United Nations CEDAW/C/90/D/164/2021

Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
6 March 2025
English
Original: Spanish

Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 164/2021*,**

Communication submitted by:	C.S.F. (represented by Christian Felipe Berndt Castiglione)
Alleged victims:	C.S.F. and E.B.S.F.
State party:	Argentina
Date of communication:	20 November 2020 (initial submission)
Date of adoption of views:	21 February 2025
Subject matter:	Obstetric violence, lack of redress, lack of investigation
Procedural issues:	Jurisdiction *ratione temporis*; jurisdiction *ratione personae*; exhaustion of domestic remedies
Articles of the Convention:	2, 3, 5, 12, 15 and 24
Article of the Optional Protocol:	4 (1) and (2) (c)

1.1 The author of the communication is C.S.F., an Argentine national. She is acting on her own behalf and that of her son, E.B.S.F, an Argentine national born on 21 February 2018. The author maintains that the State Party violated her rights and those of E.B.S.F. under articles 2, 3, 5, 12, 15 and 24 of the Convention on the Elimination of All Forms of Discrimination against Women owing to the obstetric violence to which she was allegedly subjected during childbirth. The Optional Protocol entered into force for the State Party on 20 June 2007. The author is represented by counsel.

* Adopted by the Committee at its ninetieth session (3–21 February 2025).

** The following members of the Committee participated in the examination of the present communication: Brenda Akia, Hiroko Akizuki, Hamida Al-Shukairi, Violet Eudine Barriteau, Rangita de Silva de Alwis, Corinne Dettmeijer-Vermeulen, Nada Moustafa Fathi Draz, Esther Eghobamien-Mshelia, Yamila González Ferrer, Dafna Hacker Dror, Nahla Haidar, Madina Jarbussynova, Marianne Mikko, Mu Hong, Ana Peláez Narváez, Jelena Pia-Comella, Bandana Rana, Rhoda Reddock, Elgun Safarov, Erika Schläppi, Natasha Stott Despoja, Genoveva Tisheva and Patsilí Toledo Vásquez.

1.2 On 31 January 2022, the Committee, acting through the Working Group on Communications under the Optional Protocol, rejected the State Party's request that the admissibility of the communication be considered separately from its merits.

Facts as submitted by the author

2.1 During week 41 of her pregnancy, the author went to Sanatorio Finochietto[1] in the Autonomous City of Buenos Aires for a regular check-up with her obstetrician, who informed her of the need to induce labour and gave her an appointment for the following day. The same afternoon, the author received a call from the midwife, who explained the induction procedure. On 21 February 2018, at 9 a.m., the author went to the clinic to give birth to her son. The nurse who received her explained to the author that, in order to induce labour, she would be given a drug to accelerate the contractions. Later the midwife arrived and, after a short conversation with the nurse about the large number of scheduled births, said that she would be inserting the intravenous line. The midwife attempted to insert the line in the side of the author's left wrist. However, the way she did it caused pain and the author complained about it, to which the midwife replied: "Stay still, if you start like that things are not going to go well, the worst is yet to come. […] What a chicken, you're very sensitive to pain". These kinds of comments made the author feel anxious and fearful. After trying, unsuccessfully, to place the line in the left wrist, the midwife finally managed to insert it in the right wrist.

2.2 When the author started to feel the first contractions, the midwife carried out an amniotomy in order to accelerate labour; this procedure involves inserting a serrated device, through the vagina, to rupture the amniotic sac, thereby facilitating the release of the amniotic fluid. According to the author, the World Health Organization (WHO) has established that this procedure should be used during childbirth exceptionally and only if it is necessary to extract blood from the fetus to measure its pH. However, the instrument was inserted in such a way that the midwife was not able to rupture the amniotic sac. Even though the author requested the midwife to stop, because she was starting to feel intense pain, the midwife refused and carried on moving the instrument, via the vaginal canal, which increased the author's pain. In that context, the author asked the midwife for some kind of anaesthesia, which was denied, while the midwife made the same comments as before.

2.3 Once they were in the delivery room and the anaesthesia was being administered, the midwife made ironic comments to the doctor about the author's pain threshold and made fun of her. At that point, the author asked the midwife to stop making disrespectful comments and asked to see her partner, but received no answer. At the start of labour, the midwife asked the author to inform her each time she felt a contraction, because she was "pushing badly" and the midwife was going to have to intervene. Later, the midwife used what is known as the Kristeller manoeuvre, which involves applying pressure to the woman's uterus for 5 to 8 seconds, in time with the contractions, in order to facilitate the final descent and expulsion of the baby's head. The author notes that the decision to use the manoeuvre was taken even though the practice is discouraged by both WHO and the Argentine Medical Association.[2] The manoeuvre impeded her breathing and she was therefore unable to push. Given that the contractions became more frequent, the midwife applied the manoeuvre more strongly until the baby's head emerged from the vaginal canal. Finally, at after 1 p.m.,

[1] Sanatorio Finochietto is a private health clinic.

