



Report by  
HUMAN RIGHTS IN CHILDBIRTH

to the

**UN Working Group on the issue of discrimination against  
women in law and in practice**

in response to Call for Submissions issued on UNHCHR website:  
Women Deprived of Liberty

01 October 2018

## Table of Contents

<b>About Human Rights in Childbirth</b> .....	3
<b>About our Submission</b> .....	3
<b>Submission</b> .....	4
<b>II. Other institutions</b> .....	4
<b>1. Common practices of detention in medical facilities</b> .....	5
<b>1. Pregnant women forced to give birth in medical institutions</b> .....	8
<b>II. Decision-Making Processes for Institutionalisation</b> .....	11
<b>Decision making process within medical facilities</b> .....	11
<b>Decision making process regarding issues of forced hospital birth</b> .....	11



*Photo by Šiauliai County DAC / Homeland and policeman Modestas Petrokas. The picture portrays a police officer immobilizing a pregnant woman on the delivery table.*

*This happened on 5 September 2018 in a Lithuanian hospital after the health care providers requested the intervention of the police as the woman was refusing to deliver her baby on the birthing table. It was reported that the woman was forcibly placed on the delivery table.<sup>1</sup>*

<sup>1</sup> As reported on <https://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/siauliu-patru liai-iskviesti-i-gimdyma-medikai-nesusitvarke-su-emocinga-gimdyve-59-1026226>

## About Human Rights in Childbirth

Human Rights in Childbirth (HRIC) was founded in The Hague in 2012 with the vision to protect and fulfil the full spectrum of women's rights in pregnancy and childbirth. Our organization does this by galvanizing the most important stakeholders in maternity care from the legal and medical professions, to advocacy and community groups to make human rights a reality for pregnant and birthing women around the world. By local or regional partner invitation, we share information and connect the international with the regional and local. We do this by always putting women and their lived, personal experiences at the centre of human rights in childbirth discourse.

HRIC's legal advocacy ranges from convening multi-stakeholder conferences, building multi-stakeholder support networks and legal expertise, reporting on mistreatment of women in pregnancy and childbirth and strategic intervention in legal cases and parliamentary inquiries so that we may educate and raise awareness of human and legal rights in childbirth.

## About our Submission

HRIC is concerned about a generalised disregard for pregnant women's human/reproductive rights, and particularly a worldwide phenomenon consisting of the illegitimate deprivation of liberty or movement for causes related to pregnancy. While a human rights approach to health care in childbirth is paramount to achieving gender equality, the current *modus operandi* of medical institutions is one based on authoritarian and coercive practices deeply rooted in a patriarchal and hegemonic medical system.<sup>23</sup> One of the main obstacles to addressing issues of deprivation of liberty and denial of women's agency over their own bodies during pregnancy and childbirth is the fact that the practice is naturalised and lacking visibility.<sup>4</sup> In addition, the issues are fuelled by the wrong perception that the foetus' right to life justifies medical interventions without the mother's consent.<sup>5</sup>

In view of the above, we wish to bring to your attention the matter of illegitimate deprivation of liberty or movement in medical facilities for causes related to pregnancy. We will do so by responding to Section II "*Other Institutions*" of the questionnaire of the Working Group on the issue of discrimination against women in law and in practice: Women Deprived of Liberty.

---

<sup>2</sup> To expand on the issue of medical authority and power in childbirth, see for instance, Baker et al.: 'I Felt as though I'd been in Jail'. *Feminism & Psychology* Vol. 15(3): 315–342.

<sup>3</sup> Briceno Morales X, Enciso Chaves LV, Yepes Delgado CE. Neither Medicine Nor Health Care Staff Members Are Violent By Nature: Obstetric Violence From an Interactionist Perspective. *Qual Health Res.* 2018;28(8):1308-1319.

<sup>4</sup> As suggested by the anthropologist Robbie Davis-Floyd in her book *Birth as an American Rite of Passage*, deprivation of liberty and movement during childbirth are often based on cultural beliefs rather than medically justified. Davis-Floyd, Robbie E. *Birth as an American Rite of Passage: Second Edition, With a New Preface*. 2nd ed., University of California Press, 2003.

<sup>5</sup> Kukura, E., Choice in Birth: Preserving Access to VBAC. *Penn State Law Review*, 2010. 114(3): p. 959-99.

