

Obstetric violence as a violation of the due diligence standard in the Inter-American Human Rights System

La violencia obstétrica como violación del estándar de la debida diligencia en el Sistema Interamericano de Derechos Humanos

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Resumen: La violencia obstétrica es una práctica reconocida como violación de los derechos humanos por documentos y organizaciones internacionales. El estándar de la debida diligencia determina que los Estados deben poner a disposición una variedad de recursos y medidas preventivas que aborden las causas estructurales de la violencia contra las mujeres. El caso *Brítez Arce y Otros vs. Argentina* (SIDH) arrojó luz sobre esta violación y la necesidad de que los Estados actúen con la debida diligencia en casos de violencia obstétrica. Con este estudio pretendemos entender cómo o caso refuerza este estándar y cuáles son las posibles lagunas de la decisión. Las autoras se basan en una investigación bibliográfica que utiliza la interseccionalidad como marco teórico y concluyen que, aunque esa decisión es importante como *leading case* en violencia obstétrica, presenta algunas lagunas. Esas lagunas son la falta de análisis en profundidad de los marcadores sociales en juego y sus repercusiones para los derechos reproductivos de las

mujeres y la justicia social, la ausencia de una determinación obligatoria para la formación adecuada de los profesionales de la salud con perspectiva de género y la necesidad de promover políticas públicas y facilitar el acceso a la justicia para las comunidades vulnerables.

Palabras clave: violencia obstétrica; derechos humanos; Sistema Interamericano de Derechos Humanos; interseccionalidad; derechos reproductivos.

Abstract: Obstetric violence is a practice recognized as a violation of human rights by international documents and organizations. According to the due diligence standard, applied by the Inter-American Human Rights System, states must make available a variety of resources and preventive measures that addresses the structural causes of violence against women. The case of *Brítez Arce et al. v. Argentina* shed a light on this women's right violation and the need for states to act with due diligence on the structural causes that keep those practices in force. Therefore, with this study we aim to understand how this case strengthens state's obligation to provide due diligence and what are the possible gaps in the decision. The authors draw on bibliographic research utilizing intersectionality as a theoretical framework and conclude that, although that decision is important as a leading case in OV, it presents some gaps. Those gaps are the lack of analysis in depth of social markers at play and their repercussions for women's reproductive rights and social justice, the absence of a mandatory determination for adequate training of health professionals with a gender perspective, the need to promote Public Policy and facilitated access to justice for vulnerable communities.

Keywords: obstetric violence; humans rights; Inter-American System of Human Rights; intersectionality; reproductive rights.

Summary: I. *Introduction.* II. *The due diligence standard in the IAHRs.* III. *The case Brítez Arce et al. v. Argentina.* IV. *The due or "lack" of diligence in the case.* V. *Conclusion.* VI. *References.*

I. Introduction

In 2022, the Inter-American Court of Human Rights (IA Court) made a historic decision in the case of *Brítez Arce et al. v. Argentina*. This was the first time the Court condemned a country for the practice of obstetric violence related to an avoidable maternal death. Argentina was found guilty of the death of Cristina Brítez Arce, for the violation of a reasonable investigation and judicial proceedings. This was also the first time that the court ruled on the right to live a life free from obstetric violence, using the Convention of Belém do Pará as a legal framework (Gonçalves, 2024). The Court recognized that

the state did not act with due diligence and violated the reasonable deadline in the investigation and legal proceedings that followed.

Our aim in this research endeavor is to understand whether this decision strengthens the state's obligation to provide due diligence in cases of obstetric violence against women. Thus, considering the political and jurisdictional power of the Inter-American Human Rights System (IAHRS), the objective of this study is to analyze the *Brítez Arce and Others v. Argentina* case, which despite being far from an ideal decision, as will be seen throughout the work, is the leading case in obstetric violence so far.

We use intersectionality as a critical social theory (Collins, 2022) and the concept of obstetric violence as a form of violence against women (Gherardi, 2016b) as our theoretical framework, in order to analyze the application of the due diligence standard in the case and which aspects could have been better explored considering the social markers identified, such as class, gender, ethnicity, and solo motherhood.

Obstetric violence (OV) is a practice that can be perpetrated during pregnancy, childbirth and postpartum, especially when related to other social markers such as class, race and ethnicity (Collins, 2022). It is one of the causes of preventable maternal mortality. The practice is a serious problem, according to the World Health Organization (WHO) it is estimated that between 88% and 98% of maternal deaths in the world are preventable (United Nations [UN], 2022). It is estimated that 94% of these deaths occur in low and lower middle-income countries (Pan American Health Organization [PAHO], 2017). In Latin America,¹ between 1990 and 2015, maternal mortality rates decreased by 16.4%, but had a new increase by 15% between 2016 and 2020 (PAHO, 2023).

Given this, the Inter-American Human Rights System (IAHRS), as a regional structure for the protection of human rights, plays an important role in Latin America by applying recommendations and sanctions to punish, prevent and raise awareness against this practice that is considered “another form of violence against women” (Gherardi, 2016b).

¹ Approximately 8,400 women, almost 3% of the global maternal mortality, died from causes related to pregnancy and childbirth in Latin America and the Caribbean (Pan American Health Organization [PAHO], 2023).

