IN THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS

ORGANIZATION OF AMERICAN STATES

WASHINGTON, D.C. USA

PETITION ON BEHALF OF

OFICINA DE DERECHOS HUMANOS DEL ARZOBISPADO DE GUATEMALA

v.

GUATEMALA AND THE UNITED STATES OF AMERICA

Presented by the undersigned, appearing as counsel for the Petitioners under the provisions of Article 23 of the Commission's Regulations

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I. INTRODUCTION

1. Between 1946 and at least 1953, individuals from the United States and Guatemala conducted, with the support of public institutions, non-consensual medical experiments on some of the most vulnerable populations in Guatemala. At the time the experiments took place, Guatemala sought to cultivate a better partnership with the United States and to contribute to the advancement of science. Instead, the actions of Guatemala and the U.S. reinforced the structures of exclusion, marginalization, racism, and discrimination that already prevailed in Guatemala.
2. The intentional and non-consensual exposure of people to syphilis, gonorrhea, and chancroid caused permanent damage to individuals from often marginalized Guatemalan populations. The experiments specifically targeted prisoners, soldiers from several parts of the Guatemalan army, patients in a state-run psychiatric hospital, children in orphanages, and sex workers, among others. With the exception of sex workers who were included in the experiments to have intercourse with prisoners and soldiers, the groups of individuals that were targeted were groups that lacked mobility and could be kept in an area that would facilitate observation for the duration of the experiments.
3. Both States knowingly undertook to conduct non-consensual medical experimentation, flagrantly violating persons' rights to life; dignity and privacy; health and well being; family, as a result of sterilization and birth complications; freedom of from cruel, inhuman and degrading treatment; and judicial protections under the law—all of which it is Petitioner's goal to protect against.
4. Petitioner, Human Rights Office of the Archdiocese of Guatemala (ODHAG) is an organization that provides legal assistance and community support to victims of human rights violations. Its primary objectives are to address human rights violations against the most vulnerable parts of the population; to work in accordance with the ecclesiastical and universal mandate of human rights; to facilitate the process of individual, family and group reconciliation; and to contribute and strengthen attention to the damages caused by the internal armed conflict and other human rights violations. Petitioner submits this

petition to remedy the violations the United States of America ("the US" or "the United States") and the Republic of Guatemala ("Guatemala") committed under Article I (the right to life, liberty, and personal security), Article VI (right to establish a family), and Article XI (the right to preservation of health and to well-being) of the American Declaration of the Rights and Duties of Man ("American Declaration" or "Declaration")[1]. This petition is also submitted to remedy Guatemala's violations of Articles 1(1), 4, 5, and 11 of the American Convention on Human Rights ("American Convention" or "Convention")[2].

5. Petitioner respectfully requests that this Commission admit this Petition and grant victims all relief deemed appropriate and necessary upon adjudication of the merits, including declaratory, injunctive, and compensatory relief.

II. FACTUAL ALLEGATIONS

A. Member States of the Organization of American States against Which the Complaint is Submitted and Authorities Responsible for the Facts Alleged

6. The Republic of Guatemala and the United States of America should be held accountable for conducting non-consensual medical experiments against the Guatemalan people.
7. The United States and Guatemala are both member states of the Organization of American States ("OAS"). Both States conducted medical experiments to deliberately expose individuals to syphilis, gonorrhea, and chancroid. Consequently, both States failed to respect the rights and freedoms of the individuals who were tested on without their consent, violating, among others, their rights to life, health, and freedom from cruel, inhuman and degrading treatment.
8. The preamble and introduction of the American Declaration acknowledge the dignity of the individual and recognize that juridical and political institutions should protect the essential rights of man, which are not derived from being a national of a certain state, but

[1] American Declaration of the Rights and Duties of Man, OAS Res. XXX, adopted by the Ninth International Conference of American States (1948), *available at* http://www1.umn.edu/humanrts/oasinstr/zoas2dec.htm.
[2] Organization of American States, American Convention on Human Rights, arts. 1,4,5, and 11, Nov. 22, 1969, OAS Treaty Series No. 36, 1144 U.N.T.S. 123.

rather, are based on attributes of the human personality. In accordance with Article 62 of the American Convention, the contentious jurisdiction of the Inter-American Court of Human Rights (IACtHR) is limited to those states that have explicitly recognized the Court's competence to entertain cases concerning the interpretation and application of the provisions of the American Convention in respect of that state. Guatemala has recognized this jurisdiction. Although the United States has not, as a signatory party it is obliged to refrain from acts that would defeat the object and purpose of a treaty.[3]

B. Unlawful Non-Consensual Medical Experimentations

9. It is uncontested that from 1946 to at least 1953 individuals from the United States and Guatemala conducted non-consensual medical experiments with the support of public institutions. Although the funding from the United States stopped in 1953, it has not been established when the experiments actually ended.[4]

10. From 1946 to at least 1953, officials from the United States Public Health Service ("PHS") and the Pan American Sanitary Bureau ("PASB") conducted medical experiments in Guatemala involving the "deliberate infection of people with sexually transmitted diseases ("STDs") without their consent."[5]

11. In 1946, John C. Cutler from the PHS, with assistance from PASB's General Surgeon, began conducting medical experiments on persons in Guatemala without providing them with information about the procedures or risks of participating in the experiments. Critically, obtaining consent from the psychiatric patients and of orphan children, who were under the State's care, was a legal impossibility.[6]

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[3] Vienna Convention on the Law of Treaties, Art. 18.

[4] Research Grant-65, awarded July 1946; Research Grant-65(C), awarded July 1947, and extended to December 1948. Funding through 1953 was provided by United States Public Health Service ("PHS") to several Guatemalan researchers. *See, e.g.*, Juan M. Fuentes Personnel Files, December 10, 1948. PCSBI HSPI Archives, NPRC_0000807; *see also* Class Action Compl. for Injunctive Relief and Damages, *Garcia v. Sebelius*, 867 F. Supp. 2d, at ¶ 7 (D.C. Cir. 2013), 1:11cv00527, 2011 WL 916719.

[5] U.S. Presidential Comm'n for the Study of Bioethical Issues, *"Ethically Impossible" STD Research in Guatemala from 1946 to 1948* (2011), at 2 (Appendix A). For additional information regarding the experiments, see U.S. DEPT. OF STATE, DOC NO. C05404910, PRESIDENTIAL COMMISSION FOR THE ELUCIDATION OF THE EXPERIMENTS CONDUCTED ON HUMAN SUBJECTS IN GUATEMALA DURING THE PERIOD 1946–1948 (English translation) (2014) (Appendix C). *See also* COMISIÓN PRESIDENCIAL PARA EL ESCLAREMIENTO DE LOS EXPERIMENTOS PRACTICADOS CON HUMANOS EN GUATEMALA, CONSENTIR EL DAÑO: EXPERIMENTOS MEDICOS DE LOS ESTADOS UNIDOS EN GUATEMALA, 1946–1948 (2011) (the original versión of the Guatemala Presidential Report in Spanish) (Appendix B).

[6] *See infra* section V(C)(i)(a).

12. PHS, a United States government agency, funded "Research Grant No. 65(RG-65)" for an investigation, to be held in Guatemala, into venereal disease.[7] The grant went directly to PASB.
13. In turn, PASB supported the work of the medical team and negotiated agreements that authorized the team to work with officials and institutions across the Guatemalan government.
14. Ultimately, the non-consensual medical experimentation in Guatemala exposed at least 5,128 vulnerable individuals to experimental testing.[8]

C. Infecting Individuals with Venereal Diseases Violated Their Rights Under the American Convention and the American Declaration as well as under Customary International Law

15. The medical team targeted prisoners, soldiers from several parts of the Guatemalan army, patients in a state-run psychiatric hospital, and commercial sex workers with the intent to expose them to syphilis, gonorrhea, and chancroid.
16. However, rather than obtaining consent from individual participants, the team sought cooperation from the institutions in which these individuals resided.[9]
17. The medical team provided the institutions with essential supplies. For example, the mental asylum received epilepsy medication, while the orphanage received malaria medication and refrigerators for medications.[10]
18. The purpose of the experiments was to determine whether penicillin could be used as a prophylaxis and to find the most effective way to inoculate against syphilis. However, the experiments did not result in a scientific contribution and were instead described as "ethically impossible."[11]

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[7] Appendix A at 31 (stating that PHS provided funding through 1953 to several Guatemalan researchers).
[8] Appendix A at 6; *see also* INVESTIGACIÓN ARCHIVÍSTICA SOBRE EXPERIMENTOS PRACTICADOS EN SERES HUMANOS EN GUATEMALA 1947–1948, at 171-219 (illustrating Dr. Cutler's records that list the names of 5543 victims).
[9] *Id.* at 59 (Cutler proposing that compensation was provided to the institution rather than the individual).
[10] Class Action Compl. for Injunctive Relief and Damages, *Garcia v. Sebelius*, 867 F. Supp. 2d 125 (D.C. Cir. 2013), 1:11cv00527, 2011 WL 916719.
[11] Appendix A at 100 (describing Waldemar Kaempffert's article in *The New York Times* in April 1947 about syphilis research, which reported that any plan to "shoot living syphilis germs into human bodies" to advance science would be "ethically impossible").

19. The documents maintained by the medical team reveal an understanding of, and disregard for, the respect for human dignity and human life in the course of their work in Guatemala.[12]
20. Although the experiments were designed to obtain information about how syphilis is contracted, Cutler's documentation does not indicate that the experiments followed a protocol. Rather, frequent changes in the methodology demonstrate the improvisation under which the experiments were conducted, limiting their scientific value.[13]
21. The experiments indicate that, despite the state officials' awareness, human rights standards were violated. Both the individuals and public institutions involved are responsible for the human rights violations that occurred because of these experiments.

