2022

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Global Public Health

An International Journal for Research, Policy and Practice

ISSN: (Print) (Online) Journal homepage: https://www.tandfonline.com/loi/rgph20

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To cite this article: Mariana Prandini Assis & Joanna N. Erdman (2022) Abortion rights beyond the medico-legal paradigm, Global Public Health, 17:10, 2235-2250, DOI: 10.1080/17441692.2021.1971278

To link to this article: https://doi.org/10.1080/17441692.2021.1971278

Published online: 06 Sep 2021.

GLOBAL PUBLIC HEALTH
2022, VOL. 17, NO. 10, 2235–2250
https://doi.org/10.1080/17441692.2021.1971278

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Abortion rights beyond the medico-legal paradigm

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ABSTRACT

Abortion rights in international law have historically been framed within a medico-legal paradigm, the belief that regulated systems of legal and medical control guarantee safe abortion. However, a growing worldwide practice of self-managed abortion (SMA) supported by feminist activism challenges key precepts of this paradigm. SMA activism has shown that more than medical service delivery matters to safe abortion and has called into question the legal regulation of abortion beyond criminal prohibitions. This article explores how abortion rights have begun to depart from the medico-legal paradigm and to support the novel norms and practices of SMA activism in a transformation of the abortion field. Abortion rights as reimagined in SMA activism increasingly feature in human rights agendas related to structural violence and inequality, collective organising and international solidarity, and democratic engagement.

ARTICLE HISTORY
Received 3 April 2021
Accepted 6 August 2021

KEYWORDS
Self-managed abortion; human rights; decriminalisation; abortion law; medico-legal paradigm; feminist activism

Introduction

In international law, abortion rights have historically been framed within a paradigm of 'safe and legal abortion.' Legalisation, or the establishment of a regulatory regime for legal abortion has been the imagined end of abortion decriminalisation (Berer, 2017). Legalisation refers to a set of formal rules governing who, where and how an abortion may be provided and accessed in the belief that a regulated system guarantees safe abortion. Abortion rights have thus largely focused on securing grounds for legal abortion and protective measures to ensure access to services under these grounds (Erdman & Cook, 2020). The overall human rights imperative is for states to integrate safe and legal abortion into the health care system (UN Committee on Economic Social and Cultural Rights, 2016; UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2006).

The medico-legal paradigm reflects a long-held truth in global public health discourse and human rights campaigning that illegal abortions are unsafe (Berer, 2004). Beginning in 1990, the World Health Organization (WHO), defined 'unsafe abortion' by the persons and places of care: 'individuals lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both' (World Health Organization, 1993). Legal abortion necessarily met these conditions, and illegal abortion did not. For decades, this scheme worked well enough because abortion outside these conditions generally involved invasive and other methods with unreasonable risk and serious harm. Yet WHO has since reworked its scheme of safe and unsafe abortion to accept a gradient of risk (Ganatra et al., 2014). While keeping the binary of safe/unsafe abortion, it recognised that a growing worldwide practice of the informal use of abortion pills (mifepristone and/or misoprostol) has made illegal abortion safer (Singh, 2006).

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While originally registered for the treatment of gastric ulcers, misoprostol was first misused by Brazilian women in the 1980s to induce miscarriages. The drug could be easily purchased in pharmacies, without prescription, and its off-label use for abortion quickly spread by word of mouth (Costa, 1998). Mifepristone, by contrast, was developed in a pharmaceutical lab for use with misoprostol to end a pregnancy and was introduced into formal health care systems worldwide, albeit slowed by political opposition and with considerable regulatory controls (Ewart & Winikoff, 1998). The use of mifepristone and/or misoprostol to end a pregnancy came to be known as 'medical abortion' (Weitz et al., 2004), and was folded into the medico-legal paradigm as another safe and effective method of pregnancy termination, which human rights standards endorsed (UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2011, para. 26).

Yet this was not the only trajectory of abortion with pills. Beginning in the 2000s, feminist activists organised in local collectives, nationwide networks, and global telehealth organisations took up and innovated upon the informal use of abortion pills, seeking to make the practice safer through provision of information and support, and eventually the supply of pills too (Erdman et al., 2018). Feminist practices for supporting and advancing self-managed abortion (SMA), the self-sourcing of abortion pills and their use outside of a clinical context – or *aborto autónomo* (autonomous abortion) as it is known in Latin America and the Caribbean, vary from context to context. There are hotlines (Drovetta, 2015; Gerdts & Hudaya, 2016), accompaniment in person (Singer, 2019; Zurbriggen et al., 2018), via e-mail, phone apps or websites (Yanow et al., 2019), referral to pharmacies or other trusted drug providers (Walsh, 2020), and the list continues to grow as SMA activism evolves according to people's actual needs and capacities, as well as social and material conditions.

