

## GYNECOLOGICAL-OBSTETRIC VIOLENCE IN CHILE State Responsibility for Failures in Service Provision

### VIOLENCIA GINECO-OBSTÉTRICA EN CHILE Responsabilidad del Estado por fallas en la prestación de servicios

### VIOLÊNCIA GINECOLÓGICA E OBSTÉTRICA NO CHILE Responsabilidade do Estado por Falhas na Prestação de Serviços

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#### Abstract

Obstetric and gynecological violence (OGV) in Chile is a public issue that violates women's fundamental rights, revealing deficiencies both in the health service and in the existing regulatory framework. Although regulations such as Law No. 2.584 and the "Adriana Law" project address related aspects, they do not guarantee comprehensive reparation for victims, nor do they prevent this form of violence. OGV includes dehumanizing and negligent practices that affect women's dignity, autonomy, and health. In contrast, Colombia implements a robust regulatory model, with laws such as Law No. 2.244 of 2022, which promotes humanized childbirth and comprehensive reparation, including compensation, rehabilitation, and guarantees of non-repetition. This comprehensive approach, aligned with international standards, can serve as a reference to strengthen the Chilean legal framework and guarantee dignified and respectful care in the health system, thus effectively combating OGV.

**Keywords:** Gynecological-obstetric violence; State responsibility; Failure to provide service; Comprehensive reparation; Humanized childbirth

#### Resumen

La violencia gineco-obstétrica (en adelante OGV) en Chile es una problemática pública que vulnera los derechos fundamentales de las mujeres, revelando deficiencias tanto en el servicio de salud como en el marco normativo existente. Aunque normativas como la Ley No 20.584 y

el proyecto "Ley Adriana" abordan aspectos relacionados, no garantizan reparación integral a las víctimas ni previenen esta forma de violencia. La OGV incluye prácticas deshumanizantes y negligentes que afectan a la dignidad, autonomía y salud de las mujeres. En contraste, Colombia implementa un modelo normativo robusto, con leyes como la Ley No 2.244 de 2022, que promueve el parto humanizado y la reparación integral, incluyendo indemnizaciones, rehabilitación y garantías de no repetición. Este enfoque integral, alineado con estándares internacionales, puede servir como referencia para fortalecer el marco legal chileno y garantizar atención digna y respetuosa en el sistema de salud, combatiendo así la OGV de manera efectiva.

**Palabras clave:** Violencia gineco-obstétrica; Responsabilidad estatal; Falta de servicio; Reparación integral; Parto humanizado

#### Resumo

A violência ginecológica-obstétrica (doravante OGV) no Chile é um problema público que viola os direitos fundamentais das mulheres, revelando deficiências tanto no serviço de saúde como no quadro regulatório existente. Embora regulamentos como a Lei nº 20.584 e o projeto "Lei Adriana" abordem aspectos relacionados, não garantem uma reparação integral às vítimas nem previnem esta forma de violência. A OGV inclui práticas desumanizadoras e negligentes que afetam a dignidade, a autonomia e a saúde das mulheres. Em contraste, a Colômbia implementa

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um modelo regulatório robusto, com leis como a Lei nº 2244 de 2022, que promove o parto humanizado e a reparação integral, incluindo indenização, reabilitação e garantias de não repetição. Esta abordagem abrangente, alinhada com as normas internacionais, pode servir de referência para fortalecer o quadro jurídico chileno e garantir um

atendimento digno e respeitoso no sistema de saúde, combatendo assim eficazmente a VGP.

**Palavras-chave:** Violência ginecológico-obstétrica; Responsabilidade do Estado; Falta de serviço; Reparação integral; Parto humanizado

## INTRODUCTION

Public problems are challenges that affect a significant number of people in society and, due to their impact, require state intervention to provide effective solutions or repair the damage (Olavarria Gambi 2007, Perez Castreje 2021, Noveck 2022). Therefore, their relevance lies in the fact that they generate a substantial social impact and demand public recognition as a prerequisite for being addressed by specific public policies aimed at their remediation or mitigation.

Furthermore, obstetric and gynecological violence (hereinafter OGV) is a highly complex public problem due to its structural nature and the magnitude of the damage it causes to women's fundamental rights. As recent studies show, in Chile, 8 out of 10 women report having experienced some form of OGV, revealing that violence in healthcare settings is not exceptional but systematic (Cárdenas Castro & Salinero Rates 2022). This situation constitutes not only a serious public health problem but also a violation of human rights.

From an administrative law perspective, the state (as the main guarantor of collective well-being) has a duty to act in the face of structural failures in the provision of public services, particularly in the health sector. Administrative theory establishes that when a public service (such as a hospital) acts negligently, fails to fulfill its duty, or does not meet minimum standards, it constitutes a breach of duty, triggering state responsibility. Therefore, state intervention in a public problem such as the OGV is not only political or moral but also legal and administrative.

