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## **The one that can (not) be named: obstetric violence**

### **Introduction**

Obstetric violence is a frequent phenomenon, situations of disrespect, neglect, abuse of power and inadequate treatment of pregnant women have become recurrent, and this occurs at an

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international level, that is, an abuse that affects women all over the world. This type of aggression includes physical, psychological and verbal mistreatment of pregnant women, and must be assessed by the competent bodies so that the necessary measures can be put in place. Thus, it is notable that the discussion on the subject is not only relevant, but also unavoidable, and should not be ignored by state bodies, which have a legal duty to ensure women's rights.

Furthermore, there have been repeated reports worldwide of negligence committed by health professionals against women, not only during childbirth, but throughout the pregnancy, childbirth and puerperium process, representing a violation of rights and preventing comprehensive, effective and quality care for pregnant women. This can be seen in the case of Alyne da Silva Pimentel Teixeira<sup>4</sup>, which was brought before the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a body linked to the UN, due to the lack of adequate medical care since the beginning of the complications presented by Alyne's pregnancy. CEDAW, which has the role of guaranteeing the protection and promotion of women's human rights at a universal level, therefore concluded that this represented discrimination, since it was exclusively a question of women's health and physical integrity.

The work has been divided into three main points: 1) What is obstetric violence; 2) Analysis of the 1979 Convention on the Elimination of All Forms of Discrimination against Women in the Brazilian context; 3) The one that must be named: Symbols and Legislation. Firstly, the concept of obstetric violence, the existing classes (physical, psychological, sexual, institutional, material and media violence) and their consequences will be discussed, including the analysis of reports from women who have already suffered this type of abuse. In addition, in topic one, there will be an approach from an international perspective with regard to the harmful treatment of pregnant women, and data will be compiled that proves the need to study obstetric violence, as this is a subject of worldwide relevance.

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<sup>4</sup> D. Simonovic, *A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence: note*, [digitallibrary.un.org/record/3823698?ln=en](https://digitallibrary.un.org/record/3823698?ln=en) [accessed: 12.12.2024].

Subsequently, the second section will then deal with the 1979 Convention on the Elimination of All Forms of Discrimination against Women, covering the history of its creation and the process of its development, including the list of articles that deal with pregnant women, highlighting what this treaty has highlighted and what it has not, critically pointing out the lack of legal provisions regulating and naming this type of violence, which continues to affect women at an international level.

Finally, point three concludes that there is no clear classification of obstetric violence, including in the Women's Convention itself, which is intended to protect women's rights in a broad context. Moreover, there is a lack of public policies aimed at curbing negligent actions directed at pregnant women. An international assessment shows that obstetric violence was introduced into legislation in several countries late and that in Brazil there is still no federal law regulating this abuse. Clearly, given the importance of the issue, obstetric violence needs to be incorporated into international treaties so that it is recognized worldwide as an offense against human dignity and a risk to the protection of women's rights.

### What is obstetric violence?

Obstetric violence is a broad concept that does not have a single and definitive classification, but it is possible to abstract a common essence from the doctrine that deals with certain subjects. Following the line of thought of Simoe Grilo Diniz *et al.*<sup>5</sup>, this type of violation has been recorded in the most diverse historical moments, even if it is a relatively new topic of scientific debate. Women's suffering in childbirth care, although under different names, usually has a strong impact on female lives and care treatments in the pregnancy-*puerperium* cycle of the period.

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<sup>5</sup> S.G. Diniz, H.O. Salgado, H.F.A. Andrezzo, P.G.C. Carvalho, P.C.A. Carvalho, C.A. Aguiar, D.Y. Niy, *Violência obstétrica como questão para a saúde pública no Brasil: origens, definições, tipologia, impactos sobre a saúde materna, e propostas para sua prevenção*, "Journal of Human Growth and Development" 2015, vol. 25, no. 3, pp. 1–2.

In the Brazilian context, the pioneering work to address this issue was *Espelho de Vênus* (Mirror of Venus), by the Ceres Group (1981), in the 1980s<sup>6</sup>, which was responsible for an in-depth study of women's traumatic experience of so-called institutionalized childbirth.

Based on the development of diverse studies around the world, this paper adopts a concept that better represents and characterizes obstetric violence itself. The Dossier *Parirás com dor*<sup>7</sup> developed a typification that could better encompass the various degrading situations suffered by pregnant women, women in labor, puerperal women or even women undergoing abortion procedures. This violence is evidenced by any act practiced by health professionals, technical-administrative staff of public and private institutions, civil servants and civilians that offends the sexual and reproductive health of the victim, who is represented by the pregnant woman, being the health professionals responsible for such violence.

It can be subdivided<sup>8</sup> into physical, psychological, sexual, institutional, material and mediatic violence. Physical violence is characterized by any action that compromises the integrity of the pregnant/ puerperal woman's body, resulting in damage or pain, which is not based on scientific evidence or the victim's consent. Psychological abuse is any verbal attack that makes the victim feel unhappy and damages her self-confidence (making her feel inferior, vulnerable, abandoned, unstable, afraid or insecure, for example).

Sexual violence, on the other hand, encompasses situations where the victim's dignity and intimacy are violated, hurting their sexual and reproductive rights, and may or may not be related to the handling of their private parts and sexual organs. Institutional and material violence, meanwhile, are linked to the violation of previously guaranteed rights of access to health, sometimes causing damage to the victim's material assets by charging for services that should be offered for free or that are unnecessary. Finally, mediatic violence are acts practiced by professionals through the media that aim to embarrass and control patients<sup>9</sup>.

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<sup>6</sup> *Ibidem*, p. 2.

<sup>7</sup> *Ibidem*.

<sup>8</sup> *Ibidem*.

<sup>9</sup> *Ibidem*.

It should be noted that the acts of aggression mentioned above are not only directed at women, but at all people capable of becoming pregnant and having an abortion, which includes transgender men, who also often face prejudice because of their gender identity. These subdivisions can occur together in several cases, since the patient can be the victim of more than one of these forms of obstetric violence. This type of violence can even be covered by the conceptualization of gender-based violence offered by Article 1 of the 1994 Convention of *Belém do Pará*, to which several countries, mainly in Latin America, are signatories<sup>10</sup>.

