Obstetric Violence and the International Responsibility of Argentina

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1. - Over the past decades, women have spoken out more loudly about the violence experienced during their reproductive healthcare, leading to increased awareness of mistreatment during pregnancy care and childbirth. As a result, greater attention has been directed toward how healthcare personnel perform their duties. In the 1990s, following a strong social movement and civil activism, a new term was coined in Latin America that encompassed the different types of abuse experienced by women. This specific form of gender-based violence was termed "obstetric violence," with Venezuela being the first country to introduce a legal framework addressing this concept in 2007 (as referenced by M. Di Lello Finuoli in *Hospitals, Obstetric Violence in Italy*, No. 1, 2024).

Doctrinally, this violence "includes sexist attitudes and remarks; verbal, physical, and sexual abuse; manipulation; and unconsented or unnecessary medical procedures" (as defined by R. van der Waal, K. Maya, *Obstetric Violence*, in P. Ali and M. Rogers (Eds.), *Gender-Based Violence: A Comprehensive Guide*, Sheffield, 2023, 415). Additionally, it has been argued that obstetric violence is a form of structural violence, deeply connected to concepts of hierarchy, power, status, and control—where "often, care for pregnant people is understood to be secondary to the safety of the foetus during childbirth" (ivi, 417).

Following this idea, obstetric violence has been identified as a specific form of violence, distinct from other types of medical violence or medical negligence. As M. Sadler et al., noted "Obstetric violence has particular features demanding a distinct analysis: it is a feminist issue, a case of gender violence; labouring women are generally healthy and not pathological; and labour and birth can be framed as sexual events, with obstetric violence being frequently experienced and interpreted as rape." (as explained by M. Sadler et al., *Moving beyond disrespect and abuse: addressing the structural dimensions of obstetric violence*, in 24(47) *Reproductive Health Matters* 47-55, 50 (2016)). For the authors, it is of great significance to understand that biomedicine is a social and cultural complex system, and like any other social system, it "responds to and reproduces gender ideologies across health professions, the legal system and the state [...] These discrete mechanisms can be analysed as forms of structural violence, invisible manifestations of violence that are built into

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the fabric of society, producing and reproducing social inequalities across groups." (ivi, 50).

Consequently, in biomedicine, and in medicine itself, as social systems that reproduce the same social inequalities and power relationships between men and women, male physiognomy and physiology are the norm, objectifying women's bodies and impacting women's healthcare. "The female body and its natural processes were – and continue to be – portrayed as abnormalities, diseases or deviances [...] Today, obstetric violence can indeed be seen as a reflection of how female bodies in labour are perceived as potentially opposing to femininity – violence is thus necessary to dominate them, restoring their "inherent" feminine submission and passivity. It becomes a tool for disciplining the undisciplined body in labour, in order to re-feminise and re-objectify the body." (ivi, 51).

Moreover, with advances in medical care during pregnancy, maternal mortality rates have decreased, but at the same time, with the notion of dominance over women's bodies, the natural process of becoming a mother has been institutionalized and standardized. This development led to the elimination of the relational conception of pregnancy, childbirth and midwifery. As van der Waal and van Nistelrooij explained, "When we switch our lens to maternity care, we see that the age-old form of caring for birth, midwifery practice, is also based on these two relationalities, namely, the relational perception of mother and fetus, and the relation between mother and midwife. [...] In most Western countries however, midwifery became appropriated into the obstetric institution, even when midwives work independently. [...] As a result, midwives are being torn between their relational ideals and the reality of having to work in a system characterized by protocols, over-medicalization, time-pressure, high workload, and administration." (see R. van der Waal, I. van Nistelrooij, *Reimagining relationality for reproductive care: Understanding obstetric violence as a separation*, in 29(5) *Nursing Ethics* 1186-1197, 1188 (2022)).

The institutionalization of childbirth and pregnancy care led to the separation between mother and child, with the latter gaining an autonomous identity distinct from the pregnant woman. This separation, enforced by obstetric care providers, affects the relationality between them during pregnancy and birth. Healthcare personnel often appear to "to know not only more about the condition of the child but also about what is best for the child. Simultaneously, the mother is constituted as a complicating, instead of enabling, factor in the process of childbirth, whose main role is to somehow get through the painful event in a docile manner" (ivi, 1189). It is within this context that mistreatment, abuse, and violent conduct are perpetrated, as the birthing person is seen as an instrument for delivery rather than an active subject in the reproductive process.