Public policies, understood as a set of collective decisions and actions aimed at solving public problems (Hernández 1999; Zabala Peñafiel, Dente & Subirats

2015), thus become key instruments of administrative law. Through them, the state not only responds to social demands but also fulfills its legal obligations to prevent, sanction, and remedy failures in service provision, thereby guaranteeing the full exercise of fundamental rights.

In practice, public policies materialize through various mechanisms, such as laws, regulations, social programs, or awareness campaigns. However, the focus of this article is on the legislative area, as in Chile there is a noticeable absence of a legislative framework that clearly and specifically addresses state responsibility regarding obstetric-gynecological violence (OGV) and the comprehensive reparation of damages suffered by victims.

Although the Ley Adriana project in Chile aims to regulate sexual and reproductive health care, its design is limited from an administrative perspective. It also introduces sanctions against practices that constitute gynecological-obstetric violence; these are limited to administrative fines imposed on violating health centers.

Furthermore, they do not include effective legal mechanisms to compensate victims according to the principles of administrative law, as would be the case for full reparation resulting from a failure in service provision. This limitation has been noted by attorney Paulina Gonzalez, who states that the bill does not incorporate mechanisms for comprehensive reparation for victims, leaving those affected by act of violence in medical care settings without adequate legal recourse (Gonzalez 2022).

According to article 17 of the Adriana Bill (Bulletin No. 12,148-11) an administrative procedure is only established before the Superintendence of Health to meet complaints, without guaranteeing a response that addresses the damage in its entire dimension and that attributes patrimonial responsibility to the State for failures in the provision of the service.

Given this situation, the research proposes resorting to the framework of state liability for failures in service provision as a viable alternative to ensure the reparation of damages arising from medical negligence in cases of gynecological obstetric violence. This concept refers to the omission or deficiency of public service in fulfilling its legal duty or acting contrary to its purpose.

Additionally, the tool of comparative legislation is employed, with special emphasis on Colombian regulations, to analyze how this country has implemented legal mechanisms that establish objective state responsibility for the reparation of damages caused by OGV. This administrative law approach allows for the identification of regulatory gaps in Chile and the consideration of best international practices to strengthen the Chilean legislative framework.

The methodology used in this article is theoretical-analytical. This approach facilitates the decomposition and analysis of key elements, such as social issues, public policies, obstetric-gynecological violence (OGV), and

state responsibility. Through this analysis, the lack of specific legislative tools that attribute responsibility to the State is evidenced, and the violation of the fundamental rights of the victims is highlighted.

Furthermore, the comparative analysis of Colombian legislation, especially its focus on objective state responsibility, will serve as a reference point to propose improvements in the Chilean legal framework, to ensure comprehensive reparation for damages and promote a dignified healthcare system that respects women's rights. Therefore, the specific objectives of this article are: (a) the identification of obstetric-gynecological violence as a public issue and what public policies Chile has adopted to combat it, (b) the absence of Chilean regulations that establish state responsibility for failures in service provision in cases constituting obstetric-gynecological violence, and (c) how Colombian regulations establish state responsibility for failure to provide service and ensure comprehensive reparation for victims of obstetric-gynecological violence.

Based on these objectives, with an emphasis on the last one mentioned, this article presents a solution plan that advocates for the replication of the Colombian model in Chile, through the recognition and reinforced protection of women's reproductive rights, while also establishing mechanisms that contemplate state responsibility through comprehensive damage repair.

## GYNECOLOGICAL-OBSTETRIC VIOLENCE AS A PUBLIC PROBLEM IN CHILE

### Definitions of Gynecological-Obstetric Violence (OGV)

OGV is primarily addressed from three key perspectives: gender violence, human rights, and health system management. In this context, it is considered a public health issue in Chile that requires specific legislative policies to ensure that victims receive compensation for damages resulting from inadequate obstetric and gynecological care, whether provided by public or private facilities.

One definition that establishes gynecological-obstetric violence as a type of gender violence is the following: "OGV violates women's sexual and reproductive rights, limiting their autonomy and compromising their health" (Oliveira and Martinez-Perez 2022, 7).

From a human rights perspective, with an international outlook, the World Health Organization defines obstetric violence as disrespectful and offensive treatment during childbirth in health facilities, which violates women's rights to respectful care and threatens

their rights to life, health, physical integrity, and non-discrimination (World Health Organization 2014).