The actions of the IAHRs through its functional organisms, the Inter-American Commission on Human Rights (IA Commission) and the Inter-American Court of Human Rights, is not limited to recommendations and/or condemnations for member states to reformulate or create specific legislation on certain topics. In fact, in the light of the due diligence standard, states are required to make available a variety of resources, including different forms of reparation and preventive measures that encourage the transformation of discriminatory practices.²

In order to fulfill their obligation of due diligence, states should not only focus on creating legislation, making legal reforms and ensuring women's access to justice and support services. They should also take a comprehensive approach to addressing the issue at hand, in line with regional and universal human rights standards. This standard requires the prevention of violence, addressing its underlying causes, and implementing measures to change the societal and cultural behaviors that influence the actions and responses of the state and its security forces. As a result, it is important for states to recognize the various forms of violence against women and the different types of intersecting discrimination that impact their rights. This requires the adoption of comprehensive strategies to effectively prevent, address, and eliminate these issues.

We selected the *Brítez Arce* case for analysis by searching and cataloging existing cases related to violations of the right to safe motherhood using the search tool on the Court's website. From these cases, we identified those that focused on obstetric violence as the main issue, and we chose the *Brítez Arce* case for qualitative analysis based on the following criteria: i) the case deals with women's reproductive rights; ii) the case presents some type of violation of the exercise of the desired maternity services; iii) the case does not deal with unpaid reproductive work. We purpose taking a critical approach to this case study to examine how the due diligence standard was applied by the Court, the progress the decision represents, and how due diligence could have been better addressed in the decision.

² We can identify this standard in several cases, such as in *Jessica Lenahan (González) et al. v. United States*, (2011, pars. 125-128); IACHR, in Report No. 28/07, Cases 12,496-12,498, *Claudia Ivette González et al. v. Mexico*, March 9, 2007 and Human Rights Council (2016, paras. 1-16).

In conjunction with this approach, we conducted bibliographical research using the keywords “Inter-American Human Rights System,” “obstetric violence,” “Brítez Arce,” and “reproductive justice” across Google Scholar virtual journals and the Omni Library Platform. These keywords were utilized individually and in various combinations to comprehensively explore the subject matter

The article was structured as follows: Initially, an analysis was conducted to understand the origin and content of the due diligence standard in the IAHRs. Additionally, we aimed to explore the use of due diligence in litigation against gender discrimination and its role in preventing violations of women’s reproductive rights.

Next, we analyze the Brítez Arce and Others v Argentina case to demonstrate both the procedure before the IAHRs and the Inter-American Court’s interpretation of the violated rights and their legal basis. We also analyze the sanctions imposed on the Argentine state and how the Inter-American Court examined the state’s diligence in complying with the sanctions and preventing new cases from occurring. We aimed to understand the case from the standpoint of the due diligence standard and examine how the IAHRs conducted the judgment. Given this, although we recognize the progress the case represents for women’s reproductive rights, especially in preventing OV, we identify some problems in the decision that reflect missed opportunities for the Inter-American Court to address the issue in the region.

In light of this, we conclude that these problems could be solved and better addressed in future OV cases by deepening the debate on sensitive topics related to women’s human rights, which may further lead to practices to combat and prevent violence against women.

II. The due diligence standard in the IAHRs

The due diligence standard was adopted by the IAHRs in 1988 with the decision of the Inter-American Court in the case of Velásquez Rodríguez vs. Honduras, regarding the disappearance of Manfredo Velásquez. On that occasion, the IA Court condemned Honduras for failing to meet with the duties outlined in Article 1 of the American Convention on Human Rights (ACHR).

It stated that when a violation of human rights is committed by a private individual and the state does not diligently investigate, punish, and prevent such acts, the state becomes responsible for the violation. This leads to the state's international liability for inadequate responses (Ertürk, 2006).

The principle of due diligence is outlined in Article 7(b) of the Belém do Pará Convention. This principle requires the state to take both preventive and responsive measures in cases of violations of women's rights. These measures include conducting thorough investigations, ensuring fair trials, and punishing those responsible for the violence. The Inter-American Commission on Human Rights and the Rapporteurship on Women's Rights have shown that women who are victims of violence often do not have access to adequate and effective judicial resources to report the violence. As Gherardi (2016b) states, these women's rights remain unprotected.

According to the standards defined by the IAHRs and the universal human rights system, states' efforts to comply with their due diligence obligation should not focus solely on the establishment of laws and/or legal reform, nor even on the adoption of measures to facilitate women's access to justice and services available for victims. This obligation indicates the duty of the states to go further, that is, the obligation goes beyond making the remedies formally available to the petitioners. The responses given by the State through its judicial remedies must be suitable for remedying the facts denounced. It is in line with Article 2 of the ACHR, which establishes the responsibility of states to take legislative and other measures necessary to give effect to legal guarantees. States are obligated to prevent, investigate, and punish any rights violation recognized by the IA Convention. Additionally, they should seek to restore violated rights if possible and provide compensation for any damage caused by the violation of human rights (*Case Velásquez Rodríguez v Honduras*, 1988, p. 33).

For Abi-Mershed (2009, p. 127) "The due diligence standard has served the system as a flexible way of understanding what state obligation and responsibility mean in theory, and more importantly, in practice". To her this standard is important for preventing violence against women because, although it is clear that a state is responsible for the acts and omissions of its agents, in certain circumstances, it is also responsible for preventing and/or responding to the transgression of rights perpetrated by private or non-state

actors. This creates tension in the separation between the public and the private spheres, which are highly marked by gender issues (Abi-Mershed, 2009).

The “feminist appropriation” of this principle, as stated by O’Connell (2019), is a practical strategy for litigation in favor of women’s human rights in the IAHRs because it locates them within civil and political rights, considered universal rights, reinforcing due diligence. This principle politicizes violence that occurs in private environments, such as that which occurs inside hospitals, perpetrated by public or private health agents. In this way, it seeks to deconstruct traditional notions regarding the state’s obligations to prevent and protect Human Rights (O’Connell, 2019).