Now, from a legal perspective, according to Venezuela's Organic Law on Women's Right to a Life Free of Violence, article 19(13), obstetric violence is the appropriation of women's bodies and reproductive processes by healthcare personnel, manifested in dehumanizing treatment, excessive medicalization, and the pathologizing of natural processes. This results in a loss of autonomy and the ability to make free decisions regarding one's body and sexuality, thereby negatively impacting women's quality of life. This was the first time a national law explicitly recognized obstetric violence, setting an example for other countries.

In Argentina, the Congress approved the Law for the Integral Protection of Women in 2009. This legislation defined obstetric violence as violence exercised by healthcare personnel over women's bodies and reproductive processes, manifested in dehumanizing treatment, excessive medicalization, and the pathologizing of natural processes (see Ley N°26.485 de Protección Integral a las Mujeres, article 6e, Argentina).

Most recently, in 2024, Chile became the third country in the world to legally define and regulate obstetric and gynecological violence under its Integral Law Against Violence Against Women.

However, beyond the legal recognitions by South American states, obstetric violence is a global issue. For example, in Europe, healthcare-related abuse has been acknowledged for over a decade, but there is no unified definition recognized across the continent. In 2019 the Council of Europe approved the Resolution N°2306 about "Obstetrical and gynecological violence" in which was recognized obstetric violence as a form of gender-based violence, specifying "[…] These include inappropriate or non-consensual acts, such as episiotomies and vaginal palpation carried out without consent, fundal pressure or painful interventions without anaesthetic. Sexist behaviour in the course of medical consultations has also been reported" (see Council of Europe, Committee on Equality and Non-Discrimination, *Obstetric and gynaecological violence*, Report Doc. 14495, Ref. 4378 of 27 April 2018, paragraph 3).

Following this reasoning, Lukasse and others (2015) said, "studies suggest that the concept entails neglect, emotional, physical, and even sexual abuse" (M. Lukasse et. al., *Prevalence of experienced abuse in healthcare and associated obstetric characteristics in six European countries*, 94 *Acta Obstet. Gynecol. Scand.* 508–517 (2015)). Their study reported that one out of five women (20.7%) reported experiencing abuse in healthcare across six European countries.

Additionally, the Italian Observatory of Obstetric Violence conducted a survey which revealed that one million mothers (21%) had experienced obstetric violence, with 6% stating that the trauma was so severe they chose not to have more children (see OVO Italia, *First data on obstetric violence in Italy*, 2017). In Spain, a 2019 study found that among a sample of 17,677 women, 45.8% reported that medical staff did not seek their informed consent before performing a procedure; 49% stated they had no opportunity to voice their concerns, doubts, or fears; 38% perceived that unnecessary procedures were performed; and 34% claimed to have experienced obstetric violence (see S. Iglesias et. al., *¿Violencia obstétrica en España, realidad o mito? 17.000 mujeres opinan*, Musas, 4(1), 2019, 77-97).

Finally, to provide perspective, the World Health Organization (WHO) has acknowledged medical community recommendations regarding labor induction in specific circumstances where the risks of waiting for spontaneous labor are deemed greater than those of inducing labor. Data collected over the past decades show that in developed countries, labor induction occurs in as many as one in four deliveries. A study conducted in 24 countries involving nearly 300,000 deliveries found that 9.6% involved labor induction, with Asia and Latin American countries reporting the highest rates of induction (see World Health Organization Report, *Recommendations for Induction of Labour*, 2011).

In this context, the aim of this comment is to review the judicial decision delivered by the Inter-American Court of Human Rights, which, for the first time, condemned a Member State for violating women's rights, particularly in the context of obstetric and gynecological healthcare.

2. - During the 1990s and 2000s in Argentina, women were subjected to public mistreatment during their pregnancy consultations, and evidence showed how fundamental rights were violated by healthcare personnel in both private and public institutions. For instance, from the 1990s to 2008, an average of 40 out of every 100,000 women died during childbirth (as reported by M. Romero, E. Chapman, S. Ramos, E. Abalos in the Observatorio de la Salud Sexual y Reproductiva, *La situación de la mortalidad materna en la Argentina*, No. 1, April 2010).

Since 2004, Argentine women have had two legal instruments they could rely on regarding gender-based violence during pregnancy. The first is the Law for

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Humanized Childbirth, which served as a starting point to identify the behaviors and medical procedures that could affect women's reproductive and fundamental rights. According to Herrera (2016), "The 2004 Statute of Humanized Labor recognizes the rights of women in health facilities during various maternal health services, characterizing over-medicalization as procedures that do not translate into better maternal health or fail to prevent maternal mortality and morbidity." (see C. Herrera, *Obstetric Violence: A New Framework for Identifying Challenges to Maternal Healthcare in Argentina*, 24(47) *Reproductive Health Matters* 67 (2016)). This statute established a set of rights for women, newborns, and families but only includes administrative sanctions if healthcare personnel violate them.

