Mental Health and Vulnerable Populations in the Era of COVID-19: Containment Measures Effects on Pregnancy and Childbirth[*]

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I. INTRODUCTION

The COVID-19 pandemic has had, and will continue to have, a profound impact on the human rights of everyone across the world. It has particularly affected, as always, the most vulnerable groups and sectors. The pandemic and the measures adopted by governments have worsened the existing inequalities for women and girls and discrimination of other marginalized groups such as persons with disabilities and those in extreme poverty.

Disease outbreaks affect women and men differently in all areas, from health or economy to security or social protection. Efforts to stop the spread of COVID-19 are disproportionately affecting women.[1] For example, the closure of schools as a measure to control transmission has a differential effect on women, who provide most of the informal care within families,[2] with the consequence of limiting their work and economic opportunities[3] while the confinement measures increase the risk of intimate partner violence and other forms of domestic violence due to heightened tensions in the household.[4]

Besides this, emergency response also "means that resources for sexual and reproductive health services may be diverted to deal with" the new challenge.[5] Many pregnant women have been or are isolated at home, apprehensive about clinic exposure or unable to access vital health services because of lockdowns.[6]

Labor and childbirth are psychologically significant events in the life of women, with a known neurobiological and hormonal basis, strongly influenced by sociocultural contexts.[7] During the last three decades, the issue

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1. Gabriela Salas, *The Pandemic Is Disproportionately Affecting Women—Here's Why*, NAT'L WOMEN'S HEALTH NETWORK (Sept. 9, 2020), https://www.nwhn.org/the-pandemic-is-disproportionately-affecting-women-heres-why/ [https://perma.cc/UH39-7VDA].

2. *Id.*; U.N. Secretary-General, *Policy Brief: The Impact of COVID-19 on Women*, 13–16 (Apr. 9, 2020), https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/policy-brief-the-impact-of-covid-19-on-women-en.pdf?la=en&vs=1406 [https://perma.cc/JQ9J-N8UR].

3. Salas, *supra* note 1; U.N. Secretary-General, supra note 2, at 4–9.

4. *The Shadow Pandemic: Violence Against Women During Covid-19*, UN WOMEN, https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19 [https://perma.cc/U6NF-5CNM].

5. U.N. Population Fund, *COVID-19: A Gender Lens*, 4 (Mar. 2020), https://www.unfpa.org/sites/default/files/resource-pdf/COVID-19_A_Gender_Lens_Guidance_Note.pdf [https://perma.cc/7RCR-UFXU].

6. Salas, *supra* note 1; U.N. Secretary-General, *supra* note 2, at 10.

7. AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, COMMITTEE OPINION NO. 729, IMPORTANCE OF SOCIAL DETERMINANTS OF HEALTH AND CULTURAL AWARENESS IN THE DELIVERY OF REPRODUCTIVE HEALTH CARE (Jan. 2018), https://www.acog.org/clinical/clinical-

of disrespect and abuse against women during childbirth has been placed on the global public health agenda.[8] Efforts to improve childbirth have been mainly focused on eradicating disrespectful care, especially after the shocking revelations about "Cruelty in Maternity Wards" in the 1950s United States..[9] "In addition to this important agenda," the attention on the "dignified care of newborns, who also deserve basic human rights," has recently increased.[10] As Christine Morton and Penny Simkin say, "Respectful maternity care focuses on eliminating disrespectful care; the adoption of safe, respectful care practices; health maintenance for all (not just the richest, sickest, or most at risk); and preservation and support of the physiological processes that unfold during pregnancy, birth, and early parenting."[11]

In 2018, World Health Organization (WHO) recommendations on intrapartum care for a positive childbirth experience considered "the concept of experience of care as a critical aspect of ensuring high-quality labour and childbirth care and improved woman-centred outcomes, and not just complementary to provision of routine clinical practices."[12]

Respectful maternity care begins well before pregnancy. "Women's mental health is predominantly [ ] supported . . . by relational, experiential[,] and material factors."[13] Some associated risk factors described include high anxiety levels during pregnancy, the fear of delivery, instrumental deliveries and the perceived lack of intrapartum care, the absence of the chosen birth companion, the lack of consent to certain interventions, or scarce interaction with the health professionals involved.[14] These issues persist after the

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guidance/committee-opinion/articles/2018/01/importance-of-social-determinants-of-health-and-cultural-awareness-in-the-delivery-of-reproductive-health-care [https://perma.cc/E9ZK-TZ4B].