There are several examples and real cases of this situation, reports of mothers who have had their wishes ignored and fundamental rights denied in the most diverse countries of the world, for example, what happened in 2019 in Ireland, after the death of a mother and her baby in a local maternity hospital, which encouraged the report of a victim of obstetric violence on a national radio station, which subsequently, between April 2 and 10, was contacted by more than 1,000 victims willing to tell their stories<sup>11</sup>.

The scenario is not different in Brazil, since when analyzing the reports published by several victims of obstetric violence, found by a collective case study<sup>12</sup>, several factors are found in common, one of them being the fact that most of the pregnant women were not allowed to enter the delivery room together with a companion, who was barred, leaving the victim alone with the medical team,

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<sup>10</sup> Decreto nº 1.973, de 1º de agosto de 1996 promulga a Convenção Interamericana para Prevenir, Punir e Erradicar a Violência contra a Mulher, concluída em Belém do Pará, em 9 de junho de 1994, Brasília, DF, [planalto.gov.br/ccivil\\_03/decreto/1996/d1973.htm](http://planalto.gov.br/ccivil_03/decreto/1996/d1973.htm).

<sup>11</sup> Naciones Unidas. Asamblea General, *Enfoque basado en los derechos humanos del maltrato y la violencia contra la mujer en los servicios de salud reproductiva, con especial hincapié en la atención del parto y la violencia obstétrica*, Septuagésimo cuarto período de sesiones. Tema 26 a) de la lista preliminar: Adelanto de la mujer, Nota del Secretario General, 2019, [saude.mt.gov.br/wp-content/uploads/2019/09/Informe-completo-ESP-ONU-a-violencia-obstetrica-atenta-contra-os-direitos-humanos.pdf](http://saude.mt.gov.br/wp-content/uploads/2019/09/Informe-completo-ESP-ONU-a-violencia-obstetrica-atenta-contra-os-direitos-humanos.pdf).

<sup>12</sup> M.G. Matos, A.S. Magalhães, T. Féres-Carneiro, *Violência obstétrica e trauma no parto: o relato das mães*, "Psicologia: Ciência e Profissão" 2021, vol. 41, e219616, pp. 1–13.

a situation previously prohibited by Brazilian Law No. 11,108 of 2005. From this moment on, the victims describe the fear they felt and the way they were treated, often with brutality and coldness. In one of the accounts, the mother says she was hungry and thirsty when she felt an abrupt cut on her body, and when she asked what it was, the doctor remained silent. The procedure performed on her is known as an episiotomy, which is a surgical incision made by doctors and obstetric nurses in the area between the vagina and the anus of the pregnant woman to facilitate the baby's exit.

This is one of the most commonly used interventional practices around the world and is even considered a routine procedure in certain countries. However, the World Health Organization (WHO) recommends that institutions do not exceed a rate of 10% of episiotomies performed on a local basis, but this indication is not followed by many countries, as can be seen below:

[...] in France, it was performed in 19.9% of deliveries. In Colombia and Spain, the rate was 30.48% and 50%, respectively. A 2018 systematic review evaluating trends in episiotomy practice found a range from 5% in Denmark to over 90% in some Asian countries. In Brazil, it was 16%, varying according to parity: 27.40% in primiparous women and 3.40% in multiparous women. According to a national study carried out with data from the Rede Cegonha evaluation survey, the proportion of episiotomies was 27.7% in public hospitals, but with data self-reported by the parturient. In Brazil, this procedure is performed on 27.7% of women in public institutions and 39.4% in the private sector (translated by authors)<sup>13</sup>.

<sup>13</sup> Original: “[...] na França, ela foi realizada em 19,9% dos partos. Já na Colômbia e na Espanha, a taxa foi de 30,48% e 50%, respectivamente. Revisão sistemática de 2018, que avaliou tendências da prática de episiotomia, observou variação de 5% na Dinamarca até mais de 90% em alguns países asiáticos. No Brasil, foi de 16%, variando de acordo com a paridade: 27,40% nas primíparas e 3,40% nas múltíparas. Segundo estudo nacional realizado com dados da pesquisa da avaliação da Rede Cegonha, a proporção de episiotomia foi de 27,7% em hospitais públicos, mas com dados autorreferidos pela parturiente. No cenário brasileiro, esse procedimento é realizado em 27,7% das mulheres em instituições públicas e 39,4% no setor privado”. B.M. Aguiar, T.P.R. Silva, S.L. Pereira, A.M.M. Sousa, R.B. Guerra, K.V. Souza, F.P. Matozinhos, *Fatores associados à realização de episiotomia*, “Revista Brasileira de Enfermagem” 2020, vol. 73, suppl. 4, e20190899.

So far, there is no evidence to support the need for the use of episiotomy as a routine method. Although it is known that this procedure can cause various health risks for pregnant women, increasing the extent of perineal lacerations, increasing the risk of infections and hemorrhages, and may even result in pelvic floor dysfunction, dyspareunia, rectovaginal fistulas, among other harms<sup>14</sup>. In addition, carrying out this process without the consent of the parturient woman can cause her various traumas and emotional upheavals.

There is a big difference between performing a selective episiotomy and a routine one; the former is done only if necessary and the latter is treated as one of the usual cares of normal childbirth. According to William Beltrán *et al.*<sup>15</sup>, this practice is defended as a way of avoiding serious natural perineal trauma, which is any injury that occurs to the pelvic floor muscles during childbirth, by making a provoked incision so that this laceration does not occur. However, these lacerations may or may not occur, as they are a natural result of the female body itself. As such<sup>16</sup>, the use of this procedure to prevent such damage is not proven, showing that many health services stick to outdated methodologies that treat the woman as a mere vessel for carrying the baby, leaving aside the fact that it causes pain and suffering for the pregnant woman because it is an aggressive intervention and is often done without her consent, disrespecting the victim's will regarding her own body.

