Case

of Eulogia Guzmán and her son Sergio v. Perú

Violation of the reproductive autonomy of indigenous and peasant women

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PROMSEX
Salud. Sexualidad. Solidaridad.

Contents

01 Introduction

Historically, indigenous and minority ethnic women have faced multiple forms of violence.[1]

In particular, there have been serious violations to their sexual and reproductive rights in the context of denial of their rights to self-determination and cultural autonomy, including forced sterilizations and sexual violence.[2] This is a consequence, on the one hand, of the existence of sociocultural barriers that impose controls on their reproduction and, on the other hand, of the obstacles they face in having access to affordable and quality health care[3].

Photo Credit: Leslie Moreno Custodio/Salud con lupa

In Peru, violations of the sexual and reproductive rights of indigenous and peasant women reflect the interaction between gender-based violence, poverty and ethnic discrimination that prevails in Peruvian society and institutions.

For example, in the 1990s, during the government of former President Alberto Fujimori, a state policy was launched to legalize surgical contraception, the implementation of which resulted in more than 270,000 non-consented tubal ligations and a considerable number deaths of women, mostly indigenous and rural.[4] Peru acknowledged its international responsibility for these events before the Inter-American Commission on Human Rights (IACHR) in the case of María Mamérita Mestanza, an indigenous woman who underwent sterilization that ultimately caused her death.[5] Additionally, the State acknowledged its responsibility before the same international body for violating the human rights of M.M., a peasant woman who was drugged and raped by a doctor from the public health service when she was seeking medical services.[6]

The case of Eulogia Guzmán and her son Sergio is emblematic and representative of the effects of the lack of protection of the reproductive rights of pregnant women, of the obstetric violence exercised against them and of the disproportionate impact that these human rights violations have when multiple vulnerability factors converge in addition to sex and gender, such as ethnicity and socioeconomic status.

Eulogia, who is a Quechua woman, was subjected by health personnel to a scheme of institutional and gender-based violence that disregarded her traditions and wishes regarding pregnancy, childbirth and postpartum, which caused serious damage to her life and life project. Likewise, the actions and omissions against her had repercussions on the personal integrity and health of her son Sergio, who subsequently died.

02 **The facts** of the case

Eulogia Guzmán is a woman belonging to the Quechua people.[7] Her native language is Quechua and she lives according to the customs of her ancestors.

In 2003, during her sixth pregnancy, Eulogia was wrongly diagnosed as a high-risk obstetric patient by the staff of the Health Center closest to her community. However, the alleged factors for said risk were never identified, nor were recommendations made to mitigate them. In addition to this, during prenatal check-ups, she was always treated in Spanish, a language that she did not speak or understand at that time.

On the day of the delivery, even though she expressed that she wanted to give birth at home with a vertical delivery, as was her custom, the medical personnel who came to her home threatened to impose a financial fine and withhold the birth certificate of her son if she did not go to the Health Center. Given the fear resulting from that threat and due to her poverty situation, Eulogia was forced to go to that institution in the company of her husband. Upon her arrival, she was abandoned in the delivery room. Sometime later, she felt like going to the bathroom, she got up from the table and went to a bedpan, where she realized that labor had started by squatting down. At that time, a nurse entered the delivery room and used physical strength to force her onto the bed so that she delivered horizontally. During the struggle and the violence exerted on Eulogia, her son, Sergio, was born and hit the ground.

Negligent care during pregnancy and labor put Sergio's health and life in danger, so he and Eulogia were transferred to a more complex hospital in Cusco. Upon arrival, Eulogia was separated from her newborn son and again abandoned in a hallway, even though she needed postpartum care. Then, in disregard of her worldview, they forced her to bathe in cold water because they considered that she "didn't smell good." This bath meant a serious wound for her, because in her culture it is believed that a woman's body is weak due to the force and the blood that she lost in childbirth.