Tackling violence must also focus on preventing it, tackling the historical and structural causes that give rise to it and taking measures to change the socio-cultural behavior patterns that also shape the responses of the state, the security forces and other state actors (Gherardi, 2016b). Regarding prevention, O’Connell (2019) points out that there are no effective mechanisms to measure the application of laws to prevent violence against women, and there is little information on this.

According to Ertürk (2006), states have tried to uphold this principle mainly by adopting specific legislation, developing awareness campaigns and offering training courses for certain professional groups. However, these measures tend to address violence against women in a detached manner, leaving out the relationship between this type of violence and other systems of oppression, such as those related to race, class inequality and ethnicity (Ertürk, 2006).

The promotion of non-repetition mechanisms is fundamental for the protection and promotion of women’s reproductive rights because violations of these rights are directly linked to underlying socio-cultural aspects and practices that place women in a disadvantage position.

In 2009, the Inter-American Court delved deeper into the issue of due diligence and women’s human rights in the case of *González and Others (Cotton Field) v. Mexico*, when it was investigated the death of three women who disappeared in Ciudad Juárez (Mexico) and were found months later in a cotton field, victims of femicide. The case was considered a milestone for women’s human rights in the IAHRs, as it was the first time that the Court applied the principle of due diligence to impute responsibility to a state ap-

plying the Convention of Belém do Pará, for the lack of adequate measures regarding the protection of women, considering the high rates of femicides in that region, the lack of adequate search procedures and the various flaws in the investigation process.

Through due diligence, states are required to take immediate and effective action in the face of a possible violation of women's rights in order to prevent the harmful result or to repair it, if it does occur, and in this case, to diligently act in order to prevent similar cases from occurring. It is in the areas of rehabilitation and prevention that the Court stated, in the case of *Fernández Ortega and Others v. Mexico*, that health services should be made available to remedy the physical and psychological damage caused to women victims of violence, and that professionals should be trained to take into account the specificities of gender and ethnicity when carrying out treatment and providing clear and sufficient information beforehand.³

Furthermore, it is important to point out that, although we recognize the progress that the Court has made in applying due diligence to safeguard women's human rights, there are still difficulties in making this conceptual framework a reality in the context of reproductive rights. We found this to be the case for 3 main reasons (1) because due diligence was developed with a focus on repressing physical violence rather than other forms of oppression that women may be subjected to, such as those related to discriminatory treatment in the health system in the context of their sexual and reproductive rights and health; (2) there are no defined parameters for evaluating the efficiency of decisions that determine the reduction of gender inequalities, with generic determinations or those that are difficult to measure; and (3) coordination and articulation between different state actors and civil society is nec-

³ In its decision in the case of *Fernández Ortega et. al. v. México*, the Court (2010, par. 251) emphasized that “[...] a measure of reparation must be ordered that provides appropriate care for the physical and psychological effects suffered by the victims, which attend to their gender and ethnicity. Consequently, having verified the violations and the harm suffered by the victims in the present case, the Court decides that the State is obliged to provide them, free of charge and immediately, with the medical and psychological care they require. Prior, clear, and sufficient information should be offered to the victims so as to obtain their consent. The treatments should be provided for the time that is necessary, and should include the provision of medication, and where applicable, transportation, interpreters, and other costs that are directly related and strictly necessary”.

essary in order to implement or improve services to protect reproductive rights and prevent gender discrimination and violence.

Feminist activists have been working to expand the violence prevention requirement to include state duties to confront the causes of gender-based violence rooted in discrimination, gender stereotypes and cultural practices harmful to women (O'Connell, 2019).

In order to act with due diligence, states must take into account the multiplicity of forms of violence against women and the different types of intersectional discrimination that interfere in their rights, in order to adopt varied strategies to effectively prevent, address and eradicate them. The IAHRs has been constant in affirming the importance of states fulfilling due diligence in cases where the rights of minorities are involved⁴ -a term understood here in the sense of vulnerable social groups that may even represent the majority of the population of a given state such as impoverished people.

That said, due diligence reinforces the need to work towards eliminating gender stereotypes that limit women's autonomy in accessing information, education and exercising the power of choice. The jurisprudence of the IAHRs has evolved in the direction of conceptualizing gender equality in its substantive sense, in detriment of mere formal equality. It means that states are increasingly confronted with pressure to take positive measures in the implementation of human rights (Abramovich, 2009).

III. The case *Brítez Arce et al. v. Argentina*

1. *The case*

Cristina Brítez Arce was a 38-year-old woman from Paraguay and a clothing manufacturer, she was the mother of Ezequiel Martín Avaro and Vanina Verónica Avaro, who were 15 and 12 years old respectively, at the time of the events. She attended various medical appointments that overlooked her his-

⁴ We can identify this standard in several cases, such as: *Jessica Lenahan (Gonzales) Et Al. United States* (2011, paras. 125-128); IACHR, Report No. 28/07, Cases 12.496-12.498, Claudia Ivette González et al. v. Mexico, March 9, 2007, and Human Rights Council (2016, paras. 1-16).

tory of high blood pressure and other possible complications for a pregnancy that should have been treated as a high-risk pregnancy.

On November 25, 1991, she had her first prenatal exam at the Argentine League against Tuberculosis, where she reported her history of high blood pressure. On December 1, 1991, she underwent another test at 15 weeks' pregnancy, when it was suggested that she undergo another test. On March 10, 1992, she went for the first time to the Ramón Sardá Public Hospital (or "Maternidad Sardá"), where she also reported her high blood pressure (Case *Brítez Arce et al. v Argentina*, 2022).

