MEDICALLY ASSISTED PROCREATION: THE PORTUGUESE PROJECTS

M.J. Carneiro de Sousa; Alice Gouveia; J. Pinto da Costa Biomedical Sciences Institute; Oporto University Portugal

INTRODUCTION

Rapid evolution in biological techniques used in the medically assisted procreation has aroused discussion of this issue both in the medical and the commoner alike.

At present there is no legal diploma to regulate on this issue in Portugal and this makes it an initiative solely dependent on the responsibility and skill of those who do it, making the outline of issue unknown to the health authorities and the public in general.

Thus it is an urgent need to bring forth a law that regulates this odd state of art, and this has come to the attention of the legislators who at present have four proposals, each from the four political parties with a seat in the parliament.

These proposals are enrolled in an important field of health and in conjunction with ethics, bioethics, medical law, scientific investigation and technology. This legislation foresees an obligation to revise the legislation in a certain period of time, following which a periodical revision needs to be done as to keep up with the medical practice at a particular time.

The legislation in this pattern should consider the following propositions:

- Safeguard and protect the human dignity of the human being and its genetic identity.
- Not use the human being as a tool and consider it for its own value without discrimination of any kind; be it economic, social, political, ethnic, ideological or religious, and preserve the human life in all circumstances including self-determination, mainly with prior information, clear understanding, free and understandable consent, with respect for one’s religious convictions, the value of the person, his freedom of consciousness, the right to objection of conscience, equal rights to health-care including to these type of technologies.

Among the issues considered unacceptable are the following:

- The techniques of medial assisted procreation (MAP) should not be a substitute to natural reproduction, and should be used as the only resource as an ancillary therapy,
- It should not be used for research in case of surplus embryos
- It is not allowed to be used in post-mortem artificial insemination or be implanted other than in maternal womb
- The respect for person to be, consent, privacy and anonymity, personal data protection, assurance of the fundamental human rights
- Not be commercialized either as germ cells, embryos or newborn, whenever there is objection of conscience of the medical professional and for other biotechnological purposes either of the right to maternity or paternity.

The Legislation under discussion also reserves rights against heterologous artificial procreation if neither partner donates gametes, also to post mortem implantation in case of the demise of the husband, unless this method has previously been formally expressed and mutually consented in that sense.

The adoption of surplus embryos although with certain limitations, may be accepted when the embryo is used in a parental adoption project.
These proposals come from political parties with different doctrines and diverse political ideologies, which elucidate their differences.

**MATERIAL**

**PROPOSALS OF POLITICAL PROJECTS**

**Social Democratic Party Project (proposal of law 176/X)**

No one should be discriminated for being born through medically associated procreation or based on his genetic heritage.

The techniques of medically assisted procreation are not an alternative to procreation, but a complementary method which should be used only when natural pregnancy cannot be achieved by natural methods after all medical attempts to cure sterility have failed.

Option should be made towards non-invasive techniques and without genetic or germ cell manipulation, nor allowed techniques of assisted procreation which may lead to destruction of surplus embryos, thus limiting the number of ova to maximum three, that the couple approve to be transferred to the mother’s womb in case *in vitro* fecundation of all of them.

Heterologous procreation should not be admitted.

The age limit of the couple should be between 18 and 45 years for women and 55 years in case of men, not bear any physical or psychic abnormality and be of both genders, married and not judicially separated or live together for over 2 years with full legal rights.

Those approved should give their free and formal written consent after being informed, by a doctor and as a witness in an institution approved to practice the technique of medically assisted procreation.

The cryopreservation of embryos and semen should be permitted in authorized centers but not of ova for techniques of medically assisted procreation, whilst there is no sufficient assurance regarding their viability after thawing.

For this purpose an Institute of preservation of embryos should be maintained.

The human embryos, organs, tissues and germ cells and gametes should not be commercialized.

Forbid the culture or utilization of human embryos for investigation or scientific experimentation.

Under proper legislation, scientific investigation could be permitted when it brought benefit to the embryo or in those particular cases in which all chances have failed in the implantation in the womb or attempts to adopt in three consecutive years under cryopreservation of unviable embryos or stem cells from eugenics or spontaneous abortion.

A National Commission of Medically Assisted Procreation should be instituted to supervise and coordinate these activities, an entity under the Ministry of Health.

A National Registry of Medically Assisted Procreation should work in conjunction with the above mentioned Commission.

In order to obtain quality control and avoid disclosure, economic and social discrimination and commercialization of embryos or human gametes it should be mandatory that techniques of medically assisted procreation be carried out in non lucrative accredited centres, public or private, under the authorization of the Health Ministry and enrolled in the National Registry.

All Staff of the authorized centres are obliged to hold strict confidentiality of all data relevant to all procedures, and should be conceded objection of conscience.
All born under artificial procreation should have the right on attaining majority to know their personal history, the procedures under which they were conceived and their genetic identity.

Hired wombs should be forbidden either free or profitable, under strict rules of filiations in case of breach of the rules.