[2] Among the risks of this manoeuvre for the mother are: (a) the possibility of uterine rupture; (b) the production of haematomas and contusions in the abdomen and internal organs; (c) fractures of the ribs and pelvis; and (d) vaginal and perineal tears. As for the life and health of the newborn, the performance of the manoeuvre may cause hypoxia; fracture of the humerus, clavicle or ribs; and increased cranial pressure, among other risks.

the obstetrician arrived and asked the midwife to stop performing the Kristeller manoeuvre. The midwife then started to take photos of the author with her telephone and without her authorization. The obstetrician informed the author that she would be given stitches, as she had suffered a vaginal tear. On the third day she was discharged, and the following day the author and her partner went to the neonatal unit because they had noticed that their son, E.B.S.F., had a fracture in his right clavicle, caused by the application of the Kristeller manoeuvre during birth.

2.4 The use of the aforementioned procedures caused the author to experience severe pain and resulted in serious physical consequences for both her and her son, E.B.S.F. According to the medical report,[3] the author suffered serious internal injuries to the uterus and anus, which have prevented her from leading a normal life. All this caused her to become deeply depressed, which later led to the break-up of her relationship with her partner. After the delivery, the author went back to the same clinic to seek treatment in order to recover from the aforementioned injuries. However, her doctor told her that the pain she was experiencing was caused by her emotional state after the break-up of her relationship and that she was looking for "excuses" to explain what had happened. The pain and injuries sustained during childbirth prevented the author from caring for her son appropriately, as she was unable to hold him in her arms without experiencing pain or to accompany him while he was learning to walk.

2.5 The author is currently undergoing treatment to recover her health. In August 2019 she was able to return to work and has gradually been regaining her routine, with the support of her family.

Domestic procedures

2.6 On 19 August 2019, the author filed an administrative complaint with the National Coordinating Committee for Actions to Develop Penalties to be Imposed in Cases of Gender Violence, which gave rise to administrative proceedings before the National Institute to Combat Discrimination, Xenophobia and Racism (INADI). On 2 October 2019, INADI launched an investigation process in which the complainant broadened the scope of her complaint and submitted documentary evidence. Owing to the coronavirus disease (COVID-19) pandemic, the National Executive issued Decree No. 298/2020, by which it suspended administrative deadlines. However, on 15 October 2020, by resolution No. 163/2020, INADI decided to exempt the author's case from the suspension of procedural deadlines. On 6 September 2022, INADI issued an opinion in which it found that the humiliating and dehumanized treatment of the victim by an obstetric professional, in requiring her to push harder, constituted obstetric violence, as did the performance of the Kristeller manoeuvre without her informed consent, even if the said manoeuvre might have been applied in accordance with *lex artis*, and that it constituted discrimination under Act No. 23.592. Furthermore, it found that Sanatorio Finochietto had failed to prevent, investigate and punish this type of conduct. Lastly, it recommended that Sanatorio Finochietto provide training on obstetric violence to all personnel involved in pregnancy check-ups, delivery and postpartum care, whether health professionals or administrative staff.

2.7 In addition, on 4 September 2019, the author requested the involvement of the Office of the Ombudsman, which found that the facts related to the alleged mistreatment, the lack of information provided in the processes and the performance of manoeuvres discouraged by WHO, constituted prima facie one of the forms of

[3] Forensic medical report, 27 October 2020.

violence against women, as set out in article 6 (e) of Act No. 26.485.[4] It notified the Public Prosecution Service of the Autonomous City of Buenos Aires, which, on 3 October 2019, formally began criminal proceedings relating to the offence of injury, pursuant to article 94 of the Criminal Code.[5] On 12 February 2020, the author made her statement before the Public Prosecution Service. After preparing several expert opinions, the Public Prosecution Service of the Autonomous City of Buenos Aires decided, on 25 June 2021, to close the investigation, concluding that it was not possible "to prove the existence of one of the conditions that [article 94 of the Criminal Code] […] requires in order to establish [the offence], namely […] that the accused had failed in the duty of care that it had, based on the respective roles within the medical team, and had, as a result, caused the harmful outcomes reported".