In all its diversity, SMA activism is rooted in practices of collective and self-care, and values of self-determination, compassion, and solidarity. In this way, SMA activism not only meets peoples' immediate needs, but also challenges key precepts of the medico-legal paradigm, most directly, that safe abortion can only be realised through regulated systems of legal and medical control (Erdman et al., 2018). By transforming the political geography of abortion and institutional traditions of its governance (Calkin, 2019), SMA activism has shown that more than medical service delivery matters to safe abortion, and has called into question the legal environment of abortion provision and access beyond simple criminal prohibitions. Against the medico-legal paradigm, SMA activism reimagines abortion rights from the lived experiences of those seizing the means of reproduction and demanding new democratic norms to govern abortion.

This article explores how abortion rights in international law depart from the traditional medico-legal paradigm and reflect the ways in which SMA activism has fundamentally changed the abortion field through its diverse practices and norms. In this objective, the article recognises the jurisgenerative force of grassroots activism in shaping international human rights law (Simmons, 2009) through direct action rather than formal advocacy.

Materials and methods

This article reviews existing human rights standards on abortion under the UN treaty system to assess how they support the novel norms and practices of SMA activism beyond the medico-legal paradigm. Existing literature on SMA activism worldwide was reviewed to identify the practices and values that inform its novel models of abortion care. The article builds on a previous review guided by the same objective (Erdman, 2011), but extends beyond information provision to capture the increasingly diverse practices of SMA activism.

Human rights standards are authoritative interpretations of human rights treaty provisions with respect to a particular issue, giving some real and practical meaning to the otherwise broad and open text of treaties (Mechlem, 2009). They are a feature of the legalisation of international human rights law, that is, the treatment of human rights treaties as a system of law through modes of legal adjudication and interpretation (Turner, 2017). Human rights standards have gained

a de facto normativity within the system, binding on all actors within the system, and are thus treated as a form of jurisprudence.

Using the term 'abortion', we searched the English jurisprudence consisting of all general comments and recommendations, individual communications, and thematic reports of special procedures (special rapporteurs and working groups). We limited the search to these sources, the most legalistic in reasoning and tone with interpretations that consider the object and purpose of a treaty. We also limited the search to sources that address 'abortion' explicitly, rather than implicitly, for example, under the comprehensive scope of sexual and reproductive health and rights.

There is not one single database of the entire UN jurisprudence, a consequence of a non-hierarchical decentralised system without formal integration and one of the challenges of doctrinal research in international human rights law (Egan, 2018). We thus searched for our data in several UN databases.

For individual communications,[1] we searched the database https://juris.ohchr.org/search/. Twenty-two results contained the word abortion, out of which nine were inadmissible, and of the other thirteen cases decided on their merits, abortion was the main issue only in five of these cases, which were reviewed and analysed.

For general comments and recommendations, there is no single database available. We first searched for 'abortion' in an UN official compilation of these documents, covering the period between the foundation until 2008 (HRI/GEN/1/REV.9 (VOL.I) and HRI/GEN/1/REV.9 (VOL.II)). For the period between 2008 and 2021, we visited the websites of each Treaty Body and reviewed all general comments/recommendations issued, searching for the word 'abortion'. In total, we identified and analysed seventeen documents issued by the Human Rights Committee, Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights, and Committee on the Rights of the Child.

For the thematic reports of special procedures (special rapporteurs and working groups), there is also no single database available. Therefore, we first identified those with any association with the issue,[2] and from each of their respective websites, we reviewed all thematic reports issued, searching for the word 'abortion'. We identified and reviewed forty documents for substantive standards.

Results and discussion

In this section, we present and discuss the results of our review, identifying the human rights standards that support and advance SMA activism in five key areas: abortion decriminalisation, safe abortion, unsafe abortion, abortion pills, and abortion publics.

Reimagining abortion decriminalization

Under the medico-legal paradigm, decriminalisation and legalisation are coterminous. Human rights standards, within this paradigm, call on state parties to decriminalise abortion and to legalise abortion (UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2011, para. 28; UN Working Group on the issue of discrimination against women in law and in practice, 2016, para. 83). These standards are supported and rationalised by a focus on maternal mortality and morbidity, health-related harms of criminalisation, which naturally designate medical systems as the remedial state institution for violations (UN Committee on Economic Social and Cultural Rights, 2016, para. 28; UN Working Group on the issue of discrimination against women in law and in practice, 2016; World Health Organization, 2012). In a classic formulation of the paradigm, the Special Rapporteur on the Right to Health warned that '[s]afe abortions … will not immediately be available upon decriminalisation unless States create conditions under which they may be provided,' namely establishing clinics, training physicians and health-care workers, enacting licensing requirements and ensuring the availability

of medicines and equipment (2011, para. 29). This is abortion legalisation, the codification of access to and provision of abortion services in state law.

SMA activism approaches abortion legalisation differently, indeed challenges the premise that regulatory control of service provision and entitlement keep people safe. Rather in SMA activism, sharing information and open collaborative practice are ethical imperatives to keep people safe and to continuously innovate and improve upon knowledge and practice. SMA activism is grounded on the belief that when people are informed, resourced and supported, they can safely manage their abortions.