The routine or even excessive use of this practice is common in several countries, even though it is expressly contrary to WHO recommendations. According to Dubravka Simonovic<sup>17</sup> approximately 30% of women who opt for normal childbirth in Mexico undergo episiotomy. In Italy<sup>18</sup>, this technique is used in 50% of cases. Of

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<sup>14</sup> *Ibidem.*

<sup>15</sup> W.F.P. Beltrán, M. Duran, A. Mayra, R. Losada, M. Margarita, G. Maya, A. Maria, C. Orjuela, F. Rojas, *Episiotomía estado del arte. Una muestra conductual en los partos del Hospital Universitario Hernando Moncaleano Perdomo*, "Revista Médica de Risaralda" 2019, vol. 25, no. 1, pp. 40–43.

<sup>16</sup> B.M. Aguiar *et al.*, *Fatores associados...*, *op. cit.*

<sup>17</sup> D. Simonovic, *A human rights-based...*, *op. cit.*

<sup>18</sup> A. Battisti, E. Skoko, *Submission of the obstetric violence observatory in Italy to the UN special rapporteur on violence against women*, [ohchr.org/sites/default/files/Documents/Issues/Women/SR/ReproductiveHealthCare/OsservatorioViolenzaOstetricaItalia.pdf](https://ohchr.org/sites/default/files/Documents/Issues/Women/SR/ReproductiveHealthCare/OsservatorioViolenzaOstetricaItalia.pdf).

these victims of the procedure, 61% reported in particular that no one gave them adequate information about the episiotomy, which is why their consent was neither real nor valid. After this violence, 15% of these women said they had experienced the episiotomy as a mutilation of their genitals.

In Spain<sup>19</sup>, a study carried out in 46 Spanish hospital centers in 2006 revealed that 61.43% of births were carried out using episiotomy. This procedure was used in 54% of eutocic deliveries and 92% of instrumental deliveries.

In this context, the *Sentidos do Nascer* initiative (Senses of Birth initiative)<sup>20</sup> carried out a study with 555 Brazilian women, 70 of whom (12.6%) said they had been victims of obstetric violence and another 25 (4.5%) said they didn't even know if they had been victims. The alarming aspect of these cases is that they are not an isolated and rare phenomenon, but a recurring circumstance in the lives of many people, especially the economically disadvantaged, which often goes unnoticed because it is not identified as something unusual, or as a violation and offense.

In addition, based on the studies by Faneite, Feo and Toro Merlo<sup>21</sup> on this issue in Venezuela, the optics of this violence on the side of the medical staff were observed, with 63.6% of those surveyed reporting having witnessed the mistreatment of a pregnant woman: by the doctor in 42.8% of cases, followed by the nursing staff in 42.5% of cases. The research group analyzed 158 obstetricians, 115 nurses, 113 obstetrics residents, 66 others (both students, waitresses, transporters, etc.) (13.2%) and 48 general practitioners.

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<sup>19</sup> El Parto es Nuestro, *Mistreatment and violence against women during reproductive health care with a focus on childbirth*, 2019, [ohchr.org/sites/default/files/Documents/Issues/Women/SR/ReproductiveHealthCare/F%3B6delsehuset.pdf](https://ohchr.org/sites/default/files/Documents/Issues/Women/SR/ReproductiveHealthCare/F%3B6delsehuset.pdf).

<sup>20</sup> S. Lansky, K.V. Souza, E.R.M. Peixoto, B.J. Oliveira, C.S.G. Diniz, N.F. Vieira, R.O. Cunha, A.A.L. Friche, *Violência obstétrica: influência da Exposição Sentidos do Nascer na vivência das gestantes*, "Ciência & Saúde Coletiva" 2019, vol. 24, no. 8, pp. 2811–2824.

<sup>21</sup> J. Faneite, A. Feo, J. Toro Merlo, *Grado de conocimiento de violencia obstétrica por el personal de salud*, "Revista de Obstetricia y Ginecología de Venezuela" 2012, vol. 72, no. 1, pp. 4–12.

In this regard, it should be noted that Venezuela has a law that deals with obstetric violence in a different way to Brazil. The Venezuelan Organic Law on Women's Rights (Law No. 38.668 of April 23, 2007) was the first to use the term 'obstetric violence' and to characterize it in its article 51 as a form of gender violence, since it is based on the physical and moral inferiority of women as patients<sup>22</sup>.

A study was also carried out between 2015 and 2020 to identify, select and include publications on obstetric violence<sup>23</sup>. The results showed that disrespect and abuse during childbirth take different forms and are expressed differently by the women who experience it, and are found in all regions of the world.

Of the publications analyzed, seven (31.8%) came from Latin America, with the majority of them from Mexico (five of the seven Latin American publications). Five publications (22.8%) were from the African continent, 13.7% from the United States, 9% from Europe (all from France) and 9% from Asia (one from Iran and one from Sri Lanka). The remaining 13.7% of publications consisted of literature reviews or philosophical works, which did not focus on any specific country or geographical region.

Furthermore, it has been concluded that women belonging to minority groups face a greater risk of suffering obstetric violence. A study carried out in the United States revealed that 32.8% of indigenous women reported having been mistreated by health professionals, making them the minority group most likely to experience this type of violence. This figure was followed by 25% of Hispanic women and 22.5% of black women, while only 14.1% of white women reported experiencing obstetric violence. In addition, having a black partner was also identified as a factor that increased the likelihood of inadequate treatment during childbirth<sup>24</sup>.

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<sup>22</sup> V.A.R. Haacke, F.L. Malini, *Violência obstétrica: violência de gênero e ativismo online*, "Anais do V Seminário Comunicação e Territorialidades: comunicação, democracia e direitos humanos" 2019, vol. 1, no. 5.

<sup>23</sup> V. Perrotte, A. Chaudhary, A. Goodman, "At least your baby is healthy" *obstetric violence or disrespect and abuse in childbirth occurrence worldwide: a literature review*, "Open Journal of Obstetrics and Gynecology" 2020, vol. 10, pp. 1544–1562.

<sup>24</sup> *Ibidem*.