Complaint

3.1 The author submits that the State Party is responsible for the violation of her rights under articles 2, 3, 5, 12, 15 and 24 of the Convention as it did not prevent, punish or make reparation for the violations she suffered in a situation of obstetric violence. She argues that, pursuant to article 2 of the Convention, the competent authorities have the obligation to prevent situations such as those suffered by the author and her son in all healthcare facilities, whether public or private. The laws of the State Party provide – in Act No. 25.929 – that the Ministry of Health and the competent health authorities have a duty to take all necessary measures to ensure a dignified childbirth, without treatments that constitute obstetric violence. In the present case, the State Party did not take appropriate legislative or other measures to prohibit and eliminate discrimination against women practised in this case by a private facility, thereby failing to comply with its duty to prevent gender-based violence and protect the human rights of women. The State Party did not fulfil its obligation to oversee and monitor the appropriateness of the medical services provided to women giving birth in private facilities, including by ensuring that the medical procedures followed during the delivery, as well as before and after it, do not constitute acts of obstetric violence. The lack of oversight in the clinic where the author gave birth made it possible for staff to use discouraged or prohibited practices, such as the Kristeller manoeuvre and the amniotomy, without informed consent, and to engage in acts of physical and verbal mistreatment, which had consequences for the physical and mental health of the author and her son, all of which is in violation of national and international law.

3.2 With regard to article 3 of the Convention, the author claims that, by not protecting her from the obstetric violence she suffered in the private clinic, the State Party failed to ensure her full development on a basis of equality with men. Furthermore, effective measures were not taken to ensure comprehensive reparation for the violations suffered, nor was access to justice guaranteed through effective and efficient remedies, thereby perpetuating the structural discrimination experienced by women in healthcare situations.

3.3 Regarding article 5 of the Convention, the author maintains that the State Party failed in its obligation to modify the social and cultural patterns that perpetuate obstetric violence, given that it did not prevent or punish violent and dehumanizing medical practices during delivery, such as those performed in her case. These

[4] Act No. 26.485, art. 6 (e): "Obstetric violence: violence by health personnel against the body and reproductive processes of women, expressed in dehumanized treatment, the abuse of medicalization and the pathologization of natural processes, pursuant to Act No. 25.929".

[5] Argentine Criminal Code, art. 94: "Anyone who, as a result of recklessness or negligence, a lack of professional skill or a failure to comply with the corresponding rules or duties, harms the body or health of another, shall be subject to a prison term of one month to three years or to a fine of 1,000 to 15,000 pesos and special disqualification for one to four years […]".

practices reflect the normalization of the subordination of and violence against women in the field of healthcare, which violates the international commitments to eliminate such forms of discrimination.

3.4 The author claims that, by having allowed her to be subjected to invasive and prohibited procedures without her informed consent, the State Party failed in its obligation to guarantee access to appropriate healthcare services free from discrimination and violence. According to the author, the care provided by Sanatorio Finochietto was in breach of the standards established by WHO and Act No. 25.929, depriving her of her right to be treated with respect, dignity and regard for her privacy during the delivery process. This lack of due diligence by the authorities violated the rights enjoyed by the author under article 12 of the Convention.

3.5 The author notes that the State Party failed to comply with its obligation to investigate, prosecute and provide reparation for cases of gender-based violence because: (a) the legal system did not provide specific remedies to demand the investigation, prosecution and reparation of the obstetric violence suffered; and (b) the complaints filed by the author with the State's administrative and criminal justice authorities did not lead to any investigation of the facts. The author claims that, under national law, cases of obstetric violence are treated as: (a) an administrative offence; (b) a form of harm regulated by private law; and (c) a type of injury. Therefore, in breach of articles 15 and 24 of the Convention, the national system does not provide for any procedural mechanism that would allow the judicial authorities to address cases of obstetric violence as serious violations of women's human rights. In Act No. 25.929, regarding humanized childbirth, and Act No. 26.485, regarding violence against women, no provision is made for any specific legal procedure or an appropriate category of criminal offence to address obstetric violence as a violation of human rights. In practice, this prevents cases of obstetric violence from being appropriately investigated and prosecuted. In the same way, the lack of an adequate remedy prevents victims from obtaining comprehensive reparation for the material and immaterial harm caused. The author filed reports with the National Coordinating Committee for Actions to Develop Penalties to be Imposed in Cases of Gender Violence and with the Office of the Ombudsman, which notified the Public Prosecutor's Service of the complaint. However, after receiving the complaints, the agencies in question did not take the necessary measures to process them. The State Party was therefore in breach of its obligation to process the complaint within a reasonable time. That unjustified delay prevented the author and her son from obtaining the comprehensive reparation to which they are entitled owing to the material and immaterial harm suffered.