# Submission

## II. Other institutions

1. *What other institutions outside the justice system exist in your country wherein women and girls are institutionalized on grounds such as care, correction, protection and prevention against potential harms, etc.? Please list the groups of women and girls who are most concerned in each situation.*

We wish to bring to the attention of the Working Group an issue that is complex in nature due to the various discrimination factors that intersect in connection with the provision of maternity care. This report focuses on issues of illegitimate deprivation of liberty and movement for causes related to pregnancy, a human rights violation that is affecting pregnant women across the world regardless of their economic status, race, religion, marital status, educational background, etc. However, it is important to notice that when discrimination factors intersect, the violations of human rights in childbirth are worse and more likely to happen.<sup>6 7</sup>

The World Health Organisation (WHO), while addressing the broader issue of disrespect and abuse during facility-based childbirth in a Statement released in 2014<sup>8</sup>, has warned of worldwide medical practices amounting to *“outright physical abuse... coercive or unconsented medical procedures (including sterilization), ... failure to get fully informed consent, ... gross violations of privacy, ... and detention of women and their newborns in facilities after childbirth due to an inability to pay”*, among other abusive practices. With this report, we aim to denounce and assist the Working Group to deepen its understanding in this regard.

---

<sup>6</sup> *“Coercive policies directed toward pregnant women may be disproportionately applied to disadvantaged populations. In cases of court-ordered cesarean deliveries, for instance, most court orders have been obtained against women of color or of low socioeconomic status. In a review of 21 court-ordered interventions, 81% involved women of color and 24% involved women who did not speak English as a first language (22). Likewise, a systematic review of more than 400 cases of coerced interventions found that most cases included allegations against low-income women (23).”* Committee opinion, Committee on Ethics, American College of Obstetricians and Gynecologists (ACOG), Number 664, June 2016. Available online (<https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/Refusal-of-Medically-Recommended-Treatment-During-Pregnancy>)

<sup>7</sup> The World Health Organisation has warned that *“Among others, adolescents, unmarried women, women of low socioeconomic status, women from ethnic minorities, migrant women and women living with HIV are particularly likely to experience disrespectful and abusive treatment”*. WHO Statement on The prevention and elimination of disrespect and abuse during facility-based childbirth, WHO/RHR/14.23 © World Health Organization 2015.

<sup>8</sup> Ibid, available online

([http://apps.who.int/iris/bitstream/handle/10665/134588/WHO\\_RHR\\_14.23\\_eng.pdf;jsessionid=9F267D5C92CE857479A65191EC48979D?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/134588/WHO_RHR_14.23_eng.pdf;jsessionid=9F267D5C92CE857479A65191EC48979D?sequence=1))

# 1. Common practices of detention in medical facilities

- a. **Limits in allowing new mothers and newborns to dismiss themselves from medical institutions when they consider it appropriate:** When healthy new mothers determine that they do not longer need to use health care services after delivery and express their intention to leave the institution, they are often discouraged to do so by health care providers. In many cases providers use coercive tactics to deter women from leaving the structure prior to the established date of externation. These tactics range from suggesting that patients simply do not have the right to leave the structure to threatening with the involvement of social services or the police, thereby suggesting that women may harm themselves or their own babies.<sup>9</sup> In the United States pregnant women who have a past history with or current struggle with substance use disorder have been forcibly confined in hospital to detain her foetus for inpatient drug treatment.<sup>10</sup> In Mexico, women who wish to leave before physicians deem it appropriate, they must request paperwork for a “voluntary dismissal”.<sup>11</sup> Women may wait for hours for the social worker to appear with the appropriate paperwork. In Mexico additionally women are told they are not allowed to leave the hospital without a family planning method inserted (options are IUDs and implants). Even if women say they will return, are single mothers or simply opt not to choose a method they are informed they cannot leave until she accepts a method.<sup>12</sup>
- b. **Detention of mothers and newborn in healthcare facilities for lack of payment:** A common practice in many developing countries is the undue detention of mothers and newborns for weeks or months, if they cannot afford the hospital charges.<sup>13</sup> Recent examples are found in Burundi, Cameroon, the Democratic Republic of Congo, Ghana, Kenya, Nigeria, the Philippines and Zimbabwe.<sup>14</sup>
- c. **Restraint of women in the lithotomy position and restrictions on movement during labour** While there is no medical reason to confine a healthy labouring woman to a hospital bed, this is a widespread practice across the globe. Delivery beds are equipped with stirrups and straps meant to hold and tie up the labouring woman's legs in order to restrain movement in the lithotomy

