

THE NEED TO LEGISLATE AND REGULATE OBSTETRIC VIOLENCE TO ENSURE WOMEN A REAL LEGAL PROTECTION

Necessitat de legislar i regular la violència obstètrica per garantir a les dones una veritable protecció jurídica.

Necesidad de legislar y regular la violencia obstétrica para garantizar a las mujeres una verdadera protección jurídica.

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RESUM

Les dones d'arreu del món s'enfronten a formes múltiples i interseccionades de violència, tant a la vida privada com a la pública. Després de les denúncies d'abús i falta de respecte a dones durant el part, L'OMS i l'ONU han abordat i plantejat una nova forma de violència en instal·lacions hospitalàries. La violència obstètrica que pateixen les dones durant l'atenció a la salut reproductiva, especialment durant el part, és una greu violació dels drets humans. El present article posa de manifest la necessitat de legislar i regular aquest tipus de violència per tal d'assegurar a les dones una plena protecció i reparació jurídica. El punt d'observació del present article és el d'una advocada que s'enfronta a la pràctica jurídica amb barreres per tal de garantir a les dones maltractades durant el part una protecció legal real i efectiva. Les barreres a la pràctica, almenys a Itàlia, fan que els procediments legals siguin llargs, complicats i cars. No se'ls escolta ni es creu a les dones, que lluiten per trobar experts mèdics que les donin suport en les queixes i les sol·licituds de compensació monetària. Generalment els països disposen d'un sistema de normes que es podrien aplicar en casos de violència obstètrica, a la pràctica és difícil que les dones accedeixin als procediments legals per molts factors. La idea predominant és que si les dones i els seus nadons estan vius, aleshores tot va anar bé durant el part i totes les intervencions i maniobres realitzades en el cos de les dones pel personal sanitari estaven justificades per la necessitat. Els poders desequilibrats entre el sistema sanitari i les dones dificulten i encareixen la possibilitat de tenir un recurs legal, amb el risc afegit de difamació per part dels metges. Els Estats membres han d'adoptar lleis i reglaments per prevenir i eradicar la violència obstètrica i per promoure una atenció a la maternitat respectuosa i digna.

PARAULES CLAU: violència obstètrica; protecció jurídica; reparació.

ABSTRACT

Women across the world face multiple and intersecting forms of violence, both in private and public life. A form of violence during facility-based childbirth has been addressed and framed by the WHO and UN following women's reports of abuse and disrespect. Obstetric violence that women face during reproductive health care, particularly in childbirth, is a serious violation of women's human rights. The present article highlights the need to legislate and regulate this kind of violence to ensure women's full legal protection and redress. The point of view of the present article is the one of a lawyer, based in Italy, that faces in practice barriers to ensure women abused and mistreated during childbirth a real and effective legal protection. Barriers in practice, at least in Italy, means that legal procedures are long, complicated, expensive. Women are not heard or believed, and they struggle to find medical experts supporting them in complaints and monetary compensation requests. Even if, in general, countries have a system of constitutional norms and principles that could be applied in cases of obstetric violence, in practice it is difficult for women to access legal procedures due to many factors. The prevailing idea is that if women and their babies are alive, then everything during childbirth was fine and all the interventions and maneuvers carried out on women's bodies by health personnel were justified by necessity. The unbalanced powers between health systems and women make difficult and expensive the possibility to have legal redress, with the added risk for women to be sued for defamation by health personnel.

KEY WORDS: obstetric violence; legal protection; reparation.

RESUMEN

Las mujeres de todo el mundo se enfrentan a formas de violencia múltiples e interrelacionadas, tanto en la vida privada como en la pública. La OMS y la ONU han abordado y enmarcado una forma de violencia durante el parto en centros de salud tras los informes de abuso y falta de respeto de las mujeres. La violencia obstétrica que enfrentan las mujeres durante la atención de la salud reproductiva, particularmente en el parto, es una grave violación a los derechos humanos de las mujeres. El presente artículo destaca la necesidad de legislar y regular este tipo de violencia a fin de garantizar a las mujeres plena protección jurídica y reparación. El punto de observación del presente artículo es el de un abogado que se enfrenta en la práctica barreras para garantizar a las mujeres abusadas y maltratadas durante el parto una protección jurídica real y efectiva. Las barreras en la práctica, al menos en Italia, significan que los procedimientos legales son largos, complicados y costosos. Las mujeres no son escuchadas ni creídas y luchan por encontrar expertos médicos que las apoyen en sus quejas y solicitudes de compensación monetaria. Si bien en general los países cuentan con un sistema de normas que podrían aplicarse en casos de violencia obstétrica, en la práctica es difícil para las mujeres acceder a los procedimientos legales debido a muchos factores. La idea predominante es que si las mujeres y sus bebés están vivos, entonces todo durante el parto estuvo bien y todas las intervenciones y maniobras realizadas en el cuerpo de las mujeres por parte del personal de salud fueron justificadas por la necesidad. Los poderes desequilibrados entre el sistema de salud y las mujeres dificultan y encarecen la posibilidad de obtener reparación legal, con el riesgo adicional de difamación por parte de los médicos. Los Estados Miembros deben adoptar leyes y reglamentos para prevenir y erradicar la violencia obstétrica y promover una atención materna respetuosa y digna.