D. Conditions Under Which the Experiments Occurred

22. Considering Guatemala's reliance on aid from the United States as well as its economic and political environment at the time the experiments took place, it is not surprising that Guatemalan state officials supported the experiments by not intervening or providing redress for the victims in Guatemala.
23. At the time the experiments took place, Guatemala sought political inclusion and acceptance by the United States. The opportunity to facilitate experiments, which promised to advance scientific research, was perceived as a way to enhance Guatemala's image with U.S. state officials.[14]
24. Guatemala's historical relationship with the United States and other Latin American countries facilitated the experiments. The structures of exclusion, marginalization, racism, and discrimination that were prominent in Guatemala made it a target place to conduct non-consensual medical experiments, and consequently human rights violations, with little or no consequence.[15]
25. In this era, people who were not white were viewed as test subjects by the researchers from the Public Health Service. At the same time, the Tuskegee study was going on, and

[12] *See, e.g.* U.S. DEPT. OF STATE, Appendix C, at 22–23, COMISIÓN PRESIDENCIAL, Appendix B, at 18–19 (referencing the historical and systematic racism towards and marginalization of certain groups within Guatemala).
[13] *Id.* at 85; U.S. DEPT. OF STATE, Appendix C, at 106–107.
[14] *Id.* at 14–17; Appendix B, at 11–13.
[15] U.S. DEPT. OF STATE, Appendix C, at 23;COMISIÓN PRESIDENCIAL, Appendix B, at 19.

although a cure for syphilis became standard in the nineteen forties, the researchers made a decision not to terminate that study or cure anyone's syphilis. Dr. Cutler, the researcher in charge of the experiments in Guatemala, became involved with the Tuskegee study after he returned to the states.[16] A racist and unproven belief on the part of both US and Guatemalan public health officials was that "when manifested in an Indian, it appears in mild form." [17]

26. Guatemala was conceivably chosen to conduct the experiments because of the notion that "the Guatemalans were a suitable, if not preferable, experimental population by virtue of poverty, ethnicity, race, remoteness, national status, or some combination of these factors."[18]

27. For example, because a majority of Guatemalans involved in the experiments were indigenous Mayans, a population that consists largely of poor people with dark skin and short stature, it is possible the commercial sex workers, prisoners, psychiatric patients, and soldiers were not only chosen because it was convenient, but more generally, because the population accumulates on itself all stigmas based on its physical and national characteristics.[19] Specifically, Dr. Cutler admitted that Dr. Spoto, in discussing their project, said that, "the work with the indigenous individuals in the prison could be done with little or no explanation, since explanations and knowledge about what is happening would confuse them."[20] This, combined with the fact that the medical team articulated that they could get away with paying indigenous men less than what the team had originally discussed, demonstrates a blatant disregard towards the indigenous population and a view that this population is disposable.[21]

28. Additionally, the pre-existing relationship between the United States and Guatemala, including aid for the provision of medical services and development of public health services, facilitated the experiments. The Office of Inter-American Affairs, which brought fellows like Guatemalan physician Dr. Juan Fuentes to the United States, had supported

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[16] Susan Reverby, *"Normal Exposure"and Inoculation Syphilis: A PHS "Tuskegee" Doctor in Guatemala, 1946-1948*, 23 J. of Policy History 6, 9-10 (2011).
[17] *Id*. at 11.
[18] Appendix A at 106.
[19] COMISIÓN PRESIDENCIAL, Appendix B at 103; U.S. DEPT. OF STATE, Appendix C, at 106.
[20] COMISIÓN PRESIDENCIAL, Appendix B at 18 (translated); U.S. DEPT. OF STATE, Appendix C, at 22.
[21] *See id.*

the construction of a hospital in Guatemala City where U.S. medical researchers were often present.[22] Dr. Cutler admitted that the legality of commercial sex work in Guatemala would facilitate conducting the medical experiments. This admission, in addition to his previous relationship with Dr. Juan Fuentes, who completed his fellowship at the Venereal Disease Research Laboratory ("VDRL"), contributed to the decision to conduct the experiments in Guatemala.

29. Fuentes was able to facilitate the experiments because of his positions in Guatemala. He was not only responsible for supervising the medical clinics where sex workers were required to undergo inspections, but he was also the director of both the Guatemalan Venereal Disease Control Department and the Penitenciaria Central (Penitentiary).[23]

30. It is uncontested that the experiments were also conducted against some of the most vulnerable members of the population without their consent. Both States knowingly subjected individuals usually marginalized in society and of low economic status to medical experimentation that consisted of inhumane and degrading treatment.

31. These experiments violated the most basic norms of international law, including the American Convention and American Declaration. Other international documents forbidding nonconsensual medical experimentation include the Convention on Human Rights and Biomedicine, the Universal Declaration on Bioethics and Human Rights, and the 2001 Directive passed by the European Parliament and the Council of the European Union. The World Medical Association's Declaration of Helsinki and the Council for International Organizations of Medical Services ("CIOMS") guidelines also recognize this prohibition. The enactment by no less than eighty-four countries of laws explicitly including the prohibition also demonstrates the widespread prohibition of non-consensual human medical experimentation.

E. Victims' Legal Proceedings: The Civil Tort Claims in the United States

32. On June 13, 2012, the U.S. District Court for the District of Columbia dismissed claims brought by ten of the victims (Plaintiffs) against the United States seeking redress for

[22] *Id.* at 29–30.
[23] *Id.* at 29.

"non-consensual human medical experimentation that took place in Guatemala from 1946 to [at least] 1953 . . . at the hands of American and Guatemalan doctors and government officials."[24] The court held that the claims were barred under the Federal Tort Claims Act's foreign country exception, that state officials were not personally involved in any constitutional violation, and that the claims could not overcome the certification that the defendants were acting under the scope of employment under the Employees Liability Reform and Tort Compensation Act, commonly known as Westfall Act.[25]

33. On August 13, 2012, Plaintiffs appealed to the United States Court of Appeals, District of Columbia Circuit. On June 5, 2013, the District of Columbia Circuit dismissed the appeals, effectively ending Plaintiffs' ability to seek justice.[26] The Court ruled that because Dr. Cutler and the rest of the medical team have long since left their posts, there was no basis for liability to hold the United States responsible in U.S. courts. Thus, the Court's affirmation of the defendants' certification under the Westfall Act bars a successful future appeal.

F. Victims' Current Circumstances

34. Because of the significant amount of subjects inoculated with chancroid, syphilis, and gonorrhea as part of these non-consensual experiments as well as the fact that many were not treated,[27] it is likely that persons today continue to suffer from the adverse effects of the experiments.

35. Without medical treatment, the consequences resulting from non-consensual experimentation were not limited to the actual victims; the diseases had generational impacts. For example, a child of an untreated mother with one of these diseases was likely born with defects, including blindness, paralysis, still-birth, low-birth weight, and pre-term live births.[28] Further, congenital gonorrhea, may result in morbidity for mother and child, prolonged rupture of fetal membranes, low birth-weight, and post-partum fetal

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[24] *Garcia v. Sebelius*, 867 F. Supp. 2d 125, 129 (D.D.C. 2012) opinion vacated in part, 919 F. Supp. 2d 43 (D.D.C. 2013).
[25] *Id.* at 135.
[26] *Garcia v. Sebelius*, 12-5257, 2013 WL 3357793 (D.C. Cir. June 5, 2013).
[27] Appendix A at 33, finding that only 820 out of 5240 infected patients received treatment.
[28] *See* Carolyn J. Hildreth, *Syphilis*, 301 JAMA, no. 7, 2009, at 791; *See also* H. Hunter Handsfield, *Neonatal Gonococcal Infection: I Orogastric Contamination With Neisseria gonorrhea*, 225 JAMA, NO. 7, 1973, at 697, 697.

sepsis.[29]

36. The pervasiveness and severity of symptoms associated with the infections, especially syphilis and gonorrhea, in addition to the scope of the experiments and lack of treatment for the subjects, suggest that there are many individuals suffering from the infections that Cutler's experiments inexorably and predictably caused. Persons today continue to feel the impact of the non-consensual medical experiments given that when untreated, the effects of the diseases have particularly grave medical consequences.

III. INFORMATION ON THE VICTIMS

A. Physical Harm

37. PHS's non-consensual medical experimentation in Guatemala victimized at least 5,128 vulnerable individuals by exposing them to experimental testing.[30] However, the full and complete impact in terms of resulting physical harm and number of individuals suffering from physical illness due to these experiments is unknown.
38. For example, the Class Action Complaint for Injunctive Relief and Damages filed in the District of Columbia in the United States describes the injuries of ten individuals.
39. CELSO RAMIREZ REYES served in the Guatemalan "Guardia de Honor" from 1948 to 1950. His repeated inoculations over six months left him with sores, poor sight, gonorrhea, and extreme lethargy.[31] Celso's daughter, VICTORIA RAMIREZ TISTA, also suffered as a result of her father's untreated venereal disease. She was born with poor vision and ultimately went blind at age fifteen.[32] Celso's son, GONZALO RAMIREZ TISTA has a daughter who suffers from canker sores on her head that cause chronic hair loss.[33]
40. FEDERICO RAMOS RUANO was in the Guatemalan air force between 1948 and 1950. Over a six-month period, he was inoculated every fifteen days. Each inoculation left him

[29] *Id.*
[30] Appendix A at 6.
[31] Class Action Compl. for Injunctive Relief and Damages, ¶20, *Garcia v. Sebelius*, 867 F. Supp. 2d 125, (D.C. Cir. 2013).
[32] *Id.*
[33] *Id.*

exhausted and in pain for several days. The inoculations resulted in genital pain, secretions, and hives. These symptoms continued after he left the military, along with painful urination, headaches, dizziness, chronic body aches, and exhaustion. His daughter, ODILIA RAMOS RUANO, was born with canker sores on her head that caused complete and permanent hair loss.[34]

41. Due to his inoculation with syphilis, OSCAR PEREZ RUIZ became so lethargic that his peers said he "should be buried."[35] He and his wife, MARTA CESAREA RUIZ PEREZ, had seven children. The first child was stillborn. The second child, now almost thirty years old, has been severely disabled her entire life. After their second child, Oscar and Marta sought blood tests and discovered they had syphilis. After undergoing regular penicillin treatment for twenty days, the couple had five more children, all of whom were healthy and infection-free.[36]
42. As a result of inoculation with syphilis during his service with the Guatemalan Army, VICTOR MANUEL TECU FLORIAN still cannot walk properly, even though he sought independent treatment and was cured of the infection.[37]
43. Beyond the painful rashes, the medical repercussions of untreated syphilis include severe fatigue, fever, swollen lymph nodes, sore throat, abnormalities of the heart and brain such as strokes, loss of hearing and vision, dementia, and death. Advanced syphilis can also cause areas of tissue destruction called "gummas" in affected organs and tissues.[38]
44. Furthermore, at all stages, infected persons may have no signs or symptoms. It is likely that an infected woman will transmit the infection to her fetus, and this congenital form of the infection can cause severe health problems for the child including death.[39]
45. According to the Center for Disease Control, gonorrhea causes pelvic inflammatory disease, which can lead to tubal infertility.[40] Given the number of subjects and the pervasive failure to treat the infection, the likelihood that subjects of these experiments ended up infertile is high.

