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Bianca Varesio, *COVID-19 and Reproductive Justice. Abortion: an essential service and a human rights imperative*

On 11 March 2020, the coronavirus disease was declared a pandemic by the World Health Organization. In the past, similar global emergencies have shown to have the potential of hampering reproductive justice of women and girls1. In this brief contribution, I will focus on the risks faced by women through a comment to the OHCHR literature on the issue and specifically the Covid-19 Guidance of 15 April 2020; I will further concentrate my attention on Italy and its response to the crisis in an already conservative environment regarding abortion rights.

The pandemic has proved detrimental for the human rights of women and girls in many ways. Restriction of movement and the "stay at home" order have in many countries exposed women to an increased level of domestic violence, impairment of individual freedoms and posed them before the inescapable dilemma of choosing between their job and their socially devised role of main carer for their family. In this context, the need for a safe and confidential access to abortion services has never felt more pressing. However, lockdowns, travel bans and quarantine orders restricting the movement of people exacerbated the harm of existing abortion restrictions that require multiple clinic visits and mandatory waiting periods, as well as impeding confidentiality and disrupt supply-chains for abortion medication (Jamie Todd-Gher and Payal Shah 2020, pp. 28-30).

Under international human rights law, if States are allowed and even required to take extraordinary measures to face health emergencies, they cannot arbitrarily restrict the human rights of their citizens. This has been codified in the Siracusa Principles (UN Commission on Human Rights 1984), where it is stated that human rights limitations following a health emergency have to be lawful, proportionate and not discriminate against a specific group or a minority. It is therefore clear how restricting abortion access in the Covid crisis does violate States' human rights obligations. With numerous declarations, the OHCHR has declared that the impediment to access abortion can actively infringe a woman's human rights. States' international human rights obligations in this sense cannot be suspended in a time of crisis. The positive obligation to ensure required information and care related to a legally accessible abortion, and to remove unnecessary barriers, is in fact non-derogable.

A study dated 22 October 2020 that collects data from 46 European countries (Caroline Moreau, Mridula Shankar, Anna Glasier et al. 2020) revealed the unequal and inconsistent response of European countries to the issue of abortion care during the pandemic. The lack of a unified policy response to COVID-19 restrictions has indeed widened inequities in abortion access in Europe. Some countries, such as Italy, simply did not consider abortion rights a fundamental issue to be considered in their response to the pandemic, causing delays and inefficiencies and putting

[1] As in the case of Ebola. See for example Laura Sochas, Andrew Amos Channon and Sara Nam 2017, pp. 32-39.

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women's lives at risk. Nevertheless, new measures implemented in some countries during the outbreak, such as telemedicine, could have served in fact as a wake-up call for innovation in the field and a catalyst to ensure continuity of abortion care. Hopefully, the best practice of some European countries will be seen as an incentive for follow-up in other more conservative neighbors.

UN Office of the High Commissioner for Human Rights: COVID-19 and Women's Human Rights

International human rights law explicitly recognizes the rights to sexual and reproductive health and bodily autonomy. As recognized by the CESCR Committee in General Comment No. 22, the right to sexual and reproductive health is indivisible from and interdependent with other rights (UN. Committee on Economic, Social and Cultural Rights 2016). During the Covid-19 pandemic, the WHO has explicitly classified reproductive health care as an essential health service that must be accorded high priority (WHO 2020a). Ensuring safe termination of a dangerous or unwanted pregnancy is a human rights imperative which translates into a positive obligation to ensure required information and services and to remove medically unnecessary barriers.

To prevent or at least circumvent the risks associated with restrictions of abortion-related care during a global health emergency, on 15 April 2020, the OHCHR issued the Guidance Note "Covid-19 and women's human rights". In this document, the attention is focused on women and the impact Covid-19 may have on their human rights in different situations. Notably for this field of inquiry, reproductive rights and abortion services are on top of OHCHR priorities in the disruptive wave of health services restrictions that countries can face in the aftermath of the outbreak. In particular, the document points out to how safe and confidential access to abortion services can be undermined, and pre-existing barriers can be exacerbated in the health emergency (UN Office of the High Commissioner for Human Rights 2020).

One of the indicated key actions that States and stakeholders can take in this respect is precisely to "ensure continuity of sexual and reproductive health services, including access for everyone to maternal and new-born care; safe abortion and post-abortion care; contraception; antiretrovirals for HIV/AIDS; and antibiotics to treat STIs" (UN Office of the High Commissioner for Human Rights 2020). In fact, this innovational document makes it clear how prioritization of covid-related health issues can reallocate resources intended for reproductive services, cause shortages of medical supplies and disrupt global supply chains. This can actively undermine the sexual and reproductive health and rights of women and girls and can only be complicated by the practice of States to include abortion among "non-essential surgeries and medical procedures"[2] during the COVID-19 response.