Although this definition focuses on the obstetric field, through a broad interpretation, its application can be extended to the gynecological area, as violations in the gynecological field also infringe upon these rights. Additionally, in Chile, the “Adriana Law” project defines gynecological-obstetric violence as:

Any mistreatment or psychological, physical, or sexual aggression, omission, unjustified denial, or abuse that occurs within the framework of the sexual and reproductive health care of women or individuals with the capacity to gestate, especially during the care of pregnancy, pre-labor, labor, postpartum, abortion, or gynecological emergencies. (Bulletin No. 12.148-11, 2018)

Quantitative studies reveal the magnitude of the problem. According to a survey conducted by Cardenas and Salinero, 79.3% of 2,105 surveyed women reported having experienced some form of obstetric violence. Common practices include infantilizing women, preventing companions during childbirth, performing procedures without consent, and administering medications to accelerate labor (Cárdenas Castro & Salinero Rates 2022). In addition, the data from the Ministry of Social Development and Family reflect that in gynecological consultations:

36.8% of women experienced undue pain due to a lack of care from medical personnel. 20.8% were medicated without receiving clear information. 21.4% perceived moral judgments about their sexual practices from doctors or nurses. (INJUV–Ministry of Social Development and Family 2023)

Therefore, from the definitions and statistics, it follows that gynecological-obstetric violence is a latent public problem in Chilean society, which consequently affects not only the physical and emotional health of women, but also constitutes a systematic violation of their reproductive rights.

## Chilean Legislative Public Policies and State Responsibility

As previously mentioned by Noveck, public problems, due to their nature and scope, require state intervention to seek a solution or remedy for the harm they cause (Noveck 2022). It is precisely in this last point that State’s responsibility to provide solutions for the issue at hand is determined. This is closely linked to various norms in Chilean legislation, which establish the main obligations of the state towards its citizens.

As a fundamental norm related to responsibility, the Political Constitution of the Republic establishes the following:

The State is at the service of the human person, and its purpose is to promote the common good. To achieve this, it must contribute to creating the social conditions that allow each member of the national community to attain their highest possible spiritual and material fulfillment, with full respect for the rights and guarantees established by this Constitution. (C.P.R, article 1, paragraph 3)

According to this norm, the duties of the State are established, assigning it the responsibility to act as an entity that generates optimal conditions for citizens, seeking to safeguard the rights and guarantees outlined in article nineteen of the same legal framework.

Furthermore, taking as a reference the definition provided in the text of the Adriana Bill, it can be inferred that the OGV (Obstetric and Gynecological Care Violence) is carried out by health professionals in the exercise of their functions, providing health services at all stages of obstetric or gynecological care. Therefore, as health services are involved, the State must guarantee the right to health protection, which is enshrined in the Chilean Political Constitution, in article 19, N.º 9, establishing the following:

The State protects free and equal access to actions for the promotion, protection, recovery of health,

and rehabilitation of the individual [...] It is the State's preferential duty to ensure the execution of health actions, whether provided through public or private institutions. (article 19, N.º 9)

Under this provision, the State fulfills a dual role: (i) to guarantee that health centers provide dignified care and (ii) to oversee compliance with minimum standards. At the same time, it should be emphasized that the State, to fulfill its various obligations stipulated in the Chilean Political Constitution, works together with the organs of State Administration. Therefore, another norm related to this case is article 3, paragraph 1 of Organic Law No. 18,575 on General Bases of Administration of the Republic, which establishes that:

The Administration of the State has as its main objective to serve the people, seeking the common good through constant and efficient attention to public needs. This includes promoting the development of the country through the powers granted by the Constitution and laws, as well as the planning, implementation, and supervision of policies, plans, programs, and actions at the national, regional, and communal levels. (Law No. 18,575, 1986, art. 3, para. 1)

Furthermore, Law No. 20,584 on the rights and duties of patients establishes that:

Every person has the right to receive health care by national regulations and current protocols that guarantee patient safety and service quality, especially in aspects such as hospital-acquired infections, medical errors, and avoidable adverse events. Additionally, it states the right of the patient or their representative to be informed about any adverse event that occurred during their care, regardless of its severity. (Law No. 20,584, 2012, article 4, para. 1)

Therefore, the State has the duty and legitimacy to promote the general interest and the common good, which it can achieve through its administrative organs (which are primarily public services). These organs have the authority to propose and implement public policies to provide citizens with solutions for existing

public needs. Based on this, gynecological-obstetric violence perfectly fits the concept of a public problem, as there are verifiable data supported by studies highlighting the high percentages of women who have suffered this type of violence in the healthcare sector. This directly affects the fundamental right to receive dignified health services, while also violating their physical and psychological integrity.

Therefore, there is a clear and urgent need for a significant sector of the female population to have a specific regulatory framework that effectively guarantees and protects their reproductive rights. It also emphasizes the demand for a legal tool that addresses the particularities of women's sexual and reproductive health, providing comprehensive coverage against potential violations in this crucial area.