Between March 10 and June 1, she gained more than 10 kilos, which was unusual for her condition, given that the increase considered normal would be 500 grams per week during pregnancy, as stated in the 1999 appeal judgment and the medical expert's report of May 1997 (Case *Brítez Arce et al. v Argentina*, 2022). Despite all these strong indications of a high-risk pregnancy, she was not informed of how to proceed, of the precautions she should take to prevent complications, nor was she offered any closer monitoring of her health.

In June 1992, when she was more than 40 weeks pregnant, Cristina Brítez Arce went back to the Ramón Sardá Public Hospital. There she underwent an ultrasound that found that the fetus was dead, so she was admitted for a labor induction. The induction began at 1:45 p.m. and ended at 5:15 p.m., when she was taken to the delivery room with complete dilation. She died that same day from cardiopulmonary arrest.

Both deaths, Cristina's and the fetus', were due to pre-eclampsia/eclampsia that was not correctly diagnosed. Pre-eclampsia is a serious illness related to an increase in blood pressure during pregnancy, which in some cases can develop into eclampsia, a serious form of the disease that puts the lives of both mother and fetus at risk. Eclampsia is characterized by the presence of tonic-clonic, focal or multifocal seizures, which can occur before, during or after childbirth (Dana, 2023; WHO, 2011)

Pre-eclampsia is currently the leading cause of maternal death (75,000 each year) and child death (500,000 each year) worldwide, with more than 99 % of maternal deaths occurring in poor or developing countries. In Latin America, it is responsible for 25 % of maternal deaths (Dana, 2023). Considering that eclampsia is a serious and common disease among pregnant wom-

en, and is the leading cause of maternal mortality worldwide, when Cristina was found to have several risk factors, such as being overweight, having a history of high blood pressure and being close to 40 years old, the treatment provided at the Ramón Sardá Maternity Hospital was flawed in several respects.

Thus, considering the degree of incidence of this condition in pregnant women (which characterizes a high-risk pregnancy), added to her previous record of high blood pressure, overweight and a late pregnancy, close to the age of 40, the treatment provided by the Argentine health system was insufficient in several respects. We can notice that the care given to her is in line with a context in which women's reproductive health is not considered a priority, loaded with various gender stereotypes, and in poor communities it is also affected by a lack of resources and qualified specialists.

Faced with this, Brítez Arce's relatives went on a legal crusade before the Argentine courts to have an expert medical report carried out and to prove the negligent and reckless conduct of the Ramón Sardá Hospital and its professionals. Despite the filing of several lawsuits and expert reports that showed that her pregnancy was at risk and that there had been misconduct on the part of the professionals, all the legal proceedings were ultimately dismissed (Gonçalves, 2024)

In 2001, once the national courts had been depleted, Ezequiel Avaro and Vanina Avaro submitted the case to the IA Court, requesting the international responsibility of the State of Argentina.

2. The judicial repercussions in the human rights system

On April 20, 2001, Ezequiel Martín and Vanina Verónica Avaro, children of Cristina Brítez Arce, submitted a complaint for consideration by the Inter-American Commission on Human Rights (IACHR), requesting the international responsibility of the Argentine state for the events that led to the death of their mother. The admissibility of the complaint was recognized by the Inter-American Body on July 28, 2015, through the publication of Admissibility Report No. 46/2015, in compliance with the requirements of Articles 46 and 47 of the American Convention on Human Rights (Cristina Britez Arce and Family, 2019).

In December 2019, the Commission issued Merits Report No. 236/2019, in which it ruled that the Argentine state was responsible for the violation of the rights of the victim and her family, recognizing that there had been an offence against the rights to life (Article 4.1), to personal integrity (5.1), to judicial guarantees (Article 8.1), to judicial protection (Article 25.1) and to health (Article 26) of the American Convention.

It also concluded that Article 7 of the Convention of Belém do Pará, which refers to the responsibility of states to act to prevent, punish and eradicate violence against women, applies in that case.

The Commission then indicated measures to be taken by the Argentine state in order to repair the damage, indicating the following recommendations: full reparation, through monetary compensation, to Cristina's relatives, the provision of mental health care for Ezequiel Martín and Vanina Avaro and the training of health professionals in the care of pregnant women and women in labor, in public and private hospitals.

In the Commission's merits report, it issues a recommendation to train health professionals with a human rights perspective in the care of pregnant women and women in labor, in public and private hospitals.⁵ This guideline as a measure of due diligence was not included in the decision on the merits handed down by the Court, which adopted the recommendations for monetary reparations through compensation to the victim's relatives and the provision of mental health care for Cristina's children, while remaining silent on the mentioned professional training.

Following the promulgation of the Merits Report by the Commission, Argentina was notified on February 25, 2020, to comply with the recommendations within 2 months. The deadline was extended three times without implementing the Commission's orders. In February 2021, the Commission submitted the case to the Inter-American Court of Human Rights. The judgment on the merits was handed down by the Court on November 16, 2022, and published on January 18, 2023. When evaluating the factual description,

⁵ “La Comisión Interamericana de Derechos Humanos, recomienda al estado de Argentina [...]. Disponer las medidas de capacitación necesarias, a fin de que el personal de salud que atienda a mujeres embarazadas y/o en parto, tanto en hospitales públicos como privados, conozcan los estándares establecidos en el presente informe”. (Cristina Brites Arce and Family, 2019, par. 110)

the Court noted with concern the passage of twenty years between the initial petition and the submission of the case to its jurisdiction (Case *Brítez Arce et al. v Argentina*, 2022, par. 3).