PALABRAS CLAVE: violencia obstétrica, protección jurídica; reparación.

La necessità di legiferare e regolamentare la violenza ostetrica per assicurare alle donne una tutela legale effettiva.

RIASSUNTO

Le donne in tutto il mondo affrontano forme di violenza multiple e interconnesse, sia nella vita privata che in quella pubblica. L'OMS e l'ONU hanno affrontato e inquadrato una forma di violenza durante il parto nelle strutture sanitarie a seguito di segnalazioni di abusi e mancanza di rispetto nei confronti delle donne. La violenza ostetrica subita dalle donne durante l'assistenza sanitaria riproduttiva, in particolare, durante il parto, è una grave violazione dei diritti umani delle donne. Questo articolo evidenzia la necessità di legiferare e regolamentare questo tipo di violenza al fine di garantire alle donne piena protezione e riparazione legale. Il punto di osservazione di questo articolo è quello di una avvocatessa italiana che affronta barriere nella pratica per garantire alle donne maltrattate e abusate durante il parto una reale ed effettiva tutela giuridica. Le barriere sono rappresentate, almeno in Italia, da procedure lunghe, complesse e costose. Spesso le donne non vengono ascoltate, né credute e fanno fatica a trovare consulenti medici che ne supportino le doglianze e le richieste risarcitorie. Sebbene i paesi dispongano di un sistema di norme che potrebbero essere applicate in caso di violenza ostetrica, in pratica è difficile per le donne accedere alle procedure legali a causa di molti fattori. L'idea prevalente è che se le donne ed i loro bambini sono vivi, allora durante il parto tutto è andato bene e tutti gli interventi e le manovre eseguite sul corpo della donna dal personale sanitario erano giustificati dalla necessità. Lo squilibrio di poteri tra il sistema sanitario e le donne rende difficile e costoso ottenere un risarcimento legale, con l'ulteriore rischio per le donne di essere denunciate per diffamazione da parte dei medici. Gli Stati membri devono adottare leggi e regolamenti per prevenire e sradicare la violenza ostetrica e promuovere un'assistenza rispettosa e dignitosa alla maternità.

PAROLE CHIAVE: violenza ostetrica; tutela legale; riparazione.

Roma TRE is a State University based in Rome, Italy. Multimedia Lab of Comparative Law belongs to Political Sciences Department of Rome Tre University, and since 2016 has dedicated a research Unit to the issue of respectful maternity care due to the advocacy commitment carried out in Italy by Elena Skoko and Alessandra Battisti, both members of the Research Unit.

[Author's Notes]

1. INTRODUCTION

Mistreatment and abuse during facility-based childbirth has gained global attention especially in recent years. The World Health Organization (WHO) in 2014 and the United Nations (UN) Special Rapporteur on violence against women (2014; 2014b), its causes and consequences, in 2019 have addressed the issue under a legal perspective, framing obstetric violence as a women's human rights violation and a gender-based violence, urging countries to adopt proper and effective measures. In 2019 the Council of Europe Parliamentary Assembly adopted the resolution n. 2306 inviting Member States to ensure legal protection to women during obstetric and gynecological care (Committee of Experts of the Follow-up Mechanism of the Belém do Pará. Convention Council of Europe Parliamentary Assembly, 2019).

The movement for humanization of maternity care started in late 1970's and led some countries in South America to address the issue through laws that introduced the definition of obstetric violence. We are now in a historical juncture in which international bodies have acknowledged that women face violence even in the vulnerable moment of childbirth and States are formally invited to adopt laws and regulations, sometimes, without success. A step forward is to identify a method to legislate on the issue of obstetric violence to ensure a real and effective protection to women who are victims of this kind of violence.