8. *See generally* World Health Org. [WHO], *Statement on the Prevention and Elimination of Disrespect and Abuse During Facility-Based Childbirth*, WHO/RHR/14.23 (2015), https://apps.who.int/iris/bitstream/handle/10665/134588/WHO_RHR_14.23_eng.pdf [https://perma.cc/4H39-U7L9].

9. GD Schultz, *Cruelty in Maternity Wards*, LADIES HOME J., May 1958, at 44–45, 152–55.

10. Emma Sacks & Mary V. Kinney, Commentary, *Respectful Maternal and Newborn Care: Building a Common Agenda*, 12 REPROD. HEALTH 46 (2015), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4460639/pdf/12978_2015_Article_42.pdf [https://perma.cc/TYR8-4BJC].

11. Christine H. Morton & Penny Simkin, Commentary, *Can Respectful Maternity Care Save and Improve Lives?*, 46 BIRTH 391, 391 (2019).

12. World Health Org. [WHO], *WHO Recommendations: Intrapartum Care for a Positive Childbirth Experience*, at 1 (2018), https://apps.who.int/iris/bitstream/handle/10665/260178/9789241550215-eng.pdf [https://perma.cc/78MS-935D].

13. Wendy L.M. Franks et al., *Women's Mental Health During Pregnancy: A Participatory Qualitative Study*, 30 WOMEN & BIRTH 179, 185 (2017).

14. Jesús Sánchez-Montoya & Graciela Palacios Alzaga, *Trastorno de Estrés Postraumático en el Embarazo, Parto y Posparto*, 1 MATRONAS PROFESIÓN 12, 14–15 (2007).

pregnancy as well. According to available data, maternal mental health problems—as postpartum depression, anxiety, and posttraumatic stress disorder—affect up to 20% of women after childbirth.[15]

All of these circumstances have increased during the health crisis created by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). In addition to this already stressful set of circumstances, many hospitals have implemented a number of restrictions and interventions during childbirth that are not based on any scientific evidence, disrespecting women's dignity.[16]

II. HEALTH AND HUMAN RIGHTS OF WOMEN

Health and human rights are so intrinsically linked that health cannot be improved if rights are not upheld, and rights cannot be realized without the pre-condition of good health. The right to health is both dependent on and essential for the attainment of other human rights.

A. Human Right to Health: International Protection Overview

As early as 1946, the Constitution of the WHO recognized that the enjoyment of the highest attainable standard of health is "one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition," and that "[h]ealth is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."[17] The attainment by all peoples of the highest possible level of health was the objective of this Organization, being one of the functions to achieve the objective: "to promote maternal and child health and welfare and to foster the ability to live harmoniously in a changing total environment."[18]

Two years later, the Universal Declaration of Human Rights proclaimed that "[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services."[19] It is the right to the enjoyment of the highest attainable standard of physical and mental health,

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15. Hua Li et al., *Maternal Mental Health: A Shared Care Approach*, 17 PRIMARY HEALTH CARE RSCH. & DEV. 175, 175 (2015).

16. Michelle Sadler et al., Commentary, *COVID-19 as a Risk Factor for Obstetric Violence*, 28 SEXUAL & REPROD. HEALTH MATTERS 1, 2 (2020).

17. World Health Org. [WHO] Constitution, July 22, 1946, 62 Stat. 2679, 14 U.N.T.S. 185.

18. *Id.* at art. 2(1).

19. G.A. Res. 217 (III) A, art. 25, § 1, Universal Declaration of Human Rights (Dec. 10, 1948).

usually named the right to health. It also specifically stated that "[m]otherhood and childhood are entitled to special care and assistance."[20]

The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights;[21] and both the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[22] and the 1990 Convention on the Rights of Child specified it.[23] States' duty according to CEDAW to "ensure to women appropriate services in connection with pregnancy, confinement[,] and the postnatal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation" stands out.[24] Finally, in 2002, a Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health was established by the Commission on Human Rights, and its mandate was later endorsed and extended by the Human Rights Council.[25]

If universality, indivisibility, interdependence, accountability, equality, non-discrimination, and participation are the core principles of human rights, the right to health is subject to progressive realization using maximum available resources and non-retrogression. According to the General

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20. *Id.* § 2.