Although the Argentine state has acknowledged its responsibility, the Court considered it necessary to pronounce on its obligations and the facts regarding the provision of health services during pregnancy, childbirth and the postpartum and their correlation with the legal of life and personal integrity.

En ese orden de ideas la Corte reitera que la salud es un derecho humano fundamental e indispensable para el ejercicio adecuado de los demás derechos, y que todo ser humano tiene derecho al disfrute del más alto nivel posible de salud, que le permita vivir dignamente, entendida la salud no solo como la ausencia de afecciones o enfermedades, sino también como un estado completo de bienestar físico, mental y social, derivado de un estilo de vida que permita alcanzar a las personas un balance integral”. (Case *Brítez Arce et al. v Argentina*, 2022, par. 60)

Argentina was asked to provide data on maternal mortality and obstetric violence since 1992, in order to see if there had been any progress on the issue and what measures had been taken to that end. In 2019, Argentina reached its lowest maternal mortality rate since 2009, two percentage points lower than the average reached in 2001, the year the case was formalised. The state emphasised that it has adopted different public policies aimed at putting in place a ‘solid legal framework’ that protects the right of women and other people who are pregnant to enjoy the highest level of health before, during and after childbirth (Case *Brítez Arce et al. v Argentina*, 2022, 2022).

The Court links the violations of Cristina Brítez Arce’s right to life and integrity, recognised as human rights, to constitutive acts and obstetric violence. The Committee on Economic and Cultural Rights in its General Recommendation No. 22 (2016) on the right to sexual and reproductive health emphasizes that the right to sexual and reproductive health is inseparable and interrelated with other human rights. It is closely connected to civil and political rights, which form the foundation for the physical and mental well-being and autonomy of individuals.

The Committee on Economic, Social and Cultural Rights also states in this document that the lack of urgent obstetric care is often the cause of maternal mortality,⁶ which is a violation of the right to life and safety, and in certain circumstances may constitute acts of torture or cruel, inhuman or degrading treatment (United Nations, 2016).

The Court considers sexual and reproductive health to be an indivisible human right that is closely related to other human rights recognized by international treaties and conventions, such as civil and political rights (Case *Brítez Arce et al. v Argentina*, 2022, p. 17). As a human right, it is the state's obligation to ensure access to essential health services, to guarantee effective and quality medical services, and to promote improvements in the population's health conditions. Sexual and reproductive health is understood to go beyond the absence of illnesses or disorders, but mainly as complete physical, mental and social well-being, resulting from a lifestyle that allows people to achieve this.

Given this, having addressed sexual and reproductive rights and defined health as a right that encompasses a woman's complete mental and physical well-being, the Court lists obstetric violence as a form of gender-based violence, condemned both by human rights treaties of the Universal System (UN) and by the Belém do Pará Convention.

The Belém do Pará Convention defines violence against women in a variety of ways, whether physical, sexual or psychological, perpetrated by anyone, by the state or by its agents (articles 1 and 2). This document sought to provide a broader definition of gender-based violence, including violence committed within the family and by agents of the state, whether by action or omission. As a result, the Court (2022, p. 25) reinforced its understanding of obstetric violence as such that which occurs when healthcare providers mistreat women and people who get pregnant during pregnancy, childbirth, and postpartum care. This mistreatment can take many forms, including dehuman-

⁶ In the case of the Xákmok Kásek Indigenous Community v. Paraguay in 2010, the Court made its ruling on state obligations and their relation to maternal health care during pregnancy, childbirth and the postpartum period, and determined that states must provide differentiated and adequate care during these stages. On that occasion, the Court ruled that women living in rural areas, in situations of poverty or belonging to ethnic minorities are those most at risk of maternal mortality (Inter-American Court of Human Rights, 2010).

izing, disrespectful, abusive, or negligent treatment, verbal offenses, sexual abuse, withholding information and necessary treatment, coercing medical interventions, and unnecessarily medicalizing natural reproductive processes.

Finally, the judgement condemned Argentina for violating Cristina Brítez Arce's rights to health, life and integrity based on the ACHR. Regarding Vanina Verónica and Ezequiel Martin - Brítez Arce's daughter and son, respectively - violations of their rights to personal integrity, family protection and the protection of their childhood were also recognised, as a result of their mother's death, the incessant search for justice through the legal disputes perpetrated and the delay in the investigations.

In its judgement on the merits, the Court ordered the following reparations to the expense of the Argentine state: (1) measures to rehabilitate the mental health of Vanina Verónica and Ezequiel Martin, with funds earmarked for their psychological treatment; (2) measures of satisfaction through wide publicity and facilitated access to the decision in official government bodies and in local media with wide circulation; (3) guarantees of non-repetition that meet the standard of due diligence, which will be duly explained in the next section.

It was also ordered monetary compensation for material and non-material damages, costs and expenses incurred in the proceedings, and set a deadline of one year from the date of notification. In other words, the existence of specific legislation is not enough to ensure the fulfilment of said obligations. In accordance with the principle of due diligence, the Court ordered that the rights established in the new Argentine legislation should be widely disseminated throughout the state.

Although the state of Argentina has employed strategies and programs to reduce maternal mortality and obstetric violence, the Court has ordered other measures aimed at guaranteeing the non-repetition of cases like this, based on the duty of due diligence.

IV. The due or “lack” of diligence in the case

In 2004, Argentina passed the ‘Humanized Childbirth Law’ (Law 25.929/04), which establishes, in Article 2, that every woman has the right

(1) to be informed about the different possibilities of medical interventions on her body, so that she can choose freely, when there are possible alternatives; (2) to be treated with respect, in an individual and personalized way, with attention to her cultural and personal specificities; (3) to play a leading role during the process, avoiding the use of invasive medications when they are not necessary; (4) to be informed about the progress of the birthing process, the state of her child and, in general, to be involved in the various actions of the professionals; (5) to be accompanied by a person she trusts during labor; among other prerogatives.