### **The State and its Responsibility Regarding the Consequences Generated by Gynecological-Obstetric Violence**

As previously mentioned, in Chile, current legislation does not guarantee an adequate compensation system for victims of gynecological-obstetric violence (OGV). Although the Adriana Bill includes monetary sanctions for centers that engage in acts constituting OGV, it does not address the comprehensive reparation of the damage, leaving victims without effective compensation mechanisms.

### **Responsibility for Failures in Service Provision in Chile**

Failure in Service Provision is a legal standard that attributes responsibility to the State when its administrative bodies do not meet the minimum quality standards in the provision of public services (Pierry Arrau 1996). This concept is especially relevant in gynecology and obstetrics services, where negligence and dehumanization constitute acts of gynecological-obstetric violence.

In the field of gynecology and obstetrics, failure in service provision is particularly significant, as it involves negligence, dehumanizing practices, or lack of information that violate women's reproductive rights.



These omissions, in addition to constituting a breach of the legal and ethical obligations of the state health system, also represent acts of gynecological-obstetric violence. This type of violence is punishable under the liability regime of article 42 of Law 18,575, which establishes that state administrative bodies are liable for damages caused by failure in service provision (Law 18,575, article 42).

Regarding the elements of liability for failure in service provision, Acevedo Espínola & Carmona Quintana (2021) point out that the configuration of state liability requires the concurrence of four elements:

1. Action or omission of the public service
2. Physical, psychological, or economic damage to the individual
3. Causal relationship between the action or omission and the damage
4. Breach of the duty of diligence.

It can be deduced that, in gynecology and obstetrics services, failure in service provision can manifest in multiple ways, such as medical negligence, omission of information to the patient, or dehumanizing treatment during pregnancy, childbirth, and the postpartum period. These behaviors not only constitute a breach of the minimum quality standard but also constitute acts of gynecological-obstetric violence.

This type of violence causes physical and psychological harm to patients, and its occurrence demonstrates a direct causal relationship: the action or omission of health personnel, as representatives of the State, results in the violation of women's reproductive rights. That is to say, the acts constituting gyneco-obstetric violence by health services cause physical and psychological harm to patients; therefore, the minimum standard of care is not met.

In cases of gyneco-obstetric violence, these omissions include medical negligence, lack of information, or dehumanizing treatment during pregnancy, childbirth, and the postpartum period, which results in physical and psychological damage. Examples of this issue have been recognized by Chilean jurisprudence, where the impacts on patients' health were attributed to clear

violations of ethical and legal standards (Judgment, Rol N° 99898-2016).

However, current Chilean regulations do not ensure comprehensive reparation for victims, as the regulations tend to focus on administrative sanctions or personal imputations, overlooking effective measures for compensation and guarantees of non-repetition (Soto Kloss 2012, 45). This reflects an asymmetry between the State and citizens, making it difficult for victims to access justice.

Furthermore, the lack of specific legal tools to address gyneco-obstetric violence in Chile highlights a gap in national regulations. Unlike other countries, such as Colombia, where specific laws like Law N° 2.244 of 2022 establish clear mechanisms for reparation and prevention, Chile continues to rely on general principles of administrative law and jurisprudence to address these situations.

Comprehensive reparations in cases of gyneco-obstetric violence must include not only financial compensation but also psychological support, structural reforms in the health system, and the implementation of international human rights standards. Therefore, due to the magnitude and relevance of gynecological-obstetric violence in Chile, the responsibility of the State should not be limited to administratively sanctioning the responsible officials but should also consider effective mechanisms for comprehensive reparation for victims of OGV. This includes not only economic compensation but also psychological support and structural legal reforms, which ensure dignified and respectful care in health services. The absence of specific legal tools that oblige the State to repair these damages reflects an outstanding debt in Chilean legislation.

### **Regarding OGV as Gender Violence and an Aggravating Factor in the Penal Code**

As mentioned in the definition given by the authors Oliveira and Martinez-Perez, OGV falls into the category of a type of gender violence. For this reason, it is of utmost importance to emphasize that in Chile there

is Law No. 21,675 on measures to prevent, punish, and eradicate violence against women due to their gender, which introduced a modification to article 12, No. 24 of the Penal Code. Regarding the latter, it is limited to stipulating that the commission of a crime committed within the framework of gynecological-obstetric violence is considered an aggravating circumstance.

Despite the large number of norms, none of these fulfill the objective of being an optimal legislative public policy to combat or mitigate OGV in Chile, which will be demonstrated below. First, although Law No. 20,584 recognizes the rights and duties of patients from a general perspective, it does not specifically address the needs of women in perinatal situations in the face of obstetric violence, as noted below: “establishes a set of rights in favor of patients. None of them expressly refers to the protection of women in a perinatal situation against obstetric violence” (Díaz García and Fernández 2018, 136-137). Therefore, this law only focuses on regular principles regarding respectful treatment and informed decision-making by patients and health officials, which is reflected in ARTICLES 5, 12, 13, and 14 of the same.