Human rights standards that call for abortion decriminalisation, but not legalisation align with this vision. The earliest of these standards includes General Recommendation no. 24, where the CEDAW Committee called for the 'withdrawal of punitive measures imposed on women who undergo abortion' (UN Committee on the Elimination of Discrimination Against Women, 1999, para. 31(c); UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2004, para. 30). Almost a decade later, the depenalization of abortion became a focus of human rights standards as part of a generalised decarceration agenda in human rights law, (UN Special Rapporteur on extrajudicial summary or arbitrary executions, 2017, para. 105; UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2018, para. 75; UN Special Rapporteur on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 2016, para. 14; UN Special Rapporteur on violence against women its causes and consequences, 2013; UN Working Group on the issue of discrimination against women in law and in practice, 2019, para. 38) as reflecting an inherent antagonism between punitive legal frameworks and the right to health, (UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2018, para. 19) and in calling into question the very nature of the abortion crime in the belief that people should not be punished for ending their own pregnancies, a freedom of conscience and body (UN Working Group on the issue of discrimination against women in law and in practice, 2016, para. 107(d)).

Building on this jurisprudence, human rights standards call expressly for the decriminalisation of abortion and use this term to capture a broader set of harms associated not only with specific prohibitions against 'ending a pregnancy,' but legal restrictions related to abortion that collectively constitute 'abortion criminalization' as a socio-legal phenomenon. In 2011, the Special Rapporteur on the Right to Health explained how 'criminal laws and other legal restrictions may … directly outlaw a particular service, such as abortion … [but] [i]n practice, these laws affect a wide range of individuals, including women who attempt to undergo abortions … friends or family members who assist women to access abortions; practitioners providing abortions … [and] human rights defenders advocating for sexual and reproductive health rights' (2011, para. 14). These standards mark an important break from the medico-legal paradigm, which traditionally afforded protection only to 'women and girls' undergoing abortion and the 'medical service providers' that assist them (UN Human Rights Committee, 2016; UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2011, para. 30). Today, human rights standards recognise a broader class of protected actors related to abortion, inclusive of those who defy easy categorisation.

Direct-service SMA activists are both abortion practitioners and activists, and moreover many also identify as people who have had abortions and draw from their experiences. SMA also challenges assumptions about who is a practitioner of abortion and what constitutes abortion provision, given the diverse set of its practices (e.g. safe abortion hotlines, in–person and online counseling and accompaniment and doula services and community-based distribution of pills), and the norms that underlie them – the constellations of SMA activism (Berro Pizzarossa & Nandagiri, 2021). Activists inform people how to buy and use abortion pills, counsel and support people before, during and after their abortions, and deliver pills by post and through community networks (Jelinska & Yanow, 2018). Some activists also refuse the terms, 'abortion provision or provider' as

coming from the medico-legal paradigm, emphasizing rather their supportive or accompanying role with people at the centre of SMA and its practice (Singer, 2019; Zurbriggen et al., 2018).

The Special Rapporteur on the Right to Health has recognised the value of abortion information and support practices, specifically referencing restrictions on the production and distribution of abortion information, and calling for abortion decriminalisation 'including related laws, such as those concerning abetment of abortion' (UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2011, para. 31, 2018, para. 75). Some countries do explicitly ban SMA, prohibiting as a crime the supply or use of information or thing with the intent to procure an abortion, but indeed legal risk comes from the many regulatory laws used to intimidate, harass, and criminalise SMA activists (Diaz-Tello et al., 2017). In this respect, the Special Rapporteur on the Situation of Human Rights Defenders specifically noted that abortion activists working in criminalised contexts may be 'unaware of their rights or fear the criminalisation of their defense activities' (2019a, para. 54). The Rapporteur thus warned expressly against the use of laws to harass or criminalise activists and called on states to protect their rights, including to freedom of opinion, expression, assembly and association, on- or off-line (UN Special Rapporteur on the situation of human rights defenders, 2019a, para. 95).

Beyond extending human rights protection to SMA activists as abortion providers, these human rights standards protect them as political activists. The Rapporteur recognised that abortion rights defenders work in different ways, as civil society leaders, but also engaged 'in daily acts in small places, close to home,' and that critical to their collective work are 'diverse, inclusive and strong movements' (UN Special Rapporteur on the situation of human rights defenders, 2019b, para. 1,2,85). SMA activism is more than the sum of its practices, it is a political movement centred on the belief that people have a fundamental right to make decisions about their bodies and to act on those decisions. In a rare acknowledgement of this political agenda, the Rapporteur noted that abortion rights defenders face threats and attacks by state and other actors because they call for people to 'have the autonomy to make decisions about their lives and their bodies,' and so challenge patriarchal and heteronormative systems and their gendered power relations, indeed they fight for a 'radical reimagination of the world' (2019b, para. 29,80,85).

Abortion rights as political rights is also a radical reimagining in international law, but one supported by standards that call for the decriminalisation of abortion as a severe and unjustified form of state control over the bodies and lives of people, and thus as an inherent human rights violation (UN Committee on the Elimination of Discrimination Against Women, 2017, para. 18,29; UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2011, para. 21,27; UN Working Group on the issue of discrimination against women in law and in practice, 2016, para. 76,79,106). The Special Rapporteur on Freedom of Religion or Belief (2020, para. 28,76(e)) voiced this same idea in recommending the repeal abortion bans as a form of gender-based violence and discrimination. In this revisioning, abortion rights do not relocate state control in another legal institution, medical or otherwise, rather decriminalisation is an emancipatory act that recognises the right of people to control their reproductive lives and futures. SMA is a material embodiment of this emancipatory ideal. Abortion rights are not something requested of or provided by the state, they are taken in practice.