3.6 As comprehensive reparation measures, the author requests that the Committee declare the international responsibility of the State party; the payment of 35,000 United States dollars to each of the victims; and the provision of psychological assistance for the author, to be offered through private service providers financed by the Province of Buenos Aires. Furthermore, the author requests the Committee to recommend that the State Party set up a working group for representatives of the Government and civil society, including the non-governmental organization Las Casildas, to discuss the need to amend Act No. 25.929 to establish specific procedural mechanisms allowing women who are victims of obstetric violence to gain access to an adequate remedy. The author also requests the State Party to comply with the recommendations made by the Special Rapporteur on violence against women and girls, its causes and consequences in her report on a human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence. Lastly, the author requests publication of the present communication in a national newspaper and the official gazette.

State party's observations on admissibility and the merits

4.1 On 28 April 2021 and 30 September 2022, the State Party submitted its observations on admissibility and the merits.

4.2 The State Party argues that domestic remedies have not been exhausted given that the administrative proceedings before INADI to establish the alleged facts and responsibilities are ongoing and the Public Prosecution Service of the City of Buenos Aires is in the process of conducting a judicial investigation. The State Party maintains that the exceptions claimed by the author of the communication, namely, the alleged ineffectiveness of the remedy and unreasonably prolonged nature of the domestic proceedings, are not applicable in this case. According to the information provided by the Public Prosecution Service of the City of Buenos Aires, criminal proceedings were formally begun on 3 October 2019, in relation to the offence defined in article 94 of the Criminal Code,[6] and the investigation is still under way, the most recent progress having been made in February 2021.

4.3 Although the author argues that there are no specific domestic law mechanisms for bringing complaints regarding acts of obstetric violence before a court and obtaining comprehensive reparation for the victims, the State Party maintains that this form of violence is covered by article 6 (e) of the Act on Comprehensive Protection to Prevent, Punish and Eradicate Acts of Violence against Women in their Interpersonal Relations (No. 26.485). In addition, it should be noted that not all forms of violence need to be approached from a criminal law perspective. However, even though obstetric violence is not specifically criminalized in national law, there are judicial avenues available to address through the criminal courts some behaviours that can be classified as such. For example, depending on their severity, intentional practices of obstetric violence that cause harm or injury to the body or health constitute offences defined in articles 89 to 94 of the Criminal Code (on injury). Other forms of violence capable of causing harm or injury to a person's body or health when performed recklessly may constitute negligent injury pursuant to article 94 of the Criminal Code. Furthermore, when acts of obstetric violence do not cause harm or injury to another person, in other words, when they do not constitute an offence, reparation may be obtained through a civil process by means of a claim for damages.

4.4 On the merits, the State Party maintains that various expert opinions revealed discrepancies regarding the use of the manoeuvres alleged, their compliance with medical standards and their causal relationship with the injuries reported. In one medical report it was concluded that the perineal tear was a foreseeable consequence of childbirth, there were indications that the hip injuries had been sustained previously and the urinary incontinence could not be directly attributed to a defective procedure. Furthermore, no records of the author's son's fracture were found in the medical documentation. The Forensic Medicine Directorate established that vaginal tears are common injuries in spontaneous deliveries and that the use of the Kristeller manoeuvre, although generally discouraged, could not be proved in this case. It was stated in the psychological report that the complainant experienced the facts in a traumatic manner, which caused her to suffer from post-traumatic stress disorder, reflecting the psychological impact of her experience. On 30 June 2021, the Public Prosecution Service closed the case on the grounds that the evidence collected had not allowed it to establish that the reported negative outcomes had been caused by the Kristeller manoeuvre or the rupture of the amniotic sac.

4.5 The State Party argues that specific mechanisms are available to give effect to the author's rights. Argentine law, through Act No. 25.929, regarding respectful childbirth, and Act No. 26.485, regarding comprehensive protection against gender-

[6] Ibid.

based violence, establishes legal mechanisms for penalizing non-compliance and ensuring the rights of women during and after childbirth. The investigations initiated by the author in criminal and administrative proceedings did not reveal significant shortcomings on the part of the health personnel, while INADI recommended that Sanatorio Finochietto train its staff with regard to obstetric violence. At the legal level, adequate civil, criminal and administrative remedies are available to address cases of obstetric violence.