Article 5 establishes respect for the dignity of patients, ensuring that they receive respectful and dignified treatment throughout the care process. Articles 12 and 13 contemplate confidentiality and privacy, referring to personal data and situations related to the patient's health status. Finally, article 14 constitutes informed consent, and stipulates that patients have the right to be informed in an understandable manner about all treatments, procedures, or interventions performed on them, including the risks, benefits, and alternatives.

As can be seen, none of these articles explicitly mention gynecological-obstetric violence, but rather they are limited to establishing parameters of patient care in a general context. Regarding informed consent, it ends up being the most common form of violation in the stages of pre-birth, delivery, and postpartum, since, in general, health officials do not usually treat women as active subjects in decision-making regarding medical procedures to be performed on their bodies to give birth.

Another relevant normative text is the Political Constitution of the Republic, which in its article 19 No. 1 contains the right to life and physical and psychological integrity. In this regard, there is a lack of specificity, since this article establishes rights in a general way, but does not specifically address the particularities of OGV. This type of violence is a complex phenomenon that requires regulations and guidelines that contemplate specific aspects of care in reproductive health and the rights of women in these contexts. On the other hand, this norm does not establish a clear mechanism to report, prevent, or sanction practices of gynecological-obstetric violence, which results in the difficulty of ensuring an effective legal response to these violating practices.

In addition, we have the modification to the Penal Code in article 12, No. 24, which raises gynecological-obstetric violence as an aggravating circumstance:

Committing the crime in the context of active conduct constituting gynecological-obstetric violence, in their capacity as public or private health workers, during pregnancy, pre-birth, birth, post-birth, and abortion care, in the causes established by law in the framework of care for women's sexual and reproductive health. (C.P., article 12, No. 24)

Therefore, this article only places gynecological-obstetric violence as an aggravating circumstance and does not expose it as a crime as such, establishing a fixed afflictive penalty or determining criminal liability.

Finally, article 18 of Law 21.675 on measures to prevent, punish, and eradicate violence against women based on their gender, establishes that the Ministry of Health, together with health services and providers, must implement measures to prevent any type of violence or discrimination against women, paying special attention to situations of vulnerability (Law 21.675, article 18). In this regard, according to Ulloa-Martínez (2022), violence and abuse against women represent a violation of their human rights, with serious effects on public health. These attacks have long-term consequences, both physical and psychological, that

deeply affect the victims. The current legal framework does not provide an efficient solution that eradicates gynecological-obstetric violence or, in a more realistic framework, even approaches proposals that effectively inhibit or reduce the practices of this type of violence.

### State Responsibility for Failure in Service Provision in Comparative Legislation

In this section, Colombian legislation regarding OGV is analyzed as a reference for Chile, highlighting its comprehensive approach to the protection of women's rights, especially during pregnancy, childbirth, and the postpartum period. In addition, the concept of

humanized childbirth, promoted by the World Health Organization (WHO), is examined, and a specific case of medical negligence in Colombia is presented that illustrates state responsibility for reparations. Furthermore, Colombia has integrated "humanized birth" into its current legislation and has developed effective mechanisms for comprehensive reparation for victims of obstetric violence, which allows for the extraction of lessons applicable to the Chilean context. The normative wealth, combined with high-impact judicial decisions, makes Colombia a methodologically valid reference for comparative analysis, which will highlight the continuation (table 1).

**Table 1: Similarities Between the Regulatory Models of Colombia and Chile**

Aspects	Colombia	Chile
Healthcare system	Mixed system: coexistence of public and private services regulated by the state.	Mixed system: public network (FONASA) and private providers (ISAPRE), both under state supervision.
Constitutional framework guaranteeing rights	The Constitution recognizes fundamental rights such as health, equality, and protection of women (Art. 43).	The Constitution guarantees rights such as life, health, and physical and psychological integrity (Art. 19).
Gender approach in public policies	Explicit laws and policies: Law No. 1,257 (2008), Law No. 2,244 (2022), and reproductive health policies with a gender focus.	Gender approach in public policies Progressive incorporation: Adriana Bill.
Recognition of institutional violence	Recognized in law and jurisprudence as a form of gender-based violence.	Partially recognized: only as a criminal aggravating factor, still without autonomous classification of OGV.
Judicial participation in reparation	Constitutional Court requires comprehensive reparation and guarantees of non-repetition.	Civil courts can order reparation for failure in service provision, but without a gender focus.

Source: Author's elaboration.