21. International Covenant on Economic, Social and Cultural Rights art. 12, Jan. 3, 1976, 993 U.N.T.S. 3.

22. CEDAW was adopted by the United Nations General Assembly on December 18, 1979 and entered into force on September 3, 1981. Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13. CEDAW Article 11(f) recognizes the right to protection of health and to safety in working conditions, while Article 12(1) establishes non-discrimination against women in the field of health care; with special attention to women in rural areas (Article 14(2)(b)). *Id.*

23. Convention on the Rights of the Child art. 24, Sept. 2, 1990, 1577 U.N.T.S. 3. For further support of an international right to health, see International Convention on the Elimination of All Forms of Racial Discrimination art. 5(e)(iv), Jan. 4, 1969, 660 U.N.T.S. 195; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families art. 28, 43, 45, July 1, 2003, 2220 U.N.T.S. 3; Convention on the Rights of Persons with Disabilities art. 25, May 3, 2008, 2515 U.N.T.S 3.

24. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 22, at art. 12, cl. 2.

25. Comm. on Human Rights Res. 2002/31 (Apr. 2002) (establishing the Special Rapporteur); *see, e.g.*, Human Rights Council Res. 6/29 (Dec. 14, 2007) (endorsing and extending the Special Rapporteur).

Improving health is key to reaching the United Nations Sustainable Development Goals. In pursuit of these goals, a Global Strategy for Women's, Children's and Adolescents' Health (2016–2030) was adopted. *WHO and OHCHR Launch Landmark Working Group on Health and Human Rights of Women, Children and Adolescents*, WORLD HEALTH ORG., https://www.who.int/reproductivehealth/news/human-rights-women-children-adolescents/en/ [https://perma.cc/4LB2-FCNQ]. In addition, the WHO and the Organization and the Office of the High Commissioner for Human Rights created a High-Level Working Group on the Health and Human Rights of Women, Children and Adolescents. *Id.*

Comment 14 of the Committee on Economic, Social and Cultural Rights, the right to health includes four core elements: availability, accessibility, acceptability, and quality.[26]

1. The Right to Health of Women

The CEDAW Committee focused on women's human rights in relation to health in General Recommendation No. 24,[27] while the United Nations Committee on Economic, Social and Cultural Rights' General Comment No. 22, issued in 2016, was dedicated to the right to sexual and reproductive health.[28] However, both are basically focused on elimination of discrimination against women, stating that the health rights of women should be addressed from the perspective of women's needs and interests and their distinctive features and factors.

The realization of women's right to health requires the removal of all barriers interfering with access to health services, education, and information. Availability, accessibility, acceptability (respectful of and sensitive to patients' particular identities and needs), and quality are again recognized as the central characteristics of sexual and reproductive health care. This care includes measures to ensure women appropriate services in connection with pregnancy, confinement, and the postnatal period. States should supply free services where necessary to ensure safe pregnancies, childbirth, and postpartum periods for women that include antenatal, maternity, and postnatal services to ensure women's rights to safe motherhood and emergency obstetric services.

2. The Increasing Attention to Mental Health

The Special Rapporteur has played a main role by consistently pointing out the momentous role of mental health as a human rights and development priority and by entirely devoting the reports of the last two years to mental health.

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26. Comm. on Econ., Soc. & Cultural Rts., General Comment 14 on The Right to the Highest Attainable Standard of Health, ¶ 12, U.N. Doc. E/C.12/2000/4 (2000).
27. Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 24, U.N. Doc. A/54/38/Rev.1 (1999).
28. Comm. on Econ., Soc. & Cultural Rts, General Comment 22 on the Right to Sexual and Reproductive Health, UN Doc. E/C.12/GC/22 (2016).

The 2019 report outlines that "[g]ood mental health and well-being cannot be defined" in a negative way "by the absence of a mental health condition."[29] Instead, it should be defined taking into account "the social, psychosocial, political, economic[,] and physical environment that enables individuals and populations to live a life of dignity."[30] Implementing the right to health correctly means promoting a life of dignity and well-being for all persons throughout their lifetimes.

The last report, issued on April 15, 2020, elaborates on the elements that are needed to set a rights-based global agenda for advancing the right to mental health, emphasizing that "despite promising trends, . . . a global failure . . . to address human rights violations in mental health-care systems" remains.[31]

"Worldwide[,] about 10% of pregnant women and 13% of women who have just given birth experience a mental disorder, primarily depression," and given that these maternal mental disorders are treatable, maternal mental health is absolutely relevant.[32]

3. Breastfeeding as a Human Rights Issue

Surprisingly, CEDAW only refers to breastfeeding once in its requirement that lactating women have access to adequate nutrition,[33] even if the International Labour Organization's Maternity Protection Convention had already established that breastfeeding should be accommodated in the workplace.[34]

Instead, WHO estimates that the lives of more than 820,000 children could be saved every year if all mothers followed its advice to start breastfeeding within the first hour after birth, give breast milk exclusively for the first six

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29. Hum. Rts. Council, Rep. of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, at ¶ 89, U.N. Doc. A/HRC/41/34 (Apr. 12, 2019).