4.6 As for government initiatives, the Ministry of Women, Genders and Diversity worked together with the Ministry of Health to implement Act No. 25.929, regarding respectful childbirth, and established an inter-agency committee to take action in cases of obstetric violence. Act No. 25.929, together with Act No. 27.611 (the "One Thousand Days" Act), strengthens the comprehensive view of childbearing and child-rearing rights as State policy. Moreover, the National Action Plan for Combating Gender-Based Violence includes specific lines for addressing obstetric violence, with the aim of strengthening preventive measures and ensuring dignified and respectful care for women during pregnancy, childbirth and the post-partum period.

Author's comments on the State Party's observations on admissibility and the merits

5.1 The author submitted her comments on the State Party's observations on admissibility and the merits on 7 June 2021 and 12 September 2023.

5.2 The author admits that at the time she submitted the communication, the investigation by the Public Prosecution Service was pending. However, according to the Public Prosecution Service itself, the purpose of the investigation was not to determine whether the author had suffered gender-based violence at Sanatorio Finochietto, but to establish whether the health personnel who attended her delivery there were guilty of negligence or a breach of regulations that caused harm to her body or health, as established in article 94 of the Criminal Code. From the moment the Public Prosecution Service frames its investigation within the context of the aforementioned article, the remedy becomes completely ineffective, since it is not appropriate for addressing the harm suffered by the author. The concept of obstetric violence, as defined under domestic civil law, does not match the criminal offence set out in article 94 of the Criminal Code. The Public Prosecution Service approached the investigation as though it were dealing with a crime defined by medical malpractice. However, the author argues that obstetric violence is not a simple case of malpractice whose wrongfulness is linked solely to non-compliance with administrative regulations or medical negligence.

5.3 In any case, according to the author, the remedy proved ineffective, since on 25 June 2021, the Public Prosecution Service of the Autonomous City of Buenos Aires decided to close the investigation, concluding that it was not possible "to prove the existence of one of the conditions that [article 94 of the Criminal Code] […] requires in order to establish [the offence], namely […] that the accused had failed in the duty of care that it had, based on the respective roles within the medical team, and had, as a result, caused the harmful outcomes reported".

5.4 With regard to the proceedings before INADI, the author points out that INADI is legally empowered to receive complaints about situations that may constitute discrimination, and to provide victims with legal advice and even represent them in legal proceedings. However, INADI lacks adjudicatory powers, as it is authorized only to register complaints, if they are proven to be well founded, and to sponsor legal action. INADI itself will never be able to grant reparation to a victim. For all those reasons, the author considers this administrative remedy not to have been effective. However, the author argues that the institutional recognition of obstetric violence by

INADI, in its opinion of 6 September 2022, reinforces the veracity of the facts alleged before the Committee, since a State entity has considered the violations alleged before the Committee to be proven (see para. 2.6 above).

Issues and proceedings before the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee is to decide whether the communication is admissible under the Optional Protocol.

6.2 The Committee takes note of the author's allegations that the use of the Kristeller manoeuvre without her informed consent had consequences for her son E.B.S.F., who suffered a fractured clavicle. The Committee also takes note of the author's allegations that the consequences she suffered prevented her from caring for her newborn son. The Committee notes that the alleged harm suffered by E.B.S.F. is directly linked to the alleged obstetric violence and gender-based discrimination suffered by the author. In the light of the foregoing, the Committee considers that it is not precluded, by virtue of the requirements of article 2 of the Optional Protocol, from considering the present communication, not only in relation to the author, but also in relation to her son E.B.S.F.[7]

6.3 The Committee takes note of the argument of the State Party that the communication is inadmissible on the grounds of non-exhaustion of domestic remedies, since, at the time the communication was submitted, both the criminal and the administrative complaints were still pending resolution. The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted or that the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.[8] The Committee recalls that the authors of an individual communication are not obliged to exhaust all available remedies but must give the State Party the opportunity, through a relevant chosen mechanism, to remedy the matter raised within its jurisdiction.[9] The Committee notes that the author raised the issues set out in the present communication before the national administrative and criminal justice authorities. It notes that the criminal investigation was closed in June 2021 and that INADI, in its opinion of September 2022, appeared to recognize that the author was a victim of obstetric violence. However, the Committee takes note of the author's assertion, not refuted by the State Party, that INADI lacks adjudicatory powers and, therefore, is not authorized to grant reparation to the author. In the light of the foregoing, and in the absence of any other information from the State Party indicating other remedies that would have been effective in redressing the violations alleged in the present communication, the Committee considers that available domestic remedies have been exhausted. Accordingly, the Committee finds that article 4 (1) of the Optional Protocol does not constitute a barrier to the admissibility of the present communication.