The present article is written considering both my experience as a lawyer when I legally represented myself in a court proceeding against the hospital and the doctors who mistreated me during childbirth and when I assisted other women who faced obstetric violence.

Since I sued the hospital where I gave birth, I realized how difficult it is for a woman to be heard by the legal system when claiming her rights during facility-based childbirth. The fact itself that a mother and her baby are alive after childbirth leads to a reduction, and in some cases to a denial, of legal protection under the idea that any other thing that happened during and after childbirth is not a "real problem" or a "real damage", because life was saved. I envisaged that this approach is not exclusively led by the existing norms but much more by the cultural environment surrounding childbirth. For example, in Italy there are constitutional principles and norms that could be applied to obstetric violence cases in order to protect women, but there is a discrimination in practice because childbirth is considered a life risking event. Since the cultural approach plays a key role in the creation of practical barriers to women's human rights protection during childbirth, it is extremely important to draft and put in place a dedicated legislation on the issue. Consequently, this specific area of women's rights needs specific attention and norms designed to overcome the existing barriers in ensuring legal remedies and redress related to abuse during childbirth. The following paragraphs are schematic to serve the operational purpose to help draft a legislation.

2. THE KEY ELEMENTS TO BE CONSIDERED IN DRAFTING A LAW ON OBSTETRIC VIOLENCE

There are some key elements to consider when drafting a law on obstetric violence. The following are based on WHO and UN recommendations (2015; 2018).

- Before drafting a legislation on obstetric violence, preliminary research could be helpful to identify, understand, measure, and map the problem since abuse during childbirth is still a hidden and underestimated violence. Research should include both statistical data collection and women testimonies. WHO and UN recommend a human rights-based approach as a tool to prevent and eliminate obstetric violence. The same approach could be applied in designing data collection to identify if an undignified and violent care was carried out. (Ravaldi, et al., 2018a) Indicators, such as dignity, phyco-physical integrity, respectful communication, privacy, confidentiality, informed consent could be significant to understand if women's human rights were violated during childbirth. (Ravaldi, et al., 2018b) Women testimonies should be included in research activity through dedicated programs aimed at listening mother's reports in detail. My experience as a lawyer in my daily practice shows me that, in a single case of obstetric violence, there could be several rights violations that a woman faces during childbirth. To identify what happens on the ground and to design proper norms, listening to women is crucial and it is important in a legal procedure to ensure effective protection.
- The role of terminology is crucial because there is globally an ongoing discussion about the appropriate term to use, since «obstetric violence» is often deemed too harsh, and «abuse and disrespect», «mistreatment», «birth trauma» are considered as better alternatives. In Italy, for example, the term obstetric violence has been considered outrageous by health personnel leading to misunderstanding and denial (*Associazione degli Ostetrici e Ginecologi Ospedalieri Italiani* [AOGOI], 2017).
- A legal comparative approach could be useful to optimize efforts in designing proper laws. Several countries in South America have legislated obstetric violence becoming an important point of reference for other States.
- Incorporating WHO recommendation into norms and laws, could be helpful to prevent and limit practices without scientific evidence and enhance clinical appropriateness. In 1985 a panel of international experts met at Fortaleza to discuss the appropriate technology of birth and adopted the WHO recommendation that are still in place today as a gold standard for care¹. Research and the testimonies of women show how WHO's recommended best practices are not fully implemented in many countries that still have very high rates of medical interventions during childbirth.

¹ In 1985, the World Health Organization (WHO) and the Pan American Health Organization (PAHO) promoted a conference on appropriate technology for birth, where international experts agreed on recommendations aimed at reducing medical interventions such as episiotomy, c- sections, kristeller manouvre, continous fetal monitoring, lythotomic position during labour and childbirth and all other practices wiithout scientific evidence.

- Identify behaviours, practices, procedures, and omission that constitute obstetric violence and related authors of mistreatment to have clearer norms that guarantee effective legal protection.
- Periodically review laws and regulations involving women in policy making processes and considering women's perspective and needs.
- Identify clear and sustainable mechanisms for redress and economic compensation for physical and psychological damages but also for undignified care women experienced.
- Identify procedures to prevent obstetric violence and to make facilities accountable.
- Follow the women human rights principles enshrined in international Convention such as CEDAW- Convention for the elimination of all forms of discrimination against women, Istanbul Convention, UN declaration on the elimination of violence against women and all the international bodies and mechanism aimed at reinforcing women fundamental rights.

