



## Alyne da Silva Pimentel Teixeira v. Brazil

Communication No. 17/2008; UN Doc. CEDAW/C/49/D/17/2008

**Country:** Brazil

**Region:** Americas

**Year:** 2011

**Court:** Committee for the Elimination of All Forms of Discrimination against Women Committee for the Elimination of All Forms of Discrimination against Women

**Health Topics:** Health care and health services, Health information, Health systems and financing, Hospitals, Medical malpractice, Poverty, Sexual and reproductive health

**Human Rights:** Freedom from discrimination, Right to due process/fair trial, Right to health, Right to life

### Facts

The author of the communication, the mother of a woman who had died during childbirth, claimed that Brazilian authorities had not ensured access to quality medical treatment during her daughter's delivery in violation of nondiscrimination provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). More specifically, the author of the communication alleged that her daughter became disoriented after doctors at a local health center induced the delivery of her stillborn fetus. According to the mother, after undergoing post-delivery curettage surgery, her daughter continued hemorrhaging, at which point, doctors at the health center attempted to transfer the patient to a public hospital for a blood transfusion. The public hospital refused to send its only ambulance to transport the patient, which caused the patient to wait in critical condition for eight hours and to eventually fall into a coma. At the public hospital, the staff placed her in a makeshift area due to a lack of available beds for 21 hours, after which time the patient died.

In her communication, the mother of the deceased woman claimed that the hospital failed to ensure her daughter's safety during her pregnancy and childbirth in violation of articles 12 (right to health) and 2(e) (freedom from discrimination) of CEDAW. The deceased's mother also claimed the hospital failed to provide legal guarantees against discrimination of women, as well as effective judicial recourse in such cases, as required under Article 2(c) (equal protection) of the Convention. Moreover, the mother claimed that Brazil had inequitably distributed emergency obstetric care facilities geographically in the country, which contributed to Brazil's unacceptably high rate of maternal deaths. After four and a half years insignificant action taken on the mother's "tutela antecipada" civil application, she submitted the present communication to the Committee on the Elimination of Discrimination against Women (Committee) for relief.

### Decision and Reasoning

The Committee found that Brazil violated its duties under articles 2(c) (equal protection), 2(e) (freedom from discrimination) and 12 (right to health) of CEDAW, read in conjunction with article 1 of the Convention and the Committee's general recommendations numbers 24 and 28.

With regard to articles 2 and 12, the Committee first considered that the death of the author's daughter was in fact "maternal" based on the undisputed sequence of events and expert testimony indicating that the death resulted from obstetric complications related to the deceased's pregnancy. The Committee further found that the death of the author's daughter resulted from a lack of adequate medical services for pregnant women. Furthermore, the Committee found that the unsatisfactory medical practices of the private institution were imputable to the State under Article 2(e) of the Convention because the State was directly responsible for exercising due diligence in regulating and monitoring private healthcare institutions. The failure to ensure such due diligence also constituted a violation of Article 12, paragraph 2.

The Committee further concluded that Brazilian authorities discriminated against the deceased based not only on her sex, but also on the basis of her socio-economic status and her African ethnicity - a claim that Brazil did not entirely refute.

The Committee also found that Brazil violated Articles 12 and 2(c) of CEDAW by failing to put into a place a system that could adequately ensure judicial protection and remedies for the author's daughter. In its decision, the Committee considered especially that the original civil application filed in 2003 was still pending

in 2011 despite an expected decision in July of 2008, as well as the fact that the Brazil denied two requests for the "tutela antecipada" decisions meant to avoid unwarranted delays.

The Committee therefore recommended that Brazil provide "appropriate reparation" to the author of the communication and to the deceased's family. The Committee also recommended that Brazil ensure the right to safe motherhood and affordable access to emergency obstetric care for all women on a nondiscriminatory basis.

### **Decision Excerpts**

"The Committee recalls its general recommendation No. 24, in which it states that it is the duty of State parties to ensure women's right to safe motherhood and emergency obstetric services, and to allocate to these services the maximum extent of available resources. It also states that measures to eliminate discrimination against women are considered to be inappropriate in a health-care system which lacks services to prevent, detect and treat illnesses specific to women. In the light of these observations, the Committee also rejects the argument of the State party that the communication did not contain a causal link between Ms. da Silva Pimentel Teixeira's gender and the possible medical errors committed, but that the claims concerned a lack of access to medical care related to pregnancy. The Committee therefore is of the view that the death of Ms. da Silva Pimentel Teixeira must be regarded as maternal." para. 7.3.

"... The Committee therefore notes that the State is directly responsible for the action of private institutions when it outsources its medical services, and that furthermore, the State always maintains the duty to regulate and monitor private health-care institutions. In line with article 2 (e) of the Convention, the State party has a due diligence obligation to take measures to ensure that the activities of private actors in regard to health policies and practices are appropriate. In this particular case, the State party's responsibility is strongly anchored in the Brazilian Constitution (articles 196-200) which affirms the right to health as a general human right. The Committee therefore concludes that the State party has failed to fulfill its obligations under article 12, paragraph 2 of the Convention." para. 7.5.

"... The Committee refers to its general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention and notes that the policies of the State party must be action- and result-oriented as well as adequately funded. Furthermore, the policy must ensure that there are strong and focused bodies within the executive branch to implement such policies. The lack of appropriate maternal health services in the State party that clearly fails to meet the specific distinctive health needs and interests of women not only constitutes a violation of article 12, paragraph 2, of the convention, but also discrimination against women under article 12, paragraph 1, and article 2 of the Convention. Furthermore, the lack of appropriate maternal health services has a differential impact on the right to life of women." para. 7.6.