Reimagining safe abortion

The self-use of abortion pills was traditionally seen as a dangerous act of desperation, something people were forced to endure because of criminalisation. Recent human standards continue to use the backstreet abortion trope, that criminalisation 'drives service provision underground into the hands of unqualified practitioners,' (UN Working Group on the issue of discrimination against women in law and in practice, 2016, para. 29) or that 'the lack of State and professional regulation … means that abortions are performed by unskilled practitioners, in unhygienic conditions, in order to evade law enforcement' (UN Special Rapporteur on the right of everyone to the enjoyment

of the highest attainable standard of physical and mental health, 2011, para. 32). Legalisation, in contrast, promises that people can 'seek service and treatment through professional health-care providers under safe and medically appropriate circumstances, including the use of medical abortion pills' (UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2011, para. 26). In the context of COVID-19, the Special Rapporteur on Violence against Women praised the 'legalising [of] teleconsultations and the use of early medical abortion at home' to ensure safe abortion during the pandemic (UN Special Rapporteur on violence against women its causes and consequences, 2020, para. 75), without reference to the resilient SMA networks that have long supported safe access in legally restrictive contexts and that provided protocols for telemedical models (Assis & Larrea, 2020).

SMA activism seeks precisely to make the world outside the medico-legal paradigm a safer and more-humane place by supporting people to end their pregnancies safely, but also by targeting the structural conditions that create vulnerability and expose people to risk (Erdman et al., 2018). SMA activism thereby challenges simplistic assumptions about what makes an abortion safe/unsafe. Human rights standards support this vision by acknowledging that measures other than legalisation can make abortion safe, and that legal abortion is sometimes unsafe.

The Special Rapporteur of the Right to Health has described the conditions of unsafe abortion, as including: 'limited access to information, abortion induced by an unskilled provider in unhygienic conditions, abortion induced by the woman herself … through insertion of an object into the uterus, drinking of a hazardous substance or violent massage; and incorrectly prescribed medicine with no follow-up or further information provided' (2011, para. 26). While legalisation is one measure to address these conditions, it is not the only one. These are the conditions that SMA activism targets in its practices of information provision, counseling and support, and access to pills – which are all intended to reduce risk and harm, and to make abortion safer. Human rights standards have long supported similar harm reduction measures.

Human rights standards support post-abortion care unconditionally or irrespective of the legality of abortion as a universal entitlement to 'health protection afforded by the State as part of the right to health' (UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2011, para. 30, 2016, para. 92; UN Working Group on the issue of discrimination against women in law and in practice, 2016, para. 107(d)). Under the right to life, the Human Rights Committee and the Special Rapporteur on extrajudicial, summary or arbitrary executions have focused on 'measures' to ensure that people 'do not have to undertake unsafe abortions' (2017, para. 92,102). In a report entitled, 'Saving lives is not a crime,' the Special Rapporteur described state efforts through any means to deter safe abortion provision as 'unconscionable' (UN Special Rapporteur on extrajudicial summary or arbitrary executions, 2018, paras. 76–80). Moreover, in analysing state indifference to unsafe abortion as the arbitrary deprivation of life, both authorities have focused on the conditions that guarantee life, in other words, the conditions of safe abortion. Such conditions would include safe self-use methods (i.e. abortion with pills), with access to information and support by skilled providers with follow-up care. Other standards name these measures directly, the right to evidence-based information, post-abortion care and counselling for those in need, and have declared criminal laws that interfere with these measures in violation of the right to health (UN Committee on Economic Social and Cultural Rights, 2016, para. 40,49(e)).

Yet it is not only criminal prohibitions that deter the provision of safe abortion, but also laws that restrict its provision to regulated medical professionals and render safe abortion practice by others illegal, a form of backdoor criminalisation. SMA will always carry risks and harms unless it can be practiced safely, that is, without the threat of legal sanction. The Working Group on Discrimination against Women and Girls raised concern about the overmedicalization of abortion, specifically 'requirements that only doctors can perform certain services, such as pharmaceutical termination of pregnancy [abortion with pills]' (UN Working Group on the issue of discrimination against women in law and in practice, 2016, para. 74). Where abortion is 'restricted by law,' the Working

Group explained, safe abortion is 'a privilege of the rich, while women with limited resources have little choice but to resort to unsafe providers and practices,' and so recommended the repeal of such laws, recognising that they 'primarily affect women living in poverty in a highly discriminatory way' (2016, para. 80,107(b)).