2. OBSTETRIC VIOLENCE, ABUSE, MISTREATMENT, VIOLENCE DURING CHILDBIRTH: WHICH TERM SHOULD BE USED IN A LEGAL FRAME?

Framing the appropriate terminology, under a legal perspective, to codify the violence women face during childbirth encompasses an analysis of how cultural barriers and stereotypes restrain women to enjoy the full spectrum of human rights in the context of childbirth (Sadler, et al., 2016). Talking about obstetric violence generates doubts and resistance at a public and institutional level, because childbirth is seen as a dangerous event, therefore medical care is considered always beneficial. It is culturally difficult to believe or understand that in a hospital setting, designed to save people's lives, women may face violence or mistreatment (Perrotte, et al., 2020). Consequently, any medical intervention is seen as necessary to avoid death. In this context medical procedures cannot be criticized, and women should be grateful to physicians and the hospital. In addition, stereotypes on maternity play a negative role contributing to reinforce the idea that maternity requires a sacrifice and that women in labour are unable to decide for themselves and the baby's best interest. Gender based stereotypes contribute to delegitimize the issue as a real problem. When a woman and her baby are alive everything is fine, without any consideration for women's pain and violation of their dignity.

WHO in 2014 highlighted that ensuring universal access to safe and good quality maternal health care (2014a; 2014b), can dramatically reduce global rates of maternal morbidity and mortality, nevertheless a growing body of research on women's experiences during pregnancy and childbirth describes a picture of disrespectful, abusive or neglectful treatment at facilities level. This constitutes a violation of trust between women and their health-care providers and can also be a powerful disincentive for women to seek and use maternal health care services. WHO decided to define the phenomenon as «abuse and disrespect» that violates women's human rights. The issue of terminology has been addressed by UN Special Rapporteur on violence against women, its causes, and consequences in her report "A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on

childbirth and obstetric violence” (2019). UN Special Rapporteur acknowledged that there is a set of existing terms, including «mistreatment», «disrespect», «abuse», «physical violence» and «violence against women», while obstetric violence is widely used in South America.

The Council of Europe Parliamentary Assembly used the term «obstetrical and gynecological» violence to name a form of violence that happens in the privacy of a medical consultation or childbirth “that has long been hidden and is still too often ignored” (Council of Europe Parliamentary Assembly, resolution 2306-2019).

Both, UN Special Rapporteur and Council of Europe Parliamentary Assembly, have assessed that obstetric violence is a gender-based violence under Istanbul Convention provisions, while Committee of Experts of the Follow-up Mechanism of the Belém do Pará Convention (2019), which was the first mechanism to recognize obstetric violence as a human rights violation, recommended that States adopt legal provisions that criminalize obstetric violence. This form of violence has been not recognized, denied, and neglected for a long time and still today faces a lot of resistance at institutional level to be addressed, therefore, in my personal view, it could be beneficial to prevent and eradicate it to use more than one term associated with “obstetric violence” with the purpose to make legislation and regulation clearer and effective.

3. BEHAVIORS, ACTS, PRACTICES, PROCEDURES, OR OMISSIONS THAT CONSTITUTE OBSTETRIC VIOLENCE

In drafting legislation regarding obstetric violence, it is important to highlight which acts, behaviors, practices, procedures, omissions integrate obstetric violence and mistreatment during childbirth. (Kokura, 2018). In the area of maternal care there are many practices and behaviors that are normalized at hospital level such as performing vaginal exams without respect for dignity and privacy, performing interventions without previous informed consent of the woman, carrying out verbal abuse and humiliations, only to mention few of them. The cultural normalization of this kind of violence requires a rigorous approach in identifying obstetric violence manifestations. International bodies have listed the behaviors, acts and omission that violates women's human rights during childbirth, creating a pattern States should look at when drafting the relevant legislation. According to WHO many women across the globe experience disrespectful, abusive, or neglectful treatment during childbirth in facilities such as:

- Outright physical abuse.
- Profound humiliation and verbal abuse.
- Coercive or unconsented medical procedures (including sterilization),
- Lack of confidentiality.
- Failure to get fully informed consent.
- Refusal to give pain medication, gross violations of privacy.
- Refusal of admission to health facilities.
- Neglecting women during childbirth to suffer life-threatening, avoidable complications.
- Detention of women and their newborns in facilities after childbirth due to an inability to pay.