6.4 The Committee also notes the author's statement that there is no effective remedy that facilitates her access to comprehensive, adequate reparation for herself and her son, and that, in the State Party, effective measures to ensure such reparation have not been taken, perpetuating structural discrimination against women in the field of reproductive health. The Committee considers that the allegations relating to the

[7] In this regard, see the Committee's views in *Eugene Matson v. Canada* (CEDAW/C/81/D/68/2014), para. 17.3.

[8] *J.D. et al. v. Czech Republic* (CEDAW/C/73/D/102/2016), para. 8.2; *E.S. and S.C. v. United Republic of Tanzania* (CEDAW/C/60/D/48/2013), para. 6.3; and *L. R. v. Republic of Moldova* (CEDAW/C/66/D/58/2013), para. 12.2.

[9] *S.F.M. v. Spain* (CEDAW/C/75/D/138/2018), para. 6.3.

denial of justice and discrimination on the basis of sex as a result of stereotypes are directly linked to the merits of the communication, and therefore decides to consider them on the merits.[10]

6.5 The Committee notes that the author refers to a violation of article 15 of the Convention, but does not provide information explaining how the facts of the present communication could have undermined the enjoyment of her rights under that article. Consequently, the Committee considers that the claims by the author relating to article 15 have not been sufficiently substantiated and declares them inadmissible under article 4 (2) (c) of the Optional Protocol.

6.6 However, the Committee considers that the author has sufficiently substantiated, for admissibility purposes, her allegations relating to articles 2, 3, 5, 12 and 24 of the Convention, relating to the lack of prevention and investigation of the acts of obstetric violence against her and the lack of reparation for her and her son for those acts. Accordingly, in the absence of any other issue relating to the admissibility of the communication, the Committee declares it admissible insofar as it raises issues under articles 2, 3, 5, 12 and 24 of the Convention, and decides to proceed to consider it on the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information placed at its disposal by the author and the State Party, in accordance with the provisions of article 7 (1) of the Optional Protocol.

7.2 The Committee notes that the crux of the present case is whether the State Party failed to comply with its obligation to prevent and investigate acts of obstetric violence and to grant comprehensive reparation to the author. The Committee must also assess the State Party's compliance with its obligation to exercise due diligence in the criminal proceedings that took place after the acts that are the subject of the author's complaint. The Committee recalls that it is generally for the authorities of States Parties to evaluate the facts and evidence and the application of national law in a particular case, unless it can be established that the evaluation was conducted in a manner that was biased, based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice.[11] In that regard, the Committee notes that, according to the State Party, the Government and the domestic courts thoroughly evaluated the reports provided and that various expert opinions revealed discrepancies regarding the use of the manoeuvres alleged, their compliance with medical standards and their causal relationship with the injuries reported. The Committee also notes that INADI issued an opinion stating that the author had received inappropriate treatment and that, although the Kristeller manoeuvre might have been performed in accordance with *lex artis*, it appeared to have been performed without the author's informed consent and that this constitutes obstetric violence.

7.3 The Committee points out that it has examined several cases of obstetric violence, understood to mean violence suffered by women that is inflicted by reproductive healthcare providers during pregnancy, childbirth and the postpartum period.[12] It also recalls that informed consent for medical treatment related to reproductive health services and childbirth is a fundamental human right. Women

[10] *N.A.E. v. Spain* (CEDAW/C/82/D/149/2019), para. 14.4.

[11] *H.D. v. Denmark* (CEDAW/C/70/D/76/2014), para. 7.7.

[12] See *M.D.C.P. v. Spain* (CEDAW/C/84/D/154/2020); *N.A.E. v. Spain* (CEDAW/C/82/D/149/2019); and *S.F.M. v. Spain* (CEDAW/C/75/D/138/2018). In the same vein, see A/74/137, paras. 9 and 12. See also World Health Organization, "The prevention and elimination of disrespect and abuse during facility-based childbirth" (WHO/RHR/14.23).

have the right to receive full information about recommended treatments so that they can make informed and well-considered decisions.[13] The Special Rapporteur on violence against women and girls, its causes and consequences has stated that this form of violence is widespread and systematic in nature, ingrained in health systems. It is part of a continuum of the violations that occur in the wider context of structural inequality, discrimination and patriarchy, and is also the result of a lack of proper education and training as well as the lack of respect for women's equal status and human rights.[14]