Other human rights standards also draw attention to the disproportionate impact of restrictive abortion laws on those who are socially marginalised and disadvantaged (UN Special Rapporteur on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 2016, paras. 43–44), including denials of care in contexts of extreme vulnerability as experienced by incarcerated women of colour (UN Special Rapporteur on violence against women its causes and consequences, 2001, para. 54). Moreover human rights standards that recognise social inequalities of unsafe abortion for migrants, and in particular irregular migrants, rural women, and women living in situations of conflict and disaster, adolescents, and transgender persons, (UN Committee on the Elimination of Discrimination Against Women, 2013, para. 52, 2016, paras. 38–39, 2018, para. 68; UN Special Rapporteur on the human rights of migrants, 2010, para. 31; UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2016, para. 16,89; UN Special Rapporteur on violence against women its causes and consequences, 2001, para. 168; UN Working Group on the issue of discrimination against women in law and in practice, 2016, para. 58) are not limited to criminalised contexts. They recognise rather that unsafe abortion inequalities continue after legalisation because social and economic resources continue to structure access to services. Many of these standards thus simply call for access to safe not legal abortion.

Central to SMA activism is a respect for people and their real needs and circumstances, with the commitment to meet them where they are and support them to manage their abortions safely with whatever resources they have. In SMA activism, abortion is marked by a diversity of experience, rather than the formal rules and classifications of abortion laws that marginalise people, create vulnerability and impose disadvantage (Sen et al., 2009). In a rare acknowledgement of how abortion laws harm by perpetuating structures of inequality, the Special Rapporteur on the Right of Persons with Disabilities expressed concern over grounds-based abortion laws that perpetuate ableist views by designating fetal impairment as a condition of access, and called for new legal expressions of abortion rights that embrace disability as part of human diversity (UN Special Rapporteur on the rights of persons with disabilities, 2019, para. 32,64). SMA activism shares this idea of 'safety' in abortion and its legal regulation as encompassing more than clinical safety, attentive especially to structural violence.

Reimagining unsafe abortion

In the medico-legal paradigm, human rights standards drive people toward legal abortion services in the belief that professional medical care ensures their safety. Yet SMA activism has long recognised that clinical care settings are a dangerous site for many, and increasingly human rights standards also acknowledge this fact. While obstetric violence was developed in the context of facility-based childbirth, SMA activists (Women Help Women, 2020) have mobilised this epistemic construct to shed light on the mistreatment and violence that people suffer in seeking legal abortion services within a medical context. Human rights standards recognise this relationship between medical authority, and 'torture and ill-treatment,' with the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment expressly acknowledging the powerlessness of women in a hierarchical doctor-patient relationship and the 'lack of legal and policy frameworks that effectively enable women to assert their right to access reproductive health services' (UN Special Rapporteur on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 2016, para. 42).

People who seek legal abortion services suffer from different manifestations of violence that include 'physical violence, failure to meet standards of care, threats and criminalisation, stigma and discrimination, and gaslighting' (Assis & Larrea, 2022). As against these practices, and even

within the medico-legal paradigm, human rights standards recognise the right of everyone to enjoy the highest quality of abortion care. The Special Rapporteur on Violence against Women, its Causes and Consequences recognises abortion-related violence 'as part of a continuum of the violations that occur in the wider context of structural inequality, discrimination and patriarchy' (UN Special Rapporteur on violence against women its causes and consequences, 2019, para. 9). Against these violations, human rights standards offer an encompassing set of protections that challenge the ways in which abortion safety is conceptualised and measured beyond a biomedical requirement.

The Committee on Economic, Social and Cultural Rights has recognised state obligations to protect against all forms of violence against women, including abortion-related violence (UN Committee on Economic Social and Cultural Rights, 2016, para. 59). The Committee on Elimination of all Forms of Discrimination Against Women further elaborated on this standard to expressly name the 'denial or delay of safe abortion and/or post abortion care', and the abuse and mistreatment of people seeking information on abortion, or abortion pills and services as a form of gender-based violence, that may be tantamount 'to torture or cruel, inhuman or degrading treatment' (UN Committee on the Elimination of Discrimination Against Women, 2017, para. 18). Human rights standards clearly condemn the physical violence inflicted on women who seek post-abortion care, and are believed by healthcare providers to have self-managed their abortions, including sexual violence, infliction of pain through delay and denial of needed medical treatment and pain management (Steele & Chiarotti, 2004) and being tied to bed (UN Special Rapporteur on violence against women its causes and consequences, 2019, para. 22). These standards recognise that physical violence against those seeking abortion and post-abortion care causes 'tremendous and lasting physical and emotional suffering', is 'inflicted on the basis of gender' and often works as a form of punishment for having 'contravene[d] socialised gender roles and expectations' (UN Special Rapporteur on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 2016, para. 42).

Human rights standards also address 'standards of abortion care,' protecting against the provision of false information, bureaucratic barriers that delay or deny care, privacy and confidentiality breaches, the use of outdated, risky and invasive procedures such as curettage, and generally poor conditions of health facilities (UN Working Group on the issue of discrimination against women in law and in practice, 2016, para. 29). The Committee on Economic, Social and Cultural Rights has defined the right to sexual and reproductive health as including 'access to safe abortion services and quality post-abortion care' as well as respect for the 'autonomous decisions' of people in accessing care (UN Committee on Economic Social and Cultural Rights, 2016, para. 28). These standards encompass both freedoms and entitlements, 'the right to control one's health and body … free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation' as well as 'the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health' (UN Committee on Economic Social and Cultural Rights, 2016, para. 28).