In particular situations implants of embryos should be allowed following the death of the donor, but in vitro fertilization and insemination under similar conditions forbidden. The former condition could be considered if the spouse with whom the woman lived lawfully had given consent, and the embryo should be implanted within three hundred days after death (demise).

All human cloning should be forbidden.

In particular cases of medically assisted procreation could use techniques to choose the sex or other features of the foetus if this would be the only means of avoiding severe hereditary diseases without killing the embryos.

All other means that do not respect life, dignity, integrity and identity of the human being in the embryonic stage should be forbidden. Exogenesis, production of embryos with gametes from donors, fusion of embryos or any other procedures that result in chimera and fecundation between species should be forbidden.

Communist Party Proposal (proposal of law 172/X)

Considering that the applications of the technique in prevention and treatment of infertility, genetic or hereditary diseases, the medically assisted reproduction is not applicable only to childless couples, but also to spinsters, sterile, infertile, or regarding those that are at risk of transmitting to their siblings those pathologies.

The techniques should be permitted with semen of donators and also with ova and embryos donated.

These techniques should be permitted after the death of the husband or of the male with whom the woman lived legally.

The selection of the embryos should be allowed only when there is the risk of transmitting genetic abnormalities linked to gender, or when the goal is to harvest embryos with HLA group compatible with that of the sick child who needs a transplant.

The genetic diagnosis should be permitted only in cases where there is a risk of transmitting to the next of kin diseases or mutations and also when the couple has a child affected by severe genetic disease that might lead to premature death, or diagnosed as incurable as long as the prognosis of survival of the same would benefit through the application of a therapy that does not affect the integrity of the body of the newborn as a result of embryonic transfer and also that the diagnosis aims in detecting a genetic disease and the means of preventing and treating with the above mentioned therapy.

It should be forbidden to use techniques of medically assisted procreation with the aim of creating chimeras, a human being resultant from the fecundation of two embryos or different fecundations, or with the purpose of creating identical creatures, as in reproductive cloning.

Prohibition should also regard the application of these techniques to obtain fecundation between humans and other animal species, exception made to the hamster normally used to test the human spermatozoa and exceptions considered in any other cases that the National Council of Medically Assisted Procreation (an entity that is to be created in the Project) approves.
The number of embryos to be implanted should be established so as to avoid multiple gestations. However, there should not be a limit to the ova fertilized, an issue that should be discussed with the couple, and which may be needed to obtain embryos in a good condition to be implanted.

Although there be a possibility of the given consent be abrogated by either of the beneficiaries until the application of the therapy, it is given then right to the woman to discontinue the treatment at any time.

Yet, the surplus embryos, cast aside or not viable could be used for scientific investigation.

The embryos obtained without fecundation by sperm, could be used in scientific investigation.

The right to submit to the techniques of Medically Assisted Procreation is to be given until five attempts.

For the same reason the health-insurance should cover the cost in the above mentioned attempts.

Criminal treatment should be given with a penalty of 1 to 8 years of detention when these techniques of Medically Assisted Procreation are applied without the consent of the woman.

**Socialist Party Proposal (project of law 151/X)**

The different techniques of Medically Assisted Procreation (MAP) that imply manipulation of gametes or embryos are not an alternative to procreation but a subsidiary method that should be used when there is proof that physiological mechanisms of reproduction or there are medical indications in the sense of preventing genetic, infectious or other diseases.

The resource to MAP should assure that the child gets good conditions for its global development, mainly the right to belong to a bi-parental family. Only heterosexual couples with a stable marital situation could benefit of the MAP, or exceptionally otherwise.

All MAP techniques should be carried out in accredited institutions under periodic supervision.

All personnel involved in MAP should be guaranteed privacy regarding their procedures, being allowed to breach on founded medical reason or otherwise equally sound.

Any biological product of genetic nature subject to donation can in no condition be subject to a deal, nor given any commercial value.

It should be mandatory in all procedures of MAP the free and written consent on the part of the parties involved, being guaranteed to the health professionals the right to objection of conscience which should be clearly given.

Certain goals of MAP should be considered forbidden, namely those that aim certain features to the newborn, or getting human clones from chimeras, or fertilization in different species, a hired womb and also post mortem inseminations , unless in special conditions foreseen by the National Council for MAP.

It is suggested that the units of preservation of semen be legalized, considering that the donation of gametes should not be denied when the all consequences towards the beneficiaries are assumed. Thus the technical standard of these units can be obtained and avoid stealthy, or social and economic discrimination and worst, commercialization of biological human products. This permits to protect future disputes on material grounds, regarding that the donors will not have any power or duties in relation to the newborn trough MAP.
The donation of ova should be safeguarded as to maintain anonymity of the party as in these cases there cannot be preserved as the sperm.

Surplus embryos should not be a current practice in MAP, and in this sense it is suggested that the ova to be used in each trail of in vitro fertilization should be in accordance with the embryos to be implanted and also of the condition of the laboratory involved.