7.4 The Committee notes that in the State Party, obstetric violence is defined in Act No. 26.485 (on violence against women) and that Act No. 25.929 promotes humanized childbirth. It also notes that the national system does not yet provide for any specific legal procedure, either criminal or administrative, through which obstetric violence is investigated and punished. The Committee recalls its general recommendation No. 35 (2017), in which it called on States Parties to carry out the legal reforms necessary to criminalize all forms of gender-based violence against women, including violations of women's sexual and reproductive health and rights.[15] In addition, on the basis of its general recommendation No. 24 (1999), it has reiterated the need to develop prevention programmes and ensure that women have access to sexual and reproductive healthcare,[16] and has called upon States Parties to ensure that victims of obstetric violence have effective access to justice and to comprehensive and adequate reparation.[17] The Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention recommended that the States of Latin America and the Caribbean enact laws to punish obstetric violence.[18] In 2012, the Mechanism noted that, although the State Party defined obstetric violence as a form of violence, it did not indicate what measures were being taken to punish obstetric violence in its national laws, either by establishing the corresponding penalties in the Criminal Code or guidelines in the General Health Act.

7.5 In its general recommendation No. 28 (2010), the Committee established that States Parties have an obligation not to cause discrimination against women through acts or omissions; they are further obliged to react actively against discrimination against women, regardless of whether such acts or omissions are perpetrated by the State or by private actors.[19] They also have a due diligence obligation to prevent discrimination by private actors.[20] In addition, the Inter-American Court of Human Rights considered that "in cases in which a woman claims to have been a victim of obstetric violence by non-State actors, States have the obligation to establish timely, adequate and effective complaint mechanisms under which such obstetric violence is recognized as a form of violence against women, investigate the facts with due diligence, punish any perpetrators of such violence and provide the victim with effective redress, reparation of damage or other just and effective means of

[13] See *M.D.C.P. v. Spain* (CEDAW/C/84/D/154/2020); *N.A.E. v. Spain* (CEDAW/C/82/D/149/2019); and *S.F.M. v. Spain* (CEDAW/C/75/D/138/2018). In the same vein, see A/74/137, para. 32.

[14] A/74/137, paras. 4 and 9.

[15] General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, para. 18. See also the Committee's concluding observations in CEDAW/C/LAO/CO/10, paras. 26 and 27; CEDAW/C/DEU/CO/9, para. 46; and CEDAW/C/BGR/CO/8, para. 34.

[16] General recommendation No. 24 (1999) on women and health, paras. 26 and 27.

[17] See the Committee's concluding observations in CEDAW/C/CHL/CO/8, para. 38; and CEDAW/C/URY/CO/10, para. 36.

[18] Follow-up Mechanism to the Implementation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (MESECVI), *Second Hemispheric Report on the Implementation of the Belém do Pará Convention*, April 2012, p. 39.

[19] General recommendation No. 28 (2010) on the core obligations of States Parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, para. 10.

[20] Ibid., para. 13.

compensation".[21] The Court also recalled the obligation of States to prevent third parties from committing acts of obstetric violence and, more specifically, their duty to regulate and oversee all healthcare provided to persons under their jurisdiction, regardless of whether the entity providing such services is public or private.[22]

7.6 In this context, the Committee recalls that, pursuant to articles 2 (f) and 5, States Parties have the obligation to take appropriate measures to modify or abolish not only existing laws and regulations but also customs and practices that constitute discrimination against women.[23] The Committee recalls that, in its concluding observations, it has recommended that States Parties adopt legal and policy measures to protect pregnant women during childbirth, penalize obstetric violence, strengthen capacity-building programmes for medical practitioners and ensure regular monitoring of the treatment of patients in healthcare centres and hospitals.[24]

7.7 The Committee notes that, in the present case, INADI found that the humiliating and dehumanized treatment, as well as the use of discouraged practices such as the amniotomy and the Kristeller manoeuvre, which were carried out without the author's informed consent, had physiological and psychological consequences for both her and her son. The Committee notes that the State Party did not submit arguments about the lack of informed consent alleged by the author, and that such lack of consent was apparently not considered in the investigations conducted by the Public Prosecution Service, which have been closed. In that regard, the Committee recalls that women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives.[25]

7.8 The Committee also notes that the author alleges that the authorities failed to take sufficient measures to monitor and oversee the private Sanatorio Finochietto, making it possible for clinic staff to mistreat and humiliate her and to employ discouraged or prohibited practices, such as the Kristeller manoeuvre and the amniotomy, without her informed consent. It also notes that the State Party did not comment on the author's allegations regarding the lack of oversight in private clinics where practices discouraged by WHO are employed, nor on its obligation to prevent violence against women.

