caesarian section").

50. Patel & Davidson, *supra* note 18.

51. Brigitte Weidlich, *No coerced sterilisation of HIV+ women: Kamwi,* The Namibian, Mar. 7, 2009, *available at* http://www.namibian.com.na/index.php?id=28&tx_ttnews[tt_news]=57040&no_cache=1.

52. Servaas Van Den Bosch, *Namibia: 'Cut, Cut Again And Now Tie Tightly,'* AllAfrica.com, June 23, 2009, http://allafrica.com/stories/200906230908.html.

53. Patel & Davidson, *supra* note 18.

54. Petronella Sibeene, *Foreign Journos Pry Into Forced Sterilisation Case*, New Era, Aug. 4, 2009, *available at* http://www.newera.com.na/article.php?articleid=5927.

55. *See* Wezi Tjaronda, *Namibia: Sterilisation Cases Headed for Courts*, New Era, Apr. 7, 2008, *available at* http://allafrica.com/stories/200804070421.html.

56. Priti Patel, *Agenda 75: How did we get here and where to now? The coerced sterilisation of HIV-positive women in Namibia*, http://endforcedsterilisation.wordpress.com/about/background/.

57. Denver Isaacs, *Forced sterilisation claims in court soon*, The Namibian, June 24, 2009, *available at* http://www.namibian.com.na/index.php?id=28&tx_ttnews[tt_news]=56663&no_cache=1.

58. Tjaronda, *supra* note 55.

the autonomy of patients.[59] The Namibian High Court will hear the merits of the cases in the spring of 2010.

In the past, non-profit groups in Namibia have used public interest litigation to spur the government to conform its laws and practices to international standards across a wide variety of issues.[60] A positive outcome in the forced sterilization cases before the Namibian High Court may pressure the government into enforcing clear informed consent regulations in state hospitals and prevent discriminatory forced sterilization of HIV-positive women.

As these cases are still making their ways through the IACHR and the Namibian court system respectively, the long-term success of litigation as a strategy for combating forced sterilization is not settled. Even the threat of current litigation, however, may prompt policy shifts in governments and promote respect for reproductive choices. Although litigation presents a potential solution, to date, forced sterilization continues to be a major problem throughout Latin America and Africa. While cases such as those described above are pending, the human rights community should work closely with the medical community to fill in gaps in the existing system by implementing stricter observance of informed consent and working to eliminate barriers to truly informed medical decisions.

—Pooja Nair, J.D. Candidate, Harvard Law School 2011.

59. *See, e.g.*, *NAPPA wants justice in 'forced sterilisation' cases,* New Era, Nov. 2, 2009, *available at* http://www.newera.com.na/article.php?articleid=7981; *Namibian Women Take Government to Court on Charges of Forced Sterilisation*, Inter Press Service News Agency, June 24, 2009, http://www.ipsinternational.org/africa/radio/nota.asp?idnews=5543.

60. *See* Legal Assistance Centre, *Key Judgments 1990-2000*, *available at* http://www.lac.org.na/cases/keyjudgments.html.