The situation described reflects the systemic discrimination faced by women not only in obstetric care, but also in society as a whole, where obstetric violence is a complex issue. This context emphasizes the need to address issues of equity and social justice within obstetric care, ensuring adequate and high-quality care for all women, regardless of their race, ethnic origin or social status.

Therefore, it is clear that this problem is not restricted to the Brazilian reality but is a worldwide demand that calls for an in-depth debate backed up by comprehensive legislation that can influence several countries. An example of this is the 1979 Convention on the Elimination of All Forms of Discrimination against Women, which deals extensively with ways of protecting the rights of this oppressed group and which, as far as obstetric violence is concerned, provides little specification.

### **Analysis of the 1979 Convention on the Elimination of All Forms of Discrimination against Women in the Brazilian context**

The 1979 Convention on the Elimination of All Forms of Discrimination against Women, also known as the Women's Convention (CEDAW)<sup>25</sup>, according to Professor Silvia Pimentel<sup>26</sup> is the first international treaty to deal with women's rights. The adoption of the Convention was the result of decades of international efforts. On two fronts, the Convention aims to promote and protect women's rights, seeking gender equality and repressing any kind of discrimination against women in the States Parties, through the comprehensive codification of international legal standards for women.

The treaty resulted from initiatives carried out within the UN Commission on the Status of Women (CSW), a body created in 1946 within the United Nations system, with the aim of analyzing and creating policy recommendations for the countries that signed the

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<sup>25</sup> Convention on the Elimination of All Forms of Discrimination against Women (1979), United Nations Entity for Gender Equality and the Empowerment of Women, [un.org/womenwatch/daw/cedaw/protocol/text.htm](http://un.org/womenwatch/daw/cedaw/protocol/text.htm).

<sup>26</sup> S. Pimentel, *Convenção sobre a eliminação de todas as formas de discriminação contra a mulher*, 1979, [onumulheres.org.br/wp-content/uploads/2013/03/convencao\\_cedaw.pdf](http://onumulheres.org.br/wp-content/uploads/2013/03/convencao_cedaw.pdf).

Convention, so that the status of women could be improved, giving visibility to this group<sup>27</sup>. Also, the Convention was based on the United Nations Charter, which expressly declares the equal rights of men and women, and on the Universal Declaration of Human Rights, which emphasizes the equal treatment of all individuals, with the same rights and freedoms, without any distinction.

In this context, as S. Pimentel<sup>28</sup> rightly points out, between 1949 and 1962 the Commission prepared numerous treaties with the aim of guaranteeing and promoting women's rights in a broad context, where these rights were considered vulnerable by the Commission. The treaties included: the Convention on the Political Rights of Women (1952); the Convention on the Nationality of Married Women (1957); the Convention on Consensual Marriage, Minimum Age for Marriage and Registration of Marriages (1962).

In 1967, the commission developed the Declaration on the Elimination of Discrimination against Women, which included in a single legal instrument international standards guaranteeing equal rights for men and women. However, the Declaration did not take effect as a treaty, as it did not establish obligations for states, but only had moral and political force.

A few years after this Declaration, in 1972, the Commission on the Status of Women<sup>29</sup> began to consider drawing up a treaty that would give the Declaration the force of law, an act driven by the World Plan of Action adopted by the United Nations World Conference on the International Women's Year in 1975. To put this idea into practice, a Convention on the Elimination of Discrimination against Women would be necessary, requiring effective procedures for its implementation. This was also influenced by the General Assembly, which declared 1976–1985 the United Nations Decade for Women.

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979. In approving the adoption of the Convention, the General Assembly expressed expectations of its rapid implementation.

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<sup>27</sup> *Ibidem.*

<sup>28</sup> *Ibidem.*

<sup>29</sup> *Ibidem.*

Consequently, sixty-four countries signed the Convention, and on September 3, 1981, thirty days after its ratification by the twentieth member nation, the Convention entered into force, so that by October 2005, there were already 180 member countries of the Women's Convention.

The CEDAW is known internationally as the Magna Carta of women's rights, which through the adoption of legal, political and programmatic measures makes it possible to achieve equality between men and women in political, economic, social and cultural life, thus making their advances effective. As jurist Flávia Piovesan states "The Convention is based on the dual obligation to eliminate discrimination and to ensure equality. The Convention deals with the principle of equality, either as a binding obligation or as a goal"<sup>30</sup>.

The Women's Convention has the duty to eliminate discrimination against women practiced by any person, organization, company and by the State itself, through the adoption of any and all appropriate measures.

However, Brazil<sup>31</sup> only ratified the treaty in 1984, following a decision by the National Congress on February 1, and the country faced a long process before the Convention became fully effective. The 1984 decree of the Presidency of the Republic decreed the Convention with reservations to some articles: art. 15 § 4, which guarantees men and women the right to freely choose their domicile and residence, and art. 16, § 1, a, c, g and h, which establishes equal rights for men and women in marriage and family relations. Thus, it was not until the end of 1994 that the Convention came into force in its entirety, and Brazil notified the Secretary General of the United Nations of the elimination of these reservations. Finally, in 2002, the 1984 decree was replaced by another, which guaranteed the full validity of the Convention.

Despite the long process of ratifying the Women's Convention in its entirety, this was a great achievement for Brazil, a historic milestone in the fight for women's rights and against any kind of

<sup>30</sup> F. Piovesan, *Temas de direitos humanos*, 7th ed., São Paulo 2014.

<sup>31</sup> Decreto nº 89.460, de 20 de março de 1984 promulga a Convenção sobre a Eliminação de Todas as Formas de Discriminação contra a Mulher, 1979, [assets-compromissoeatitude-ipg.sfo2.digitaloceanspaces.com/2012/08/Senado\\_CEDAWdecreto89460\\_20031984.pdf](https://assets-compromissoeatitude-ipg.sfo2.digitaloceanspaces.com/2012/08/Senado_CEDAWdecreto89460_20031984.pdf).

discrimination against this group. However, it is worth pointing out that the fight must be constant, as the treaty represents a major step towards guaranteeing equal treatment for men and women, but there are still many more achievements to be made so that women are respected in a context of equality.