The second is the Law for the Integral Protection of Women, Law No. 26.485, which explicitly recognized and defined obstetric violence. Its Presidential Executive Decree further specified the terms contained in the Law, extending this type of violence to include abortion and post-abortion care. It classified as "dehumanizing treatment" any cruel, dishonorable, disqualifying, humiliating, or threatening behavior, and expanded the definition of "health personnel" to include all individuals working in healthcare services—whether professionals (doctors, nurses, social workers, psychologists, obstetricians) or administrative staff (refer to Decreto Reglamentario de la ley 26.485 sobre Proteccion Integral para Prevenir, Sancionar y Erradicar la Violencia Contra las Mujeres, artículo 6 e)

In 2015, Law No. 27.210 was enacted, creating the "Body of Lawyers for Victims of Gender Violence", an administrative body responsible for providing free legal advice and judicial representation to all victims of gender-based violence falling under the protection of the Law for the Integral Protection of Women, Law No. 26.485.

Unfortunately, this latter law did not include specific sanctions for obstetric violence, leaving medical staff largely unaccountable and rendering the legal framework ineffective in practice. In fact, in 2021, the Observatory of Obstetric Violence reported 52 complaints of obstetric violence received via Helpline 144, with 75% of the claims related to dehumanizing treatment, 52% to the disrespect of the woman's decisions, and 44% to the lack of information provided to the patient about medical procedures. Additionally, the report showed that of the 277,330 childbirths registered in 2019, 37% were cesarean sections, 43.7% of patients were not allowed to have family support during childbirth, and 53.3% underwent episiotomies, exceeding the rates recommended by international organizations (see Observatorio de las Violencias y Desigualdades por Razones de Género, *Violencia obstétrica: Análisis de los Registros de la Línea 144*, Buenos Aires, 2019, 14).

Furthermore, regarding obstetric violence, it is not possible to find much jurisprudence, at least not within Argentine national judicial records. In fact, in 2022, the Public Prosecutor's Office released a judicial bulletin revealing that only six cases (from 2017 to 2021) involved a court defining a specific concept of obstetric violence and addressing its scope. The only progress made by the national courts was the identification and conceptualization of obstetric violence as a form of gender-based violence, and the obligation for healthcare personnel to inform patients and obtain their informed consent (as referred Ministerio Público, *Violencia Obstétrica*, Boletín Judicial, abril 2022).

Finally, in its judicial decision, the Inter-American Court highlighted the fact that the maternal mortality rate has increased in recent years, rising from 2.9 per 10,000 births in 2019 to 4.1 per 10,000 births in 2021, which is less than one percentage point lower than the maternal mortality rate in 1992 (4.8 per 10,000 births), the year Ms. Brítez Arce died (*Brítez Arce et al. v. Argentina*, decision 16 November 2022, p.31, §118).

3. - This section will succinctly describe the main events that occurred in the final months of Cristina Brítez's life. Following this, I will outline the actions her family took to seek accountability within the Argentine legal system, utilizing both administrative and judicial mechanisms available at that time. Finally, it will highlight how, despite exhausting all available avenues, the State failed to take responsibility for the negligence in Cristina's healthcare, which ultimately led to her death.

Cristina Brítez Arce was a 38-year-old pregnant Paraguayan woman and mother of two children, Ezequiel Martín Avaro and Vanina Verónica Avaro who were residents in Argentina. She began her prenatal care on November 25, 1991, at the Argentine League Against Tuberculosis, where she disclosed her history of arterial hypertension.

On March 10, 1992, she visited the Sardá Hospital for the first time, where she reported her arterial hypertension, and the information was duly recorded in her medical history.

On June 1, 1992, Cristina went to the Sardá Maternity Hospital at around 9:00 a.m., complaining of back pain, fever, and fluid leakage from her genitals. An ultrasound was performed, and she was informed that the baby had died.

The attending physician told her that induced labor was necessary but did not provide any alternative options or further explanations. The procedure began at 1:45 p.m. and lasted almost three hours. Afterward, she was transferred to the maternity ward with full dilation but was made to wait two more hours sitting in a chair.

During this wait, and according to her death certificate, Cristina died around 6:00 p.m. from a "non-traumatic cardiopulmonary arrest."

Cristina had two older children, Ezequiel and Vanina, who were 15 and 12 years old, respectively. According to the statements provided by the Commission and testimonies, Ezequiel, who was accompanying his mother, waited several hours in the hospital for any news. He was not immediately informed of his mother's death, and when the healthcare staff finally communicated the news, they sent a nurse to speak with the minor, rather than the doctor who had performed the procedure. This situation led to claims of violations of the children's human rights, which will be address in the following sections.