Therefore, the selection of Colombia as a reference country is not arbitrary. The country presents important normative similarities with Chile, especially regarding

its public-private health system, its constitutional framework that guarantees rights, and its progressive incorporation of a gender approach in public policy.



## Humanized Childbirth and Gynecological-obstetric Violence

The concept of humanized childbirth is essential to combat OGV, since it positions women as active subjects in the obstetric process. According to Lampert, this approach seeks to respect women's autonomy and ensure that they make informed decisions about medical procedures, while health personnel act as supportive agents (Lampert Grassi 2023).

Therefore, the main function of humanized childbirth is to establish respect for the autonomy of women and to recognize their intrinsic right to make informed decisions regarding the obstetric process. Humanization in health services integrates various elements focused on improving both the quality of care and the interaction between doctors and patients, guaranteeing a more satisfactory experience for those cared for (Gómez Ángel & Ortiz Ferro 2020).

Likewise, some of the guidelines proposed by the World Health Organization to improve the quality

of care are reflected in the adequate care that health officials must provide to achieve respect for women's autonomy, within which we have: (a) the duty to attend to physical, emotional, and cultural needs; (b) the minimization of unnecessary medical interventions, such as cesarean sections or episiotomies (only when medically justified); and (c) the promotion of an empathetic and safe environment for women, which focuses mainly on using respectful and understandable language.

In Chile, this concept has not yet been legally materialized, and its closest implementation would be the "Adriana Law," currently under consideration. In contrast, Colombia integrates humanized childbirth into its regulatory framework, laying the foundations for dignified and respectful care for women and establishing a strengthened legal system in favor of women and their reproductive rights, which will be demonstrated below.

## COLOMBIAN LEGISLATION REGARDING OGV

Colombian legislation is an example of progress in the regulation of obstetric and gynecological violence, addressing both prevention and reparation of damages. Its main pillars include Law No. 2,244 of 2022 (Law on Dignified, Respected and Humanized Childbirth), which recognizes the rights of women during pregnancy, childbirth, and the postpartum period, guaranteeing their autonomy and support, as well as the right to receive clear information and make informed decisions. On the other hand, there is also Law No. 1,257 of 2008, which expands protection against gender-based violence, including OGV as a specific form of violence in health services.

Another key regulatory tool is the National Policy on Sexuality, Sexual and Reproductive Rights, promoted by the Ministry of Health and Social Protection. This policy aims to strengthen women's autonomy in their reproductive decisions, promoting access to quality

health services that respect their physical and emotional integrity (República de Colombia, Ministerio de la Protección Social 2003).

On the other hand, there is the Colombian Political Constitution, which in its article 43, establishes an essential foundation by recognizing gender equality and the special protection of women's rights, particularly in the context of motherhood (C.P.R. de Colombia 2011). This constitutional principle has been key to developing a broad interpretation of sexual and reproductive rights, considering that gynecological-obstetric violence violates the right to health, life, and human dignity.

Regarding the role of jurisprudence, the Constitutional Court of Colombia has played a central role in advancing protection against OGV. Its rulings have set precedents that require health services to respect

the dignity of women during childbirth and prohibit degrading or dehumanizing practices. For example, in specific cases, the Court has ordered compensation and comprehensive reparation measures that include guarantees of non-repetition, underlining the State's responsibility in complying with international human rights standards.

Finally, regarding the achievements and challenges in the Colombian regulatory framework, it is observed that thanks to the interaction of these legal bodies, Colombia has made notable progress in the fight against gynecological-obstetric violence. However, challenges persist in its implementation, such as ensuring adequate training for health personnel, establishing effective monitoring and supervision mechanisms, and ensuring equal access to justice for victims.

The Colombian legal framework is a valuable example for Chile, which could benefit from adopting elements such as the explicit recognition of humanized childbirth, the implementation of public policies with a gender focus, and the creation of legal tools that guarantee comprehensive reparation for the damage suffered by women.

In summary, the Colombian regulatory model offers a comprehensive approach that not only sanctions OGV but also focuses on preventing and repairing it from a human rights perspective. This framework could serve as a reference for the development of more robust public policies for Chile, thus ensuring that women's sexual and reproductive rights are effectively protected.

### **A Case of Gynecological-Obstetric Violence: Conviction of the Miraflores Regional Hospital**

To illustrate how the Colombian system of state responsibility for gynecological-obstetric violence operates in practice, the case of the Miraflores Regional Hospital was selected for being one of the most representative failures in terms of the application of the gender approach, condemned for failure in service provision, and ordered full reparation. Although there are no other precedents, this case stands out for the clarity of the facts, the seriousness of the negligence, and the forcefulness of the judgment, which makes

it particularly illustrative for comparative purposes. The analysis of a single case responds to the criteria of an emblematic case study, a useful methodology to highlight good judicial practices in regional contexts. In Colombia, the E.S.E. (Empresa Social del Estado) Miraflores Regional Hospital was convicted for gynecological-obstetric violence.