In 2009, the country published the ‘Integral Protection Law to Prevent, Sanction and Eradicate Violence Against Women in the Environments in Which They Develop Their Interpersonal Relationships’ (Law No. 26,485/09), which deals with situations that can constitute cases of obstetric violence. Article 6 lists the ways in which the different types of violence against women manifest themselves and defines obstetric violence as ‘that exercised by health professionals on women’s bodies and reproductive processes, expressed in dehumanized treatment, the abuse of medicalization and the pathologization of natural processes’ (Law 26.485/09, article 6, translated).⁷

In light of this, the Court ordered campaigns to be carried out to disseminate the information presented in these legislation in order to raise awareness of: (1) the rights related to pregnancy, childbirth and the postpartum, referred to in Article 2 of the Humanized Childbirth Law; (2) the situations that may constitute obstetric violence in light of the sentence and in light of the Integral Protection Law to Prevent, Sanction and Eradicate Violence Against Women; (3) the right of pregnant women to receive humanized care during pregnancy, childbirth and postpartum, as well as to have access to complete information in clear language about their state of health and to have their preferences, choices and needs respected throughout the reproductive process. These campaigns should be broadcast on radio and television with advertisements that should be reproduced in every maternity hospital in the country.

⁷ “Violencia obstétrica: aquella que ejerce el personal de salud sobre el cuerpo y los procesos reproductivos de las mujeres, expresada en un trato deshumanizado, un abuso de medicalización y patologización de los procesos naturales, de conformidad con la Ley 25.929” (Lei n° 26.485/09, article 6).

According to the standards of due diligence set by the Regional and Universal Human Rights Systems, the state's focus in fulfilling this obligation should not be centered solely on the creation of legislation, access to justice or, as in the case analyzed, the dissemination of information about rights related to pregnancy, labor and birth. As explained in this article, due diligence requires the adoption of measures aimed at preventing violence, addressing the social structures that perpetuate it and promoting the transformation of social patterns that influence the responses given by the state. For Gherardi (2016a, p. 132) this standard sheds light on the states' obligation to consider the various forms of oppression women can experience using intersectionality to unveil it and then, take actions to prevent and dismantle it.

The due diligence standard has been implemented by the IA Court and other international courts of justice as a tool to encourage states to deal effectively and multidimensionally with human rights violations, including cases of violence against women. This principle has also been essential in defining the circumstances in which states are obliged to prevent the conduct of public agents or to respond to the actions of private parties.

Thus, this duty includes the obligation of the entire state structure to act in favor of human rights: the legislative and judicial bodies, the prison, police and political systems. According to the Commission (Jessica Lenahan (Gonzales) *et al.* United States, 2011), this responsibility is guided by four principles.

Firstly, there is liability before international bodies if states fail to act with due diligence to prevent, investigate, punish and remedy acts of violence against women. Secondly, they highlight the link between discrimination, violence against women and due diligence, with the understanding that it is the state's duty to confront violence, which necessarily implies adopting measures to prevent the discrimination that perpetuates the problem. This principle is understood as follows:

States must adopt the required measures to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and other practices based on the idea of the inferiority or superiority of either of the sexes, and on stereotyped roles for men and women. (Jessica Lenahan (Gonzales) *et al.* United States, 2011, par. 125)

As a third principle, the Commission emphasizes the relationship between the state's duty to act with due diligence and the obligation to guarantee access to adequate and efficient judicial remedies for victims and their families. Fourthly, the organization underlines the need to consider the different types of violence that different groups of women can suffer, influenced by social markers such as race, ethnicity and economic conditions. These markers must be taken into account by states when they act to prevent and confront violence.

In a survey conducted by the Organization of American States (OAS) in 2019, it was found that 25 % of pregnant women, during childbirth or the puerperium reported having suffered acts of obstetric violence in Mexico in 2016, one in four women in Brazil in the same year and, in 2017, there were 89 complaints of this type of violence in Argentina (Organization of American States [OAS], 2019). According to the Montevideo Consensus, a protocol carried out by civil society organizations, 8 of the 23 countries analyzed promote negative practices regarding pregnancy, childbirth and postpartum. The Latin American and Caribbean countries are lagging behind in terms of systems for reporting cases of obstetric violence, and more than half of the countries do not have adequate sanctioning mechanisms. In addition, half of the countries lack professionals with the appropriate training for humanized childbirth services (Mira que te Miro, 2018).

The Commission has alerted its member countries that even in those where specific legislation exists in the field of obstetric violence, such as Argentina, Bolivia, Mexico, Panama, Peru and Venezuela, this is not enough to prevent it, as there are gaps between its formal provision and application (OAS, 2019). Due to the high rates of preventable maternal mortality, the Commission (2010), from its Rapporteurship on Women's Rights, recommended that states adopt the necessary measures to recognize obstetric violence as a form of violence against women, regulating its sanctions and establishing mechanisms for training health professionals, for reporting these cases and carrying out awareness campaigns about women's rights so that they can identify this form of violence. Given this, the decision of the IA Court addresses the first principle by condemning the Argentine state for its responsibility towards the family of Cristina Brítez Arce. However, with regard to the other principles, we understand that the court decision presents some gaps.