30. *Id.*

31. Hum. Rts. Council, Rep. of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, at ¶ 82, U.N. Doc. A/HRC/44/48 (Apr. 15, 2020).

32. *Mental Health*, WORLD HEALTH ORG., https://www.who.int/mental_health/maternal-child/maternal_mental_health/en/ [https://perma.cc/9SJY-RY5L].

33. Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 22, at art. 12(2).

34. *International Labour Standards on Maternity Protection*, INT'L LABOUR ORG., https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/maternity-protection/lang--en/index.htm [https://perma.cc/55UM-M32U].

months, and continue breastfeeding until their children reach the age of two alongside appropriate complementary foods.[35]

In 2016, a joint statement by the UN Special Rapporteurs on the Right to Food, Right to Health, the Working Group on Discrimination Against Women in Law and in Practice, and the Committee on the Rights of the Child was issued, asserting that

> [b]reastfeeding is a human rights issue for both the child and the mother. Children have the right to life, survival and development and to the highest attainable standard of health, of which breastfeeding must be considered an integral component, as well as safe and nutritious foods. Women have the right to accurate, unbiased information needed to make an informed choice about breastfeeding . . . . And they have the right to adequate maternity protection in the workplace and to a friendly environment and appropriate conditions in public spaces for breastfeeding which are crucial to ensure successful breastfeeding practices.[36]

B. The Impact of COVID-19 on the Health of Women and Girls

The pandemic has affected health of women in many different ways. On the one hand, as women comprise 70% of health workers and are expected to perform a greater caregiving role, they are suffering a greater exposure to infection.[37] On the other hand,

> safe and confidential access to health services has been undermined, as pre-existing barriers [have] exacerbated in the health emergency . . . . Overloaded health systems, reallocation of resources, shortages of medical supplies, and disruptions of global supply chains can undermine the sexual and reproductive health and

35. *Infant and Young Child Feeding*, WORLD HEALTH ORG. (Aug. 24, 2020), https://www.who.int/news-room/fact-sheets/detail/infant-and-young-child-feeding [https://perma.cc/HZ4D-L9L6].

36. U.N. Human Rights Office of the High Commissioner, Joint Statement by the UN Special Rapporteurs on the Right to Food, Right to Health, the Working Group on Discrimination Against Women in Law and in Practice, and the Committee on the Rights of the Child in Support of Increased Efforts to Promote, Support and Protect Breast-Feeding, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20871 [https://perma.cc/8WX3-GFGQ].

37. Rosamond Hutt, *The Coronavirus Fallout May Be Worse for Women Than Men. Here's Why*, WORLD ECON. F. (Mar. 12, 2020), https://www.weforum.org/agenda/2020/03/the-coronavirus-fallout-may-be-worse-for-women-than-men-heres-why/ [https://perma.cc/AN2L-KXRR].

> rights of women and girls, including their access to maternal and new-born care.[38]

"Women and girls with chronic conditions, weakened immune systems . . . or experiencing malnutrition appear to be particularly at risk of contracting COVID-19," as well as older women"[39] Moreover, "[p]regnant women and girls and those who have just given birth can be particularly vulnerable to infectious diseases."[40]

Regarding maternal and new-born health, WHO has stated that "[r]eductions in access to and utilization of essential maternal and newborn health . . . services during epidemics translate into important increases in the number of women and newborns who suffer complications or die."[41] WHO recommends that all essential care elements are maintained and that women and new-borns have access to skilled care at all times.[42] Essential commodities and supplies should be in stock and available for antenatal and postnatal care (ANC/PNC) as well as for childbirth, including new-born care.[43] "Mothers with suspected or confirmed COVID-19 should be encouraged to initiate and continue skin-to-skin contact and breastfeeding with appropriate precautions."[44]

III. THE WAY TO RESPECTFUL MATERNITY CARE (RMC)

Every year, approximately 140 million births take place all over the world.[45] Each pregnancy is unique and clinical needs change across the pregnancy, childbirth, and postnatal periods. One thing that never changes is the right to a positive experience at every stage, which highlights the importance of quality care. Of course, reducing the unacceptably high

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38. *Covid-19 and Women's Human Rights Guidance*, Open Soc'y Founds. , https://www.osf.am/2020/05/covid-19-and-womens-human-rights-guidance/ [https://perma.cc/6SUC-7EQ6].

39. U.N. Office of the High Commissioner for Human Rights, COVID-19 and Women's Human Rights: Guidance (Apr. 15, 2020), https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf [https://perma.cc/B352-PYLN].

