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Commentary

Obstetric violence: a Latin American legal response to mistreatment during childbirth

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Over the last several years, a new legal construct has emerged in Latin America that encompasses elements of quality of obstetric care and mistreatment of women during childbirth – both issues of global maternal health import.[1–3] Termed 'obstetric violence', this legal construct refers to disrespectful and abusive treatment that women may experience from healthcare providers during pregnancy, childbirth and the postpartum period,[4,5] as well as other elements of poor quality care, such as failure to adhere to evidence-based best practices.[6] This new legal term emerged out of concerted efforts by women's groups and networks, feminists, professional organisations, international and regional bodies, and public health agents and researchers to improve the quality of care that women receive across the region.[7,8] In Latin America, the intense scrutiny these groups brought to mistreatment of women during pregnancy and childbirth resulted in the development of a legal framework addressing it – one which specifically locates 'obstetric violence' at the nexus of gender-based violence and clinical malpractice, and interweaves elements of both respectful treatment and quality care.

Initially, the movement around obstetric violence grew out of a focus on quality of care. The Latin American Centre for Perinatology, Women and Reproductive Health [a division of the Pan American Health Organization (CLAP/WH-PAHO)] disseminated evidence-based practices during labour and delivery[9] in the region, which increased health professionals' knowledge of the benefits of continuous support during labour and delivery, and eventually led to the passage of laws in Argentina and Uruguay that provided women with the right to be accompanied by a birth companion of their choosing.[10] These two initial laws paved the way for a broader legal focus on the experiences of women during childbirth in the region. Whereas Argentina subsequently passed a law on obstetric violence, Uruguay did not take further steps. The five countries who have since implemented legislation addressing obstetric violence have chosen to do so in slightly different ways, but the similarities suggest a shared regional legislative approach that may provide useful lessons for other countries seeking to use legal avenues to combat mistreatment of women during childbirth. Three of these approaches are discussed in detail below, and all five are summarised in Table 1.[11–15]

In 2007, Venezuela became the first country in Latin America to develop legislation around 'obstetric violence', a term that encompasses such diverse concepts as disrespectful and abusive treatment of women during pregnancy, childbirth and the postpartum period; unconsented and nonmedically indicated care; and negligence during obstetric emergencies.[6,12] Of note, Venezuela's legislation explicitly interprets obstetric violence within the context of gender-based violence, and stipulates that eliminating obstetric violence is critical to ensuring that women can live a life free of violence.

Argentina uses a combination of two laws to combat obstetric violence, which draw on concepts from women's rights and gender-based violence legislation.[7,11] National Law 25,929, enacted in 2004 and finally regulated in 2015, calls for 'humanised childbirth' and explicitly emphasises the rights of women, newborns, birth companions and families.[16] In addition, Argentina followed the pathway of Venezuela and in 2009 enacted the National Law 26,485 (regulated in 2010), which prevents and sanctions gender violence, and includes a specific article on obstetric