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[34] *Id.* at para. 22.
[35] *Id.*
[36] *Id.*
[37] *Id.* at para. 23.
[38] Hildreth, *supra* note 25, at 791.
[39] *Id.*
[40] CENTER FOR DISEASE CONTROL AND PREVENTION, GONORRHEA, 2014.

46. Given the number of subjects included in these experiments and the fact that they were not treated, it is incredibly difficult to gauge the number of individuals suffering severe physical harm as a result of these experiments. In the case of the Ramirez Reyes family, for example, the experiments have caused physical maladies in their family for generations. The pervasiveness and severity of symptoms associated with syphilis and gonorrhea, scope of the experiments, and lack of treatment for the subjects make it likely that there are many more individuals like the members of the Ramirez Reyes family suffering from the infections deliberately instigated by Cutler's experiments.

B. Demographic Breakdown[41]

47. The pool of victims included prisoners, soldiers, mental patients, and child and adult prostitutes. Of these individuals, at least 1,308 individuals were intentionally exposed to one of the following forms of Sexually Transmitted Disease: syphilis, gonorrhea, and chancroid.
48. PHS researchers conducted diagnostic testing without consent on thousands of individuals using invasive techniques such as blood sampling, physical examinations, and lumbar punctures. Among the group subjected to diagnostic testing were Guatemalan children in orphanages between the ages of one and eighteen. Additional experiments were conducted involving indigenous children and psychiatric subjects, many of whom were repeatedly subjected to various forms of experimentation.
49. According to Dr. Cutler's own records, eighty-three of his subjects died during the course of the diagnostic testing and close to one hundred during the course of the experiments. These deaths are significant as they implicate a violation of the right to life.
50. Beyond the diagnostic testing, a series of experiments intentionally exposed over 1,000 individuals to gonorrhea, syphilis, and chancroid. Across the three types of infections, the affected individuals included sex workers, soldiers, prisoners, and psychiatric patients. The contagion methods included both intentional artificial inoculation through a variety of techniques, and also "normal exposure", or sexual intercourse with a sex worker or soldier already intentionally exposed.

[41] Information in this section comes from the State Department's English translation of the Guatemalan Presidential Report on the Experiments. *See generally* Appendix B, at 6, 22–23, 51–60, Appendix C, at 25–26, 54–64.

51. Figures may indicate some overlap, as one of the methods was to take individuals already infected with syphilis and infect them also with gonorrhea, then use infected bodily secretions to infect other subjects. Artificial inoculation of the penis and vaginal tissue occurred both superficially following sexual intercourse and on a deeper, subdural level. Some individuals were exposed several times, which constituted multiple sessions of experimentation.
52. For the method of sexual intercourse, ninety-three soldiers were exposed to twelve infected women a total of 163 times. Dr. Cutler recorded the duration of intercourse, frequency, and time between sexual relations. These specific figures are significant because they indicate that a small group of women were, as a requirement of the experiment, told to have intercourse with a large group of men, often engaging in intercourse with multiple partners in short periods of time. These facts have implications for the general rights to safety, autonomy, and dignity of the various subjects.
53. Finally, tests on psychiatric patients involved injecting diseased material into subjects' rectum, urethra, and/or eyes. The PHS targeted the most vulnerable individuals among the already-marginalized population of psychiatric patients. For example, one of the psychiatric patients selected for exposure to gonorrhea was a terminally ill woman. She died four days after she contracted the infection.

C. Experiments Involving Exposure to Syphilis[42]

54. PHS and Guatemalan researchers exposed commercial sex workers, prisoners, soldiers, and psychiatric patients to syphilis.
55. Of the 219 prisoners involved in these experiments, a majority of them were indigenous Mayans. The exposure to syphilis was accomplished through sex workers and inoculations. In the case of inoculations, the record indicates that researches used the same needle "repeatedly" and "without sterilization of any kind from one patient to the next". Researchers passed the infection by giving sub-dermal injections of syphilitic material directly into the foreskin or into the right forearm. The transmission rate using this method was 96.8 percent.

[42] Information about the experiments involving exposure to Syphilis, Gonorrhea, and Chancroid comes from the government reports by the Governments of the United States and Guatemala: Appendix A, at 41–70; Appendix B, at 72–87, Appendix C, at 68–78 (also providing information about the methodology of the experiments).

56. Researchers also exposed prostitutes and psychiatric patients to syphilis. The prostitutes were exposed through sexual intercourse with already exposed or infected prisoners or soldiers.
57. Researchers inoculated psychiatric patients by applying infected material to scrapes on the mucous membrane (usually the penis), and by injecting inoculum under the skin. Researchers began abrading subjects' penises to improve transmission rate.
58. Subjects were sometimes "compensated" in the form of a pack of cigarettes, and only a fraction of subjects ever received treatment.
59. Untreated syphilis has particularly grave medical consequences. For example, when a mother has untreated syphilis, the disease causes catastrophic defects for her child, including blindness, paralysis, still-birth, low-birth weight, and pre-term live births. Advanced stages of syphilis present symptoms including blindness, ataxia, brain dysfunction due to brain lesions and dysfunction of the cerebral blood vessels.[43]

D. Experiments Involving Exposure to Gonorrhea

60. Commercial sex workers, soldiers, and psychiatric patients were exposed to gonorrhea. Many individuals, such as Celso Ramirez Reyes and Federico Ramos Ruano, named above, were exposed several times, which constituted multiple incidents of non-consensual experimentation.
61. For the method of sexual intercourse, a large group of men was exposed to a significantly smaller group of infected women. As with other similar experiments, Dr. Cutler recorded the duration of intercourse, frequency, and time between sexual relations. In some cases, sex workers were encouraged to have sexual intercourse as many as seventeen times in one day. In other cases, soldiers were asked to have sex with different sex workers three times in less than one hour.
62. Finally, inoculation of psychiatric patients involved inoculation into subjects' rectum, urethra, and/or eyes. The PHS again targeted the most vulnerable candidates for inoculation.
63. As with syphilis, maternal gonorrhea during pregnancy presents dangerous possibilities

[43] Hildreth, *supra* note 25, at 792.

for both mother and child, including pre-term births, maternal fever during the last month of gestation, morbidity for both mother and child, prolonged rupture of fetal membranes, low birth-weight, and post-partum fetal sepsis.[44]

E. Experiments Involving Exposure to Chancroid

64. Researchers conducted experiments exposing psychiatric patients and members of the Guatemalan army to chancroid. Forty-one female subjects at the psychiatric hospital were exposed to chancroid through inoculations in the arms. Specifically, one group of women was repeatedly exposed on three separate occasions until the infection was transmitted. According to Dr. Cutler's records, one of these three women died just thirteen days later.
65. The remainder of the subjects exposed to chancroid were members of the Guatemalan army. To infect the soldiers, researchers made scratches deep enough to draw blood in their skin using hypodermic needles. Chancroidal inoculum was applied to the abraded area, and the different kinds of treatment were applied at varying periods of time after that.
66. Although the long-term effects of chancroid are not as severe as those associated with syphilis and gonorrhea, the symptoms that present with the infections include extremely painful swollen glands in the genitals accompanied by open ulcers.[45] When no medical treatment is received, these ulcers may become infected, eventually requiring surgical repair.[46]

IV. VIOLATIONS OF THE VICTIMS' RIGHTS

A. Violations of Obligations Pursuant to the American Declaration of the Rights and Duties of Man

67. As addressed at the outset of this petition, the United States and Guatemala violated numerous articles of the American Declaration of the Rights and Duties of Man; specifically, Article I (the right to life, liberty, and personal security), Article VI (the

[44] Handsfield, *supra* note 25, at 697.
[45] *Diseases Characterized by Genital, Anal, or Perianal Ulcers,* CENTER FOR DISEASE CONTROL AND PREVENTION (August 15, 2014), http://www.cdc.gov/std/treatment/2010/genital-ulcers.htm.
[46] *Id.*

right to a family and to protection thereof) and Article XI (the right to preservation of health and to well being).[47]

68. The IACtHR highlighted in its Advisory Opinion on the Interpretation of the American Declaration that the American Declaration was founded on the principle that the "international protection of the rights of man should be the principal guide of an evolving American law."[48] The non-consensual medical experimentation perpetrated against Guatemalan subjects constitutes a violation of fundamental rights that the Commission has explicitly stated it aims to protect through the instrument of the American Declaration.

69. In an Advisory Opinion, the IACtHR held that the American Declaration, although not a treaty, has "legal effect" on members of the Organization of American States.[49] The Inter-American Commission has held that the United States is "bound to respect" the provisions of the American Declaration "in conformity with Article 17 of the OAS Charter, Article 20 of the Statute of the Commission, and Article 29 of the Rules of Procedure of the Commission."[50] For States like Guatemala that have also ratified the American Convention, the Court ruled that they "cannot escape the obligations they have as members of the OAS under the Declaration, notwithstanding the fact that the Convention is the governing instrument for the States Parties thereto."[51]

70. PHS is a United States government agency. The experiments were planned, funded, and led by United States researchers.

71. PHS researchers convinced Guatemalan state officials to allow the research and to participate.

72. Although the role of the United States and Guatemala in carrying out non-consensual medical experiments against the victims varied slightly, their actions both caused subjects' suffering and therefore can be analyzed together in terms of the relevant

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[47] American Declaration, *supra* note 1, at 1.
[48] Interpretation of the American Declaration of the Rights and Duties of Man.
Within the Framework of Article 64 of the American Convention on Human Rights,
Advisory Opinion OC-10/89, July 14, 1989, Inter-Am. Ct. H.R. (Ser. A) No. 10 ¶ 7(1989).
[49] *Id.* ¶¶ 47–48.
[50] Gonzales v. U.S., case 12.626 Inter-Am. Comm'n H.R., Report No. 80/11, OEA/Ser.L./V/II.128, doc. 19 ¶ 37 (2011).
[51] *Id.* ¶ 46.

provisions of the American Declaration.