In this respect, it is noteworthy that obstetric violence and the rights of pregnant women are addressed by the Convention (Decree Nº 4.377, 2002) in a broad manner in the following articles: Article 11, § 2 a, b, c and d, which provides for the preservation of women's rights in the event of marriage or maternity and to ensure the effectiveness of their right to work. In addition, Article 12 of the same provision ensures equal conditions between men and women, access to medical services, including those relating to family planning, and appropriate assistance in relation to pregnancy, providing free assistance when necessary.

In light of the above, it is clear that the convention has highlighted some of the rights of pregnant women, but it does not cover everything it should, especially when it comes to identifying obstetric violence. The lack of legal provisions and specific legislation represents a serious breach of women's rights, which need legal protection to be enforced and guaranteed by the state.

### The one to be named: symbols and legislation

As noted, even the 1979 Convention on the Elimination of All Forms of Discrimination against Women, which sought to guarantee rights to this minority group, failed to legislate on all types of violence against women, since it did not expressly classify the existence of obstetric violence as a serious threat to the physical and mental health of pregnant women, nor did it establish measures to protect them in an international context.

There are a number of difficulties regarding this issue<sup>32</sup>, such as the lack of a definitive definition on what types of acts constitute

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<sup>32</sup> R. Henriques, *Violência obstétrica: um desafio para saúde pública no Brasil*, "Página Grená: Publicações do Centro de Ensino e Pesquisa do IMS/UERJ" 2021, [ims.uerj.br/wp-content/uploads/2021/02/violencia-obstetrica\\_tatiana\\_henriques\\_pagina\\_grena\\_fev2021.pdf](https://ims.uerj.br/wp-content/uploads/2021/02/violencia-obstetrica_tatiana_henriques_pagina_grena_fev2021.pdf) [accessed: 12.12.2024].

an example of this violence, the disagreement over the use of this term, the lack of evidence regarding maternal and child harm and the shortage of public policies aimed at curbing these acts. As a result of this disagreement over its terminology<sup>33</sup>, an effective instrument to curb this practice has not been established in the Brazilian context, which also hinders the assessment of its complications in the lives of many women. Denying the use of the term 'obstetric violence' is the same as denying the existence of the issue itself.

Although this is a recent debate and a relatively new term<sup>34</sup>, the problem of obstetric violence is an old one, and is currently on the agenda due to the need to update legislation in this regard, as it has been ignored for a long time. This concept<sup>35</sup> emerged in Latin America and Spain around the 2000s, brought to the fore by feminist movements aimed at defending women's autonomy.

In terms of legislation, this term has already been accepted in some Latin American countries, such as Argentina, Venezuela and Mexico, making the perpetrators of this conduct criminally liable.

Argentina became a pioneer in this area with the enactment of Law nº 25,929 of 2004, known as the *Ley del Parto Humanizado*, which, although it did not directly use the term 'obstetric violence', was a historic milestone in terms of guaranteeing the rights of pregnant women, women in labor, puerperal women and their newborns<sup>36</sup>.

Nevertheless, Argentina's progress continued in 2009, with the promulgation of Law No. 26,485, known as the *Ley de protección integral para prevenir, sancionar y erradicar la violencia contra las mujeres en los ambitos en que desarrollen sus relaciones interpersonales*. With this law, the term 'obstetric violence' was mentioned and legally conceptualized for the first time in the country, in Article 6,

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<sup>33</sup> *Ibidem*.

<sup>34</sup> L. Katz, M.M. Amorim, J.C. Giordano, M.H. Bastos, A.V.M. Brillhante, *Who is afraid of obstetric violence?*, "Revista Brasileira de Saúde Materno Infantil" 2020, vol. 20, no. 2, pp. 623–626.

<sup>35</sup> *Ibidem*.

<sup>36</sup> L.V. Spacov, D.S. Silva, *Violência obstétrica: Um olhar jurídico desta problemática no Brasil*, "Derecho y Cambio Social" 2019, no. 55, pp. 485–499.

paragraph 'e', bringing with it the idea of dehumanized treatment of victims<sup>37</sup>.

Also noteworthy is the case of *Brítez Arce and Others vs. Argentina*, judged by the Inter-American Court of Human Rights, which issued a statement on January 18, 2023, holding the Argentine state responsible for the death and obstetric violence suffered by Cristina Brítez Arce, who was pregnant at the time of her death<sup>38</sup>.

The victim was a Paraguayan woman who was more than 40 weeks pregnant suffering from various risk factors and who always sought medical attention from the Argentine health system, but was not properly attended to. On June 1, 1992, Cristina Brítez Arce went to the hospital due to various pains, at which time she discovered through an ultrasound that her fetus was dead and that she would need to have an induced delivery<sup>39</sup>.

Labor lasted from 1:45 p.m. until 5:15 p.m., during which time Cristina had to wait for two hours in a chair. Then, according to the death certificate, at 6 p.m. on the same day, Cristina Brítez Arce died of a non-traumatic cardiorespiratory arrest. Subsequently, three criminal cases and one civil case were brought against Mrs. Brítez Arce, all of which were dismissed, and ten expert reports were presented.

In its ruling of November 16, 2022, the Inter-American Court reiterated that obstetric violence “encompasses all situations of disrespectful, abusive, negligent treatment or denial of treatment, during pregnancy and the preceding phase, and during childbirth or the puerperium, in public or private health centers”. As a result, it held that Argentina was responsible for violations of the rights to life, personal integrity and health (Articles 4.1, 5.1 and 26 of the American Convention on Human Rights) to the detriment of Ms. Brítez Arce.

This was because, among other arguments, the IA Court considered that she was in a particularly vulnerable condition, not only because

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<sup>37</sup> L.I. Díaz García, Y.M. Fernández, *Situación legislativa de la violencia obstétrica en América latina: el caso de Venezuela, Argentina, México y Chile*, “Revista de Derecho (Valparaíso)” 2018, no. 51, pp. 123–143.