As a result of the failings described, Sergio was diagnosed with hypoxic-ischemic encephalopathy,[8] which caused him cerebral palsy, blindness, seizures, psychomotor and mental retardation, breathing difficulties and suffocation. His functional diversity, coupled to the barriers imposed by the State during his life, generated multiple disabilities.[9]. On December 29, 2015, because of the lack of appropriate health care due to a pneumonia, Sergio died at the age of 12.

Eulogia and her husband filed a complaint against the staff of the Health Center for the mistreatment and abandonment suffered during Sergio's childbirth and postpartum. This gave rise to criminal proceedings that culminated in the acquittal of the defendants. The decision was motivated by gender stereotypes, since the responsibility for Sergio's fall was attributed to Eulogia for wanting to give birth squatting, which made the violence to which she was subjected invisible. In addition to this, Eulogia filed an administrative complaint for the negligence in the medical care that Sergio received and that resulted in his death. This litigation is still pending.

On December 29, 2015, because of the lack of appropriate health care due to a pneumonia, Sergio died at the age of 12.

Photo Credit: Leslie Moreno Custodio/Salud con lupa

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03

Obstetric violence

Obstetric violence is a form of violence against women and pregnant people

that encompasses "all situations of disrespectful, abusive, negligent treatment or denial of treatment, during pregnancy, the previous stage and during childbirth or postpartum, in public or private health centers".[10] This is manifested "through actions such as the denial of complete information about their health and applicable treatments, indifference to pain, verbal humiliation, forced or coerced medical interventions, forms of physical, psychological and sexual violence, invasive practices and the unnecessary use of medications, among others."[11] In addition, obstetric violence is a form of institutional violence, since it consists of acts or omissions that are naturally reproduced in the work routines of health providers.[12]

In Latin America and the Caribbean, certain groups of women are at greater risk of suffering obstetric violence, particularly women living in poverty, rural women and/or women belonging to ethnic minorities[13]. For example, indigenous women in the region have been reported to have been forced to give birth in a supine position instead of upright, have suffered forced sterilizations, or have been tied during childbirth.[14]

In Peru, there is a generalized context of mistreatment in the field of maternal health by medical personnel against indigenous and peasant women, particularly Quechua-speakers.[15] This occurs because health providers consider, based on stereotypes and preconceptions, that their customs regarding pregnancy, childbirth and postpartum are "backward" and "ignorant".[16] For example, although their preference and tradition are home delivery in the company of midwives,[17] the medical staff forces them to give birth in health establishments in exchange for receiving insurance benefits or the birth certificate of their sons or daughters.[18] Other related practices are the imposition of de facto fines, the use of the police or threats of imprisonment.[19] Furthermore, the absence of personnel who speak the native language favors mistrust and contributes to women not returning to health services.[20]

04

Access to justice

In a context of structural discrimination in access to maternal health against peasant, indigenous and rural women, the Peruvian State violated its obligation to ensure Eulogia's rights to reproductive health, personal integrity, autonomy, private life, information, prior, free and informed consent, cultural identity, to not be subjected to acts of torture and to live free of gender-based violence and discrimination, due to the negligent health care provided and the violence perpetrated against her during the pregnancy, childbirth and postpartum of her son Sergio.

The lack of clear, simple, and complete information about her health status in her native language prevented Eulogia from making free and informed decisions about the care she needed during pregnancy and the place where the birth would take place. Additionally, the medical staff did not respect her wish to have a home birth and in vertical position in accordance with her culture, using methods of physical coercion and intimidation that flawed her consent and forced her to give birth at the Health Center and on a stretcher. Eulogia's cultural practices after her delivery were also ignored by forcing her to take a cold-water bath and she was even abandoned twice, endangering her health and personal integrity. All the foregoing was an arbitrary interference in her rights and institutional and gender-based violence against her, which in this specific case constituted obstetric violence.