Table 1. Latin American countries with laws concerning obstetric violence

Country	Year	Summary of legal rights
Venezuela (Boliviarian Republic of)[11]	2007	**Law Number 38,668, Articles 15.11 and 51** Defines obstetric violence as the 'appropriation of women's bodies and reproductive processes by health professionals, expressed as dehumanising treatment and/or abusive medicalisation and pathologisation of natural processes, resulting in loss of autonomy and the capacity to decide freely about their own bodies and sexuality, negatively impacting women's quality of life.' Provides specific examples of actions that constitute obstetric violence, including failing to provide timely and effective care during obstetric emergencies, intervening to accelerate labour without the woman's express voluntary informed consent, and performing a nonmedically indicated caesarean section without the woman's express voluntary informed consent
Argentina[12]	2009	**Law Number 26,485, Article 6** Defines obstetric violence as 'exercised by health personnel over a woman's body and reproductive processes, expressed as dehumanising treatment, and/or abusive over-medicalisation and medicalisation of the natural processes, in conformity with Law 25,929.' Guarantees a woman the right to be treated as a healthy, informed, decision-making participant in her own labour, delivery and postpartum period; to have a natural birth that respects her timing and natural processes; to be accompanied by a trusted birth companion of her choosing throughout the entirety of labour, delivery and the postpartum period; to room in with her newborn; and to receive counselling and support for breastfeeding
Bolivia (Plurinational State of)[13]	2013	**Law Number 348, Articles 7 and 8** Guarantees women the right to a life free from violence, including 'violence against reproductive rights' and 'violence in health services,' defined as 'actions or omissions that impede, limit or otherwise violate women's right to information, orientation, comprehensive care and treatment during pregnancy or miscarriage, labour, birth, postpartum period, and breastfeeding' and 'any discriminatory, humiliating, or dehumanising action, and anything which omits, negates or restricts access to immediate, effective care and timely information, committed by health personnel, that puts the life and health of women at risk,' respectively
Panama[14]	2013	**Law Number 82, Article 4** Guarantees women the right to a life free of violence, including obstetric violence, which is defined as 'exercised by health personnel over women's bodies and reproductive processes, expressed as abusive, dehumanising, humiliating or vulgar treatment.' **Article 27.3** Early detection and attention to all types and modalities of violence against women, essentially in primary health care, emergencies, clinical specialty, obstetrics, gynaecology, traumatology, paediatrics and mental health, specifying the procedure to be followed for the attention of women victims of violence, safeguarding the privacy of the person assisted and promoting a nonsexist medical practice. This procedure must ensure the obtaining and preservation of probative elements
Mexico City, Mexico[15]	2014	**Law Number 180: 2007 modified 2014, Article 6–7** Defines obstetric violence as 'all actions or omissions by medical and health professionals that damages, harms, denigrates or causes the death of the woman during pregnancy, birth and the postpartum period.' Penalises obstetric violence and also negligence, nonmedically indicated caesarean section, sterilisation and/or use of contraceptive methods without voluntary consent, and anything that interferes with the early bonding of the mother and infant (including breastfeeding) without medical cause

violence.[11] Hence, Argentina's legal framework builds on that of Venezuela to guarantee a broader set of rights to the childbearing woman, the newborn and their family.

In contrast, the Plurinational State of Bolivia does not explicitly mention obstetric violence, but rather develops a legislative framework around violence within health services that includes a special focus on pregnant and childbearing women. In addition, the law defines a new term, 'violence against reproductive rights' that extends beyond Argentina and Venezuela's definitions to include miscarriage and breastfeeding.[13]

To date, there has been no comprehensive evaluation of these laws published in the literature, but there are some early signs that can be used to inform how to orient and evaluate implementation, process and effectiveness. For example, in Venezuela, the National Institute for Women developed a triptych brochure defining obstetric violence, detailing who can report it, and indicating which institutions receive complaints.[17] In addition, the Ministry of Popular Power for Women and Gender Equality has begun recruiting community promoters to be incorporated into the National Humanised Delivery Plan.[17] Bolivia has

incorporated questions about obstetric violence into the 2016 National Survey of the Prevalence and Characteristics of Violence Against Women.[18] In Argentina, the Buenos Aires Provincial Ombudsman's Office has begun developing intervention protocols for cases of obstetric violence and receiving complaints.[19] Of note, the first trial for a case of obstetric violence in that country is currently being brought and tried.[20]

These laws offer a potentially promising approach to responding to obstetric mistreatment, a phenomenon that appears to be pervasive across many settings. Though the exact prevalence of treatment that would qualify as obstetric mistreatment is unknown, studies from Tanzania and Brazil report figures >70% whereas figures from five European countries are around 20%.[21–23] This suggests that the prevalence may be widespread and that obstetric violence may present challenges to guaranteeing quality maternal care in a variety of different contexts. Though on the one hand the use of legislation with consequent criminalisation is controversial and could generate significant pushback from the medical community, on the other hand, legislation also creates an enabling environment for those seeking to engender change and improve the quality and dignity of intrapartum care. Discussion of the benefits and drawbacks of such legislation deserves to be had within the scientific community, to ultimately develop a path forward for guiding and evaluating the implementation, process and effectiveness of multi-faceted approaches to eliminating mistreatment.

The passage of these laws is a good start, as they empower women and families to claim their rights to health care without discrimination. The legal concept of obstetric violence can serve as a framework for combating systemic failures in proper implementation of quality maternal care (including obstetric mistreatment) by encouraging women to take their cases of rights violation to the courts and clearly delineating responsibilities and obligations to healthcare providers. Long-term improvements will require collaborative, multi-sector efforts with healthcare institutions developing new guidelines and accountability procedures, advocacy groups informing women of their rights in obstetric settings, legal and human rights organisations developing case law to refine the legal framework, and public health researchers documenting and monitoring women's experiences of care. Legislation alone will not solve the problem of maternal mistreatment, but it provides a solid foundation on which to build societies that protect the human right to dignified, quality maternity care.

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