The Inter-American human rights system grants citizens and individuals whose rights have been violated the opportunity to submit claims directly to the Inter-American Commission, but only after all national legal remedies have been exhausted. In this case, Cristina Brítez's family submitted numerous administrative and judicial petitions to investigate her death and hold those responsible accountable.

The judicial proceedings were inconsistent with one another. Initially, an autopsy on Cristina's body and fetus was ordered, but it was later nullified due to the doctors altering the results. A second report was prepared by different medical experts, but it was insufficient to convince the tribunal of the victim's high-risk pregnancy. Furthermore, because responsibility was not clearly attributed, the accused were acquitted. The Court of Appeals upheld this decision (*Brítez Arce et al. v. Argentina*, decision 16 November 2022, pp. 10-11, §§ 30-34).

After this failure, the judge filed a complaint with the criminal court against the two doctors who falsified the autopsy results, requesting a new report to be prepared by 31 physicians. This report concluded that the attending doctor's judgment should prevail. In this case, the doctor who ordered the ultrasound in May 1992 showed that the fetus was viable at that time, and no negligent treatment was provided. Consequently, the accused were acquitted once again, and the decision was confirmed by the Court of Appeals (*Brítez Arce et al. v. Argentina*, decision 16 November 2022, pp. 11-12, §§ 35-39).

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During another civil procedure initiated in 1994 by Cristina Britez's partner against the physician who attended her, the Sardá Hospital, and the Government of the City of Buenos Aires, it was proven that her pregnancy was high-risk due to her physical condition and health. Therefore, the care provided by the medical personnel and the decision not to perform a cesarean section but to induce labor was deemed appropriate. The petition was rejected by the Court because it was not possible to conclusively determine the cause of death, considering that the autopsy was performed days after her decease. Additionally, the criminal judge had already determined that it was impossible to connect the event in question to the physician's responsibility. This decision was confirmed by the Court of Appeals (*Britez Arce et al. v. Argentina*, decision 16 November 2022, pp. 13, §§ 46-50).

In the end, at least nine medical reports were issued, but none could conclusively demonstrate the cause of death, negligence, or the responsibility of the medical staff. These were the reasons considered by the different tribunals and courts to reject all the claims and requests presented by her family, exhausting all available national remedies.

4. - First, a brief overview of the regional system is necessary. The Inter-American system of human rights is composed of a series of international treaties and conventions. Within this framework, two bodies were created: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

In 1959, to oversee and address human rights violations committed by Member States, the Organization of American States established the Inter-American Commission on Human Rights, which began functioning in 1960 after the Council approved its Statute and elected its members.

Later, in 1969, during the Inter-American Specialized Conference on Human Rights held in San José, Costa Rica, Member States drafted the Inter-American Convention on Human Rights, which entered into force on July 18, 1978. Within the Convention, the second institution, the Inter-American Court of Human Rights, was created and has been functioning since 1979.

The Statute established that the Court would be an autonomous judicial body located in San José, Costa Rica, with the main goal of applying and interpreting the Convention, along with its consultative and interpretative functions concerning other human rights treaties adopted under the Organization's umbrella.

As a result, the Inter-American system of human rights operates with a two-step process. Individuals can submit claims only to the Commission, which investigates and analyzes the merits of the case. If the Commission finds sufficient grounds to believe that a human rights violation has occurred, it presents the claim to the Court.

In 1994, Member States adopted the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (the "Belem do Pará Convention"), and since then, the Inter-American system has addressed the issue by interpreting the norms and harmonizing them with the fundamental rights recognized by the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man.

Similarly, Member States have used the Belem do Pará Convention as a framework to interpret their national laws concerning women's rights, leading to important legal developments, such as the creation of special laws on the matter.

In this section, I will discuss the arguments and conclusions reached by both the Inter-American Commission and the Inter-American Court more than 30 years after the events occurred.

The Inter-American Commission on Human Rights, based on the American Convention on Human Rights and the Belem do Pará Convention, recognized the

possible responsibility of the State of Argentina for violating various fundamental rights included in these instruments.

The specific rights violated, according to the Commission, were the rights to life, personal integrity, and health, established in articles 4(1), 5(1), and 26 of the American Convention, in relation to article 1(1), to the detriment of Cristina Brítez Arce. The Commission based this accusation on the fact that the State "did not prove that it had adopted the measures reasonably required to safeguard Ms. Brítez Arce's rights despite the special duty it had due to her pregnancy." (*Britez Arce et al. v. Argentina*, decision 16 November 2022, pp. 14-26, §§ 52-86).