Human rights standards specifically condemn confidentiality and privacy breaches, and more broadly the participation of health professions in the criminalisation of abortion. These standards repeatedly condemn doctors and other health care personnel who 'report cases of women who have undergone abortion', and where required by law, have declared such practices as a violation of civil and political rights (UN Human Rights Committee, 2000, para. 20).

Human rights authorities recognise that confidentiality breaches not only put people at risk of being criminalised, but also have a chilling effect on people 'seeking advice and treatment and thereby adversely affect their health and well-being' (UN Committee on the Elimination of Discrimination Against Women, 1999, para. 12(d)). The Special Rapporteur on the Right to Privacy recognised that 'a woman's decision to voluntarily terminate her pregnancy is not a matter of public or general interest', but rather confidential treatment is a requirement of 'respect for women's right to privacy and dignity' (UN Special Rapporteur on the right to privacy, 2020, para. 39(ii),(iv)). The Rapporteur further called on states to protect against such breaches including by 'the design of

facilities, the management of health-care services, staff practices and data processing' (UN Special Rapporteur on the right to privacy, 2020, para. 41(c)).

Human rights standards that condemn abortion-related violence in medical settings not only offer protection against abuse, and mistreatment, but call for a higher standard of 'holistic and humane' care, that is 'designed to safeguard … privacy and dignity' (UN Special Rapporteur on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 2016, para. 70(k)), ensuring people can access care 'free from discrimination and any violence, including sexism and psychological violence, torture, inhuman and degrading treatment and coercion' (UN Special Rapporteur on violence against women its causes and consequences, 2019, para. 76). Such inclusive protection requires not only the removal of 'criminal charges and imprisonment of women who have been seeking emergency obstetric health services' (UN Special Rapporteur on violence against women its causes and consequences, 2019, para. 81(r)) but also healthcare personnel prepared to provide compassionate, evidence-based, and high-quality care.

Actual experience of abortion-related obstetric violence or fear of it, in formal health systems, is one of the many reasons that people seek SMA. By putting abortion pills in their hands, and accompanying them with compassion, and without judgment or mistreatment (Jelinska & Yanow, 2018), SMA activism both builds and offers a vision for just and inclusive systems of care, and invites the state to learn from these systems rather than extinguish them (Erdman et al., 2018; Assis & Larrea, 2020).

Reimagining abortion pills

Abortion pills are a key material resource for SMA activism, and a crucial pharmaceutical innovation that allowed activists to challenge the medico-legal paradigm, but also the physical and geographical confines of abortion. As often remarked in activist circles, 'pills have legs,' and can travel from place to place, carried in purses, wallets, and pockets, and passed around hand-to-hand. Abortion pills have dramatically changed the patterns and conditions of abortion access, but also social meanings associated with abortion (Irons, 2020; Nations et al., 1997). They have also improved people's abortion experiences, making abortion easier and more practical, allowing for privacy and for the possibility of having the intimate support of a partner, friend, or trusted person throughout the experience (Ramos et al., 2014; Zamberlin et al., 2012).

Abortion pills are protected under international human rights law as an unequivocal 'benefit of scientific progress,' and the material result 'of the applications of scientific research,' supported by human rights standards that call on state parties to ensure access to up-to-date technologies of relevance to the right to sexual and reproductive health (UN Committee on Economic Social and Cultural Rights, 2020, para. 8,33). Denying 'access to … medication for abortion' amounts to discrimination and outright inequality (UN Committee on Economic Social and Cultural Rights, 2020, para. 33).

As recognised by the Committee, access to abortion pills are critical because they represent a technological innovation that has significantly improved the quality of abortion care, (UN Committee on Economic Social and Cultural Rights, 2016, para. 21) a strong finding of public health evidence from both formal (Dzuba et al., 2013) and informal settings (Gerdts et al., 2020; Gerdts & Hudaya, 2016). Abortion pills are safe and effective with few contraindications and relatively low cost for misoprostol.

Yet the medico-legal paradigm continues to subject abortion with pills to excessive regulation, particularly on the supply side, overreaching evidence, disqualifying safe providers and effectively outlawing safe practices. Pharmaceutical companies have also actively limited access to abortion pills by refusing to commercially register or license products for abortion indications, and otherwise restricted their use (Chong et al., 2004). Drug regulators have enacted onerous prescription and other distribution controls, and in extreme cases, designated abortion pills as a controlled substance

confined to institutional use, with significant criminal penalties under drug enforcement regimes (Assis & Erdman, 2021).

These practices were sustained for many years by global health policy, including the *WHO Essential Medicines List*, where applications for the listing of mifepristone and misoprostol for use in abortion were rejected because of 'concern about widespread use as a self-medication where abortion is considered illegal' (WHO Expert Committee on the Selection and Use of Essential Medicines, 2003, p. 16), and later when listed, abortion pills were placed in the complementary list, among medicines for which specialised facilities, care or training are needed with a further requirement for 'close medical supervision' (WHO Expert Committee on the Selection and Use of Essential Medicines, 2005, p. 37), and an unprecedent qualification, 'where permitted under national law and where culturally acceptable' (Gibson, 2005; Perehudoff et al., 2018).