<sup>38</sup> Brasil, Centro de Apoio Saúde Pública. Ministério Público do Paraná, *Caso Brítez Arce e Outros vs. Argentina: Corte IDH condena país por violência obstétrica*, Ministério Público do Estado do Paraná, 2023, [site.mppr.mp.br/direito/Noticia/Caso-Britez-Arce-e-Outros-vs-Argentina-Corte-IDH-condena-pais-por-violencia](http://site.mppr.mp.br/direito/Noticia/Caso-Britez-Arce-e-Outros-vs-Argentina-Corte-IDH-condena-pais-por-violencia) [hereafter as: CAOP–MPPR, 2023].

<sup>39</sup> *Ibidem*.

she was pregnant, but also because she had several risk factors – such as her age, a history of high blood pressure and a significant weight gain during pregnancy – which were not given due medical attention and which were not even informed to the patient. As a result, Mrs. Cristina did not receive adequate and specialized medical treatment during her pregnancy and at the time of delivery. Furthermore, she remained in labor for three hours with a dead fetus<sup>40</sup>.

This case was extremely emblematic for the Argentine state, which recognized its international responsibility in this case, confirming the facts and accepting the rights violations attributed to it. The IA Court also recognized and condemned Argentina for violating Article 07 of the Convention of *Belém do Pará*<sup>41</sup>, given the consequences for the victim's surviving children<sup>42</sup>.

Furthermore, as mentioned above, even though the discussion began earlier in Argentina, the term 'obstetric violence' was first

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<sup>40</sup> CAOP-MPPR, 2023, translated by us. Original: "O trabalho de parto durou das 13:45h até às 17:15h, sendo que durante esse tempo, a senhora Cristina teve de aguardar por duas horas em uma cadeira. Após, conforme informações da certidão de óbito, às 18 horas do mesmo dia, Cristina Brítez Arce faleceu devido a uma parada cardiorrespiratória não traumática. Posteriormente, quanto à morte da senhora Brítez Arce, foram instaurados três processos penais e um civil, que foram todos julgados improcedentes, sendo apresentados, no âmbito desses, dez relatórios periciais. Na sentença, de 16 de novembro de 2022, a Corte Interamericana reiterou que a violência obstétrica »abrange todas as situações de tratamento desrespeitoso, abusivo, negligente ou negação de tratamento, durante a gravidez e na fase anterior, e durante o parto ou puerpério, em centros de saúde públicos ou privados«. Por conta disso, entendeu que a Argentina seria responsável pelas violações dos direitos à vida, à integridade pessoal e à saúde (artigos 4.1, 5.1 e 26 da Convenção Americana sobre Direitos Humanos) em prejuízo da Sra Brítez Arce. Isso, porque, dentre outros argumentos, a Corte IDH considerou que ela se encontrava em uma condição de especial vulnerabilidade, não apenas por estar grávida, mas também por apresentar diversos fatores de risco – como sua idade, histórico de hipertensão arterial e aumento significativo de peso durante a gestação – aos quais não se deram a devida atenção médica e que até por conta disso não foram informados à paciente. Dessa maneira, a Sra Cristina não obteve um tratamento médico adequado e especializado durante sua gestação e no momento do parto. Ademais, ela permaneceu três horas em trabalho de parto de um feto morto".

<sup>41</sup> Decreto nº. 1.973, de 1º de agosto de 1996, *op. cit.*

<sup>42</sup> CAOP-MPPR, 2023.

legally conceived in Venezuela in 2007, with Law n°. 38.668, called the *Ley Orgánica Sobre el Derecho de las Mujeres*. The term is presented among 15 other typifications of forms of violence against women and criminalized in art. 52 of this law, in which 5 types of criminal actions are defined as obstetric violence. This legislation also sets out the applicable sanctions and civil reparations for victims, demonstrating the strong progress made in this field in the country<sup>43</sup>.

Finally, Mexico is also taking a stand against obstetric violence. The country has a number of federal and state laws dealing with this issue, but only a few of the federal states have a standard for eradicating violence against women. The 2007 federal law, known as the General Law on Women's Access to a Life Free of Violence, does not expressly use the term 'obstetric violence', but it does aim to prevent, punish and eradicate all types of violence against women in general. In addition, the term is present in some state regulations in the federal states of Chiapas, Veracruz and Guerrero. In their legislation, Obstetric Violence is conceptualized and criminalized, as well as various sanctions for its punishment according to the specific case<sup>44</sup>.

However, compared to these Latin American countries, in Brazil there is still no federal law that addresses this abuse<sup>45</sup>, there is only legislation at the state level, for example, Law n° 18.322, of January 5, 2022, of Santa Catarina and Law n° 16.499, of December 2018, of Pernambuco, which recognize the term 'obstetric violence' and establish measures to combat it. Although this term is often recognized, many people are against its use.

An example of this opposite movement<sup>46</sup> is the fact that the Brazilian Ministry of Health itself, on May 3, 2019, issued a statement against the use of this term as it considered it inappropriate, since

<sup>43</sup> L.I. Díaz García, Y.M. Fernández, *Situación legislativa...*, *op. cit.*

<sup>44</sup> *Ibidem.*

<sup>45</sup> L. Katz, M.M. Amorim, J.C. Giordano, M.H. Bastos, A.V.M. Brillhante, *Who is afraid...*, *op. cit.*

<sup>46</sup> *Violência obstétrica: CNS se posiciona contra extinção do termo, proposta pelo Ministério da Saúde*, Conselho Nacional de Saúde, Governo Federal, 2019, [conselho.saude.gov.br/ultimas-noticias-cns/588-violencia-obstetrica-cns-se-](https://conselho.saude.gov.br/ultimas-noticias-cns/588-violencia-obstetrica-cns-se-) [accessed: 12.12.2024].

it was a term that added no value and would offend medical society by representing situations of intentional use of force, which does not represent all occurrences in this sense. In view of this, the National Health Council intervened, recommending that the ministry stop any process of excluding the expression 'obstetric violence' from documents, regulations, technical notes and others, as it is a term used by several countries around the world and by the World Health Organization (WHO) itself.