In this regard, the Court estimated that "both civil and political rights and economic, social, cultural, and environmental rights are inseparable and, therefore, their recognition and enjoyment fall under the principles of universality, indivisibility, interdependence, and inter-relationship." (ivi, p. 15, §57) The Court stated that the rights to life and personal integrity are directly linked to health care. It also highlighted that in previous cases, it had ruled that states have the obligation to provide special and differentiated health care during pregnancy, childbirth, and post-partum stages to prevent maternal mortality.

Subsequently, recognizing the definition given in 2019 by the Inter-American Commission on Human Rights, the Court delivered its innovative consideration: "The Court has specifically ruled on violence during pregnancy, childbirth, and afterwards in accessing health services and has held that it is a violation of human rights and a gender-based form of violence called obstetric violence, which 'encompasses all situations of disrespectful, abusive, neglectful treatment or denial thereof that take place during the pregnancy, childbirth, or post-partum period, in private or public health facilities.'" (ivi, p. 21, §75).

Later, the Court concluded that Argentina was internationally responsible for the proven facts, including the violation of the right to health, right to life, and the right to personal integrity to the detriment of Cristina Brítez Arce. The decision was based on Cristina Brítez's condition as a high-risk pregnant woman, considering risk factors such as her weight and history of arterial hypertension, which were inadequately treated by the health system. Additionally, there was a lack of adequate information about the procedures after learning that her fetus had died. For the Court, the combination of these circumstances "subjected the victim to stress, anxiety, and anguish that, combined with her special vulnerability, resulted in dehumanizing care and the denial of full information on the state of her health and treatment alternatives, which constitutes obstetric violence." (*Britez Arce et al. v. Argentina*, decision 16 November 2022, pp. 24-25, §§ 82-85).

On the other hand, the Commission referred to the violation of the rights to judicial guarantees and judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention, in conjunction with Article 1(1); the violation of Article 7 of the Belem do Pará Convention; and the violation of the right to personal integrity recognized in Article 5(1) of the American Convention to the detriment of the victim's children, Ezequiel and Vanina Avaro. This claim was supported as an autonomous source of their suffering and helplessness, as it has been impossible to determine their mother's cause of death to this day. The Commission considered that both children were minors at the time of the events, and the delay in justice and truth constituted a violation of their right to mental and moral integrity.

The Inter-American Court reiterated its position that "family members of victims of human rights violations may, in turn, be victims." (ivi, p. 26, §90) The Court found that the State violated the children's rights as they endured uncertainty, suffering, and anguish from the day their mother died. Ezequiel, a 15-year-old minor, had to wait several hours in the hospital for any news, and to this day, they do not know the exact cause of her death.

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As a result of Cristina Brítez's death, the children had to change schools, neighborhoods, friends, and their daily lives. Both siblings were separated: Ezequiel went to live with his grandparents, and Vanina with her aunts and uncles in the countryside, affecting their identity formation. Both adolescents were traumatized, resulting in emotional sequelae that impacted their future education and employment opportunities.

The Court concluded that Cristina Brítez's death "in addition to impacting the personal integrity of her son and daughter, had, as an immediate effect, the total disintegration of the family." (ivi, p. 28, §94). This implied a violation of article 17 of the American Convention, which recognizes the family as the natural and fundamental unit of society. Therefore, the State of Argentina was held responsible for the violation of the right to personal integrity and the protection of the family to the detriment of Ezequiel and Vanina Avaro.

Subsequently, the Court established the reparations to which Argentina was condemned. First, as measures of rehabilitation, Argentina was ordered to pay Ezequiel and Vanina Avaro $5,000 each for psychological and/or psychiatric care.

Additionally, for satisfaction, the Court ordered the publication of the summary and complete judgment in a newspaper of broad national circulation and on the official websites of the Ministry of Women, Genders and Diversity, and the Ministry of Health.

Regarding guarantees of non-repetition, the State referred to all measures, public policies, and legal bodies adopted since then, affirming that the current situation in Argentina is very different from that which existed at the time of the events. Nevertheless, the Court noted that maternal mortality rates increased in 2021, showing only a slight improvement compared to 1992. Therefore, the Court considered it necessary to implement measures to reduce these rates. It ordered the State to develop campaigns to publicize women's rights regulated by special laws, including Law No. 25.939 (the "Law for Humanized Birth"), Law No. 26.485 (the "Law on the Comprehensive Protection to Prevent, Punish and Eradicate Violence Against Women"), and the rights of pregnant women to receive humanized health care during pregnancy, childbirth, and post-partum.