UN Special Rapporteur identified manifestations of mistreatment and gender-based violence in reproductive health care service and during facility-based childbirth as follows:

- Forced sterilization and forced abortion.
- Women physically restrained during labor.
- Post childbirth detention of women and their newborns in health care facilities because of their inability to pay hospital fees.
- C-sections without women consent and clinically unjustified.
- Unnecessary and/ or unconsented episiotomy.
- The use of unexperienced medical staff to carry gynecological examinations.
- The overuse of synthetic oxytocin to induce contractions.
- The application of manual fundal pressure to facilitate childbirth during the second stage of labor known as Kristeller maneuver.
- Lack of respect for privacy and confidentiality when performing vaginal examination during labor including in front of third parties.
- Lack of autonomy and decision-making including the chance to choose their preferred position for delivering during childbirth.
- Verbal abuse sexist remarks and profound humiliation during childbirth.
- Lack of informed consent.

The Council of Europe Parliamentary Assembly recalled WHO, the Argentina and Venezuela law on obstetric violence, the Istanbul Convention and United Nations Special Rapporteur on violence against women and its causes and consequences, identified the following behaviors and acts as obstetric and gynecological violence:

- Practices that are violent or that can be perceived as such.
- Inappropriate or nonconsensual acts.
- Episiotomy without consent.
- Vaginal palpation carried out without consent.
- Fundal pressure.
- Painful interventions without anesthetics.
- Sexist behavior during medical consultations.

In 2007 Venezuela, inside the frame of the law “*Ley Orgánica sobre el derecho de las mujeres a una vida libre de violencia*”, adopted a definition of obstetric violence that is a fundamental point of reference, in a legal comparative perspective, to draft a legislation on the issue. Obstetric violence, according to the definition by Venezuelan Law, results in an appropriation of women’s bodies and reproductive processes through three kinds of abuse:

1. Dehumanizing treatments.
2. Overmedicalization.
3. Pathologizing natural processes.

The definition also encompasses the consequences of the obstetric violence:

- Women’s loss of autonomy.
- Women’s loss of ability to freely decide about their body and sexuality.
- Women ‘s worsening quality of life.

The UN Working Group on discrimination against women in law and practice affirmed that women face a disproportionate risk of being subjected to humiliating and degrading treatment in health care facilities, especially during pregnancy, childbirth and in postpartum period. (UN Working Group on discrimination against women in law and practice regarding health and safety (A/HRC/32/44). Women's bodies are instrumentalized for cultural political and economic purposes rooted in patriarchal traditions. Instrumentalization occurs within and beyond the health sector and it aims at perpetuating taboos and stigmas concerning women's bodies and their traditional roles in society especially in relation to their sexuality and reproduction. The UN Working Group explains that viewing women's behavior and biological physiology, particularly their reproductive functions and sexuality, as symptomatic of medical problems reflects a history of gendered pathologization as a form of social control exercised by patriarchal establishment to preserve the gender roles of women.

The concept of «over-medicalization», pathologization and instrumentalization of women's bodies and biological functions should be clearly addressed and punished in a legislation aimed at protecting women from obstetric violence. The Venezuelan law defines in art. 51 the conducts carried out by health personnel that constitute obstetric violence:

- **Women are denied receiving proper care in obstetric emergencies.** This way of behaving can be framed as dehumanizing treatment that puts women at risk of suffering life threatening complications that are avoidable as outlined by WHO through the statement on prevention and elimination of abuse and disrespect during facility-based childbirth.
- **Women are forced by health personnel to give birth in lithotomic position and with their legs raised without any respect for physiological vertical delivery.** This treatment is dehumanizing since women are forced in a position that they do not feel is natural. They are humiliated with their genitals overexposed to care givers view and they lose the possibility to choose the best and most comfortable position for them. The care givers comfort prevails over the women's freedom of choice. This treatment is also an abuse of medicalization and a way of pathologizing natural processes. WHO recommends free positions during labor and childbirth since 1985.
- **Women are prevented from immediate contact with their newborn without any medical reason and denied from immediate breast feeding.** This practice is considered to be dehumanizing because it is rooted in the unhuman idea that newborns can stay away from their mothers as a normal routine. Preventing mothers from immediate breastfeeding is a violation of WHO- UNICEF recommendations and a violation of the right to the highest attainable level of health for both mother and baby.
- **The natural process of a low-risk childbirth is accelerated without the previous free an informed consent of the woman.** Accelerate childbirth through intervention de-humanizes the biological functions of women. It is also an abuse of medicalization and a women's human rights violation when there is a lack of consent.
- **A C-section is performed when physiological childbirth is possible without previous free and informed consent of the woman.** The UN Special Rapporteur on violence against women observed that:

“Recently there has been a growing overuse of the procedure around the globe and in Latin America and in Europe it is replacing vaginal birth or is being selected as a preferred way of birth. In many legal contexts the interest of the fetus and override the rights of the pregnant woman which leads the situation where women purposely are not consulted about the decision as to whether to deliver the baby by caesarian section. There is also evidence that suggests that women are becoming victims of failing health system where services are planned and managed with a focus on time and cost efficiency. Furthermore c- sections can be scheduled and can take place on selected weekdays as opposed to weekend and doctors usually get higher fees from private insurance companies for the procedure” (UN, 2019).