40. *Id.*

41. World Health Org. [WHO], Maintaining Essential Health Services: Operational Guidance for the COVID-19 Context, at 24 (June 1, 2020), https://www.who.int/publications/i/item/WHO-2019-nCoV-essential-health-services-2020.1 [https://perma.cc/E3J2-MNA3].

42. *Id.*

43. *Id.*

44. *Id.*

45. *Making Childbirth a Positive Experience*, WORLD HEALTH ORG., https://www.who.int/reproductivehealth/intrapartum-care/en/ [https://perma.cc/6ZCY-84HD].

maternal mortality is the first but not the only goal. "Achieving the best possible physical, emotional, and psychological outcome[] for every individual and newborn requires health systems to take a human rights-based approach: not only preventing maternal death and morbidity, but prioritising person-centred care and well-being."[46]

Indeed, WHO looks for a world "where every pregnant woman and newborn receives quality care throughout pregnancy, childbirth[,] and the postnatal period."[47] As part of its efforts, a comprehensive guideline on routine antenatal care for pregnant women and adolescent girls, *The WHO Recommendations on Antenatal Care for a Positive Pregnancy Experience*, was launched in November 2016.[48]

ANC recommendations have highlighted the importance of providing effective communication and effective support, including social, cultural, emotional, and psychological support, to pregnant women in a respectful way.[49] A woman's relationship with maternity care providers and the maternity care system during pregnancy, childbirth, and the postpartum period is vitally important, and new-borns' experiences can also have significant and lasting impact, as they can experience emotional distress, particularly when separated from their mothers in the first hours of life.[50]

So, the real goal is to provide "care organized for and provided to all women in a manner that maintains their dignity, privacy[,] and confidentiality, ensures freedom from harm and mistreatment, and enables informed choice and continuous support during labour and childbirth."[51] That

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46. *What Matters to Women in the Postnatal Period?*, WORLD HEALTH ORG. (Apr. 22, 2020), https://www.who.int/news/item/22-04-2020-what-matters-to-women-in-the-postnatal-period [https://perma.cc/UT36-5ZFC].

47. *Quality of Care for Every Pregnant Woman and Newborn*, WORLD HEALTH ORG., https://www.who.int/reproductivehealth/topics/maternal_perinatal/care/en/ [https://perma.cc/3AFX-AE6E].

48. WORLD HEALTH ORG. [WHO], THE WHO RECOMMENDATIONS ON ANTENATAL CARE FOR A POSITIVE PREGNANCY EXPERIENCE (2016). It includes twenty-three recommendations that are context-specific; they need tailoring to local situations. For example, populations with different nutritional needs or rates of infections are subdivided into five categories (nutritional interventions, maternal and fetal assessment, preventive measures, physiological symptoms, and health systems) and address three dimensions of quality: health systems, content of care and women's experience of care.

49. *Id.* at ix (2016).

50. Jeannette Crenshaw, *Care Practice #6: No Separation of Mother and Baby, With Unlimited Opportunities for Breastfeeding*, 16 J. PERINATAL EDUC. 39 (2007).

51. World Health Org. [WHO], WHO Recommendation on Respectful Maternity Care During Labour and Childbirth (Feb. 15, 2018), https://extranet.who.int/rhl/topics/preconception-pregnancy-childbirth-and-postpartum-care/care-during-childbirth/who-recommendation-respectful-maternity-care-during-labour-and-childbirth [https://perma.cc/72VW-8RRU].

is the provision of Respectful Maternity Care (RMC),[52] in accordance with a human rights-based approach.

In this way, WHO upholds every woman's right to a positive maternity care experience: one where her pregnancy does not erase her competency, autonomy, and right to participate in decision-making for her own care and the care of her new-born and states that women's choices and rights to sexual and reproductive health care, including maternity care, should be respected at every stage of the continuum of maternal and new-born care. This is true across all income settings, as well as in humanitarian settings and during public health emergencies.

IV. EFFECTS OF COVID-19 ON MATERNAL CARE AND ITS REPERCUSSIONS ON MENTAL HEALTH

Care during pregnancy and childbirth

> needs to encompass basic human rights, including the rights to respect, dignity, confidentiality, information and informed consent; the right to the highest attainable standard of health, and freedom from discrimination and from all forms of ill-treatment. A woman's autonomy should be recognized and respected, as should her emotional well-being, choices and preferences, including the right to have a companion of choice during labor and childbirth. Respect and recognition of the woman can benefit the newborn, who also has rights and requires respect and recognition.[53]

Nevertheless, human rights of women and their babies may have been violated by the introduction, in many countries, of inappropriate protocols regarding pregnancy management, delivery, and postnatal care in response to the current coronavirus disease 2019 (COVID-19) pneumonia pandemic.