Finally, as compensation, the Court ordered Argentina to pay $149,000 to Ezequiel and Vanina Avaro for pecuniary and non-pecuniary damages caused by Cristina Brítez Arce's death. (Britez Arce et al. v. Argentina, decision 16 November 2022, pp. 28-34, §§ 98-136).

5. - The approval of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women was a huge step forward for the recognition of women's fundamental rights in all aspects.

Before the Belem do Pará Convention, the only international instruments addressing gender-based violence were CEDAW General Recommendations N°12 and N°19, adopted in 1989 and 1992, respectively, and the 1993 Declaration on the Elimination of Violence Against Women. However, all of these addressed this violence in a broad sense, merely providing guidelines to States on how to approach the issue, without being legally binding.

With its entry into force in 1994, the Inter-American Convention became the first international treaty to regulate gender-based violence in a binding manner, filling the existing gap in the international human rights system (as reported by C. Iriarte, *La Sustancialidad de la Convención Belém Do Pará para la Superación de la Discriminación Estructural*, Anuario de *Derechos Humanos*, número especial, 2020).

For the purpose of this analysis, the most important provisions in the treaty are article 7 – which outlines the duties of States Parties to adopt necessary measures to comply with the Convention's objectives – and article 11, which

reinforces the States' ability to request advisory opinions from the Inter-American Court on the interpretation of the Convention.

In my opinion, the reasoning provided by both bodies (the Commission and the Court) was outstanding, reaffirming the commitments undertaken by American States under the American Convention on Human Rights and the American Convention on the Prevention, Punishment, and Eradication of Violence Against Women. Furthermore, in this case, Argentina expressly acknowledged its international responsibility from the outset, which simplified the Court's task by expanding the scope of applicable conventions and advancing the interpretation of obligations undertaken by American States.

Firstly, although the Belem do Pará Convention could not be directly applied to the circumstances surrounding Cristina Brítez's death (as Argentina ratified the convention after the events occurred), the respondent State expressly accepted the claims during the proceedings. Therefore, the Court chose to interpret the norms of the American Convention on Human Rights and the specific details of the case through the lens of gender-based violence, explicitly referencing the Belem do Pará provisions. As noted by the tribunal: "It is not possible to attribute international responsibility to the State for violating obligations under that treaty. However, in light of the State's recognition of international responsibility, the Court will take the content of that treaty into consideration in order to characterize obstetric violence." (*Britez Arce et al. v. Argentina*, decision 16 November 2022, p.22, §76).

I would like to focus on this point. According to its statute, the Court's primary mandate is to apply and interpret the American Convention on Human Rights. Furthermore, article 64.1 of the American Convention grants the Court authority to provide advisory opinions and consultations requested by States regarding the interpretation of the Convention or other human rights treaties applicable to the Americas. This competence is reinforced by article 11 of the Belem do Pará Convention.

In this case, the Court did not find Argentina in violation of article 7 of the Belem do Pará Convention concerning the death of Cristina Brítez, as the events took place four years before the treaty's ratification by Argentina. Nevertheless, as mentioned earlier, the State's express recognition allowed the tribunal to apply article 11 and use it to develop gender-based jurisprudence, ultimately adopting the "obstetric violence" definition introduced by the Inter-American Commission in 2019.

However, the adoption of a gender-based approach is not new within the Inter-American human rights system. Since 2001, treaty bodies have enforced the obligations States Parties assumed when signing and ratifying regional instruments. The first case in which the Inter-American Commission on Human Rights addressed gender-based violence was María da Penha Maia Fernandes v. Brazil (Inter-American Commission of Human Rights, *Maria da Penha Maia Fernandes v. Brazil*, N°12.051, April 16th, 2001). In this case, the Commission found that the State had failed to address domestic violence adequately, recognizing that women in the region faced violence as part of a pattern where States often failed to implement necessary measures, thus generating State tolerance and judicial inefficacy (referred by C. Iriarte, *La Sustancialidad de la Convención Belém Do Pará para la Superación de la Discriminación Estructural*, Anuario de *Derechos Humanos*, número especial, 2020, 180).

For the Court, a key ruling came in 2006 in the case of *Penal Miguel Castro Castro v. Perú* (Inter-American Court of Human Rights, *Penal Miguel Castro Castro v. Perú*, November 25th, 2006). The tribunal applied the Belem do Pará Convention for the first time, recognizing that the sexual violence suffered by female inmates during a military operation constituted torture, aimed at punishing, humiliating, intimidating, and degrading women as part of a broader pattern of violence against

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women in armed conflicts (see C. Iriarte, *La Sustancialidad de la Convención Belém Do Pará para la Superación de la Discriminación Estructural*, 181). Since that day, several cases have followed in which the Court has upheld women's fundamental rights under the Belem do Pará Convention (see Inter-American Court of Human Rights, *Gonzalez and others (cotton fields) v. Mexico*, November 16th, 2009; *Veliz Franco y otros con Guatemala*, May 19th, 2014; *Velásquez Paiz con Guatemala*, May 15th, 2015), leading to the specific treatment of obstetric violence as a form of gender-based violence in 2022.