Although the decision dealt with topics such as the importance of acting to eliminate gender stereotypes (the second principle), it did not examine the issue in depth. At the end of the sentence, the IA Court did not impose any socio-educational measures at a national level (whether in schools, higher education courses, campaigns in the local media or even in medical and nursing courses) aimed at reducing gender stereotypes. This measure would be interesting for the formation of more qualified health professionals when dealing with pregnancy and childbirth, for example. Simply ordering the publication of information about the laws issued in matter of reproductive rights (Law No. 25.929/04 and Law No. 26.485/09) is not sufficient to meet the requirements for due diligence. It is noteworthy that among the recommendations made by the Commission in its merits report is the training of health professionals in the care of pregnant women and women in labor, in public and private hospitals (Cristina Britez Arce and Family, 2019, p. 25), a recommendation that has not been determined as a binding measure by the IA Court.

With regard to the third principle, no mandatory measures have been designated either regarding access to judicial remedies for victims of OV violence and their families. The death of Cristina Brítez Arce occurred in 1992. After almost 10 years of lengthy and unsuccessful internal proceedings, the case was petitioned to the IA Commission, which took another 10 years to report it to the Court, given that its recommendations were not answered within the time limit set for Argentina. In all, it took almost 20 years between the facts and a decision on the merits holding the state responsible.

In this sense, despite the fact that the IA Court noted “with concern” the length of time it had taken to submit the case to its jurisdiction (Case Brítez Arce *et al.* v Argentina, 2022, par. 3), nothing was stipulated in the decision that would determine the implementation of a faster judicial system in cases of violence against women, nor did it stipulate a fine for the Argentine state for its slow response. Nor were there any measures stipulating a time limit for the processing of cases like this and/or a differentiated procedure in order to avoid the loss of the object or the death of the victim and her relatives during the course of the investigation.

Finally, when it comes to the intersectional perspective presented in the fourth principle, we see that the Court’s action is also insufficient. Through-

out the decision, it was referred that Cristina Brítez Arce was a woman from Paraguay who worked as a sewist, an ethnic minority with precarious economic conditions.

However, we found that the decision under study made no greater reference to these social markers than those raised when the case was presented (Inter-American Court of Human Rights, 2022, par. 27). In other words, although these intersections were mentioned in the first part of the sentence, they are not referred to or considered throughout the reasoning or the reparations. Thus, these issues were not dealt with in depth.

Studies and statistics on the intersections between gender, race, ethnicity, class and other social markers are scarce in Argentina, which demonstrates the need to look even closely at these inequalities. The report “Violencia Obstétrica: Análisis de los Registros de la Línea 144” produced by Argentina’s Ministry of Women, Gender and Diversity in 2022 on the incidence of obstetric violence in the country, for example, makes no reference to race or ethnicity. This raises a warning about discrimination that may be overlooked by the state (Gonçalves, 2024).

A study carried out with a group of hospital doctors in Buenos Aires in 2015 showed that women with lower socioeconomic status have less access to information and tend not to report discriminatory practices related to gender violence because they don’t have the proper information to do so, accepting what is offered to them in hospitals as a “free favor” (Kaplán, 2015).

This information is in line with the report issued by Argentina’s Ministry of Women, Gender and Diversity, in which 60% of reports of obstetric violence in 2021 were related to private hospitals, where women with better socioeconomic conditions have access (Argentina, 2022). It does not mean that in these places women’s reproductive rights suffer more violations, but that women who attend to these hospitals have better conditions and information to report. The same can be inferred about immigrant women: of the complaints of obstetric violence made between 2015 and 2021, only 8.5% were made by women of other nationalities in Argentina.

The practice of unjustified caesarean sections is also another important data when we discuss obstetric violence. In Argentina, the rate of caesarean sections over all births is around 25%, ranking fourth in Latin America, behind Chile, Brazil and the Dominican Republic (Valenti *et al.*; 2014). This

is even more worrying when we talk about indigenous women, for whom the moment of childbirth tends to be even more violent, because oppression is not only a gender issue, but also a matter of class, ethnicity and distinct cultural practices.

Argentina's health system is not prepared for indigenous women or poor women to have access to quality sexual and reproductive health, with free, prior and informed consent and respect for their ancestral knowledge and practices. So, being a woman, poor and indigenous is a perfect combination for suffering oppression and discrimination. "Las barreras culturales y de género impiden a estas mujeres acceder a un tratamiento adecuado y respetuoso a la hora de tener a sus hijos" (Gottardi, 2021, p. 82)".

Although the concept of obstetric violence is applicable to people who are pregnant in general, in practice, the few times it is applied, it tends to be directed only at white, heterosexual, middle-class women in Argentina (Gottardi, 2021). The IACourt emphasizes that the state is responsible for promoting the improvement of the population's health conditions and ensuring access to essential services, but it has not been determined the creation of any public policy focused on vulnerable communities in Argentina. Obstetric violence, in addition to gender-based violence, is also intersectional violence (Collins, 2022).

The IA Court points out that the state is responsible for promoting the improvement of the population's health conditions by ensuring access to essential services. However, the IA Court did not order the creation of any policy focused on guaranteeing this right for vulnerable communities in Argentina, such as Cristina's.

For Cristina Brítez Arce, the situation was even more difficult, as she experienced motherhood as a sole parent. The father of Ezequiel Martín and Vanina Verónica, who were teenagers at the time of her death, was not around, which led to an additional situation of suffering and violation of rights: the separation of the siblings to be raised in different relatives' homes. The fact that Brítez Arce could not count on the support of her son's and daughter's father was not explored throughout the decision, and no reference was made to this aggravating situation of her social, economic and emotional condition, especially at a time of special vulnerability, which is pregnancy.

Christina was the center of family life, the affective and economic base. She faced a lonely pregnancy while supported the household by sewing clothes, a situation that had been little explored by the Inter-American Court of Human Rights, leaving no room for discussion on the subject.