---

<sup>9</sup> Rice, Xan. Kenyan mothers too poor to pay for treatment locked up in hospital. (2009)

<https://www.theguardian.com/world/2009/aug/13/kenya-maternity-poverty-detained-hospital>

<sup>10</sup> Stone, Rebecca. "Pregnant Women and Substance Use: Fear, Stigma, And Barriers To Care". *Health & Justice*, vol 3, no. 1, 2015. Springer Nature, doi:10.1186/s40352-015-0015-5. Accessed 2 Sept 2018.

<sup>11</sup> Castro and Erviti. Violations of Reproductive Rights during Hospital Births in Mexico. *Journal of Health and Human Rights*, vol. 7, no. 1, 2003.

<sup>12</sup> Ibid

<sup>13</sup> Khosla R, Zampas C, Vogel JP, Bohren MA, Roseman M, Erdman JN. International Human Rights and the Mistreatment of Women During Childbirth. *Health and Human Rights*. 2016;18(2):131-143. Available online <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5394989/>

<sup>14</sup> Devakumar D, Yates R. Medical Hostages: Detention of Women and Babies in Hospitals. *Health and Human Rights*. 2016;18(1):277-282. Available online <https://www.hhrjournal.org/2016/01/medical-hostages-detention-of-women-and-babies-in-hospitals/>

position.<sup>15</sup> A 2015-2016 survey in Argentina, indicates that 4 out of 10 women could not move during labour, and 7 out of 10 were not allowed to move during delivery.<sup>16</sup> In Spain, a 2016 survey indicates that 55,7% of the labouring women were denied their request to walk and 74,7% of them were confined to a bed during delivery.<sup>17</sup> Similarly, a Croatian report<sup>18</sup> found that 76% of women there were forced to lie down for the entire duration of their labour and birth.<sup>19</sup> While freedom of movement is a fundamental right, studies also show that it may be critical to a successful birth experience<sup>20</sup>. The most recent case we learned about, took place last month in a Lithuanian hospital, where medical staff, with the assistance of the police, forced a woman to give birth on the delivery table flat on her back against her will.<sup>21</sup>

- d. **Locking of labour wards:** While there is no medical reason to do so, it has been reported to us that in many countries medical structures lock their labour wards, constraining women to labour within the walls of one locked and often crowded room. It has also been claimed that under these circumstances, hospital staff confiscates the labouring women's belongings, especially communications devices such as cellular phones. We have learned that some medical providers unlock doors if they receive payment to do so.<sup>22</sup>
  
- e. **Limiting visitors in labour, delivery and postpartum wards:** Medical institutions often deny entrance of those chosen by the labouring woman to be by their side during one of the most vulnerable moments of their life. In Slovakia ethnic minority Roma women are denied companionship while labouring in racially segregated maternity wards.<sup>23</sup> In Argentina for instance, 3 out of 10 women are *“left without reliable interlocutors and without witnesses of what happens*

---

<sup>15</sup> See for instance the statements by the Spanish association “El Parto es Nuestro”

<https://www.elpartoesnuestro.es/blog/2010/03/08/el-disparatado-mundo-de-las-mesas-de-parto>; and [https://www.elpartoesnuestro.es/sites/default/files/2010/03/analisis-biomecanico-de-la-mesa-de-parto1\\_0.pdf](https://www.elpartoesnuestro.es/sites/default/files/2010/03/analisis-biomecanico-de-la-mesa-de-parto1_0.pdf)

<sup>16</sup> Observatorio de Violencia Obstétrica (OVO) Argentina, Agrupación Las Casildas, final report on its 2015-2016 “survey on maternity care” based on 4,939 reported births.