Secondly, the Court acknowledged and concurred the claims presented by the Commission regarding the violation of the right to life, the right to personal integrity and the right to health to the detriment of Cristina Brítez Arce, ruling that Argentina had violated her right to personal integrity, life, and, notably, her mental and psychological health. The innovation here lay in the treatment of the right to health as a fundamental right, separate from the rights to life and physical and mental integrity.

The Court based its analysis on the assumption that the victim was in a vulnerable position due to her pregnancy, which placed special duties on the State. It thus ruled that the State had obligations related to the "provision of health services during pregnancy, childbirth and post-partum period and the guarantee of the rights to life and to personal integrity" (ivi, pp. 15-24, §§57-81).

It is important to clarify that the American Convention on Human Rights does not explicitly recognize the right to health as an individually protected right. Instead, Chapter III of the Convention addresses economic, social, and cultural rights, with article 26 establishing the duty of States to progressively develop and adopt measures to achieve the full realization of rights implicit in the OAS Charter's economic, social, educational, scientific, and cultural standards.

The tribunal went further by interpreting that civil and political rights and economic, social, and cultural rights are inseparable, invoking the doctrine of universality, indivisibility, and interdependence of human rights. It held that these categories of rights are integral and universal, with no hierarchy, and have the same enforceability before competent authorities (ivi, p. 15, §57).

In doing so, the Court recognized that the right to health is covered under article 26 of the American Convention, which refers to the Charter of the Organization of American States. The right to health derives from articles 34 (i), 34 (l) and 45 (h) of the Charter. The Court held that the rights to life and personal integrity are directly linked to healthcare, and that the lack of adequate medical care resulted in violations of articles 4(1) and 5(1) of the American Convention on Human Rights. Furthermore, after establishing the existence and enforceability of the right to health and the general duty to protect it, the tribunal introduced the obligation for States to guarantee access to essential health services, to ensure effective and quality medical care, and to promote better health conditions for the population (ivi, p. 17, §61).

The significance of this approach, and the recognition of the direct enforceability of the right to health, lies in the shift in criteria adopted by the Court. Typically, the right to health is considered a second-category right, whose justiciability depends on the violation of other civil and political rights. Its protection and promotion consist of the progressive adoption of general measures towards its full realization (see Inter-American Court of Human Rights, *Poblete Vilches et. al. v. Chile*, 8 March 2018, pp. 31-31, §§103-104). In fact, in the present case, Judge Humberto Antonio Sierra Porto and Judge Patricia Perez Goldberg issued a partially dissenting opinion, arguing against establishing the State's international responsibility for an alleged violation of the individual right to health based on article 26 of the American Convention on Human Rights. They contended that economic, social, and cultural rights are not equally and directly justiciable

before the Court, as they fall outside its jurisdiction and competence (*Britez Arce et al. v. Argentina*, decision 16 November 2022, Partially Dissenting Opinions).

In the field of obstetric violence and healthcare during pregnancy, the Court has defined specific obligations for States, such as "design appropriate healthcare policies that permit assistance to be provided by personnel who are adequately trained to attend to births, policies to prevent maternal mortality, and legal and administrative instruments for healthcare policies that permit cases of maternal mortality to be adequately documented" (Inter-American Court of Human Rights, *Xákmok Kásek Indigenous Community v. Paraguay*, decision 24 August 2010, pp. 54-55, §233). Moreover, as referenced earlier, the Court cited the 2019 Report prepared and published by the Inter-American Commission on Human Rights "Violence and Discrimination against Women and Girls: Best Practices and Challenges in Latin America and the Caribbean" reproducing the definition of "obstetric violence" provided by the Commission. This created a precedent by applying the concept in a final decision regarding the international responsibility of a State. The Court concluded that obstetric violence is a form of gender-based violence prohibited by Inter-American human rights treaties, including the Convention of Belem do Pará (*Britez Arce et al. v. Argentina*, decision 16 November 2022, pp. 24-26, §81-86).