Performing a c-section when there are not any clinical needs results in dehumanizing treatment because women are not considered as human beings. Rather the occasion is viewed as an opportunity to optimize costs, time, and health care organization in order to obtain even higher insurance fees for doctors. Unjustified c-sections are rooted in the idea of commercialization, objectification and instrumentalization of women’s body, a further aspect of women’s body appropriation by the health system and health personnel. At the same time, the denial of a c-section when clinically necessary for a reason such as cost reduction or reaching lower percentage as a hospital performance is violence against mother and baby and a serious violation of their right to life and to health (WHO, 2015).

Drafting a law on obstetric violence should encompass the juridical notion and protection of women’s autonomy as well as the criminalization of any form of instrumentalization, overmedicalization and pathologization of women’s bodies and biological functions, while also establishing an accurate list of conducts that are harmful and violate women’s dignity.

4. IDENTIFYING WHICH WOMEN’S RIGHTS ARE VIOLATED BY OBSTETRIC VIOLENCE

Stereotypes surrounding obstetric violence and a lack of knowledge of this kind of violence might lead to think that women do not face any real attack on their rights since the practices and procedures mothers-to be receive are part of medical care. Therefore, to design a proper legislation it is important that key actors involved in law making become aware on the types of rights violations women might face during childbirth. According to WHO, women experiencing an abusive care during facility-based childbirth might be subjected to the following rights violation:

- Right to health.
- Right to life.
- Right to informed consent.
- Right to a dignified care.
- Right to privacy.
- Right to confidentiality.
- Right to be free from violence.
- Right to be equal in dignity.
- Right to be free to seek, receive and impart information.

- Right to be free from discrimination.
- Right to enjoy the highest attainable standard of physical and mental health including sexual and reproductive health.

UN Special Rapporteur on violence against women, in their report on obstetric violence, calls Member States to adopt the human rights-based approach to address mistreatment and violence against women in reproductive health services. UN experts have clarified that practical implications of the human rights values of dignity and nondiscrimination results in a set of working principles that form the basis of human rights approach (OHCHR, 2016). The principles of a human rights-based approach that should be part of a legislation on obstetric violence are the following:

- **Accountability.** It does not mean blame or punishment but rather a process aimed at correcting systemic failure to prevent future harm. The Special Rapporteur on health has defined accountability as “ensuring that health systems are improving and the right to the highest attainable standard of health is being progressively realized for all” (OHCHR, 2003). Accountability includes a regular monitoring of the health system and the underlying physical and social economic determinants of health that affect women’s health and ability to exercise their right. In addition, the principle of accountability implies the rights of victims to remedy including reparation.
- **Participation.** It means that people have the individual and collective right and duty to participate in the planning and implementation of their health care (PAHO, 1978, Declaration of Alma-Ata, para. IV). Participation in the context of maternal health means ensuring women’s access to relevant information while also including them in decision making processes which affect their pregnancy and childbirth.
- **Transparency:** it is linked to meaningful accountability and participation. States have the duty to provide transparent accountability processes to enable citizens to fully participate in refocusing public health policies.
- **Empowerment:** it is closely linked both to gender equality and the effectiveness of accountability as a mechanism.
- **Sustainability:** referring to a long-term investment in health policies and programs to empower women’s health and rights.

5. AN INTERNATIONAL RECOMMENDATIONS TO MEMBER STATES TO LEGISLATE ON OBSTETRIC VIOLENCE

Legislation on obstetric violence is highly recommended by UN, WHO and Council of Europe Parliamentary Assembly. In framing domestic rules, States and legislators should carefully take into consideration the existing recommendations on the issue of obstetric violence and mistreatment. In 2014 the WHO suggested that governments take the following actions to prevent and eliminate disrespect and abuse during facility-based childbirth:

- Invest in research on disrespect and abuse at the facility level worldwide.
- Support respectful care as an essential component of quality of care.