Eventually with greater generic production of abortion pills, and stronger public health evidence, a less medicalized approach to abortion pills was adopted (World Health Organization, 2015, 2018). Today, mifepristone and misoprostol for medication abortion are listed on the core *WHO Essential Medicines List*, although they remain as the only essential medicine subjected to the restriction of '[w]here permitted under national law and where culturally acceptable'.

The Special Rapporteur on the Right to Health directly addressed the damaging health consequences of restricting access to medicines for 'political, cultural and legal considerations', and called on states to 'ensure that access to essential medicines for … sexual and reproductive health … is based purely on health needs and evidence' (UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2013, para. 45;73 (b)). More recent human rights standards that explicitly mandate states to make available 'medicines for abortion and for post-abortion care' as essential medicines now reflect the changing status of abortion pills themselves in global health policy (UN Committee on Economic Social and Cultural Rights, 2016, para. 13, 2020, para. 33).

These human rights standards support SMA activism, which endeavours not only to help people navigate informal supplies or markets, but also to supply evidence-based instructions on safe and effective use where pharmaceutical companies have refused to provide them (Frye et al., 2020). By doing so, SMA activism fulfils the state obligation to ensure safe supply of abortion pills and allows for the enjoyment of the benefits of scientific progress.

Reimagining abortion publics

While political contestation and disputes around abortion are highly public and visual (Sutton & Vacarezza, 2020), the medico-legal paradigm pulls abortion from streets, news media, political pamphlets and billboards, placing it within the enclosed confines of the clinic. Beyond efforts to share information and support people as widely as possible, the high visibility and public activities of SMA activism – graffiti art, digital media, DIY guides, popular songs and political manifestos – mark a wrangling of power away from medical and state-based authority that has suppressed the publicness of abortion, and more so, create a 'counter-public' (Fraser, 1990) to the official discourse on abortion, by framing abortion as a common life event, if not an affirming one (Erdman et al., 2018).

The Argentine hotline *Lesbianas y Feministas por la Discriminalización del Aborto* (Lesbians and Feminists for the Decriminalization of Abortion), for example, distributes an informational booklet on safe abortion that embodies a DYI aesthetics where the print type reminds one of a friend's handwriting, and smiley abortion pills appear against a rainbow background.[3] These materials bring joy and lightness to an experience otherwise stigmatised as criminal or miserable, helping to destigmatize abortion, while challenging abortion silence and secrecy and celebrating queer life. The Chilean accompaniment group, *Con las Amigas y en la Casa* (With Friends and At Home), produced a version of *Despacito*,[4] a Latin pop-hit song in which they celebrate at-home abortions with friends. The Abortion Dream Team, in Poland, a group of activists who travel

the country running SMA workshops is loud and proud about their work, advertising their tours with colourful and bright misoprostol-shaped posters.[5] By making abortion an issue that is not only public, but also a source of friendship, joy, togetherness, and ultimately pride, SMA activism involves critical cultural work that shifts people's attitudes and feelings about abortion.

Human rights standards recognise the harms of abortion stigma, which 'perpetuate[s] and intensif[ies] violations of the right to health', while also often preventing 'women from seeking abortions' and 'those who undergo abortions from requesting treatment for resulting medical complications' (UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2011, para. 34). The Special Rapporteur on the Right to Health has acknowledged that 'the intense stigmatisation of both the abortion procedure and women who seek such procedures can have deleterious effects on women's mental health' (UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2011, para. 36), that is, abortion stigma as an embodied state has an enduring effect on peoples' lives. Moreover, whereas abortion stigma contributes to 'the gross underreporting of abortion — only 35–60 per cent are reported,' (UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2011, para. 34) the visibility of SMA activism which shows abortion as a common fact in diverse people's lives combats this effect.

While the provision of information is not a crime, SMA activism is subject to forms of censorship and harassment, both public and private, in shutting down websites, hotlines and meetings. Human rights standards, in contrast, strongly protect the right to impart and receive information generally, including 'evidence-based information on all aspects of sexual and reproductive health,' including 'safe abortion and post-abortion care,'(UN Committee on Economic Social and Cultural Rights, 2020, para. 18) and further extended this right explicitly to adolescents (UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2016, para. 90). As both an individual and collective right critical to the realisation of other human rights, the Special Rapporteur on the Right to Privacy has recognised a general obligation on states to 'refrain from censoring, withholding or intentionally misrepresenting health-related information,' an obligation beyond medicalized contexts (UN Special Rapporteur on the right to privacy, 2020, para. 41(e)).

Human rights authorities further recognise opposition to SMA activism, including by religious fundamentalist groups that seek to 'roll back the advances achieved in securing women's equality, aim[ing] to block further advances and try[ing] to penalize' (UN Special Rapporteur in the field of cultural rights, 2017, para. 2) and stigmatise 'women for exercising and advocating for sexual and reproductive rights, creating a culture of shame rather than equality' (UN Special Rapporteur in the field of cultural rights, 2017, para. 72). Against these actions, the Special Rapporteur in the Field of Cultural Rights has called on the international community to 'support initiatives that reaffirm women's cultural rights' and recognised state obligation to 'take all necessary measures to respect and ensure the human rights of women human rights defenders who challenge fundamentalism and extremism' (UN Special Rapporteur in the field of cultural rights, 2017, para. 98(l)).