<sup>17</sup> Observatorio español de Violencia Obstétrica (OVO), Asociación El Parto es Nuestro, report dated 25 November 2016. Available online <https://www.elpartoesnuestro.es/sites/default/files/public/OVO/informeovo2016.pdf>

<sup>18</sup> Roda - Parents in Action. Survey on Maternity Services in Croatia, 2015. Available at [http://www.roda.hr/media/attachments/udruga/dokumenti/analize\\_izvjestaji/Survey\\_on\\_Maternity\\_Services\\_Croatia\\_2015.pdf](http://www.roda.hr/media/attachments/udruga/dokumenti/analize_izvjestaji/Survey_on_Maternity_Services_Croatia_2015.pdf)

<sup>19</sup> The 2017 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his visit to Croatia, has also warned of this practice. Report available online (<http://www.roda.hr/media/attachments/udruga/dokumenti/reakcije/342567581-lzjava-posebnog-izvjestitelja-UN-a-o-Hrvatskoj.pdf>)

<sup>20</sup> See Gupta JK, Sood A, Hofmeyr GJ, Vogel JP. Position in the second stage of labour for women without epidural anaesthesia. Cochrane Database of Systematic Reviews 2017, Issue 5. Art. No.: CD002006. DOI: 10.1002/14651858.CD002006.

<sup>21</sup> As portrayed in the picture above.

<sup>22</sup> Women, Mothers, Bodies: Women's Human Rights in Obstetric Care in Healthcare Facilities in Slovakia. English summary. ed. Janka Debreceniova. Authors: Kristina Babiakova, Janka Debreceniova, Miroslava Hlincikova, Zuzana Kriskova, Martina Sekulova, Sylvia Sumsalova. Open Society Foundation; 2015.

<sup>23</sup> Women, Mothers, Bodies: Women's Human Rights in Obstetric Care in Healthcare Facilities in Slovakia. English summary. ed. Janka Debreceniova. Authors: Kristina Babiakova, Janka Debreceniova, Miroslava Hlincikova, Zuzana Kriskova, Martina Sekulova, Sylvia Sumsalova. Open Society Foundation; 2015.

*in her delivery*"<sup>24</sup> This happens even more often to women giving birth by caesarean section<sup>25</sup> who are often denied a companion in the operating theatre and postoperative ward.<sup>26</sup> We note that support persons are not only essential for the emotional wellbeing of the mothers but also, and most importantly, because they are witnesses and advocates for the pregnant women's rights and can effectively prevent cases of deprivation of liberty and movement.<sup>27</sup>

- f. **Hospitalisation of full-term pregnant women for extended periods of time to "await" labour:** There is no medical reason to hospitalise a healthy pregnant woman<sup>28</sup>, yet in settings of economic incentives to fill beds, women are illegitimately deprived of their liberty through unnecessary hospitalisation.<sup>2930</sup>
- g. **Shackling of pregnant prisoners:** as noted above, intersecting discrimination factors, can worsen the childbirth experience. It is for instance, the case of pregnant prisoners in labour, who are shackled to their beds and put in a situation that may amount to torture.<sup>31</sup> Their need for physical movement is illegitimately restricted based on their status of being a pregnant prisoner.<sup>32</sup>

---

<sup>24</sup> According to the Obstetric Violence Observatory Argentina. Observatorio de Violencia Obstetrica (OVO) Argentina, Agrupacion Las Casildas, final report on its 2015-2016 "Survey on maternity care". The report state that 3 out of 10 of the surveyed women were deprived of their right to be accompanied by a person of their choice.

<sup>25</sup> Almeida, Adaiana Fátima et al. "SEPARAÇÃO DA MULHER E SEU ACOMPANHANTE NO NASCIMENTO POR CESÁREA: UMA VIOLAÇÃO DE DIREITO". *Cogitare Enfermagem*, vol 23, no. 1, 2018. Universidade Federal Do Parana, doi:10.5380/ce.v23i1.53108. Accessed 2 Sept 2018.

<sup>26</sup> According to the Obstetric Violence Observatory Argentina. Observatorio de Violencia Obstetrica (OVO) Argentina, Agrupacion Las Casildas, final report on its 2015-2016 "Survey on maternity care". It is reported that, while 3 out 10 women were not allowed to have a companion during vaginal delivery, 4 out 10 women were left without a companion during c-section.