(i) The United States and Guatemala Violated Their Obligations to Respect Victims' Article I Rights to Life, Liberty, and Security of Their Persons

73. Article I provides that "every human being has the right to life, the freedom to liberty, and the security of his person."[52] The Guatemala experiments violated numerous notions of personal security and liberty. First, the lack of informed consent violates the concept of autonomy underlying the right to liberty. Liberty, apart from physical liberty, is also the right to be independent from other's choices.[53] Viewed as such, the liberty of the subjects was violated when they were subjected to experiments without being informed of the nature of those experiments or of the possible dangers.
74. Personal security refers to physical safety, and being deliberately infected with harmful diseases undoubtedly violates victims' personal physical safety.[54]
75. Finally, the record indicates that nearly one hundred of Cutler's subjects died during the experiment period. The effects of untreated syphilis and gonorrhea, in particular, are so detrimental to the quality of life that the Article I right to life is implicated. Additionally, because some of the female subjects did not receive treatment and later became pregnant, they had severe difficulties in childbirth. The deaths of the subjects during the experimentation, the widespread pain and suffering of surviving subjects, and the deaths of children born to infected parents all indicate a violation of the Article I right to life.
70. The right to life's incorporation into every major international law instrument underlines its importance, and the Commission has recognized its significance in previous reports.[55] The Commission has repeatedly emphasized that the right to life embodied by Article I is "the supreme right of the human being, respect for which the enjoyment of all other rights

[52] American Declaration, *supra* note 1, at 1.
[53] *See generally* Immanuel Kant, *The Metaphysics of Morals,* PRACTICAL PHILOSOPHY – THE WORKS OF IMMANUEL KANT 393 (The Cambridge Edition 1996).
[54] *See, e.g.* Marino Lopez et al. (Operation Genesis) v. Colombia, case 12.573 , Inter-Am. Comm'n H.R.Report No. 64/11 ¶ 237 (2011) (stating that due respect for individuals entails the obligation not to violate physical safety).
[55] *See, e.g.* Universal Declaration of Human Rights, art. 3, Dec. 10, 6 U.N. Bull. (1949); International Covenant on Civil and Political Rights, art. 6, Dec. 16, 1966, 999 U.N.T.S 171, 174; European Convention on Human Rights, art. 2, Sep. 3, 1953, E.T.S. No. 005. *See also* Jessica Lenahan (Gonzales) et al. v. United States, Case 12.626, Inter-Am. Comm'n H.R. Report No. 80/11, ¶ 112 (2011).

depends."[56]

71. The Commission has interpreted Article I of the Declaration to include those protections found in Article 5 of the American Convention on Human Rights[57], which guarantees the right to respect for a person's "physical, mental, and moral integrity," and to not be "subjected to torture or to cruel, inhuman, or degrading punishment or treatment."[58]
72. The intentional transmission of infections known to cause painful, long-term effects constitutes a blatant disregard for the integrity of another human. The subjugation of individuals to repeated inoculations, intentional abrasions on their genitals to accommodate the passing of infections, and forced intercourse with other infected individuals is cruel and degrading.
73. Furthermore, both the Commission and the Court have found that the conduct in violation of Article I does not necessarily need to be solely physical in nature, but rather may include conduct that causes psychological, moral, and emotional suffering.[59] For example, acts causing "trauma and anxiety"[60] and "intimidation" or "panic" can violate Article I.[61]
74. The Guatemala experiments have caused generations of trauma, anxiety, and panic for the subjects and their families. Individuals who were directly subjected to the experiments recall the uncomfortable, intimidating, and frightening situation in which they found themselves. For example, being told to have intercourse in clinical settings and with multiple partners, being violated in intimate body parts with medical instruments and needles, and being pricked in the arm multiple times would be traumatic. Subsequent generations have been called upon to aid their parents, who suffer from neurological disorders or lack of motor control due to never being treated for syphilis. In the worst cases, the children themselves suffer from blindness or perennial canker sores.
79. The experiments infringed upon individuals' personal autonomy, violating their right to

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[56] *Id.*, *quoting* Gary T. Graham (Shaka Sankofa) v. United States, Case 11.193, Inter-Am. Comm'n H.R. Report No. 97/03 ¶ 26 (2003).
[57] 188- Inter-Am. Comm'n H.R., Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr, ¶ 155.
[58] American Convention, *supra* note 2, at art. 5.
[59] Loayza-Tamayo v. Peru, Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C), No. 33 ¶ 57. (Sept. 17, 1997).
[60] *See* Maria Mejia v. Guatemala, Case 10.553, Inter-Am. Comm'n H.R., Report No. 32/96, OEA/Ser.L/V/II.95, doc. 7 rev. ¶ 60 (1996) (Guatemalan military officials found liable for causing "trauma and anxiety to the victims [constraining] their ability to lead their lives as they desire").
[61] *See id.* ¶ 61 (finding Guatemalan military responsible for actions designed for "intimidating" and to cause "panic" among community members).

liberty and personal security. The severe physical and emotional damage violated the subjects' right to life, and for these reasons Petitioner requests that the Commission find that the States violated Article 1 of the American Declaration.

(ii) The United States and Guatemala Violated Their Obligations to Respect Victims' Article XI Rights to Preservation of Their Health and Well-Being

80. Due to the severe health implications associated with untreated syphilis, gonorrhea, and chancroid outlined above, defendants also violated victims' Article XI rights to preservation of health and well-being.
81. The commission has interpreted a state's failure to provide adequate medical care a violation of Article XI.[62] *A fortiari*, deliberately and non-consensually infecting individuals with a medical condition requiring care is a violation of those rights.
82. The commission has an established practice of using sources of international law beyond the Inter-American System in order to interpret articles of the American Declaration.[63] Therefore, an examination of the International Covenant on Civil and Political Rights (ICCPR)[64] may assist in understanding both the severity of the perpetrated acts and the scope of Article XI of the American Declaration.
83. Article 7 of the ICCPR expressly condemns non-consensual medical and scientific experimentation: "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." Article 7 not only articulates that non-consensual medical experimentation is a violation of human rights, but it also puts it in the class of torture and cruel, inhuman, and degrading treatment. In customary international law, torture

[62] *See* Mortlock v. United States, case 12.534, Inter-Am. Comm'n. H.R., Report No. 63/08 ¶ 94 (2008) (holding that sending petitioner back to Jamaica with knowledge of the lack of sufficient HIV/AIDS health care would be cruel and unusual punishment and violation of rights).
[63] Oscar Elias Biscet et al v. Cuba, case 12.476, Inter-Am. Comm'n. H.R., Report No.67/06, n. 16 (2006) (stating "The Commission has properly invoked in some of its reports and resolutions other treaties concerning the protection of human rights in the American States, regardless of their bilateral or multilateral character, or whether they have been adopted within the framework or under the auspices of the Inter-American system").
[64] International Covenant of Civil and Political Rights, art. 7, March 23, 1973, 999 U.N.T.S. 171.

has risen to the level of *jus cogens*, a universal and nonderogable obligation.[65] Acts like those suffered by subjects of the Guatemala experiments qualify as torture and inhuman or degrading treatment, and thus logically also violate individuals' rights to health and well-being.

84. Finally, the lack of consent and vulnerable status of the subjects highlight the egregiousness of this violation. In regards to consent, the Human Rights Committee, for example, has "indicated that vulnerable persons, like prisoners or other detainees, should never be subjected to potentially detrimental medical experimentation, as any consent given by such people is inherently suspect."[66] The victims were not informed of the risks of their participation. Any consent they gave was not valid due to their lack of knowledge as well as their vulnerability, and the resulting detriment to their health and well-being establishes the Defendants' Article XI violations.
85. In light of the persuasive authority regarding non-consensual medical experimentation as well as the resulting health problems to the subjects, we urge the Commission to find that the Defendants violated Article XI of the American Declaration.

(iii)The United States and Guatemala Violated Their Obligations to Respect Victims' Article VI Rights to Establish a Family and Receive Protection Thereof

86. Article VI of the American Declaration states, "Every person has the right to establish a family, the basic element of society, and to receive protection therefore."[67]
87. International law has embraced the right to family, as demonstrated by Article 23 of the ICCPR,[68] Article 17 of the American Convention of Human Rights,[69] and Article 12 of the European Convention of Human Rights, which are all substantively similar to Article VI of the American Declaration.[70]

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[65] *See generally* Erika Wet, *The Prohibition of Torture as an International Norm of* jus cogens *and Its Implications for National and Customary Law*, 15 EJIL, No. 1 (2004), at 97.
[66] Sarah Joseph & Melissa Castan, 219 The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary (3d. ed. 2013).
[67] American Declaration, *supra* note 1, at 3.
[68] ICCPR, *supra* note 61, at 11.
[69] American Convention, *supra* note 2, at art. 17.
[70] European Convention on Human Rights, C.E.T.S. 005, March 9 1953, at 12.

88. The Inter-American Commission on Human Rights vindicated the right to family in *Gretel Artavia Murillo et al. v. Costa Rica*.[71] Victims in this case alleged that Costa Rica had violated their rights to establish a family by implementing a ban on *in vitro* fertilization methods. The Inter-American Commission determined that "protecting the right to found a family also means protecting the right to decide to become a biological parent and the option and access to the means by which one's decision can be realized."[72] The Inter-American Commission found that Costa Rica's ban on *in vitro* fertilization constituted a substantial interference with access to the means by which a woman could realize her right to decide to become a biological parent, thereby violating the right to establish a family.[73]
89. Additionally, The European Court has held that the concept of private life includes the right to decide to become or not to become a parent and even the choice to become a genetic parent. [74] Similarly, the United States and Guatemala substantially interfered with Guatemalan experiment subjects who were unable to conceive or rear healthy children as a result of their infection with syphilis or gonorrhea. In the cases where untreated syphilis or gonorrhea caused infertility, the right to family was not only obstructed but also entirely denied.

B. Violations of Obligations Pursuant to the American Convention on Human Rights

90. Guatemala has ratified the American Convention on Human Rights. In conducting non-consensual medical experiments, Guatemala violated Articles 1(1), 4, 5, and 11 of the Convention.
91. Because the United States has not ratified the American Convention on Human Rights, Petitioner only alleges violations of the American Convention against Guatemala.