- Promote changes in provider behavior, clinical environments, and health system to ensure that all women have access to respectful and skilled maternity care.
- Enhance health system accountability for the treatment of women during childbirth.
- Involve women to participate in efforts to improve quality of care and eliminate disrespectful and abusive practices.

In a 2016 report on health and safety, the UN Working Group on discrimination against women in law and practices, called upon the Human Rights Council to urge States to take all necessary measures to respect, protect and fulfill women's rights to the highest attainable standard of health worldwide, including their reproductive and sexual health. (UN Human Rights Office, 2016). Particularly on the issue of childbirth, the UN working Group recommended that States:

- Ensure laws, policies and practices that mandate respect for women's autonomy in their decision-making, especially regarding pregnancy, birthing, and post-natal care.
- Regulate birthing facilities to ensure the respect of women's autonomy, privacy, and human dignity, including respecting women's choices regarding home deliveries provided there are no specific medical contradictions.
- Prevent instrumentalization of women in the birthing process, ensuring that penalties are incurred for gynecological and obstetric violence. This includes performing abusive cesarian sections, refusing to give women pain relief during childbirth, surgical termination of pregnancy and performing unnecessary episiotomies.

The UN Special Rapporteur on violence against women in 2019 recommended that States should address the current problem of mistreatment and violence against women in reproductive services and childbirth from a human rights perspective and use it to conduct an independent investigation into women's allegations of mistreatment and gender-based violence in health care facilities. States should adopt effective laws and policies that ensure the application of informed consent in all reproductive health services, guaranteeing prior free and informed consent for cesarian sections, episiotomies and any another invasive treatment during childbirth. Laws aimed at preventing obstetric violence should:

- Guarantee the right to have a birth companion of choice in law and practice.
- Consider the possibility of allowing home birth without any criminalization.
- Monitor health care facilities and collect and publish data on the percentage of c-section, vaginal births, episiotomy is another treatment related to childbirth; (Zaami, et al., 2019).
- Address the lack of anesthesia and pain relief as well as the lack of choice of birth position and lack of respectful care.
- Establish human rights-based accountability mechanisms that ensure redress for victims of mistreatment and violence including financial compensation, acknowledgement of wrongdoing, formal apologies and guarantees of non-repetition.
- Ensure professional accountability and sanctions by a professional association in cases of mistreatment as well as access to justice in cases of human rights violation.
- Guarantee full and fair investigations into allegations of mistreatment and violence against women during childbirth.

The Council of Europe Parliamentary Assembly (Resolution 2306/2019) calls Member States to:

- Call on the ministry's responsible for health and equality to collect data on medical procedures during childbirth and, in cases of gynecological and obstetric violence, to undertake studies on the subject and to make them public.
- Disseminate the good practices promoted by the WHO and ask national medical associations to discuss this issue and make recommendations to prevent gynecological and obstetrical violence through a commission that promotes a caring approach in gynecology.
- Enact and implement legislation on informed consent and the rights to information of patients at various stages of medical procedures if this has not yet been done.
- Provide for a mechanism to examine complaints about gynecological and obstetrical violence excluding any mediation and provide sanctions against health care professionals when a complaint of obstetric violence is proven.
- Offer a support service to victims of gynecological and obstetric violence and assure the care is provided.

The CEDAW Committee on the case S.M.F. v Spain concerning communication n.138/2018 has released general recommendations on obstetric violence toward the State party that are compliant with the above mentioned. Particularly, the CEDAW Committee (2018), under art.,7 (3) of the optional protocol makes the following recommendation to the State party:

- Ensure women's rights to safe motherhood and access to appropriate obstetric services in accordance with general recommendation No. 24 (1999) on women and health. Provide women with information at each stage of childbirth and establish a requirement for their free, prior informed consent to be obtained for any invasive treatment performed during childbirth, except in situations where the life of the mother and/ or the baby is at risk, thereby respecting women's autonomy, and their capacity to make informed decisions about their reproductive health.
- Conduct research into obstetric violence in the State party to shed light on the situation and provide guidance for public policies to combat such violence.
- Provide obstetricians and other health workers with professional training on women's reproductive health rights.
- Ensure access to effective remedies in cases in which women's reproductive rights have been violated, including in cases of obstetric violence and provide training to judicial law enforcement personnel.
- The State party shall give due consideration to the views of the Committee 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, having them widely disseminated to reach all sectors of society.