The importance of using the term 'obstetric violence' is even more evident when compared to European countries that have adopted this terminology. As mentioned, Spain was one of the pioneering countries in adopting this concept, due to activist movements in favor of humanized childbirth. *El Parto es Nuestro*<sup>47</sup>, a feminist non-profit association founded in 2003 and based in Spain, conducted a local survey in 2015 that revealed cesarean rates far above the 25% recommended by the WHO, indicating that care does not always follow medical criteria. Often, during childbirth, hospital logistical needs, such as freeing up beds or adjusting shifts, are prioritized over the health of the woman and baby.

Obstetric violence often manifests through medical procedures such as episiotomies or cesareans performed without physiological justification<sup>48</sup>. European countries, such as Spain, have made significant strides in recognizing and addressing obstetric violence. Spain's proactive stance has highlighted the need for legal frameworks that explicitly address the types of violence suffered by women during pregnancy, labor, and the postpartum period.

It is therefore extremely important to establish this term internationally in legislation with supra-legal force, in order to establish a way of criminalizing such actions. As happened in the case of *Alyne da Silva Pimentel Teixeira v. Brazil*<sup>49</sup>, in which the committee of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a body linked to the UN, judged the

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<sup>47</sup> *El Parto es Nuestro, Mistreatment and violence against women...*, *op. cit.*

<sup>48</sup> S. Villarme, *A philosophy of birth: if you want to change the world, change the conversation* [version 1; peer review: 2 approved, 1 approved with reservations], Open Res Europe 2021, doi.org/10.12688/openreseurope.13333.1.

<sup>49</sup> D. Simonovic, *A human rights-based approach...*, *op. cit.*, p. A/74/137.

case of a Brazilian woman who died due to obstetric negligence by the Brazilian health system. The country was held responsible for what happened, as the committee assessed that there had been an inadequate use of resources and ineffectiveness in the application of state public policies that should protect this section of the population.

Furthermore, by naming a conduct in the form of a law, its existence is admitted in reality and makes it necessary for it to be regulated in order to protect fundamental rights. After all<sup>50</sup>, in order for violence to be reported, it needs to be recognized as such. Formalizing these acts as violence allows techniques that were previously used as natural, through this recognition, to be perceived as violations of the parturient's autonomy.

This issue is similar to the legal protection offered to women in Brazil with the *Lei Maria da Penha* (Law nº 11.340/06) and the *Lei do Feminicídio* (Law nº 13.104/15), which criminalized acts against the life, physical and psychological integrity of women. These criminal laws<sup>51</sup> offer a response to a structural problem, which can have the most diverse causes, not necessarily reducing its occurrence, but presenting people with a conduct that is no longer acceptable.

Even if these normative provisions create an apparent protection of the rights of a certain minority group, they are not enough on their own to change the intrinsic prejudices of criminal law itself. Their great importance is highlighted by the symbolism that comes from recognizing the need for this punishment<sup>52</sup>.

In this way, they are mainly symbolic in nature<sup>53</sup> aiming to show society's and the state's intolerance of this violence against women, regardless of whether or not the measures to contain it are

<sup>50</sup> T.D.V. Castro (Coord.), *Violência obstétrica em debate: diálogos interdisciplinares*, Rio de Janeiro 2019.

<sup>51</sup> C.M.R. Borges, B.A.A. Razera, *Paradoxos feministas: o discurso punitivista contra a violência de gênero*, "INTERthesis: Revista Internacional Interdisciplinar" 2021, vol. 18, nº 1, pp. 1–23.

<sup>52</sup> *Ibidem*.

<sup>53</sup> E.T. Gindri, M. de Nardin Budó, *A symbolic function of criminal law and its appropriation by feminist movement in the discourse of combating violence against*, "Revista Direitos Fundamentais & Democracia" vol. 19, no. 19, pp. 236–268.

effective, the central focus is naming the problem so that it can be recognized in reality. Through these laws, cases of violence against women have been given more prominence, showing the population their frequency and enabling the effective safeguarding of women through protective measures and the support network for women in this situation.

The naming of these forms of violence is a form of resistance to the disregard for the lives of women in a context of gender violence. Naming such an institute does not focus on punishment, because as can be seen in the femicide scenario, the deaths were already being punished as homicides; however, it is necessary to emphasize the gender of the victims and the motivation of these hate crimes, as a way of not only punishing, but also to apprehend<sup>54</sup>. This is because naming violence as a way of apprehending not only records the fact as a number or statistic, but as a recognition of the violence bound by the gender order.

Therefore, naming obstetric violence as a form of gender oppression is extremely necessary, even more so if the concept is introduced in an international treaty, which upon ratification obliges signatory countries to obey it.

This argument explains why states often ratify international treaties without intentions or capacities to enforce them. (2) Ratification of human rights treaties, however, makes states vulnerable to social pressures from monitoring bodies: IGOs, international and domestic NGOs, and domestic social groups. Their strategies to influence states' behavior can take different forms: coercion, persuasion, social punishment, and social reward, to name a few. In this article, We emphasize the complexity of these pressures and demonstrate how strategies that challenge the states' social status on both international and domestic levels become paths for promoting states' compliance with international human rights treaties<sup>55</sup>.

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<sup>54</sup> D. Diniz, B.S. Costa, S. Gumieri, *Nomear feminicídio: conhecer, simbolizar e punir*, "Revista brasileira de ciências criminais, Revista dos Tribunais Online" 2015, vol. 23, no. 114, pp. 225–239.

<sup>55</sup> O. Avdeyeva, *When do states comply with international treaties? Policies on violence against women in post-communist countries*, "International Studies Quarterly" 2007, vol. 51, issue 4, pp. 877–900.

It is clear that this coercion encourages countries that have ratified treaties to follow them, and this pressure exerted by them is useful for maintaining and guaranteeing the implementation of public policies linked to these requirements.