(i) Guatemala Violated its Obligation to Respect Victims' Rights Under Article 1

[71] Gretel Artavia Murillo et al. v. Costa Rica, Case No. 12.361, Inter-Am. Comm'n H.R., Report No. 85/10, No. 177 ¶¶ 165–166 (2010), available at https://www.cidh.oas.org/demandas/12.361Eng.pdf (The petitioners in this case brought the claim under article 17 of the American Convention of Human Rights, which is substantially similar to article VI of the American Declaration in that it protects the right to "raise a family").
[72] *Id.* ¶ 82.
[73] *Id.*
[74] Case of Dickson v. The United Kingdom, App. No. 44362/04, ¶ 78 ECHR 2007-V.

92. The IACtHR has interpreted Article 1(1) as establishing states' obligations to respect the rights and freedoms recognized in the Convention, as well as to ensure their free and full exercise to individuals under their jurisdiction.[75] According to the Court, any form of exercise of public power that violates the rights protected by the Convention is unlawful. Thus, when an organ or agent of the public authority violates any of these rights, this is a violation of the obligation to "respect", and consequently a violation of Article 1(1).[76]

(ii) Guatemala Violated Victims' Rights to Life under Article 4

93. Article 4(1) of the American Convention provides that "[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."[77]
94. The right to life constitutes the essential basis for the exercise of all other rights. Compliance with Article 4 in connection with Article 1(1) of the American Convention not only assumes that no person shall be deprived of his life arbitrarily, a negative obligation, but also requires that the States adopt all the proper measures to protect and preserve the right to life, a positive obligation.[78]
95. In this regard, the IACtHR has stated the following: "States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it."[79]
96. The Human Rights Committee, which monitors implementation of the ICCPR, established that "[t]he protection against arbitrary deprivation of life, which is explicitly required by the third paragraph of Article 6.1 of the ICCPR, is of paramount importance…. The deprivation of life by the authorities of the State is a matter of utmost gravity. Therefore, [the State] must strictly control and limit the circumstances in which [a person] may be deprived of his life by such authorities."[80]

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[75] Velásquez-Rodríguez v. Honduras, Case No. 7920, Res. No. 22/86, OAS/Ser.L/V/III.17, doc. 13 ¶¶ 165–166 (1986).
[76] *Id.* ¶ 169.
[77] American Convention, *supra* note 2, at art. 4.
[78] Tomas Lares Cipriano v. Guatemala, Case 11/171, Inter-Am Comm'n H.R., Report No. 69/06 ¶ 38 (March 23, 2006).
[79] Case of the "Street Children," Judgment, Merits, Inter-Am. Ct. of H.R. (ser. C) ¶ 144 (Nov. 19, 1999).
[80] *Id.* at para. 145 (citing to General Comment 6).

97. Here, agents of Guatemala deprived victims' rights to life arbitrarily when they failed to take actions to prevent harmful conditions in violation of international law. The record indicates that seventy-one of the syphilis subjects died during the study, including one from a fatal epileptic seizure.[81] Furthermore, some of the patients subject to syphilis and gonorrhea experiments already suffered from tuberculosis, epilepsy, and alcoholism.[82] Thus, their symptoms worsened or were exacerbated as a result. Experiment subjects were not informed, consulted, or warned regarding the potentially disastrous consequences to their health and their lives.[83]

98. The effects of untreated syphilis, gonorrhea, and chancroid are so detrimental to subjects' quality of life that their Article 4 rights to life were certainly violated.

iii. Guatemala Condoned and Supported Non-Consensual Experiments Subjecting Individuals to Cruel, Inhuman, and Degrading Treatment in Violation of Article 5

99. The victims' rights under Article 5 of the American Convention were violated because they were intentionally infected with venereal diseases without their consent and through invasive procedures. Article 5 of the American Convention grants every person the right to have "his physical, mental, and moral integrity respected," prohibits "cruel, inhuman, or degrading punishment or treatment," and requires that "all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."[84]

100. The IACtHR has established that the violation of the right to "physical and psychological integrity of persons is a category of violation that has several gradations and embraces treatment ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment with varying degrees of physical and psychological effects caused by endogenous and exogenous factors."

101. In this case, the PASB, in conjunction with the PHS, conducted non-consensual medical experimentation in Guatemala on vulnerable individuals. The procedures ranged from blood sampling, physical examinations, and lumbar punctures to inoculation into subjects' rectum, urethra, and/or eyes. In *Miguel Castro Castro Prison v. Peru*, the Inter- American

[81] *See* Appendix B at 11, Appendix A, at 13, 105.
[82] *Id.* at 18.
[83] *Id.* at 22.
[84] American Convention, *supra* note 2, at art. 5.

Court of Human Rights ("IACtHR") held that the State's failure to provide adequate treatment to prisoners after an attack on the prison and deprivation of medical attention to prisoners constituted a violation of Article 5 of the Convention.[85] Unlike *Miguel Castro Castro Prison v. Peru*, the injuries incurred from the medical experiments were not accidental or the result of an attack, but rather intentionally inflicted. Guatemala's failure to provide any medical treatment for the STD infections also constitutes inhuman and degrading treatment in violation of the American Convention.

102. Considering that the PHS targeted the most vulnerable candidates for inoculation, these procedures constitute cruel, inhuman, and degrading treatment in violation of Article 5(2). Furthermore, a violation of Article 5 is directly connected to a violation of Article 11.

(iv) Guatemala Failed to Respect the Honor, Dignity, and Privacy of the Individuals Being Tested on and Infringed on Their Private Life in Violation of Article 11 of the American Convention

103. Guatemala violated Article 11 because the Commission considers that sexual abuse, besides being a violation of the victim's physical and mental integrity, implies a deliberate disregard of an individual's dignity.

104. In *Fernandez-Ortega et al. v. Mexico,* the Commission recognized that members of the Mexican Army infringed on the most intimate spheres of an individual's life, invaded her physical and sexual space, and took away her ability to make autonomous decisions concerning her own body when they raped her.[86] Based on this finding, the Commission asked the IACtHR to declare the State responsible for the violation of Article 5(1) and Article 11 of the American Convention. The Court concluded that rape committed by members of the State's security forces against members of the civilian population constitutes a grave violation of human rights protected in Articles 5 and 11 of the American Convention.[87]

105. The Commission has also established that rape, which affects both a victim's physical and moral integrity, including her personal dignity, constitutes a violation of Article 11 of the

[85] Miguel Castro Castro Prison v. Peru, Inter-Am. Ct. H.R. (ser. C) No. 160 ¶¶ 284–300 (Nov. 25, 2006).
[86] Fernández-Ortega et al. v. Mexico, Judgment, Inter-Am. Ct. H.R. (2010), at ¶ 129.
[87] *Id.* ¶¶ 128-29.

Convention.[88] As mentioned above, the experiments intentionally exposed over 1,000 individuals to gonorrhea, syphilis, and chancroid. The contagion methods included both intentional artificial inoculation through a variety of techniques, and also "normal exposure" or sexual intercourse with a sex worker or soldier already intentionally exposed.

106. Although the artificial inoculation of the penis and vaginal tissue occurred superficially following sexual intercourse and on a deeper, subdural level, the IACtHR has stated that rape must "be understood as act of vaginal or anal penetration, without the victim's consent, through the use of other parts of the aggressor's body or objects, as well as oral penetration with the virile member."[89] Because the experiments not only involved sexual intercourse, but also the artificial inoculation of the penis and vaginal tissue, these acts constitute rape as defined by the IACHR and the IACtHR.[90]

107. The Commission has also stated that rape may constitute torture if it is "1) an intentional act through which physical and mental pain and suffering is inflicted on a person; 2) committed with a purpose; and 3) committed by a public official or by a private person acting at the instigation of the former."[91] Because it is undisputed that PASB, an international organization operating in Guatemala, conducted non-consensual experiments using invasive techniques and infringed on the individuals' ability to make autonomous decisions concerning his or her body, the experiments fall within the concept of "private life" in Article 11. However, Guatemala's infringement on the individuals' physical and sexual space in violation of Article 5 and 11 of the American Convention may also constitute a violation of the Convention Against Torture because of the numerous experiments on thousands of individuals with the purpose of infecting them with venereal diseases.

108. On the basis of these considerations, the Commission should conclude that since the

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[88] Raquel Martí de Mejía v. Perú, Case 10.970 Inter-Am.Comm'n .H.R., Report No. 5/96, OEA/Ser.L/V/II.91, doc. 7 ¶ 157 (1996).

[89] Miguel Castro Castro Prison, Inter-Am. Ct. H.R. (ser. C) No. 160, at ¶ 310.

[90] *See generally* Raquel Martí de Mejía v. Perú, Case 10.970 Inter-Am.Comm'n .H.R., Report No. 5/96, OEA/Ser.L/V/II.91, doc. 7 ¶ 157 (1996); Miguel Castro Castro Prison, Inter-Am. Ct. H.R. (ser. C) No. 160, at para. 310 (holding finger vaginal inspection experienced by a female inmate was considered rape and, consequently, an act of torture).

[91] Raquel Martí de Mejía v. Perú, Case 10.970 Inter-Am.Comm'n .H.R., Report No. 5/96, OEA/Ser.L/V/II.91, doc. 7 ¶ 157 (1996).

Guatemalan State failed to respect victims' rights to humane treatment and to protection of their honor and dignity, the State is in violation of the obligation contained in Article 11 and 1(1).

V. THIS PETITION IS ADMISSIBLE UNDER THE COMMISSION'S RULES OF PROCEDURE

109. This petition is factually and legally sufficient in accordance with the provisions of Articles 22 to 29 of the Inter-American Commission on Human Right's Rules of Procedure. The Petitioner meets all admissibility requirements set out in American Convention in Articles 46 to 47.

A. The Petitioner ODHAG has Standing to File a Petition

110. Petitioner is authorized to file a petition. The right of petition before the Inter-American Commission is not limited to alleged victims and their relatives. Any "person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the OAS has the right to petition in the Inter-American system.[92] As a result, NGOs, such as ODHAG have standing to file complaints on behalf of victims in any State that has ratified the American Convention. National human rights committees and human rights ombudsmen can also file petitions on behalf of victims.[93]

B. The Commission has the Jurisdiction and Competence to Hear Petitioner's Claim

i. The Commission has Jurisdiction and Competence to Hear Petitioner's Claims Against the United States and Guatemala under the American Declaration

111. The Commission has the jurisdiction and competence to examine this petition. As stated in the Introduction and Summary,[94] the Petitioner alleges that agents of the United States violated Articles I, VI, and XI of the American Declaration.