All the international recommendations on obstetric violence urge member States to address the issue, to legislate and regulate, to conduct research, to make available redress and compensation mechanisms for victims. Member States who do not address obstetric violence legally fail their obligation to protect women's human rights.

6. THE 2016 ITALIAN LAW PROPOSAL THAT ANTICIPATED INTERNATIONAL RECOMMENDATIONS ON OBSTETRIC VIOLENCE

On 11 of March 2016 the Italian Deputy, Hon Adriano Zaccagnini (2016), submitted to the Italian Chamber of Deputies a law proposal on obstetric violence titled "Rules Protecting the Rights of Women and New-borns in Childbirth and Regulation for the Promotion of Physiological Birth". I was honoured to collaborate in drafting the law proposal since the beginning. It was designed taking in consideration the following:

- WHO statement on the prevention and elimination of disrespect and abuse during facility-based childbirth.
- 1985 and 1996 WHO recommendations on the appropriate technology for birth. In the law proposal there is a list of practices and related explanations, that should not be performed, protecting women's rights and dignity.
- The Venezuelan law and its' definition for obstetric violence.
- The human rights-based approach including the principle of accountability, transparency, and participation.
- Italian Health Institute guidelines on appropriate obstetric care.

At the time the law proposal was submitted to the Italian Chamber of deputies, the UN Special Rapporteur on violence against women report on obstetric violence and the Council of Europe Parliamentary Assembly resolution on obstetric gynecological violence didn't exist yet. Nevertheless, it anticipated the recommendation of both. It is important to highlight how birth activism in Italy and worldwide has played a crucial role in promoting the issue of a respectful maternity care (White Ribbon Alliance, 2011), raising awareness among mothers, and urging international human rights bodies and organization to address obstetric violence under a legal frame (Skoko, 2018). A month later the law proposal submission, Elena Skoko, researcher, writer, mother, and activist, launched a social media campaign called "*Bastatacere- le madri hanno voce*" through a Facebook® dedicated page where women were invited to share their experiences of childbirth (Skoko & Battisti, 2017). In 15 days, April 4-19, 2016, the campaign became viral, collecting thousands of testimonies and arousing the attention of the press. Hon Zaccagnini's law proposal was empowering for Italian women, legitimizing them to talk about the violence they had experienced (2016). The Italian law proposal was structured as follows:

- First chapter, art .1, promotes the respect of fundamental human rights of women and newborns, the appropriate use of medical interventions with the aim to reduce c-section rates, to reduce the surgical vaginal birth and all the harmful practices damaging physical and mental integrity of women, including verbal humiliation.
- The second chapter is dedicated to women rights and informed consent to medical treatments during labor and childbirth.

- There is a provision introducing the crime of obstetric violence as regulated and defined in Venezuelan law.
- Chapter 3 is dedicated to the newborn's rights.
- Chapter 4 states that regions and autonomous provinces of Trento and Bolzano, through the health system plans, according to economic and human available resources, must provide appropriate information to the woman about the physiological birth and must carry out models of care to enhance health and wellbeing of the mother and newborn, in the frame of the present law.
- Art. 23 states the accountability system for hospitals, calling for open, transparent, and easy to access online publications and dedicated web pages for the public.
- The national health system local unit should provide care givers with evaluation tools of their work, particularly when there are difficult cases with unfortunate health outcomes.
- To decrease litigation, lawsuit, and defensive medicine, the national health system local unit should use a disclosure system, emphasizing a transparent, respectful, and compassionate communication between families and care givers involved in unfortunate events. The user's and care giver's evaluation results will be published every year on the web site of each National Health System Local Unit.
- Every national health system local unit should provide every woman with a model birth plan that will be completed and updated during pregnancy by the woman in question with the support of a midwife.
- Every national health system local unit may designate family counseling already existing enhancing their services.
- Family counseling at a local level should be improved and strengthened to provide adequate information to childbearing women.
- Every national health system local unit should promote a dialogue between civil society at a local level, enhancing the role of the peer-to-peer volunteer mothers.

7. CONCLUSION

The gargantuan effort of the advocacy groups worldwide and the courage of mothers to report and testimony on abuse and disrespect during facility-based childbirth have led to a growing body of research, data, literature, and international human rights bodies documents. The next step is the accountability of Member States to legislate and regulate obstetric violence in order to fully protect women's human rights in the vulnerable moment of childbirth and post-partum. [The UN Special Rapporteur on violence against women and the Council of Europe resolution on obstetric and gynecological violence recommendation offer a valuable model to legislate and regulate properly on this issue.](#)

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