But in order for a country to follow an international treaty, it must first be a signatory to it and ratify it in its legal system. A major obstacle is that each country follows a different ratification process to make the treaty a reality. In Brazil, for example<sup>56</sup>, after negotiations between the representatives of the countries that intend to sign the treaty, the treaty is sent to the National Congress to analyze its content, and is initially discussed by the Chamber of Deputies. If approved<sup>57</sup>, it is sent to the Federal Senate, which approves it, transforms it into a Legislative Decree and sends it for publication. The Executive Branch is tasked with ratifying the treaty or not, in a non-mandatory way, as it is a discretionary matter for the State, deciding whether or not to submit to the conditions of that international convention. Once it has been approved and ratified, the next step is promulgation by means of a decree published in the Federal Official Gazette by the President of the Republic.

However, an international treaty should only be ratified if it is consistent with the legislation of the signatory country. If, as a condition for its ratification, the country limits certain articles of the treaty in such a way as to de-characterize its main intention, as in the case of the 1979 Convention on the Protection of Women, it has no reason to ratify it. According to Sofia Rajab<sup>58</sup>, on the African continent, countries such as Egypt, Libya, Tunisia, Mauritania and Niger, in the process of ratifying this Convention, had reservations about articles 2 and 16, which deal with issues related to gender equality in marriages and family relationships, because these are countries

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<sup>56</sup> L.B.R. Floriani, L.F. Santos, *A hierarquia dos tratados internacionais e seus reflexos jurídicos e extrajurídicos*, "Revista Direitos Sociais e Políticas Públicas (UNIFAFIBE)" 2019, vol. 7, no. 1, pp. 250–276.

<sup>57</sup> *Ibidem*.

<sup>58</sup> S. Rajab, *The challenges of implementing international treaties: a case study of gender constitutionalism in Kenya*, doctoral dissertation, University of Nairobi, 2016, [erepository.uonbi.ac.ke/handle/11295/98825](https://erepository.uonbi.ac.ke/handle/11295/98825) [accessed: 12.12.2024].

that perpetuate the belief that male figures should have positions of superiority within these relationships. Therefore, it is clear that these countries do not agree with the purpose of the Convention, and it makes no sense to ratify it. After all, the signatory states that ratify this treaty must do so in compliance with the protection measures contained in Articles 2 and 16, because these are basic issues of the Convention, without which the treaty would be mischaracterized. For this reason, in order to become a signatory, a country must agree with the ideas propagated by these fundamental provisions, and it makes no sense to ratify only on paper, without actually applying the ideals of the CEDAW.

Consequently, even if each country follows a different procedure and some are not ready to ratify certain treaties, it is still important that some issues are protected by these international treaties, because the recognition of obstetric violence as a real and international problem is already a big step towards changing behavior regarding abusive practices that are often not recognized as such. The symbolic nature of having a term like this in an international legislation with such strength as a fundamental rights treaty is the first step towards combating obstetric violence around the world. Even if some countries are not ready to comply with the convention, just having an international normative provision on the subject already highlights its importance for the lives of many women around the world.

### Final considerations

It can be seen that several advances have been made with regard to women's rights around the world, especially since the 1979 Convention on the Elimination of All Forms of Discrimination against Women, even though it still does not clearly address the problem of obstetric violence. As such, there is still a long way to go before truly achieving a global protection of the body and autonomy. As analyzed when dealing with the concept of obstetric violence, women are often still seen and treated as mere instruments (objects) for a certain purpose, in this case, giving birth. Thus, in many cases they are seen as mere incubators, their rights are not respected, and their

power of choice is left aside in the context of childbirth, at which point the parturient woman's will is no longer taken into account and she must submit to someone else's understanding of her body.

Considering this evident lack of respect for women's fundamental rights, there is a clear need for a provision that can protect their rights more effectively, and there is nothing more symbolic than an international treaty that has been a milestone in the consolidation of women's rights covering this issue. Therefore, this work supports the idea that if there were a rule naming obstetric violence as one of the forms of violence against women in the 1979 Convention on the Elimination of All Forms of Discrimination against Women, it would represent a major step forward in terms of protecting this group in one of its most vulnerable moments, which currently does not receive due visibility. Even if such conduct is not initially criminally prosecuted, the symbolism that comes from the inclusion of the term 'obstetric violence' in international legislation already represents recognition of the problem that must be combated and is the first step towards a more humanitarian childbirth and the protection of this group that has been forgotten by the national and international legislation.

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## Abstract

### The one that can (not) be named: obstetric violence

Obstetric violence is a recurring problem that affects many women all over the world. Obstetric violence is any action or omission directed at a woman during prenatal care, childbirth or the puerperium, which ends up causing unnecessary pain or suffering to the pregnant woman. These acts include acts carried out without her clear consent, demonstrating a violation of her autonomy, physical and mental integrity. The purpose of this paper is to analyze obstetric violence and its correlation with the 1979 Convention on the Elimination of All Forms of Discrimination against Women. The major problem regarding obstetric violence stems from the lack of specific provisions on this type of vio-

lence, even in the 1979 Convention, which aimed to protect women in a broad context. There is a gap in this international treaty regarding this type of abuse, with no clear definition on this topic. It is important to emphasize that there are several variables to be considered, one of which is social inequality itself, in which women in precarious income conditions are more likely to be victims of obstetric violence, given the discrepancy between the public and private health systems. Furthermore, the rates of occurrence of this phenomenon vary from country to country, as does the legislation on the subject. As this is a serious violation of fundamental rights, especially public health and human dignity, the Convention on the Elimination of All Forms of Discrimination against Women will be analyzed in the context of obstetric violence. In this scenario, the article will have the following specific objectives: a) to define obstetric violence; b) to analyze the International Convention; c) to point out the importance of defining and characterizing this phenomenon at international level. For this purpose, the methodology used in this work is deductive, making use of qualitative research, with documentary and descriptive analysis. Therefore, there will be a reflection on the possible presentation of a proposal to update the international treaty to resolve these gaps, naming and characterizing obstetric violence correctly, as it is an extremely important issue for the protection of women's sexual and reproductive rights.

**Key words:** obstetric violence, pregnant women, violence, 1979 convention on the elimination of all forms of discrimination against women