The Committee on the Elimination of Discrimination against Women (CEDAW), recalling the above presented Guidance Note, further urged States par-

[2] See for example: Laurie Sobel, Amrutha Ramaswamy, Brittni Frederiksen, and Alina Salganicoff 2020; Ronny Linder 2020.

ties to uphold women's rights in providing sexual and reproductive health as essential services through its Guidance note on CEDAW and Covid-19 (UN Office of High Commissioner for Human Rights 2020a). This document presents practical guidelines for States to mitigate the devastating impact that the pandemic is having on women's and girls' health. In fact, considering that our societies are unequal in the first place, the current crisis has impacted women in a disproportionate and more severe manner.

There is now a concern that COVID-19 and its impact will push back fragile progress on gender equality (UN Office of High Commissioner for Human Rights 2020b). Unfortunately, this is true especially for reproductive rights of women and girls (De Vido 2020). For this reason, the WHO accorded high priority to abortion care during the Covid-19 response (WHO 2020b). In fact, abortion restrictions following the health emergencies declared in several countries do infringe women's human rights. These restrictions target a specific group of individuals and they do not respect the proportionality requirement, considering the health conditions of women at stake and acknowledging that abortion is a time-sensitive procedure. The bottom line is that abortion services are to be considered essential medical services, which must be available in time of emergency.

On 28 September 2020 we celebrated International Safe Abortion Day, an initiative sponsored by the WHO that served as a timely reminder in the current global health crisis of the importance of a fair access to legal and safe abortion. This is fundamental to attain the highest standard of sexual and reproductive health. In fact, while it is too soon to know the repercussions of abortion restrictions on women, providers have expressed concern that women will delay their abortions, risk their health by travelling long distances, with no respect for their privacy and at high cost (Laurie Sobel, Amrutha Ramaswamy, Brittni Frederiksen, and Alina Salganicoff 2020).

Italy and the exacerbation of obstacles to legal abortion

The pandemic pushed the essential vs. non-essential categories of health services into the political debate over abortion and led some States to exploit the chance offered by the pandemic (Kate Hunt 2021) to restrict abortion services by classifying them as non-essential. This phenomenon can be observed both in countries that condemn abortion and in those in which abortion is already recognized as a fundamental right. Examples of this behaviour can be observed in Argentina and Ireland (Miriam Berger 2020), which delayed the adoption of the bill legalizing abortion, and notably in the United States (Laurie Sobel, Amrutha Ramaswamy, Brittni Frederiksen, and Alina Salganicoff 2020), where some States such as Alabama and Oklahoma suspended abortion services ascribing it to the pandemic by considering them elective medical procedures. Nevertheless, in countries like France and England, Scotland and Wales, the response to the danger of limited access to abortion during the pandemic for women and girls was prompt and effective: telemedicine and online consultants were made available as soon as April 2020 (Miriam Berger 2020), and self-managed abortion care quickly took hold as the safest way to access abortion care for both women and doctors.

In Europe, the need for safe and confidential abortion services is likely to have increased in the wake of the COVID-19 pandemic, given economic uncertainties, rising reports of sexual violence and limited access to contraception due to supply shortages. However, responses from European countries have not followed a united pattern. Where the approach of making telemedicine available for abortion rights has been implemented in a handful of countries, the rest has made access to abortion services, intentionally or not, more complicated or even suspended it altogether. With this behaviour, several countries can be said to be in breach of their positive obligations to ensure safe and confidential abortion services to their citizens. Incorporating measures to ensure safe abortion services into state pandemic responses and eliminating barriers to abortion is not just a matter of harm reduction – it is a human rights imperative (Jamie Todd-Gher and Payal Shah 2020, p. 28). In Italy, Human Rights Watch accused the government of failing to ensure time-sensitive reproductive care: on 30 July 2020, Human Rights Watch denounced the inaction on account of the Italian government that left women and girls facing very avoidable obstacles in accessing abortion during the Covid-19 pandemic, putting their health and their lives at risk (Human Rights Watch 2020a).