7.9 The Committee considers that the administrative complaint before INADI did not constitute contentious proceedings through which the author could have obtained comprehensive reparation. The Committee also considers that the absence of a timely, adequate and effective judicial mechanism to implement the provisions of Act No. 26.485 has prevented a due diligence investigation of the facts. The investigations related to the offence of injury conducted in response to the complaints of obstetric violence were insufficient, as they were carried out without a gender perspective: the lack of informed consent, the psychological consequences and the author's loss of autonomy, all of which have their roots in gender stereotypes, were not taken into consideration. The Committee considers that this affected the author's rights to access to justice and to adequate reparation.[26] Therefore, the Committee considers that the State Party failed in its duty to provide timely and adequate complaint mechanisms

[21] Inter-American Court of Human Rights, *Rodríguez Pacheco et al. v. Venezuela*, judgment of 1 September 2023, para. 112. See also Convention of Belém do Pará, art. 7.

[22] Inter-American Court of Human Rights, *Rodríguez Pacheco et al. v. Venezuela*.

[23] *González Carreño v. Spain* (CEDAW/C/58/D/47/2012), para. 9.7.

[24] *M.D.C.P. v. Spain* (CEDAW/C/84/D/154/2020), para. 7.9; *N.A.E. v. Spain* (CEDAW/C/82/D/149/2019), para. 15.5; and *S.F.M. v. Spain* (CEDAW/C/75/D/138/2018), paras. 7.5 and 7.6. See also CEDAW/C/CRI/CO/7, para. 31.

[25] *M.D.C.P. v. Spain* (CEDAW/C/84/D/154/2020), para. 7.7.

[26] *S.L. v. Bulgaria* (CEDAW/C/73/D/99/2016), para. 7.11.

to enforce Act No. 26.485, under which obstetric violence is recognized as a form of violence against women.

7.10 As a result, the Committee considers that the cumulative facts of the present case, namely, the alleged fracture of the author's son's clavicle, the loss of dignity, the abuse and physical and verbal mistreatment suffered by the author, the use of practices discouraged by WHO, such as the amniotomy and the Kristeller manoeuvre, without the author's informed consent or without having justified the need for such interventions, and the difficulties the author had in caring for her son – all of which resulted in physical and psychological consequences for both the author and her newborn child – constitute obstetric violence.[27] The Committee also considers that the lack of an appropriate judicial mechanism, the inadequate investigation by the State authorities, the lack of oversight of private institutions and the lack of measures to prevent this kind of reproductive violence resulted in the violation of the author's rights under the Convention.

7.11 Consequently, acting under article 7 (3) of the Optional Protocol, the Committee is of the view that the facts before it reveal a violation of the rights of the author and her son under articles 2, 3, 5, 12 and 24 of the Convention.

8. In the light of the above conclusions, the Committee makes the following recommendations to the State Party:

(a) Concerning the victims: provide comprehensive reparation, including adequate financial compensation for the damage that she and her son suffered to their physical and psychological health, and medical and psychological care for the author;

(b) In general:

(i) Ensure that women have access to adequate healthcare services during pregnancy, childbirth and the post-partum period, and that they are protected from physical and verbal mistreatment, disrespect and abuse during childbirth in public and private healthcare institutions;

(ii) Uphold women's rights to safe motherhood and access to appropriate obstetric services, in accordance with general recommendation No. 24 on women and health, and, in particular, provide women with adequate information during each stage of childbirth, establishing a requirement to obtain their free and informed consent prior to any invasive treatment performed during childbirth, thus respecting their autonomy and their capacity to make informed decisions regarding their reproductive health;

(iii) Identify existing legal gaps and provide, in national law, for adequate and effective legal mechanisms for addressing violations of women's reproductive health, including obstetric violence, and provide specialized training to judicial and law enforcement personnel;

(iv) Provide obstetrician-gynaecologists and other public- and private-sector health professionals with adequate professional training in the reproductive rights of women and girls;

(v) Provide adequate professional training to enable the judiciary to recognize the various forms of gender-based violence against women, including obstetric violence;

(vi) Publish the present communication in a national newspaper and the official gazette.

[27] *M.D.C.P. v. Spain* (CEDAW/C/84/D/154/2020), para.7.12; and *N.A.E. v. Spain* (CEDAW/C/82/D/149/2019), para. 15.7.

9. In accordance with article 7 (4) of the Optional Protocol, the State Party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response including information on any action taken in the light of the views and recommendations of the Committee. The State Party is also requested to publish the Committee's views and recommendations and disseminate them widely in order to reach all relevant sectors of society.