Thirdly, according to the claim, not only were Cristina Britez's rights violated, but also those of her children, who were minors at the time of the events and left for many hours unaware of their mother's condition, alone in a public hospital. The Commission, in collaboration with the family, noted that Argentina, through its officials—healthcare personnel at a public institution and the intervening tribunals—violated Ezequiel and Vanina's personal integrity as recognized in the American Convention. Specifically, they "experienced uncertainty, suffering, and anguish detrimental to their mental and moral integrity due to their mother's death and the acts of State authorities." (ivi, p. 27, §91). As a result, the Court also recognized the violation of the children's rights under articles 8.1 and 25.1 of the American Convention.

The tribunal not only declared violations of the right to personal integrity and access to justice but also concluded that Argentina had violated the right to family life, as stated in article 17 of the American Convention on Human Rights. This was due to Cristina Britez's death, which resulted in the breakup of her family unit, leaving her children in the care of grandparents and uncles. Additionally, the Court directly applied article 7 of the Belem do Pará Convention to the events that occurred after the treaty's ratification on July 5th, 1996.

The Court reiterated its ruling regarding the harm and damage caused to the direct victim's family, considering not only the anguish and uncertainty resulting from a parent's death without clear causation but also the consequences this episode had on the children's lives. This included their inability to continue their studies and pursue professional careers, which was significantly impacted by the State's negligence.

Fourthly, for the first time at the international level, the Court conducted an innovative analysis, ruling that violence experienced by women during pregnancy, childbirth, and the postpartum period constitutes obstetric violence. This was followed by an explicit definition of this type of violence as a common phenomenon in the Americas, which must be combated and eradicated, especially following the signing and ratification of the Belem do Pará Convention. Consequently, the Court established a precedent for similar cases, influencing national courts and legislators to enhance their recognition of women's rights and revise their judicial criteria.

The Inter-American Court of Human Rights has made significant strides in recognizing and addressing violence against women, particularly in the area of specialized healthcare. It acknowledged the impacts of pregnancy on women's

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bodies, placing them in a vulnerable position that must be considered during medical consultations.

The development of legal reasoning and the relationship between different regional conventions, such as Belem do Pará Convention, reflects the goal of achieving gender equality and provides Member States with an example to follow within their national legal frameworks. The significance and influence of these decisions are evident, as they serve as a last resort for individuals seeking recognition and reparation, compelling States to adopt new legislation and policies.

As demonstrated, the State acknowledged all alleged facts and their legal implications, fully aware of the human rights violations committed in 1992, which resulted not only in the death of an individual but also in the suffering and damage experienced by an entire family.

This decision aligns with the goals agreed upon by States Parties concerning fundamental rights, the American Convention, and commitments to women's rights, establishing a milestone that could set new criteria in this area.

6. - This judgment, based on the claim presented by the Inter-American Commission, is the first one focusing directly on obstetric violence, and moreover, this violence as a manifestation of gender-based violence, with structural features. In my view, the approach taken by both treaty bodies will help women in Member States to publicly address an issue that is often normalized as something women must endure as part of life.

As I pointed out, obstetric violence is not the same as regular medical negligence but is an expression of the power relationship between women and men, demonstrated through the supposed dominance of healthcare personnel and the submission of the patient to their instructions. This type of mistreatment is inflicted on women because they are women, especially considering that pregnant women are not ill and do not always need medicalization or invasive interventions during childbirth.

The reality is that, even though Argentina has a legal framework that protects women from mistreatment and abuse during pregnancy, these statutes have not been successful in decreasing the high rates of obstetric violence. It seems that the lack of specific sanctions and procedures to hold offenders accountable in court really hinders the fight against this type of gender-based violence.

Every year, women experience violations of their sexual and reproductive rights daily, struggling to make their voices heard. The importance of this decision lies precisely in the fact that an international court with substantial influence over Member States' decision-making processes has set guidelines for implementing real and effective measures and established a path for women to assert their rights. Mostly, considering that until now, the judicial treatment of obstetric violence is almost inexistent.

However, obstetric violence is not only a problem in Latin America. But the difference with other regional systems may lie in the stronger civil movements and visibility in Latin American countries, possibly due to shared language, traditions, and a common history of colonization and struggles for independence. These circumstances may have enabled a unified approach that transcends borders, applying significant pressure on authorities and governments, including international institutions like the Inter-American Court.

While violence against women is a global issue, approaches to solutions vary in speed. Latin America has been more progressive on the matter, but the current development is still insufficient. Nevertheless, there is some hope for improvements on the field, example of it, is the recent approval of a special law regarding gender-based violence in Chile, that contains explicit references to international and regional obligations contracted by the State. Same thing we can expect from

Argentina, maybe the judgement will bring adjustments to their legal framework that will recognize in a more explicit way obstetric violence and offer to women actual remedies to combat it.

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