A. The Outbreak of COVID-19 Pandemic and Its Repercussions on Maternal Care

The outbreak of such pandemic has caused the overburden of health care systems and has led to dramatic shifts in healthcare processes. The COVID-19 pandemic is a serious public health emergency that is particularly deadly to vulnerable populations. Pregnant women and their fetuses represent an

52. *Id.*

53. *Respectful Maternity Care Charter*, White Ribbon All., https://www.whiteribbonalliance.org/respectful-maternity-care-charter/[https://perma.cc/PL7R-MEEH].

especially high-risk group that has been subjected to those changes. In Spain, for example, during this period pregnant women have had to face the uncertainty caused by the new virus in addition to the inherent fear that pregnancy involves, without the support of the Health Care system.[54] Under the pretext of social distancing, face-to-face obstetric monitoring has been drastically reduced and preparation for birth groups have disappeared.[55] Medical decisions to minimize healthcare professionals' time of exposure, such as reducing the second stage of labor and preventive caesarean or instrumental deliveries, have been implemented without any scientific endorsement.[56] Moreover, in most cases these measures have been implemented without informing women or offering any alternative. In addition to the fear of contagion and the possible effects the virus may have during pregnancy, the uncertainty of receiving adequate health assistance has led to great public concern due to the delivery protocols introduced, leading many women to fear hospital delivery.

In March 2020, Favre et al. published a guideline, which suggested that there was no evidence of vertical transmission of SARS-CoV-2 during pregnancy and only one reported case of suspected perinatal transmission.[57] In spite of this, induction of labor was recommended in order "to avoid unnecessary surgical complications in an already sick patient."[58] Moreover, the paper recommended the isolation of new-borns from COVID-19 positive mothers and discouraged breastfeeding.[59] At the onset of the pandemic, those recommendations that included performing deliveries without a birth companion or, in those cases where SARS-CoV-2 positivity was suspected, early mother-child separation and banning skin-to-skin contact as well as breastfeeding, had a big impact in Spanish-speaking countries and were adopted by many hospitals.[60] And these practices were endorsed despite the fact that the isolation of new-borns and the restrictions on breastfeeding are known to lead to long-term consequences, which could be harmful if applied to the general population.[61] Many authors have criticized the Favre and colleagues' recommendations, pointing out that making recommendations that affect a large number of people requires a sound foundation. As Schmid

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54. *See generally* Kirstie Coxon et al., *The Impact of the Coronavirus (COVID-19) Pandemic on Maternity Care in Europe*, 88 MIDWIFERY 1, (2020).

55. *Id.* at 1.

56. Sadler et al., *supra* note 16, at 1.

57. Guillaume Favre et al., *Guidelines for Pregnant Women with Suspected SARS-CoV-2 Infection*, 20 LANCET INFECTIOUS DISEASES 652, 652 (2020).

58. *Id.*

59. Sadler et al., *supra* note 16, at 1.

60. *Id.* at 1–2.

61. *Id.* at 2.

et al. said, "In the absence of such a foundation, the medical and academic community should explain to the best of their knowledge what they know and what the knowledge gaps are, rather than trying to fill these gaps with unsound speculation."[62] Especially when this speculation could harm the dignity and rights of the population affected—pregnant women and their babies, in this case. Those practices were implemented directly in opposition to the WHO recommendations for COVID-19, which recognized that "[C-sections] should only be performed when medically justified" and stated that women should be allowed to practice skin-to-skin contact with their new-borns as well as breastfeeding, whether they or their infants suffer from a suspected, probable, or confirmed case of COVID-19.[63]

Some of these potentially traumatic practices are described as follows: caesarean delivery and induced labor without medical indication, separation of mother and child, and the hindrance to breastfeeding. Also, an increase in the number of stillbirths has been reported, which logically has a negative impact on mothers' health.

1. Caesarean Delivery and Induced Labor

"High rates of preterm and caesarean deliveries have been reported in women with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) infection" in order to minimize the professional exposition of health care workers.[64] A Caesarean section can save lives when it is shown to be medically necessary; however, the traumatic potential of a Caesarean section should not be ignored.. Additionally, induced labor increases the chance of needing Caesarean and instrumental delivery, which are also associated with mental trauma.[65]

62. Manuel B. Schmid et al., *COVID-19 in Pregnant Women*, 20 LANCET INFECTIOUS DISEASES 653, 653 (2020).

63. World Health Org. [WHO], *Pregnancy, Childbirth and COVID-19* (Sept. 2, 2020), https://www.who.int/news-room/q-a-detail/q-a-on-covid-19-pregnancy-childbirth-and-breastfeeding [https://perma.cc/693T-CHP3].