In this situation, the Administrative Court of Boyacá convicted the E.S.E. Miraflores Regional Hospital for a failure in the provision of medical services that resulted in the death of a newborn. The plaintiffs, a mother, and her minor children, argued that the hospital did not act according to medical protocols nor prioritize adequate care during labor, which led to serious consequences.

Regarding the main facts, first, the failure in the medical service is identified. The Court found that there was indeed medical negligence, since the emergency cesarean section was performed 48 hours after the start of labor, which led to prolonged labor and caused severe hypoxia due to acute fetal distress (Judgment N. ° 15000-23-31-000-2008-00235-01, 7). There was also inadequate care during the pregnancy, since, at first, no abnormal risks to the health of the fetus were identified. However, the medical staff did not act quickly, despite the clear signs of complications, such as stationary dilation, which is defined as "the lack of progression of cervical changes for 2 hours" (Consejo de Salubridad General 2014, 6) and the mother's high blood pressure. Finally, there were deficiencies in the transfer of the newborn, since the baby was transported inappropriately, with improvised methods that included a styrofoam box with hot bags, which caused hyperthermia and first-degree burns on 50% of his body.

Regarding the highlighted legal and conceptual aspects, we have first medical liability, by which it was considered that the damage caused to the fetus during a normal pregnancy constituted a clear indication of failure of the medical service. In addition, the high degree of gynecological-obstetric violence is highlighted, since the court classified the acts as a manifestation of institutional gender violence, emphasizing that this implies mistreatment, dehumanization, and violation of the sexual and reproductive rights of women.

Regarding the gender perspective, the need for dignified treatment of pregnant women is highlighted, recognizing motherhood as a constitutionally protected right. In this context, the Court not only ruled in favor of the mother and her children but also ordered the implementation of comprehensive reparation measures, including guarantees of non-repetition as a mechanism to guarantee the full restitution of the violated rights. In addition to material damages, comprehensive reparation and non-repetition measures were ordered to guarantee the full restitution of the violated rights.

These reparation measures seek to address both material and immaterial damages through specific actions such as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition (Rojas Castillo 2022). This last component is especially relevant, since, as the Colombian Ministry of the Interior points out, guarantees of non-repetition are measures adopted by the State and are intended to involve the entire society to avoid future violations of Human Rights and breaches of International Humanitarian Law (Ministry of the Interior 2025).

Therefore, following the approaches of Rojas and the Ministry of the Interior, guarantees of non-repetition are not only a type of reparation measure, but also a key tool for the prevention of new violations, thus consolidating a comprehensive approach to the protection of Human Rights. In this sense, regarding the reparations ordered, the court ordered comprehensive reparation, which included economic and non-pecuniary measures, as actions to prevent future similar cases.

Regarding the human rights approach, the court applied the principle of *restitutio in integrum* and the right to comprehensive reparation established in article 63.1 of the American Convention on Human Rights, which tells us that “every person whose rights have been violated has the right to adequate reparation” (CADH, article 63.1). Furthermore, since it is mentioned that negligence occurred on the part of a public hospital, it belongs to the state services provided by the State to citizens. Therefore, the State has a direct responsibility and must compensate the mother and her children for

the damage caused. This thought is aligned with the statement by Sánchez, who maintains the following:

When a health service provided by state entities causes harm or affects the integrity and health of patients, as in the case of gynecological-obstetric care, and the responsibility of the assigned medical personnel is proven, the State is directly responsible for the consequences of those events that harmed the health of people. (2017, 41)

This case showed how gynecological-obstetric violence can arise from negligent institutional practices, underlining the responsibility of the State and health institutions to guarantee adequate, respectful, and humanized medical care, especially during pregnancy and childbirth. Therefore, Colombian legislation offers a robust model to address OGV, integrating prevention, reparation, and international human rights standards. This regulatory framework could serve as a reference for Chile, where the lack of specific legal tools leaves victims without effective protection and reparation mechanisms. Implementing elements such as humanized childbirth in a comprehensive compensation system would be a crucial step to combat OGV and guarantee dignified care in the Chilean health system. The following table summarizes the differences between the Chilean and the Colombian normative model.

From an administrative law perspective, a comparative analysis between Colombia and Chile reveals a substantial difference in the way both states assume their role as guarantors of the proper functioning of health services. While Colombia has incorporated a robust regulatory framework that allows for the attribution of state responsibility for failures in gynecological and obstetric care (through specific laws, comprehensive redress mechanisms, and recognition of humanized childbirth), in Chile the legal system still lacks effective instruments to enforce that responsibility from an administrative perspective. This shortcoming reflects an institutional weakness in the fulfillment of the state's duty to guarantee the quality of public services, which limits victims' access to effective redress for structural violations.

