

Threats of retrocession in sexual and reproductive health policies in Brazil during the Zika epidemic

Ameaças de retrocesso nas políticas de saúde sexual e reprodutiva no Brasil em tempos de epidemia de Zika

Amenazas de retroceso en las políticas de salud sexual y reproductiva en tiempos de epidemia Zika en Brasil

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The right to abortion and the current scenario

Brazil has one of the most restrictive legislations in the world on abortion. Since 1940, abortion is only allowed in Brazil in cases involving either risk to the woman's life or rape, and in cases of fetal anencephaly. Yet abortion is common despite these legal restrictions. According to a nationwide survey in 2010, one in five adult women in Brazilian cities had already had an abortion, meaning more than five million women in absolute numbers ¹. Deaths resulting from clandestine abortions are one of the five main causes of avoidable maternal death.

The Zika virus epidemic has reached more than 20 countries in the Americas and is the potential cause, with circumstantial evidence, for thousands of cases of microcephaly, in addition to other neurological consequences. Unequivocally, the families, especially the poorest, will bear the brunt of the burden of caring for these children. The situation calls for a public debate on women's right to interrupt the pregnancy if they so desire, as an issue of reproductive social justice. Organizations on sexual and reproductive rights defend future judicial claim before the Federal Supreme Court to request authorization for pregnancy termination for women infected with the Zika virus based on risks to their mental health and potential risks to fetal development due to the outbreak. The central arguments are

the state's responsibility for failure to control the vector and the woman's right to dignity and health, considering the situation of aggravated social and economic vulnerability.

Despite tensions in the debate on women's autonomy to interrupt pregnancy in Brazil, the regulation of care for cases of legal abortion in pregnancy resulting from rape is a reality, in spite of difficulties in its implementation.

In 2013, *Law n. 12,845* ² enacted by the Office of the President was a victory for women's rights, since it provided for mandatory, comprehensive, and multidisciplinary care for persons that had suffered sexual assault, in all hospitals operating under the Brazilian Unified National Health System (SUS).

According to the *Technical Guidelines on the Prevention and Treatment of Injuries Resulting from Sexual Assault against Women and Adolescents* ³, health professionals may decide whether or not they want to perform the abortion, based on their personal convictions, but in such cases they have the obligation to refer the woman to another health service or health professional to perform the procedure ⁴. However, in case there is no one else to perform the abortion, the health professional is not entitled to claim conscientious objection. That is, the health professional and health service administrator are required to ensure adequate care.

Despite such progress in the legislation, according to a survey in 2012, the supply of services

was still insufficient: there were only 65 services that performed abortions as allowed by law in the country⁵, with a heavy concentration in the South and Southeast regions. And despite the proven effectiveness of emergency procedures⁶, the SUS has still not succeeded in guaranteeing equal access for all women victims of sexual assault.

Threats of retrocession

The current composition of the Brazilian National Congress shows a strong religiously-based conservatism whose agendas infringe the Brazilian state's secularity⁷. There is a set laws submitted by the Evangelical Lobby that raise threats of retrocession in established rights, as part of a strategy organized under the "right to life" argument⁸. For example, the Bill of Law known as the "Unborn Child's Statute" (*PL n. 478/07* – <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=345103>) aims to provide absolute protection for the right to life of the unborn child, that is, granting the embryo the same rights as already-born children and adolescents. If the bill passes, it may criminalize abortion in cases of rape, risk to the woman's life, or anencephaly, in addition to interfering negatively in the field of assisted reproduction. The bill is currently under review in the Committee on the Constitution and Justice, in Brazil's Lower House (CCJC).

Still, *Bill of Law n. 5,069/2013* (<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=565882>) is the one that sparks the most social outcry, and is one of the Evangelical Lobby's explicit priorities this year. The bill proposes various barriers for women and adolescent victims of sexual assault to access health services and exercise their sexual and reproductive rights. The bill received approval by the Committee on the Constitution and Justice in October 2015 and is scheduled to come up for vote on the floor of the Lower House.

The bill revokes the expanded definition of sexual assault as "any form of nonconsensual sexual activity", guaranteed by *Law n. 12,845*², and reclaims the less comprehensive definition of rape, already altered by *Law n. 12,015*⁹. This would narrow the definition of sexual assault and restrict access to health services and justice, which are established rights for rape victims.

The bill also proposes a change to Article 1 of *Law n. 12,845*², striking the term "comprehensive" from care in cases of sexual assault. The proposed deletion ignores the complexity of rape cases and the multiple needs for clinical, social, and psychological care, legal assistance, and police protection, among others.

*Law n. 12,845*², in addition to guaranteeing health care, provides each woman's right to receive sufficient information on her rights and orientation on the available services, including the right to safe and legal abortion in case of pregnancy resulting from rape.

Meanwhile, *Bill of Law n. 5,069* typifies as a crime to "induce", "instigate", or "abet" the practice of abortion (Article 112) or to perform "advertising of means for abortion", and explicitly when the crime is "committed by an agent of the public health service or a practicing physician, pharmacist, or nurse". We can only imagine the negative consequences for free professional exercise and educational practices by all those working with reproductive health.

Under the substitutive to the bill refers explicitly to the right to conscientious objection not only by health professionals, but also extending to institutions. The statement that "*no health professional or institution, in any case, may be obliged to counsel, prescribe, or administer a procedure or medication that he/she/it considers abortive*" clearly leaves room for omission of responsibility for the care, encouraging denial of information to women by health professionals, institutions, and administrators.

Another serious aspect of this bill is the establishment of mandatory certification of rape by a forensic medical examiner and reporting to the police authorities prior to authorization of the abortion, disregarding the prevailing Ministry of Health directive, which makes the woman's affidavit sufficient.

Finally, the bill alters the technical definition of "*prevention of pregnancy*" to "*non-abortive procedure or medication, with early efficiency to prevent pregnancy resulting from rape*". This leaves room for the tortuous and conservative debate on preventive versus abortive medication, jeopardizing access to emergency contraception, which is guaranteed by the Federal Constitution when it provides the right to family planning (Article 226 of the *Federal Constitution*, paragraph 7) and *Federal Law n. 9,263/1996*¹⁰.

Conclusion

On the one hand we have legislation that acknowledges sexual and reproductive rights as human rights, defending access to equal and adequate sexual and reproductive health care, without discrimination, coercion, or violence, the right to family planning, the right to information, the right to life, and the right to health, liberty, and security.

On the other, barriers to access and quality of care, expressed in *Bill of Law n. 5.069*, may influence adult and adolescent rape victims into delaying or desisting from seeking public health care services, turning to unsafe procedures to interrupt the pregnancy, with all the inherent risks. In addition, such barriers pose a risk to health professionals that fulfill their ethical and professional duties to rape victims and expose themselves to criminal prosecution.

Given the current scenario of the Zika virus epidemic, officially declared a global emergency, and the threats of retrocession in the Legisla-

tive Branch, like *Bill of Law n. 5.059*, Brazil runs the risk of counteracting the measures needed to guarantee women's sexual and reproductive health, as expressed by the World Health Organization and the Office of the United Nations High Commissioner for Human Rights, calling on governments to fulfill their responsibility to reverse restrictive laws and policies, expand access to comprehensive sexual and reproductive health services, and guarantee access to information and the right to health for all women, without discrimination.

Contributors

Both authors elaborated, wrote, and revised the manuscript.

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