64. Asma Khalil et al., Letter, *Change in the Incidence of Stillbirth and Preterm Delivery During the COVID-19 Pandemic*, 324 JAMA 705, 705 (2020).

65. VANIA SANDOZ ET AL., IMPROVING MENTAL HEALTH AND PHYSIOLOGICAL STRESS RESPONSES IN MOTHERS FOLLOWING TRAUMATIC CHILDBIRTH AND IN THEIR INFANTS 1 (2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6955544/pdf/bmjopen-2019-032469.pdf [https://perma.cc/43U3-6TKF]; Sadler et al., *supra* note 16, at 2.

2. Mother-Baby Separation

Mother-infant separation after birth has been a common practice during this stage of the COVID-19 pandemic. According to mammalian neuroscience, the intimate contact between a mother and her baby evokes neuro-behaviors that fulfil basic biological needs.[66] This early contact "may also help keep babies warm and calm and improve other aspects of their transition to life outside the womb."[67] The period of time immediately after birth may represent a "sensitive period" for programming future physiology and behaviour of the child.[68] Skin-to-skin contact has also shown to lower maternal stress levels.[69] Despite the fact that scientific evidence supports the benefits of early mother and baby skin-to-skin contact, as well as breastfeeding, in order to prevent postpartum depression and anxiety disorders, these practices have disappeared from some hospital protocols during this COVID-19 pandemic.[70]

3. Discouraging Breastfeeding

It is well known that an infected mother can transmit the SARS-CoV-2 virus through respiratory droplets during breastfeeding or intimate contact with her infant.[71] However, it also known that it improves the health of both mother and child and reduces the risk of neonatal infections by other pathogens that are likely to cause serious illness.[72] In addition to this, beyond the immediate benefits for infants, breastfeeding also contributes to mental and psychomotor development and decreases the risk for endocrine disorders,

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66. Elizabeth R. Moore et al., *Early Skin-to-Skin Contact for Mothers and Their Healthy Newborn Infants*, COCHRANE SYSTEMATIC REV. (May 16, 2012), https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD003519.pub4/full#CD003519-abs-0008 [https://perma.cc/82P2-UG93] (quoting the plain language summary on the *Cochrane Systematic* Review website).

67. *Id.*

68. Z. Hochberg et al., *Child Health, Developmental Plasticity, and Epigenetic Programming*, 32 ENDOCRINE REVS. 159, 162 (2011).

69. Linda Handlin et al., *Effects of Sucking and Skin-to-Skin Contact on Maternal ACTH and Cortisol Levels During the Second Day Postpartum-Influence of Epidural Analgesia and Oxytocin in the Perinatal Period*, 4 BREASTFEEDING MED. 207, 207 (2009).

70. Alison Stuebe, *Should Infants Be Separated from Mothers with COVID-19? First, Do No Harm*, 15 BREASTFEEDING MED. 351, 351 (2020).

71. *See* David W. Kimberlin & Sergio Stagno, Editorial, *Can SARS-CoV-2 Infection Be Acquired in Utero? More Definitive Evidence is Needed*, 323 JAMA 1788, 1788 (2020).

72. World Health Org. [WHO], Protecting, Promoting and Supporting Breastfeeding in Facilities Providing Maternity and Newborn Services: The Revised Baby-Friendly Hospital Initiative, at 8 (2018), https://www.who.int/nutrition/publications/infantfeeding/bfhi-implementation-2018.pdf [https://perma.cc/33W4-J62L].

pediatric cancers, and allergic diseases among breastfed children.[73] Whenever possible, the preferred option during the COVID-19 pandemic is the joint management of both the mother and the new-born, in order to facilitate their interaction and the initiation of breastfeeding.[74]

4. Perinatal Mortality

Sanitary changes caused by the pandemic may have also affected neonatal mortality. Some authors have "demonstrate[d] an increase in the stillbirth rate during the pandemic."[75] This might be a direct consequence of SARS-CoV-2 infection in pregnant women. But such an increase in stillbirths could have also been caused by indirect effects of the pandemic such as a greater "reluctance to go to the hospital when needed . . ., fear of contracting infection, or not wanting to add to the National Health Service burden."[76] Losing a child is devastating for parents and their extended family.[77] Studies demonstrate that women who have lost an infant due to stillbirth or because of neonatal death manifest significantly higher rates of psychological distress than mothers of living infants, for at least thirty months after their loss.[78] Additionally, it has been stated that a "[h]igher risk of perinatal loss may be linked to factors associated with maternal psychiatric illness in general, such as insufficient attendance for antenatal care and unhealthy lifestyles rather than the maternal mental illness itself."[79]

B. Maternal Mental Health During COVID-19

The latter mentioned harmful practices are a manifestation of structural gender discrimination and have an important repercussion on women's mental health. Recent surveys have detected "a substantial increase in the

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73. *See generally* Chiara Gertosio et al., *Breastfeeding and Its Gamut of Benefits*, 68 MINERVA PEDIATRICA 201 (2016).