<sup>27</sup> We note, for instance, the experience of a doula in the USA, who stated that "*her job could be better described as a "bodyguard." Rather than offering comfort measures or encouragement at births, she felt she was really there to keep her clients safe, to protect their physical autonomy, to shield them from being victimized, and failing that, to stand as a witness to their abuse*". See the article online ([https://broadly.vice.com/en\\_us/article/evqew7/obstetric-violence-doulas-abuse-giving-birth](https://broadly.vice.com/en_us/article/evqew7/obstetric-violence-doulas-abuse-giving-birth))

<sup>28</sup> Maloni, Judith A. "Lack of Evidence for Prescription of Antepartum Bed Rest." *Expert review of obstetrics & gynecology* 6.4 (2011): 385–393. *PMC*. Web. 8 Sept. 2018. Available online <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3226811/>

<sup>29</sup>Manzano-Santaella, Ana, 2003. "'Bed-blocking": an Evaluation of the Role of Financial Incentives in the Community Care (Delayed Discharges etc. ) Act 2003", Ph.D. Thesis, The University of Leeds School of Sociology and Social Policy, Leeds, UK. Available at: <https://core.ac.uk/download/pdf/40054999.pdf>

<sup>30</sup> Elizabeth Kukura, Contested Care: The Limitations of Evidence-Based Maternity Care Reform, 31 *Berkeley J. Gender L. & Just.* 241 (2016).

<sup>31</sup> UN Comm. against Torture, Conclusions and Recommendations, United States of America, 33, U.N. Doc. CAT/C/USA/CO/2 .

<sup>32</sup> See <https://www.thecut.com/2018/03/these-states-still-allow-shackling-inmates-during-childbirth.html>

# 1. Pregnant women forced to give birth in medical institutions

- a. **Detained by the police for attempting a home birth and escorted to hospital:** contrary to the fact that birth is a normal physiological process pertaining to the private sexual life of the pregnant person, there are many cases of labouring women being treated as criminals for birthing or attempting to birth their babies at home. This practice evidences a cultural belief that birth is pathogenic and dangerous as well as portraying pregnant women as lacking the capacity to take sound decisions in relation to their health and the health of their foetuses/babies.<sup>33</sup>
- b. **Mandatory evacuation of pregnant women from remote locations:** In some countries, policies oblige pregnant women living in remote places to relocate near a hospital when they are close to their due date. A famous example is the case of First Nations people in Northern Canada<sup>34</sup> and Australia<sup>35</sup>.
- c. **Prohibition to give birth outside of medical institutions:** Some countries orchestrate a *de facto* illegitimate detention of pregnant women in medical facilities by (i) criminalizing and punishing those who attempt or give birth outside of the structures, in particular when the birthing process results in a bad outcome<sup>36</sup>; or (ii) forbidding independent healthcare providers to assist out of hospital births.<sup>37</sup> By doing so, the state effectively sends the message that birth outside medical institutions is forbidden.<sup>38</sup> In both cases, the state forces pregnant women to present themselves in hospitals to give birth. We are also concerned about governments actions to discourage birth outside medical structures through conditioning to institutional births the allowance of maternity leave benefit or child cash transfer and other social supports, forcing thereby low income women

---

<sup>33</sup> For example, in 2016, a woman in Spain was escorted by the police to the hospital after her doctor alerted authorities that she was in disagreement with his medical advice and refused the proposed intervention. The woman was forced to undergo induction of labour when she was 40 weeks pregnant after her health care provider requested a court order to do so. (<http://www.elmundo.es/sociedad/2016/07/04/577a57c922601d4d448b4617.html>)

<sup>34</sup> Karen Lawford, R.M., A.M., Understanding the Experiences and Processes of Health Canada's Evacuation Policy for Pregnant First Nations Women in Manitoba, 2017. Available online [https://ruor.uottawa.ca/bitstream/10393/36816/3/Lawford\\_Karen\\_2017\\_thesis.pdf](https://ruor.uottawa.ca/bitstream/10393/36816/3/Lawford_Karen_2017_thesis.pdf).

See also Government of Nunavut (Canada), Department of Health and Social Services. *Nunavut Maternal Newborn Health Care Strategy 2009 – 2014*. Available: [https://www.gov.nu.ca/sites/default/files/files/Maternal%20strategy\\_ENG.pdf](https://www.gov.nu.ca/sites/default/files/files/Maternal%20strategy_ENG.pdf)

<sup>35</sup> Kildea, Sue et al. "Improving Maternity Services For Indigenous Women In Australia: Moving From Policy To Practice". The Medical Journal Of Australia, vol 205, no. 8, 2016, pp. 374-379. Australasian Medical Publishing Co. Pty Ltd. (Ampco), doi:10.5694/mja16.00854. Accessed 1 Oct 2018.