In addition, the serious suffering of Eulogia was exacerbated by the simultaneous convergence of several factors of discrimination, since she was a pregnant woman, a peasant, a Quechua-speaker, in a condition of poverty and, later, a caregiver of a child with disabilities. Thus, her case illustrates that gender-based violence and discrimination in maternal health services do not have a homogeneous impact on all women and that the effects on historically marginalized groups are more serious.[21]

The lack of due diligence by the judicial and administrative authorities in charge of the case, added to discrimination based on gender and ethnic origin due to the use of stereotypes, have prevented Eulogia and her family from accessing justice. Today, almost 20 years after the events, the case remains in impunity, and she is still waiting for justice.

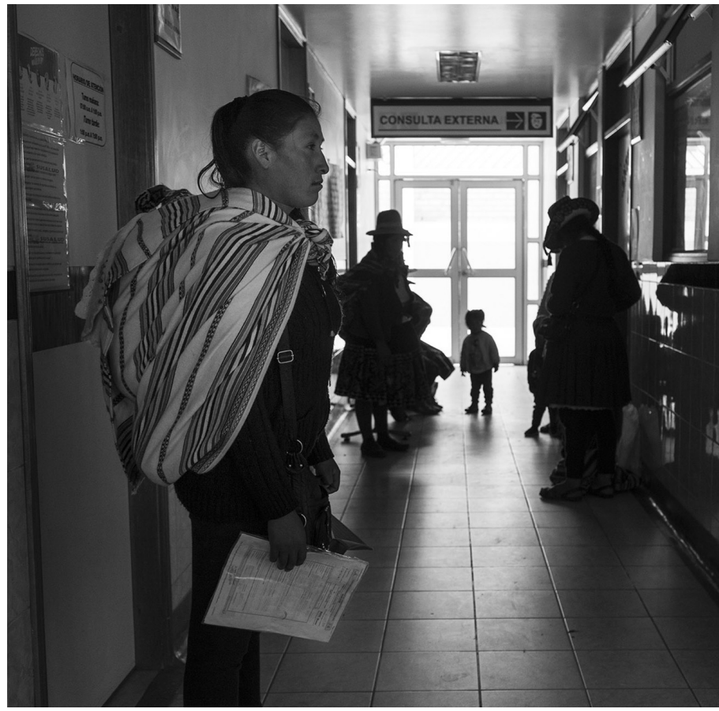

Photo Credit: Leslie Moreno Custodio/Salud con lupa

In October 2009, a petition was filed with the IACHR denouncing these events. On April 4, 2014, the IACHR approved the Admissibility Report of the case. Currently, the Center for Reproductive Rights (CRR or the Center), the Center for the Promotion and Defense of Sexual and Reproductive Rights (PROMSEX) and María Concepción Salízar represent Eulogia Guzmán. The IACHR is expected to issue the Merits Report during 2022.

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05
Caselaw development
sought with the case

This is one of the cases in the Inter-American System for the Protection of Human Rights that surmises the impacts of a scheme of institutional and gender-based violence on the lives of women and pregnant people, with special consideration for diversity among women and their different experiences, expectations, traditions, and beliefs about the experience of pregnancy, childbirth and postpartum. In this regard, through this litigation, the petitioners seek that the IACHR ensures the protection of the rights of women, particularly those belonging to ethnic minorities, and acknowledges that:

a. Disrespectful, abusive, negligent treatment or lack of clear, complete, and understandable information in the woman's language during pregnancy, childbirth and/or postpartum constitutes gender-based violence, in particular obstetric violence. States, through their health agents and institutions, must prevent and redress this type of violence.

b. The inadequacy of maternal health services to the expectations, traditions and beliefs about pregnancy, childbirth and postpartum, including the decision on the place and position of delivery, translates into a violation of the rights to reproductive health, autonomy, privacy, information, prior, free, and informed consent, and cultural identity.

c. Gender-based violence during pregnancy, childbirth, and postpartum constitutes intersectional discrimination when multiple vulnerability factors come together in addition to sex and gender, such as ethnicity and socioeconomic status. States have a special duty to implement measures aimed at reversing these situations of discrimination.

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ENDNOTES

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