In Argentina, approximately 11% of households are single-parent (children are raised by only one parent), and of these, 86 % are single-parent households, according to the Instituto para el Desarrollo Social Argentino (IDESA, 2021). In these households, 80 % of women work outside their home, being forced to take on the roles of caregivers and parents, and yet, when compared to working fathers, they occupy less qualified and lower-paid positions. IDESA also demonstrated that among working mothers, 56% have another family member to help take care of their children and that this family member is usually an older child. Thus, in order to be able to work, mothers need the help of other people or state care institutions.

The IA Court could have used this opportunity to shed a light on the issue, drawing attention to the problem and determining the creation of assistance, in addition to promoting the creation of daycare centers and full-time schools, the allocation of financial aid to single mothers who are on the poverty line, incentives for education and qualification for the labor market and equal pay between men and women.

In addition, the IA Court framed the events that occurred to Brítez Arce as obstetric violence, recognizing this type of violence as a violation of human rights and a form of gender-based violence.

The IA Court's conceptualization of obstetric violence is very abstract. It did not distinguish, for example, events that constitute medical negligence and those that characterize obstetric violence, and which practices of health professionals should be banned. The lack of an accurate definition of obstetric violence makes it difficult to prevent it, which is why it would have been interesting if the IA Court had made a precise ruling detailing what is meant by this practice, creating guidelines for future cases.

For Bowser and Hill (2010), obstetric violence in medical literature covers diverse categories, ranging from physical abuse, non-consensual, non-confidential and undignified care to discrimination based on physical attributes. The lack of adequate and satisfactory care, with respect for the dignity of the parturient woman, are the generic contours that can be grasped from the con-

ceptualization of obstetric violence, which provides margins for different interpretations by health professionals and the judiciary when faced with cases such as these (Ferrão *et al.*, 2022).

The Humanized Childbirth Law (Law No. 25.929/04), enacted in 2004 in Argentina, did not include a definition of obstetric violence, while the Comprehensive Protection Law to Prevent, Sanction and Eradicate Violence Against Women in the Spheres in Which They Develop Their Interpersonal Relationships (Law No 26.485/2009), defines obstetric violence as “that perpetrated by health professionals on women’s bodies and reproductive processes, expressed in the dehumanized treatment, abuse of medicalization and pathologization of natural processes, in accordance with Law 25.929” (Argentina, 2009, article 6, e, translation).

The concept of obstetric violence in the Argentine legal system remains abstract, as it does not make explicit what is meant by “abuse of medicalization” or “pathologization of natural processes” as formal concepts capable of being applied in the legal field. Similarly, the concept of “dehumanized treatment” is also open-ended, so that certain medical conducts can be considered dehumanized by some professionals and naturalized by others. Psychological violence, which is also one of the forms of obstetric violence, has not been covered by the national legal system at all. The only penalty for these violations in both laws, whether by health professionals and their collaborators or by the institutions that cause them, is the classification of obstetric violence as serious misconduct, according to article 6 of the Humanized Childbirth Law. In other words, these sanctions are administrative rather than legal, and the assessment of severity is left to the Social Works Directorate of the Ministry of Health, the authority that applies sanctions of this nature (García and Fernández, 2018).

Despite the national regulatory advances made by Argentina in addressing violence against women and protecting humanized childbirth, the IA Court can and should use its role as a transnational legal body to promote the restructuring of the region’s legal and political systems, which require effective responses from the states (Gherardi, 2016). While the decision in the case under analysis marked progress in discussing the issue in Latin America by being the first time the IA Court condemned a state for practicing obstetric violence leading to an avoidable maternal death using both the American

Convention on Human Rights and the Convention of Belém do Pará, the decision missed the chance to delve more deeply into the issues set out above and address them more effectively.

V. Conclusion

The political power that the IA Court wields in the region is sometimes greater than its jurisdictional power, especially when ruling on human rights issues by creating international standards and recommendations. The decisions of the IA Court provide full reparations for victims and their families. Whether through the creation of memorials, public requests for forgiveness, the creation of legislation and/or the implementation of public policies, states cannot choose which parts of the decision they will comply with.

Thus, with regard to due diligence, we can notice that it was interesting that the IA Court took the position of not only condemning the state, but also requesting the presentation of statistical data on maternal deaths since the death of Cristina Brítez Arce, in order to verify the effective actions of the Argentine state with regard to preventing obstetric violence. The Court also asked the state to provide the media (mass media, TV and radio) with clarifications on what obstetric violence is, making it easier for the population to understand, with the aim of giving greater visibility and effectiveness to the legal guarantees.

Despite this, we found some points that could have been better addressed in the decision, such as the training of health professionals in the field of obstetrics, the creation of instruments for access to justice for victims of violence (which go beyond knowledge of the legislation), the implementation of jurisdictional mechanisms that demonstrate the priority of this type of claim, as well as the promotion of public policies aimed at universal, public and quality access to health services for vulnerable communities in Argentina.

Successful and sustainable implementation of reproductive rights, in light of due diligence, requires the incorporation of non-repetition remedies in the legislation form, education and training that seek to reshape social and cultural practices that prevent all kinds of women from enjoying the fullness of their reproductive rights (O'Connell, 2014).

We hope that in future cases of violence against women, especially obstetric violence, the IA Court follows the standard of due diligence with the appropriate care, deepening the debate on topics that are sensitive to women's human rights. In addition, we trust that, in due course, the Court will issue orders that consider the complexity of human rights involved in cases like this, promoting practices to confront and prevent violations.

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APA

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