<sup>36</sup> In Argentina for instance, a couple was prosecuted for manslaughter because their baby died subsequent to its delivery at home. We have not heard of a similar prosecution after a bad outcome at a hospital. <https://www.lanacion.com.ar/1921854-parto-domiciliario-inedito-juicio-por-la-muerte-de-una-beba-en-neuquen>

<sup>37</sup> For example, in Argentina a new bill of rights that would forbid midwives to attend births out of institutions is pending parliamentary debates at the Congress. See the informative video by women against this project "Agrupación Nosotras parimos, nosotras decidimos" . <https://www.youtube.com/watch?v=mdRXUfUJOPg>

<sup>38</sup> In 2013, Aja Teehan sued the Ireland Health Services for prohibiting her to have a home birth as she wished. The Irish High Court ruled against her. <http://aimsireland.ie/how-and-where-your-baby-is-born-who-gets-to-decide/>, and <http://homebirthireland.com/category/home-birth-services/>



to give birth at hospital.<sup>39</sup> We are also concerned that due to intersectional discrimination experienced in hospitals in combination with lack of access to racially-concordant birth care providers, ethnic minority, low-income and indigenous women experience even more severe access issues to out of hospital birth.<sup>40</sup> Obstacles to the issuance of certificates of birth and other identifications documents for children born at home, have also come to our attention.<sup>41</sup> This practice also aims to limit women's right to liberty in that it may function as a deterrent to give birth outside medical structures. In December 2009, Anna Ternovszky, a national of Hungary seeking a homebirth, brought her case to the European Court of Human Rights since the legal framework in her country was unclear and deterred medical providers to assist her. The Chamber Judgement considered that "*legal uncertainty prevented [her] from giving birth at home*".<sup>42</sup> In other States, the deprivation of liberty and agency over their own bodies is legally allowed by provisions according to which, women are simply not authorized to give birth out of the institutions.<sup>43</sup>

- d. **Coerced medical interventions that require hospitalisation**, we have learned of cases of women being forced to undergo induction of labour<sup>44</sup> and major surgery (c-section) on grounds of potential risks to the life of the foetus.<sup>45</sup> While in most of these cases, the medical need for these interventions is moot to say the least, pregnant women, as every capable human being, have the authority to make decisions over their own body, even if those decisions would signify a risk to their own life or that of the foetus. However, health care providers under the perception that women are not capable or simply do not have the right to make such decisions, are forcing women to undergo invasive medical procedures they do not want. Major surgery, when not medically justified amount to a severe injury to the body not to speak about the heightened risk of morbidity and mortality for both mother and baby. However, to force women who prefer to wait for a natural delivery, doctors use the same coercive tactics described above (ie. misinformation

---

<sup>39</sup> Homedes, N., & Ugalde, A. (2009). Twenty-Five Years of Convolved Health Reforms in Mexico. PLoS Medicine, 6(8), e1000124.

Chant, S. (2008). The 'Feminisation of Poverty' and the 'Feminisation' of Anti-Poverty Programmes: Room for Revision? The Journal of Development Studies, 44(2), 165-197.

Smith-Oka, V. (2013). Shaping the motherhood of indigenous Mexico. Nashville: Vanderbilt University Press. Complete ethnography focussing on Oportunidades and cash transfer

<sup>40</sup> See <https://www.nytimes.com/2018/02/14/opinion/pregnancy-safer-women-color.html>

<sup>41</sup> See for instance, El Kotni, M. and A. Ramírez-Pérez (2017). Certificates that Recognize, Certificate that Monitor. Birth Certificates and the Control of Midwifery in Chiapas. Available online

([https://www.researchgate.net/publication/323109494\\_Certificates\\_that\\_Recognize\\_Certificate\\_that\\_Monitor\\_Birth\\_Certificates\\_and\\_the\\_Control\\_of\\_Midwifery\\_in\\_Chiapas](https://www.researchgate.net/publication/323109494_Certificates_that_Recognize_Certificate_that_Monitor_Birth_Certificates_and_the_Control_of_Midwifery_in_Chiapas))