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[92] Art 44 of the ACHR.
[93] *See* Baena Ricardo et al. v. Panama (No. 72, 2001), ¶ 6 (finding that the Panamanian Human Rights Committee had standing to file a petition on behalf of 270 public employees who were dismissed from their jobs for participating in a public demonstration).
[94] *See infra* Part II.

112. Petitioner is an organization that provides medical assistance to victims of violence resulting from human rights violations that are protected in the American Declaration, and that the United States has committed to respecting. The Commission has competence over claims for victims "whose rights are protected under the American Declaration, the provisions of which the State is bound to respect in conformity with the OAS Charter, Article 20 of the Commission's Statute and Article 49 of the Commission's Rules of Procedure." [95] The United States has signed and ratified the Charter of the Organization of American States (OAS Charter) and is among the nations that adopted the American Declaration at the conference that created the OAS in 1948. Therefore, the Commission is competent *ratione personae* to examine the petition. Further, jurisdiction is not limited to the physical territory of the state—it includes all areas over which it has effective control.[96] Although the experimentation did not take place in the United States, many relevant acts did take place on American soil, including decisionmaking and funding. The United States had essentially all the control over the experiments because it initiated the experiments and assigned an American doctor as the project leader. Guatemalan authorities did not have full knowledge regarding the inner aspects of the experimentation.[97] Therefore, the Commission is competent *ratione loci* to consider the petition.

113. The IACtHR has held that where events occur prior to acceptance of the Convention, those continuing at the time of the acceptance fall within the Court's jurisdiction.[98] The Court in *Heliodoro Portugal v. Panama* held a victim's disappearance constituted a continuing violation when the victim's remains were discovered in 2000, thirty years after the victim disappeared in 1970 and twenty years after Panama officially accepted the Court's jurisdiction.[99] Although our case does not involve disappearances, the European

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[95] Abdur'Rahman v. United States, Petition 136/02, Inter- Am. Comm'n H.R., Report No 39/03 ¶ 22 (2003).
[96] *See* Letter from IACHR president to US Secretary of State on Guantanamo Bay (2002); *see also* Precautionary Measures by the Commission on 12 March 2002 in Detainees at Guantanamo Bay, Cuba (holding implicitly that the Guantanamo detainees were subject to United States jurisdiction because they were "wholly within the authority and control of the United States Government" even though they were outside the physical territory of the United States).
[97] Presidential Comm'n, *Ethically Impossible, supra* note 5, at 54.
[98] *See, e.g.*, Serrano Cruz Sisters v. El Salvador, Preliminary Objections, Inter-Am. Ct. H.R. (ser. C) No. 118 ¶ 65 (Nov. 23, 2004); Vargas Areco v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 155 ¶ 63 (Sept. 26, 2006).
[99] Heliodoro Portugal v. Panama, Judgment, Inter-Am. Ct. H.R., (ser. C) No.186 ¶¶ 25, 34–35 (Aug. 12, 2008).

Court of Human Rights ("ECHR"), in determining whether the principle of non-retroactivity bars a claim, has held that the principle of non-retroactivity could not protect a practice that "flagrantly infringe[d] human rights and above all the right to life, the supreme value in international hierarchy of human rights."[100] In *Streletz, Kessler, and Krenz v. Germany*, the ECHR concluded that proceedings against those who violated the general principles of law recognized by civilized nations and crimes against humanity were not retroactive when the conduct violated international law at the time even if it did not violate domestic law.[101]

114. The Code of the Nuremberg International Tribunal, accepted as customary international law, identified a prohibition of non-consensual medical experiences on human subjects what was already originally accepted as customary international law.[102] The United States has recognized that non-consensual medical experiments are in violation of customary international law and constitute a crime against humanity. This is evidenced by the conviction of fifteen doctors at Nuremberg who were found guilty of war crimes and crimes against humanity for conducting non-consensual medical experiments prior to 1945.[103] Thus, non-consensual medical experiments, as crimes against humanity, were barred by customary international law even before the American Declaration of the Rights and Duties of Man was created in 1948.[104]

115. In addition, because the experiments also fall within the definition of non-derogable rights under various international instruments and because these are generally accepted international standards, the principle of non-retroactivity should not be a justification to bar this claim.[105] Here, the experiments not only infringe on individuals' right to life and

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[100] Streletz, Kessler, and Krenz v. Germany, Judgment, ECHR ¶ 87 & concurring opinion of Judge Loucaides (Applications nos. 34044/96, 35532/97 and 44801/98, March 22, 2001), *available at* http://hudoc.echr.coe.int/eng?i=001-59353#{"itemid":["001-59353"]}

[101] *Id.*

[102] *Abdullahi v. Pfizer, Inc*., 562 F.3d 163, 176-77 (2d Cir. 2009) (concluding that the prohibition of non-consensual medical experimentations, originally identified at the Nuremberg war crimes trials, clearly represents customary international law that is universally accepted).

[103] United States v. Brandt, 2 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council No. 10, 181 (1949).

[104] *See, e.g.*, Almonacid Arellano et al v Chile, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No 154 ¶ 151–53 (Sept. 26, 2006).

[105] Art 27 of the ACHR; Art 15(2) of the ECHR; Art 4 of the ICCPR (listing non-derogable rights under the American Convention, the ICCPR, and the European Convention of Human Rights); *see also* Streletz, Kessler, and Krenz v. Germany, ECHR ¶ 87 (March 22, 2001).

right to family under the American Declaration, but also other instruments of international law.[106]

116. Furthermore, the non-consensual medical experiments began two years before Guatemala and the United States became signatories to the American Declaration but continued until at least 1953–five years after the United States and Guatemala recognized the American Declaration. Because the victims of the experiments continue to suffer harm, the principle of non-retroactivity is not triggered in this case. Recognizing jurisdiction *rationae temporis*, examining events that began before the signing of the instruments but that continued after the date is not a breach of the principle of non-retroactivity.[107]

117. Drawing from the instruments that include the right to life as being a non-derogable right; the ECHR's stated principle that non-retroactivity cannot protect a practice that "infringes human rights and above all the right to life;" as well as the IACtHR's decisions holding that continuous acts will not breach of the principle of non-retroactivity, there is support for the conclusion that this claim does not trigger the principle of non-retroactivity.

(ii) The Commission has Jurisdiction and Competence to Hear Petitioner's Claims Against Guatemala Under the American Convention

118. The Commission has the jurisdiction and competence to examine this petition. As stated in the Introduction and Summary,[108] Guatemala violated Articles 1, 4, 5, and 11 of the American Convention.

119. Petitioner is an organization that provides medical assistance to victims of violence resulting from human rights violations. Its primary objectives are to address human rights violations against the most vulnerable parts of the population and to contribute and strengthen attention to the damages by human rights violations like the ones that the State of Guatemala has pledged to protect against as set forth in the American Convention. Guatemala has been a State Party to the American Convention since May 25, 1978, the date on which it deposited its instrument of ratification. Further, Guatemala signed and

[106] *See, e.g.*, Article 4 and 7, ICCPR. *See generally* Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) art. 3, 16 (Dec. 10, 1948).
[107] Velazquez Rodriguez v. Honduras, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4 ¶¶ 155, 158 (July 29, 1988) (holding in the context of human disappearances that the practices, in addition to directly violating many provisions of the Convention, constitute a radical breach of the treaty and show an abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the Inter-American system).
[108] *See infra* Part II.

ratified OAS Charter and is among the nations that adopted the American Declaration at the conference that created the OAS in 1948. The Commission is therefore competent *ratione personae* to examine the petition. Since violations of rights protected under the American Convention occurred in the territory of Guatemala, a State Party to the treaty, the Commission is competent *ratione loci* to consider the petition.

119. As mentioned above, the Statute of the Nuremberg International Tribunal, which has been accepted as customary international law, recognized that non-consensual medical experimentation on individuals constitutes a crime against humanity and is a violation of what was already originally accepted as customary international law.[109] Because Articles 1, 4, 5, and 11 of the American Convention are substantially similar to the violations alleged under the American Declaration, the same principles of customary international law apply and the principle of non-retroactivity is not implicated.

120. Even if the customary international norms identified in the Statute of the Nuremberg International Tribunal do not apply to violations of the American Convention, because of the extent and continuous effects of the non-consensual medical experiments after the acceptance of the American Convention, the principle of non-retroactivity is not breached and the Commission has jurisdiction over these claims. Here, the events that took place are "continuous" because the State infected victims with diseases that have been passed on through pregnancy. Guatemalan officials knew or could have easily foreseen that infecting individuals with STDs would impact not only the individuals infected, but would result in health effects on their children, and their children's offspring. Because impunity for these abuses is ongoing, in part because the violations were concealed for a long time, including long after Guatemala ratified the Convention, the principle of non-retroactivity does not bar this claim.

121. Furthermore, Guatemala's failure to investigate, prosecute, and punish those responsible for a human rights violation that took place before the State accepted the Court's jurisdiction will be considered a continuing violation over which the IACtHR has

[109] *Abdullahi v. Pfizer, Inc*., 562 F.3d 163, 176–77 (2d Cir. 2009) (concluding that the prohibition of non-consensual medical experimentations, originally identified at the Nuremberg trial of the Nazi doctors, is customary international law that is universally accepted).

jurisdiction.[110] Here, Guatemala had an obligation to effectively investigate and punish those responsible for those conducting the experiments and engaging in egregious violations of human rights.

122. In the alternative, even if the Commission cannot rule over the non-consensual medical experiments themselves because of the temporal limitations on its jurisdiction, the Commission may still rule on Guatemala's failure to effectively investigate, prosecute, and punish those responsible for these violations.[111]

C. The Petition Does Not Create Any Duplication of Proceedings

123. Article 33 of the Commission's Rules of Procedure establishes that the Commission may not consider a petition if its subject matter is pending before another international organization or essentially duplicates a petition already decided by the Commission or another international governmental organization.[112] Neither of these provisions applies to the present case, as the Petitioner's case is not pending before, and has not been decided by, any other international government organization. Petitioner's petition therefore complies with the prohibition on duplicate proceedings.