Abortion in Italy is authorized by Law 194 during the first ninety days of pregnancy for health, economic, social or personal reasons (Angela Spinelli and Michele Grandolfo 2001). However, amidst burdensome requirements and the widespread use of "conscientious objection" by medical staff to deny treatment, women and girls find themselves scrambling to find medical services within the time allowed by law, often having to visit to multiple structures, in Italy or abroad. Of course, during the pandemic restrictions, such travel was prevented by local and international travel bans in order to avoid the spread of Covid-19. To add further complications, some facilities suspended health services for abortion during the pandemic, or even reassigned gynecological staff to the departments dedicated to Covid-19.

Unlike other European governments, the Italian authorities have not adopted measures to facilitate access to abortion-inducing drugs during the pandemic. The widespread notion, supported by the WHO, that care regarding medical abortion can be safely self-managed by women up to the twelfth week of pregnancy, when detailed information and the support of a doctor are available, has not yet made its way in the Italian common opinion. In fact, medically induced abortion in Italy is only permitted by law up to the seventh week of pregnancy, when some people may not know they are pregnant, and national guidelines require the drugs to be administered over the course of a three-day hospitalization. While surgical abortion can be performed in day hospital or outpatient clinic, only 5 regions out of 20 (Human Rights Watch 2020b) in Italy allow drug-induced abortion on an outpatient basis.

The already labyrinthine, to say the least, system of accessing abortion in Italy has been further complicated by the failure of the government to understand the possible impact of movement restrictions to abortion care for girls and women. Although on 31 March 2020 the Italian Ministry of Health published guidelines on women's health during the response to the Covid-19 outbreak, abortion regulations

were not included, and the establishment just turned a blind eye to the matter. Hillary Margolis, Human Rights Watch researcher, explained: "The Covid-19 pandemic has done nothing but highlight how the country's outdated restrictions cause damage instead of guaranteeing protection". People interviewed by Human Rights Watch reported that travel restrictions, lack of information and the closure of services during the Covid-19 pandemic exacerbated delays in accessing abortion within the time frame required by law (Human Rights Watch 2020a).Italy's failure to guarantee consistent access to abortion, including the excessively widespread practice of invoking conscientious objection, constitutes a violation of the right to health protection and non-discrimination in violation of the European Social Charter. The Council of Europe declared that all Member States must ensure full access to reproductive health, including abortion, in their response plans to the Covid-19 pandemic, and called on Member States to "urgently remove all residual obstacles that prevent access to safe abortion" (Council of Europe. Commissioner for Human Rights 2020. In the case of Italy, the situation was already serious before the pandemic hit. Before the outbreak of Covid-19, only 20% of Italian hospitals offered medical abortion care, which covers only 21% of abortions in Italy because of the requirements in terms of hospitalization. In many other European countries, this number rises to 80%, since it is considered simpler and safer than an invasive surgical procedure. The picture that has been tragically uncovered by the pandemic impact on women's rights is that abortion regulations in Italy are based on out-of-date notions that need updating and innovating. In this sense, the pandemic could be seen as a wake-up call in order to advance and improve the system of accessing abortion and bring it more in line with international standards. A first step forward has been observed by Human Rights Watch in August 2020, when Minister of Health Roberto Speranza announced revisions to outdated national guidance, which will ease restrictions on medical abortion (Human Rights Watch 2020b).

Conclusions

The extraordinary measures adopted by national governments around the world in response to the COVID-19 pandemic have revealed glaring political, social and economic inequalities that continue to pervade many societies. Over the past months it has become clear that women and girls have been disproportionately impacted by these inequalities (De Vido 2020) with lockdown measures highlighting pre-existing gaps and exacerbating deeply rooted gender-based discrimination and violence. The pandemic has uncovered unambiguously the ways in which existing legal frameworks continue to undermine access to abortion. Abortion is still considered a "non-essential" health service in many countries, despite the UN clearly defined it a human rights imperative, a positive obligation from which states cannot derogate. The crisis exploitation used by some countries to overcomplicate or suspend access to abortion services should be condemned by the international community. In a time of medical emergency, where shortage of supplies hinder access to contraceptive options, movement restrictions and quarantine expose women to domestic violence and job losses hamper their independence, a safe and legal access to abortion services is of the utmost importance.

In Italy, Human Rights Watch denounced the inaction of the government in taking measures to ensure abortion services during the pandemic. The failure to understand the relevance of abortion services during the pandemic unveiled the underlying issue at heart of the Italian system, that fails to see abortion as an essential health service. The country rests on out-of-date premises that include limitation to the seventh week of pregnancy for a legal abortion, a vast majority of doctors making use of "conscientious objections", an unequal distribution at national level of hospitals in a position of offering abortion care, a burdensome three-day hospitalization for medically induced abortion. The pandemic did nothing but exacerbate the difficulties in accessing the already intricate Italian system.