<sup>42</sup> See the Chamber's Press release on Ternovszki v. Hungary dated 14/12/2010, available online <https://hudoc.echr.coe.int/fre-press#%7B%22fulltext%22:%7B%22ternovszky%22%7D%7D>. The judgement became Final on 14/3/2011. See Court decision online, <https://hudoc.echr.coe.int/eng#%7B%22dmdocnumber%22:%7B%22878621%22%7D%22itemid%22:%7B%22001-102254%22%7D%7D>

<sup>43</sup> "The "no home birthing" policy exacerbates the already alarming health conditions in the country and burdens the poor women more. The root causes of maternal deaths and poor maternal health are the pervasive and entrenched poverty and inequality in the country." See

<http://ibon.org/2016/03/no-home-birthing-policy-burden-to-filipino-mothers/>

<sup>44</sup> In 2016, a woman in Spain was allegedly forced to undergo induction of labour when she was 40 weeks pregnant after her health care provider requested a court order to do so. The woman was escorted by the police to the hospital.

(<http://www.elmundo.es/sociedad/2016/07/04/577a57c922601d4d448b4617.html>)

<sup>45</sup> Diaz-Tello, F., Invisible wounds: obstetric violence in the United States. Reprod Health Matters, 2016. 24(47): p. 56-64.

regarding the health status of mother and baby, mistreatment, threats to involve child protective services or the police, etc). To cite an example, the case of Rinat Dray in the USA made headlines as she decided to sue her maternity care providers for performing a c-section against her will. Ms. Dray intended to have a Vaginal Birth After 2 Caesareans (VBA2C), but her doctor did not agree to this and when she refused to undergo the surgery he did it anyways. Her physician wrote in her medical records: "*The woman has decisional capacity. I have decided to override her refusal to have a c-section*". On April 4, 2018, a mid-level New York appeals court ruled against Ms. Dray, perpetuating the violations of her human rights on the basis that "*the state interest in the well-being of a viable foetus is sufficient to override a mother's objection to medical treatment*".<sup>46</sup> In some cases, when women stand upon their right to informed refusal of medical treatment, health care providers resort to the justice system and very often they are successful in obtaining a court order authorising the procedure. In 2014, Adelir Carmen Lemos de Goés, a Brazilian woman, was forced to undergo an unwanted c-section after her medical providers obtained a court order to do so. The woman was escorted by the police to the hospital in Torres, Brazil.<sup>47</sup>

---

<sup>46</sup> The decision is available online at <http://www.courts.state.ny.us/courts/ad2/Handdowns/2018/Decisions/D54973.pdf>

<sup>47</sup><http://g1.globo.com/rs/rio-grande-do-sul/noticia/2014/04/justica-determina-que-gravida-faca-cesariana-contravontade-no-rs.html>.

## II. Decision-Making Processes for Institutionalisation

**2. Please explain the decision-making process for the institutionalization of women and girls in each situation, including the role of women and girls themselves in the decision on institutionalization. Please highlight any good practices in terms of enabling women to exercise agency within institutional systems, with due respect to their rights?**

### Decision making process within medical facilities

With regard to the first group identified in the section above as “*Common practices in medical facilities*”, the decision-making process to illegitimately deprive pregnant women of their liberty is under the exclusive control of the medical institution. Many of these illegitimate detentions that are disguised as provision of health care, are the result of hospital policies and protocols. Hospital rules are alien to a gender-based approach and fail to comply with international human rights standards. Individual health care providers (such as doctors, nurses and midwives) also play a significant role as they execute policies and protocols that result in overmedicalization, but also when their actions are based on their own personal and cultural beliefs. In particular, when those beliefs are embedded in a patriarchal social structure that is reluctant to incorporate a gender and human rights approach to maternity care and pregnancy in general.

### Decision making process regarding issues of forced hospital birth

In relations to the groups mentioned in the section “*Pregnant women forced to give birth in medical institutions*”, while medical providers have mostly a reporting role in decision making, other state actors are also involved. Police actions are critical to ensure transport of the pregnant woman from home to hospital as well as in shackling labouring prisoners. In the case of the forced caesarean section and other interventions, the justice system is involved at the request of medical providers, to issue court orders authorising the practice in individual cases. Regarding the case of mandatory evacuation of pregnant women from remote location and the prohibition to give birth outside of medical institutions, there is a direct role by the government in the form of *de facto* or *de iure* provisions precluding women to give birth outside medical facilities, as described in the previous section.