D. Petitioner Has Exhausted All Domestic Remedies

124. Petitioner has exhausted its domestic remedies in accordance with Article 31 of the Commission's Rules of Procedure.[113] Pursuant to Article 31 of the IACHR Rules of Procedure, individual petitions are admissible only where domestic remedies have been exhausted or where such remedies are unavailable as a matter of law or fact.[114] Petitioner, the Office of Human Rights for the Archdiocese of Guatemala, seeks here fair compensation for the egregious violations suffered by those personally subjected to the non-consensual human medical experimentation and others living with the devastating

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[110] Moiwana Community v. Suriname, Judgment Inter-Am. Ct. H.R. (ser. C) No. 124 ¶ 124 (June 15, 2005); Gomez Lund et al. v. Brazil,Preliminary Objections, Merits, Reparations, and Costs Inter-Am. Ct. H.R. (ser. C) No. 219 ¶ 18 (Nov. 24, 2010); Radilla Pacheco v. Mexico, Preliminary Objections, Merits, Reparations, and Costs Inter-Am. Ct. H.R. (ser. C) No. 209 ¶ 15 (Nov. 23, 2009).

[111] *See, e.g.*, Radilla Pacheco v. Mexico, Preliminary Objections, Merits, Reparations, and Costs Inter-Am. Ct. H.R. (ser. C) No. 209 ¶ 24 (Nov. 23, 2009).

[112] *See* IACHR Rules of Procedure, art. 32 (2).

[113] Graham v. United States, Case 11.193, Inter-Am. Comm'n H.R., Report No. 51/00 ¶ 55 (2000).

[114] *See* IACHR Rules of Procedure, art. 31.

results.

125. On August 13, 2012, victims appealed the United States District Court for the District of Columbia's June 13, 2012 Opinion dismissing victims' claims. On June 5, 2013, the District of Columbia Circuit affirmed and dismissed the claims granting judgment for the government, thereby declining to consider any of the outstanding issues and denying an opportunity for the victims to pursue remedies against the United States.[115]

(i) Under Article 31(2) of the Commission's Rules, Petitioner Need Not Exhaust Domestic Remedies in Guatemala

126. Article 46(2) of the Convention, for its part, provides for three situations in which the rule on exhaustion of domestic remedies does not apply: (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. These situations refer not only to the existence of such remedies, but also to their appropriateness and effectiveness. Two of these exceptions are applicable in our present case.

(a) Guatemalan Domestic Law Does Not Afford Due Process of Law for the Protection of Rights Alleged

127. The Court has held that domestic remedies that are merely illusory due to the circumstances of the case or the general situation in the State cannot be considered effective.[116]

128. Guatemalan domestic law does not afford due process of law for the protection of the rights that have been violated. Although Guatemala has obligations under domestic and international law to prevent these types of violent acts, many human rights abuses including widespread institutional corruption, particularly in the police and judicial

[115] *Garcia v. Sebelius*, 12-5257, 2013 WL 3357793 (D.C. Cir. June 5, 2013).
[116] Las Palmeras v Colombia, (ser. C) No. 99 ¶ 58 (2001); Constitutional Court v. Peru, Merits, Inter-Am. Ct. H.R. (ser. C) No. 71 ¶ 93 (Jan. 31, 2001).

sectors, continue today.[117] This includes the failure of the judicial system to ensure full and timely investigations and fair trials; failure to protect judicial sector officials, witnesses, and civil society representatives from intimidation;[118] the lack of an independent judiciary;[119] among many others. In a submission to the Universal Periodic Review of Guatemala, The International Commission of Jurists found that the "context in Guatemala is one of generalised violence and impunity."[120] Due to the different policies put in place by the various parties in power in Guatemala, institutions have become too weak to adequately respond—or in some instances have lost the ability to respond at all—to human right violations.[121] Consequently, the State's policies have been facilitating impunity.[122]

129. Guatemala has cooperated with the International Commission Against Impunity in Guatemala (CICG) and has taken steps to prosecute officials who committed abuse, but impunity continues to be widespread.[123] The majority of cases brought to the Office of the Special Prosecutor for Human Rights went without timely investigation or languished in the court system in 2012. The Office of the Human Rights Ombudsman reports to Congress and monitors the human rights set forth in the constitution; however, the office is not adequately resourced, and the public generally questions the ombudsman's effectiveness.[124]

130. Additionally, the IACtHR has even criticized the State of Guatemala for its outright refusal to properly investigate cases of murder and torture. In *Maritza Urrutia v. Guatemala*, the Court recognized the State's role in permitting conditions that lead to torture, and failing to uphold the rights of victims.[125]

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[117] U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY HUMAN RIGHTS AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012 1 (2012).
[118] *Id.*
[119] Int'l Comm'n of Jurists, International Commission of Jurists Submission to the Universal Periodic Review of Guatemala (April 2012), *available at* http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/06/Guatemala-ICJ-submission-UPR-non-judicial-submission-2012.pdf (finding that the "security of tenure for magistrates is … dependent on political will" and that there are not protection mechanisms for judges).
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY HUMAN RIGHTS AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012 1 (2012).
[124] *Id.*
[125] Maritza Urrutia v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 91 ¶ 40 (Feb.

130. Further, Guatemala has a history of discriminating against its indigenous population, specifically indigenous women.[126] A report submitted to the United Nations Human Rights Committee found that the Guatemala "continues to be grossly non-compliant with its obligations under the ICCPR, Convention on the Elimination of all forms of Discrimination Against Women ("CEDAW"), Convention on the Elimination of all forms of Racial Discrimination ("CERD"), other instruments of international law to which it is a party and its own Constitution, which would collectively compel it to safeguard the rights of Guatemalan indigenous women to be free from violence and discrimination."[127] In 2012, the International Commission of Jurists found that Guatemala's discrimination also affects men from indigenous communities. In its submission to the UN Human Rights Council, the International Commission of Jurists found that individuals (both men and women) from indigenous communities often times lack the right of access to justice when it comes to issues such as human rights violations.[128] Should these be separate "counts" of discrimination against US? Guatemala?

131. Finally, under Guatemala law, those victims that were psychiatric patients did not have and continue to lack the right to sue on their own behalf, as they are considered wards of the state. Under Article 308 of the Civil Code of Guatemala, "the directors of the institutions [...] of social care facilities, which house minors or *disabled persons*, are their guardians and legal representatives from the moment of their admission, and their position does not require discernment."[129] Directors of hospitals essentially have complete discretion and authority over the patients in state-run hospitals, while the patients have no legal rights to sue.[130] Patients are left with no "practical legal recourse to

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22, 2002).

[126] U.N. Human Rights Comm., Oct. 11- 29, 2010, *Violations of Women's Human Rights in Guatemala*, 15 ("Indigenous women constitute a substantial portion of the Guatemalan citizenry and they have been disproportionately affected by violence and political discrimination in that nation.").

[127] *Id*. at 16.

[128] Int'l Comm'n of Jurists, International Commission of Jurists Submission to the Universal Periodic Review of Guatemala (April 2012), *available at* http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/06/Guatemala-ICJ-submission-UPR-non-judicial-submission-2012.pdf.

[129] Código Civil, Decreto-Ley 106, Artículo 308 (emphasis added), *available at* http://biblio3.url.edu.gt/Libros/2011/codigo.pdf.

[130] Petition to IACHR from Disability Rights International and the Human Rights Office of the Arch-Bishop of Guatemala Requesting Precautionary Measures for 3344 Patients Detained at Federico Moral Hospital (Oct. 12,

the justice system that has placed full legal control over all of a patient's decisions-– including the decision to file a complaint – in the hands of the very hospital authorities at whose hand patients may be subject to abuse."[131]

132. In summary, although Guatemala may in theory have protections in place in its domestic law, in reality these laws provide little to no protection for victims suffering from human rights abuses. In fact, the victims that Petitioner is seeking to protect would have likely suffered more punishments if they had sought legal remedies under Guatemalan domestic law due to widespread institutional corruption in the judiciary and police sectors. This coupled with the fact that many of the victims are indigenous, would not have allowed any opportunity for remedies under Guatemala domestic law.

(b) Victims Have Already Been Denied Access to Any Remedies Under United States Domestic Law

133. The IACtHR has found that resorting to domestic remedies can be a "senseless formality" if they "are denied for trivial reasons or without an examination of the merits, or if there is proof of the existence of a practice or policy ordered or tolerated by the government."[132]

134. Although there are remedies available to victims under United States domestic law, victims have already been denied any access to any remedy against the United States. This exception involves all circumstances that in any way might impede the exhaustion of domestic remedies. This includes not only the absence of available remedies, but also any situation in which the state limits the exercise of existing remedies or allows any obstacles in accessing domestic remedies.

135. On March 14, 2011, ten victims filed a civil complaint in the U.S. District Court for the District of Columbia against various current state officials and the current director of

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2012); *see also* Precautionary Measures by the IACHR on 20 November 2012 in Patients at the Federico Mora Hospital, Guatemala (granting precautionary measures for 334 patients at the hospital), *available at* http://www.oas.org/en/iachr/decisions/precautionary.asp.

[131] Petition to IACHR from Disability Rights International and the Human Rights Office of the Arch-Bishop of Guatemala Requesting Precautionary Measures for 3344 Patients Detained at Federico Moral Hospital (Oct. 12, 2012).