74. SOCIETÀ ITALIANA DI NEONATOLOGIA. BREASTFEEDING AND SARS-COV-2 INFECTION 4 (Feb. 28, 2020), https://www.uenps.eu/wp-content/uploads/2020/03/14marzo.SIN_UENPS0.pdf [https://perma.cc/6VUJ-HQ6W].

75. Khalil et al., *supra* note 64, at 706.

76. *Id.*

77. JoAnne M. Youngblut & Dorothy Brooten, *Comparison of Mothers and Grandmothers Physical and Mental Health and Functioning Within 6 Months After Child NICU/PICU Death*, 44 ITALIAN J. PEDIATRICS 1, 3 (2018).

78. Frances M. Boyle et al., *The Mental Health Impact of Stillbirth, Neonatal Death or SIDS: Prevalence and Patterns of Distress Among Mothers*, 43 SOC. SCI. & MED. 1273, 1273 (1996).

79. S. King-Hele S et al., *Risk of Stillbirth and Neonatal Death Linked with Maternal Mental Illness: A National Cohort Study*, 94 ADC FETAL NEONATAL EDITION 105, 105 (2009).

likelihood of maternal depression and anxiety during the COVID-19 pandemic."[80] Postpartum depression and childbirth-related posttraumatic stress symptoms have been associated with some mothers having bonding difficulties with their babies, thereby demonstrating the importance of perinatal maternal mental health as a potential risk factor in child development.[81] There is a wealth of literature emphasizing the association of different attachment styles with bonding, as well as the mediating roles that childbirth-related posttraumatic stress disorder and postpartum depression symptoms play in it.[82] So, the more important consequences of the pandemic in children's mental health may remain to be seen.

V. CONCLUSION

The necessary human rights-based approach to health is a people-centred approach. As previously revealed, these potentially traumatic practices and the discontinuation of antenatal follow-ups, as well as rapidly changing and erratic protocols or the cancellation of antenatal examinations, represent blatant violations of both women and new-borns' rights.

Undeniably, the introduction in many countries of inappropriate protocols, not based in current reputable evidence, for pregnancy management, as well as for birth and postnatal care in response to the COVID-19 pandemic, has meant the violation of the human rights of women and their babies when quality health services should always be safe and assured.[83]

In conclusion, while rights of girls and women across every aspect of their lives should be adequately protected, pregnant, parturient, and puerperal women have suffered greatly from the lack of protection during COVID-19. The potentially harmful measures implemented in obstetric care units are not strictly necessary in many cases, and moreover, are not even based on scientific evidence. Additionally, the high levels of anxiety mothers have

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80. Margie H. Davenport et al., *Moms Are Not OK: COVID-19 and Maternal Mental Health*, 1 FRONTIERS GLOB. WOMEN'S HEALTH 1, 4 (2020).

81. NAT'L INST. OF MENTAL HEALTH, PERINATAL DEPRESSION 3 (n.d.), https://www.nimh.nih.gov/health/publications/perinatal-depression/20-mh-8116-perinataldepression_159799.pdf [https://perma.cc/C677-TTGY].

82. *See generally* Ilana S. Hairston et al., *Postpartum Bonding Difficulties and Adult Attachment Styles: The Mediating Role of Postpartum Depression and Childbirth-Related PTSD*, 39 INFANT MENTAL HEALTH J. 198 (2018).

83. *See* Int'l Confederation of Midwives, Official Statement, Women's Rights in Childbirth Must be Upheld During the Coronavirus Pandemic, https://www.internationalmidwives.org/assets/files/news-files/2020/03/icm-statement_upholding-womens-rights-during-covid19-5e83ae2ebfe59.pdf [https://perma.cc/7ZZ4-6U49].

faced, making many of them feel that their deliveries have been "stolen," will have, in the medium and long term, an impact on public mental health.

The provision of mental health and psychosocial support must be a critical part of the overall response because there is no health without mental health and, being interdependent, the deprivation of one human right adversely affects all the others.