**Table 2: Colombia vs. Chile on Gynecological-Obstetric Violence**

	Colombia	Chile
Key legislation	Law No. 2.244 (2022) on dignified childbirth and Law No. 1.257 (2008) on awareness-raising, prevention, and punishment of forms of violence and discrimination against women.	Adriana Bill (Bulletin No. 12.148-11, 2018)
Recognition of VGO	Explicit: considered institutional and gender-based violence.	Partial: only considered an aggravating factor in the Penal Code.
Comprehensive reparation	Mandatory: includes compensation, rehabilitation, and guarantees of non-repetition.	Non-existent: limited to administrative fines for the health facility.
Gender perspective	Incorporated into legislation and constitutional jurisprudence.	Limited, as there is no cross-cutting gender approach.
Humanized childbirth	Recognized as a legal right, women take on the role of active subjects.	There is no law in force, only the Adriana Bill, which is still pending.

Source: Author's elaboration.

Therefore, Colombian legislation offers a robust model for addressing OGV, integrating prevention, redress, and international human rights standards. This regulatory framework could serve as a reference for Chile, where the lack of specific legal tools leaves victims without effective mechanisms for protection and redress. Implementing elements such as humanized childbirth as part of a comprehensive compensation system would be a crucial step in combating OGV and ensuring adequate care in the Chilean health system.

In Chile, failure to meet basic standards in medical care, together with the lack of specific legislation, limits victims' access to justice and perpetuates a cycle of impunity. Existing general regulations are not sufficient to address the complexity of OGV, which highlights the need for the implementation public policies and specific legal tools that include the gender perspective

and ensure the recognition of women as active subjects in reproductive health processes.

The Chilean State must adopt more effective measures to prevent, sanction and remedy acts that constitute gynecological-obstetric violence. Some concrete measures that could be implemented in the country, based on the Colombian model, are: (i) the creation of a special law that incorporates the necessary measures to ensure a Humanized Birth and (ii) the implementation of a National Policy on Sexual and Reproductive Rights. These two measures together would raise the importance of protecting and responding to acts that constitute gynecological-obstetric violence, and therefore, cases of negligence due to failure in service provision would also have to face strict sanctions, having to grant comprehensive reparation to the victims.

## CONCLUSIONS

Gyneco-obstetric violence is a structural manifestation of gender violence that violates the fundamental rights of women and at the same time exposes serious

deficiencies in the provision of public health services, configuring, in many cases, what the administrative law calls a failure in service provision. In the Chilean

context, this problem reveals a crisis in gynecological-obstetric care, as well as the omission of the State in its duty to guarantee a dignified, efficient, and respectful provision of rights in the reproductive sphere.

As stated by Lampert, the OGV ranges from dehumanizing medical practices to acts of explicit discrimination, directly impacting the dignity and autonomy of women during essential processes such as pregnancy, childbirth, and postpartum (Lampert Grassi 2023). These acts violate fundamental rights and constitute illegitimate harm derived from a poorly provided public service, which must be addressed from within the scope of state responsibility.

If general norms such as Law 20.584 and the Chilean Constitution ensure general rights for patients, their current design does not allow claiming patrimonial liability from the State for acts of institutional negligence, nor access to full reparation. This lack of specific regulations prevents victims from obtaining justice and weakens the principle of legality and efficiency that must govern public administration.

In contrast, the Colombian model offers a more robust normative framework that regulates humanized birth and sexual and reproductive rights, enabling concrete legal mechanisms to attribute administrative

responsibility to the state and repair damages caused by institutional failures. This reparation includes economic compensation on the ground, as well as non-pecuniary measures such as rehabilitation, restitution of rights, and non-repetition guarantees, aimed at comprehensively addressing both the physical and emotional consequences of gynecological-obstetric violence (Ulloa-Martínez et al. 2022).

Cases like the ruling of the Boyacá Administrative Court in 2018 illustrate how Colombian jurisprudence interprets these crimes as sanctionable state omissions, strengthening access to justice and structural reparation. Accordingly, this case emphasizes the need to guarantee timely and dignified medical care, as well as to implement comprehensive reparation measures, establishing important precedents for the fight against OGV (Sentencia N. ° 15000-23-31-000-2008-00235-01, 34).

Therefore, from an administrative law perspective, it is urgent that Chile move toward a regulatory framework that allows the state to be held accountable for failures in the provision of public health services, particularly in situations of gynecological and obstetric violence. This implies not only gender-sensitive public policies but also laws that clearly define administrative duties and the legal consequences of noncompliance.



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