In case of surplus embryos that are not used, it is recommended that they be frozen for a later implantation to couples considered beneficiaries. When this does not occur and under exceptional conditions the embryos can be donated to another couple diagnosed as infertile or ultimately used in scientific investigation.

It is considered that a National Council for Medically Assisted Procreation (MAP) be founded to give the necessary guidance in MAP.

Proposal of the Bloco de Esquerda Party (project of law 141/X)

All procedures of MAP should be carried out in authorized health institutions, legally certified and accredited so that medical assistance is guaranteed.

All expenses of the treatment used in MAP should be covered by the National Health Services and by Health Insurance up to five settings, including the cost of treatment.

The MAP should be carried out under strict confidentiality including donors of embryos or gametes.

It is the responsibility of the medical specialist to choose the most adequate techniques for MAP, namely to determine the number of ova to be inseminated in vitro in each cycle, according to the best of his knowledge, never forgetting to inform the woman or the couple about the outcome of the procedure on the health of the next of kin nor the alternatives in case of failure.

It is forbidden to sell sperm or ova, and also embryos or other biological material that can be collected from MAP.

Cloning is prohibited for purposes of reproduction.

The application of surplus embryos should be included in the term of consent, either for cryo-reservation and reutilization until three years later or donated to another woman or other childless couple or used for other purposes under the law.

In case of genetic diseases or mutations with a high probability of transmission to the next of kin, a pre-implantation diagnosis should be made as to avoid death of the foetus, severe disease and ultimately a therapeutic abortion.

It is proposed the foundation of a National Commission for MAP, composed of members of outstanding scientific excellence to assess the institution where MAP is practiced, give legislative opinions, gather the necessary information and inform the public.

It is suggested that the Portuguese Civil Code be altered as regards MAP as to adjust the laws to innovations on the issue.

DISCUSSION

The proposal of the Social Democratic Party suggests the foundation of the Institute of embryo adoption, a National Commission for MAP. Does not admit heterologous procreation nor resource to post mortem implantation of the embryo to carry mothers, fertilization and artificial insemination post-mortem. Approves post mortem implantation of the embryo only in case of a prior family project. It omits the genetic diagnosis prior to implantation and does not consider costs with the treatment.
The Communist Party Proposal makes concession towards the application of semen of the donor and also of the ova and donated embryos even after the demise of the husband or the partner who was legally considered as such. Puts a limit on the number of embryos to be implanted but no restriction concerning ovum fecundation, and is tolerant concerning the right to interrupt the treatment without time limit and concedes benefit to spinsters.

The Socialist Party Proposal focuses attention in assuring the child its development, the right to be part of a family, bi parental and affiliates. Puts restrictions on techniques for MAP which may lead to human clones, of chimeras, or fertilization among species and surrogate mothers, exceptionally fertilization post mortem with authorization of the National Commission of Medically Assisted Procreation.

The Bloco de Esquerda enhances the genetic diagnosis of pre-implantation, in the women or couples that have diseases or genetic mutations with a high risk of transmission to the next of kin. In their proposal it is permitted to donate gametes or embryos and stress on anonymity of donators. It lacks opinion regarding surrogate mothers, insemination or fertilization post mortem.

In none of the proposals the objections of conscience of the health professionals is mentioned, although in the Social Democratic Party’s it is mentioned focussing the medics, and this should be a relevant point to those involved in these type of technologies.

CONCLUSIONS

All four projects agree in a series of topics, mainly:

- To subsidize the MAP only after a strict diagnosis of infertility or in the prevention or treatment of a genetic or infectious disease.
- It is destined to heterosexual couples either by marriage or living together
- The beneficiaries have to be considered fit by law and without a psychic disease.
- The techniques of Medically Assisted Procreation have to be carried out in certified centres by qualified personnel
- The licensing has to be got from the Ministry of Health
- There is a consensus that a National Committee should be consulted, although the there are differences in the constitution and powers of that Committee
- It is necessary a Registry of Data and Protection of the same.
- In all the steps related to the techniques of medical assisted procreation there must be consent given to the parties involved, and be free and clear, withy the right to refuse de MAP and concealment to information.
- All procedures involving lack of respect for life, dignity, integrity and identity of the human being as an embryo, such as ectogenous, production of embryos with gametes from donors, fusion of embryos or any other procedure to produce chimeras and fecundation inter-species.
- The prohibition of cloning for purpose of reproduction.
- The lawful cryopreservation of embryos, the donation of embryos, the use of embryos for investigation aiming diagnosis or treatment.
- The gratuity of the gametes used.
At present the Socialist Party is in power in Portugal with the majority of the deputies in Parliament belonging to that party, it is presumed that their proposal will pass to regulate the technology of Medically Assisted Procreation.

In spite of some loopholes that the proposal has, it is a positive step to put some rule on this issue as to avoid misuse and ultimately adverse effects in the near future.

**Maria José Carneiro de Sousa**  
Biomedical Sciences Institute  
Largo Abel Salazar  
4050 PORTO  
PORTUGAL  
j.pintodacosta@portugalmail.com