[132] Velazquez Rodriguez v. Honduras, Inter-Am. Ct. H.R. (ser. C) No. 4 ¶66 (July 29, 1988)

international health organization.[133] These victims sought redress under the Alien Tort Statute, 28 U.S.C. § 1350 (2006) and the Constitution for injuries stemming from the non-consensual human medical experimentation program.[134] The victims sought to hold federal defendants liable for tortious acts "in violation of the law of nations [that] are, therefore actionable under the Alien Tort Statute, 28 U.S.C. § 1350."[135]

136. The court dismissed this claim because it found that principles of successor liability did not apply and that the United States must be substituted for the public officials.[136] Thus, the court converted the victims' claims Federal Tort Claims Acts ("FTCA") claims and held that FTCA's foreign country exception barred these claims.[137]

137. The court also dismissed victims' constitutional (*Bivens*) claims because the federal defendants were not personally involved. Finally, the court held that the director of the international organization was entitled to statutory immunity under the International Organizations Immunity Act ("IOIA"). While the court acknowledged that the Guatemala study was a "deeply troubling chapter" in United States history, it ultimately determined it was "powerless to provide any redress to plaintiffs."[138] Instead, the court found that the "political branches" of the United States government had the ability to grant any relief and that some efforts appeared to be forthcoming based on the United States' representation to the court.[139]

138. The United States claimed it was committed to "taking appropriate steps to address" the "terrible wrongs" that occurred in Guatemala.[140] The court concluded that the lawsuit was not the appropriate "vehicle to remedy those wrongs." [141] Because of the court's findings and the United States' representations made to the court, the victims focused their efforts on seeking redress through the political branches of the United States government in reliance on the United States' representations during the lawsuit. However, the political

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[133] *See Garcia v. Sebelius*, 867 F. Supp. 2d 125 (D.D.C. 2012) *opinion vacated in part*, 919 F. Supp. 2d 43 (D.D.C. 2013) *appeal dismissed*, 12-5257, 2013 WL 3357793 (D.C. Cir. June 5, 2013).
[134] *Id.*
[135] *Id.* at 134.
[136] *Id.* at 135–136.
[137] *Id.* at 136–137.
[138] *Id.* at 144.
[139] *Id.*
[140] *Id.*
[141] *Id.*

branches of government failed to provide any redress either, providing compensation only in the form of increased HIV/AIDS funding for the Guatemalan government.[142]

139. Finally, if Petitioner had brought suit on behalf of the victims in the United States in a federal court, the suit would have likely been dismissed for a lack of standing. Article III of the United States Constitution limits federal courts' jurisdiction to hear certain "Cases" and "Controversies." One element of the case or controversy requirement is that plaintiffs must establish that they have standing to sue. [143] To establish Article III standing, an injury must be "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling."[144]

140. When an organization, such as ODHAG, sues to assert its own interests, the Article III inquiry requires looking at whether the entity itself suffered a "concrete injury" to its own interests, apart from any separately identified injury to third parties.[145] A plaintiff organization is required to have more than just a mere organizational "interest in a problem" to satisfy the "concrete injury" element,[146] Instead, an organization must show that he is himself adversely affected,[147] and it must provide the court with a "factual showing of perceptible harm."[148] Because federal courts in the United States have such a high threshold for organizations to meet the standing requirement, it is unlikely that ODHAG would have been successful. A court would look to whether petitioner has an organizational interest in the issue, and whether Petitioner or its members had suffered an injury. While Petitioner would have been able to demonstrate an organizational interest in the issue on behalf of the public this would not have been enough to commence litigation because Petitioner has not identified members who were injured.

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[142] See US pledges $1.8 million in response to protections, Centers for Disease Control Public Health Law News, Top Stories (Jan. 2012), available at http://www.cdc.gov/phlp/news/2012/2012-01-19.html (accessed Dec. 10, 2015)

[143] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

[144] *Id*. at 560-561.

[145] *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972).

[146] *Id.* (holding that "a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself").

[147] *Id*.

[148] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 566 (1992).

E. This Petition is Timely Under Commission's Rules of Procedure

141. Article 32 of the Commission's Rules of Procedure provides that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable under Article 46.2 of the American Convention, the petition shall be presented within a "reasonable period of time," or as soon as it clear that the State is unlikely to remedy the violation on its own.[149] Here, Petitioner cannot bring a lawsuit in the United States as it does not have standing as an organization to bring a lawsuit.

142. Here, exceptions (a) and (b) Article 46.2 are both applicable, and therefore the Petitioner is exempt from the six-month filing deadline. Further, the petition is timely because it has been presented within a "reasonable period of time" from when it became apparent to Petitioner that neither State would be likely to remedy the violations on their own.

(i) The gravity of the violations alleged, as well as the context within which they took and are taking place make reasonable the timing of the Petition's presentation.

145. According to the Commission, it is not possible to determine a criterion in abstract to determine a "reasonable period of time" and therefore it should be decided in a case-by-case basis.[150] For such a purpose, the Commission is to consider the date when the alleged violation of rights occurred, the gravity of the violation, and the circumstances of each case. [151] In *Mario Eduardo Firmenich*, the Court found that "a Stated party is not bound to set a valid time for all cases, independently of the circumstances, because each case is a 'microcosm' with its own time, objective circumstances, behavior of the accused and that of his attorneys, etc."[152] This is also consistent with the criterion established by the European Court of Human Rights.[153]

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[149] CIDH, Petition 943-04, Report No. 100/06, Gaybor Tapia and Colón Eloy Muñoz v. Ecuador, Annual Report, 2006, OEA/Ser.L/V/II.127 Doc. 4 rev. 1. ¶ 20 (2007), October 21, 2007. See also, CIDH, Case of 11,827, Report No. 96/98, Peter Blaine v. Jamaica, Annual Report 1998, OEA/Ser.L/V/II.102 Doc. 6 rev. ¶ 52 (1999).
[150] *See* Mario Eduardo Firmenich v. Argentina, Case 10.037 Inter-Am.Comm'n H.R., Report No. 17/89, OEA/Ser.L/V/II.76, doc. 10 ¶ 13 (b) (1988-1989).
[151] *See id.* (finding that "a Stated party is not bound to set a valid time for all cases, independently of the circumstances, because each case is a 'microcosm' with its own time, objective circumstances, behavior of the accused and that of his attorneys, etc").
[152] *Id*.
[153] *See* Stogmuller v. Austria, Eur. Ct. H.R. at ¶ 2 (1969).

146. Here, the gravity of the violation is severe. Non-consensual human medical experimentation, which violates one's rights to life, health, and personal integrity, is universally condemned as a violation of customary international law. This is reflected in various international instruments, such as the Nuremberg Code, which states as its first principle that "[t]he voluntary consent of the human subject is absolutely essential," the Universal Declaration of Human Rights ("UDHR"), and Article 7 of the ICCPR, which provides that "no one shall be subjected without his free consent to medical or scientific experimentation."[154]

147. As explained in this Petition, both the United States and Guatemala violated victims' essential rights by engaging in egregious actions and causing substantial harm. These actions are universally condemned as violations of customary international law and are considered to be "crimes against humanity." Therefore, States are obliged not only to refrain from performing acts of non-consensual medical experimentation, but also to afford effective remedies for victims of non-consensual medical experimentation.

(ii) The steps taken by the Victims after the findings of the United States' involvement in these horrific events show that the filing of the Petition was done within a reasonable period of time.

148. The plaintiffs in the suit against the United States took all appropriate steps to seek legal recourse in the United States. Although the non-consensual medical experiments themselves occurred from 1946 to at least 1948, the exact end date has not been determined. The PHS never revealed the truth to the victims nor did they follow up to treat the untreated or ensure others, such as children of the victims, did not become infected. The United States' involvement in these tragic events only became public in 2010. On March 14, 2011, victims filed their civil complaint against the United States in a United States federal court. The District Court dismissed the victims' complaint in June 2012 and the Circuit Court affirmed that decision in June 2013.

[154] Class Action Compl. for Injunctive Relief and Damages, *Garcia v. Sebelius*, 867 F. Supp. 2d 125 (D.C. Cir. 2013), 1:11cv00527, 2011 WL 916719.

149. In September 2011, the United States Presidential Commission recommended strengthening protections so atrocious acts likes these would never occur again.[155] The United States claimed it was committed to "taking appropriate steps to address" the "terrible wrongs" that occurred in Guatemala.[156] However, the political branches of government failed to provide any redress. Despite lobbying by organizations in the United States, no reforms were ever made. The victims never received any treatment or compensation for their losses and substantial harms they suffered.

150. Furthermore, in the *Trujillo Oroza Case*, the Commission found a petition filed by a victim's mother more than twenty years after the victim's disappearance to be admissible, even though the victim's mother never filed a writ of habeas corpus or any complaint with the Bolivian courts.[157] The victim's mother had merely taken action before executive and legislative authorities. The Commission relied on the claimant's arguments regarding the political instability of Bolivia, the fear of reprisal, and the dependence of the courts on the executive.[158]

151. Here, the length of time is significantly less than the twenty years in *Trujillo Oroza*. The United States Circuit Court dismissed the victims' litigation less than two years ago. The victims sought action and redress with all three branches of government in the United States in a timely fashion. The victims in the suit against the United States relied on representations from the United States government that they would receive compensation or some sort of remedy. However, as the record indicates, the United States failed to take any steps to provide any form of relief to victims. Instead, the victims' tireless efforts were only met with more disappointment and it has now become apparent neither State has any plans for remedying the violations. It was not until after these events occurred that Petitioner became aware of the circumstances in the United States. Therefore, under the specific circumstances and context of this case, the period of time in which Petition is presented is reasonable. [159]

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[155] Appendix A at 108.
[156] *Garcia v. Sebelius*, 867 F. Supp. 2d at 144.
[157] Trujillo Oroza v. Bolivia (Merits), Inter-Am. Ct. H.R., (ser. C.) No 64. ¶ 2 (a). (Jan. 26, 2000).
[158] *Id*.
[159] *See* Mario Eduardo Firmenich v. Argentina, Case 10.037 Inter-Am.Comm'n H.R., Report No. 17/89, OEA/Ser.L/V/II.76, doc. 10 (1988-1989); *see also* Certain Attributes of the Inter-American Commission on Human Rights (arts. 41, 42, 46, 47, 50 and 51 of the American Convention on Human Rights), Advisory Opinion OC-12/93 of July 16, 1993, Inter-Am. Ct. H.R. ¶ 42 (stating that the Court should "over-reliance on rigid formalism").

152. Accordingly, this petition complies with the admissibility requirements established in this Commission's Rules of Procedure.

VI. CONCLUSION

153. Due to the acts of agents of the United States and Guatemala, victims' rights under the American Declaration have been violated, namely Articles I, VI, and XI. Due to acts of the agents of Guatemala, Petitioner's rights under the American Convention have been violated, namely Articles 1, 4, 5, and 11. It is clear that the victims were subject to non-consensual human medical experimentation and suffered substantial harm as a result.

154. Petitioner, through its counsel,[160] asks that this Commission declare the admissibility of this petition and grant all relief deemed appropriate and necessary by the Commission upon adjudication of the merits, which may include:

- Declaring the United States and Guatemala to be in violation of Articles I, VI, and XI of the American Declaration;

- Declaring Guatemala to be in violation of Articles 1, 4, 5, 11, and 17 of the American Convention;

- Requesting that the United States and Guatemala adopt measures to prevent similar violations from taking place;

- Requesting that United States and Guatemala provide treatment and fair compensation to the victims for the egregious violations suffered by those personally subjected to the non-consensual human medical experimentation and others living with the devastating results.

Dated: December 14, 2015

[160] A number of students in the University of California Irvine School of Law International Human Rights Clinic participated in the drafting of this petition, including Nahal Hamidi, Zoe McKinney, Citlalli Ochoa, and Honieh Udenka.

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