A simple question we need to ask ourselves regarding the issue of abortion restrictions due to the Covid-19 outbreak is: are these restrictions justified? International conventions, UN reports and international human rights treaties differ on this point. Abortion rights are considered to be non-derogable human rights. It is a sheer hypocrisy to argue that they are to be considered elective medical procedures that can be halted or altogether banned during a health emergency crisis. The impacts of crises are never gender neutral, and the COVID-19 crisis is no exception (Inter-Parliamentary Union 2021).

Bibliography

Berger, Miriam. 2020. "How the pandemic has affected abortion rules around the world." The Washington Post, September 26. Accessed on 20 March 2021.

Council of Europe. Commissioner for Human Rights. 2020. Statement of 7 May 2020. "COVID-19: Ensure women's access to sexual and reproductive health and rights." https://www.coe.int/en/web/commissioner/-/covid-19-ensure-women-s-access-to-sexual-and-reproductive-health-and-rights, accessed October 20, 2021.

De Vido, Sara. 2020. "Gender inequalities and violence against women's health during the CoViD-19 pandemic: an international law perspective." Biolaw Journal 3: 77-105.

Human Rights Watch 2020b. "A Step Forward for Abortion Rights in Italy. Revised Medical Abortion Guidance Will Help Ensure Safe, Legal Care." 11 August 2020. https://www.hrw.org/news/2020/08/11/step-forward-abortion-rights-italy, accessed February 15, 2021.

Human Rights Watch. 2020a. "Italia: Covid-19 aggrava gli ostacoli all'aborto legale." 30 July 2020. https://www.hrw.org/it/news/2020/07/30/375941#, accessed February 15, 2021.

Hunt, Kate. 2021. "Exploiting a Crisis: Abortion Activism and the COVID-19 Pandemic." Perspective on Politics 19(1): 1-16.

Inter-Parliamentary Union 2021. "Joint Call by IPU and CEDAW Committee on International Women's Day 2021." 8 March 2021. https://www.ipu.org/iwd-2021-statement, accessed February 15, 2021.

Linder, Ronny. 2020. "Women's Groups in Israel Sound Alarm After Abortions Not Deemed Urgent Procedure." Haaretz, March 24.

Moreau, Caroline, Mridula Shankar, Anna Glasier et al. 2020. "Abortion regulation in Europe in the era of COVID-19: a spectrum of policy responses." BMJ Sexual & Reproductive Health 47(4), accessed March 15, 2021, doi:10.1136/bmjsrh-2020-200724.

Sobel, Laurie, Amrutha Ramaswamy, Brittni Frederiksen, and Alina Salganicoff. 2020. "State action to limit abortion access during the Covid-19 Pandemic." KFF. Kaiser Family Foundation, August 10.

Spinelli Angela, and Michele Grandolfo. 2001. Bollettino Epidemiologico Nazionale. Epicentro. "L'epidemiologia per la sanità pubblica." Istituto Superiore di Sanità.

Todd-Gher, Jamie, and Payal Shah. 2020. "Abortion in the context of COVID-19: a human rights imperative". Sexual and Reproductive Health Matters 28(1): 28-30.

UN Commission on Human Rights. 1984. Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, Annex. UN Doc. E/CN.4/1985/4.

UN Committee on Economic, Social and Cultural Rights. 2016. "General Comment No. 22: On the right to sexual and reproductive health." E/C.12/GC/22.

UN Office of High Commissioner for Human Rights. 2020b. "Joint statement by the Special Rapporteur and the EDVAW Platform of women's rights mechanisms on Covid-19 and the increase in violence and discrimination against women." July 14.

UN Office of the High Commissioner for Human Rights. 2020a. "Topic in focus: Covid-19 and women's human rights. Guidance." April 15. https://www.ohchr.org/Documents/Issues/Women/COVID-19_and_Womens_Human_Rights.pdf

WHO 2020 b. "Maintaining essential health services: operational guidance for the COVID-19 context interim guidance." June 1. https://www.who.int/publications/i/item/WHO-2019-nCoV-essential-health-services-2020.1

WHO 2020a. "WHO releases guidelines to help countries maintain essential health services during the COVID-19 pandemic." March 30. https://www.who.int/news-room/detail/30-03-2020-who-releases-guidelines-to-help-countries-maintain-essential-health-services-during-the-covid-19-pandemic