Human rights defence work is central to SMA activism. *Socorristas* (first responders), a nationwide accompaniment network in Argentina, collectivise the experience of abortion through face-to-face group meetings. Through their actions, they 'foster an understanding of abortion not merely as a private and individual choice but as a collective women's right' (Santarelli & Anzorena, 2017). Their logo, an assemblage of pairs of pink canvas sneakers 'communicate[s] that there is a collective ready to walk together with and provide speedy assistance to those who need an abortion' (Sutton & Vacarezza, 2020, p. 747). The Special Rapporteur on the Situation of Human Rights Defenders has recognised and celebrated the role and significance of reproductive rights defenders working at the frontlines, articulating positive state obligations to ensuring 'a safe and enabling environment [for activists] to exercise their rights … addressing systemic and structural discrimination and violence

… and enacting laws that recognise and protect the rights of all human rights defenders' (UN Special Rapporteur on the situation of human rights defenders, 2019b, para. 108). Rather than simple restraint, states and the international community are called upon to recognise the 'initiatives, strategies and networks,' (UN Special Rapporteur on the situation of human rights defenders, 2019b, para. 108) of human rights defenders, and to respect and support their work as crucial for people, communities, and society.

Conclusion

SMA activism challenges core features of the medico-legal paradigm of abortion rights, namely the belief that safe abortion can only be secured through legal abortion, a regulated system of controlled provision and access. This remains the dominant paradigm of abortion rights in international law – safe and legal abortion, but there are standards that depart from it and even challenge it. Abortion rights as reimagined in SMA activism increasingly feature in human rights agendas related to issues of structural violence and inequality, collective organising and solidarity, and democratic engagement.

Human rights standards that call for abortion decriminalisation without legalisation recognise that abortion laws can create conditions of unsafe abortion, and generally harm by perpetuating social structures of marginalisation and disadvantage. These standards situate abortion rights as bodily rights within the context of peoples' lives, a reimagining of abortion rights as embodied rights. Yet it is still rare for the jurisprudence to describe the circumstances that give rise to people's decisions to seek an abortion, or the real experiences of abortion in oppressive contexts. In an exceptional instance, the Working Group on Discrimination against Women described why migrant women may seek abortions to keeps their jobs, when subject to mandatory pregnancy tests before or during employment and fearing dismissal or deportation with a positive test (UN Working Group on the issue of discrimination against women in law and in practice, 2016, para. 23). Their legal status, however, excludes them from legal services, and their socio-economic status from safe services. Apart from this report, however, the jurisprudence does not address abortion as a form of social security, nor the differential criminalisation of people living in poverty or the criminalisation of poverty itself under abortion laws. While dismantling oppressive working conditions and migration laws that curtail people's dignity and autonomy must be a priority, when ending a pregnancy becomes a means of survival, denying or punishing people for that action should be recognised as cruel and inhuman treatment (UN Special Rapporteur on extreme poverty and human rights, 2011, paras. 31–32).

Human rights standards that recognise the public and participatory dimensions of abortion rights also reflect a critical turn away from narrow formulations of abortion rights as individualistic, and towards their public and collective dimensions particularly in the protection of abortion rights defenders with the need for safe spaces and communication channels that enable them to raise common concerns, define collective action and develop strong networks (UN Special Rapporteur on the situation of human rights defenders, 2019b, para. 92). In the briefest mention, the Independent Expert on the Promotion of a Democratic and Equitable International Order named 'abortion' as an issue on which to test the existence or otherwise of a democracy, specifically the degree to which people have had an opportunity to participate in political decision-making on abortion, and governments have been responsive to them in the decisions taken (UN Independent Expert on the promotion of a democratic and equitable international order, 2013, para. 21). These human standards capture the radical political ambitions of SMA activism in reimagining not only the freedom of people to control their reproductive lives, but in the creation of a world that supports, embraces and celebrates this freedom for all. Today these standards tentatively mention abortion, but tomorrow they may call out with all the love and joy of SMA activism.

Notes

1. The following Treaty Bodies receive and consider complaints from individuals: Human Rights Committee, and Committees against Torture; On the Elimination of Discrimination against Women; On the Elimination of Racial Discrimination; On the Rights of Persons with Disabilities; On Enforced Disappearances; On Economic, Social and Cultural Rights and On the Rights of the Child.
2. These were: Working Groups on Arbitrary Detention and on the issue of discrimination against women and girls; Special Rapporteurs on Violence Against Women, its causes and consequences; Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; On the Freedom of Religion or Belief; On Contemporary Forms of Racism; On the Right to Privacy; In the Field of Cultural Rights; On the Right to Development; On the Rights of Persons with Disabilities; On the Right to Education; On Extrajudicial, Summary or Arbitrary Executions; On the Promotion and Protection of Freedom of Opinion and Expression; On the Rights to Freedom of Peaceful Assembly and of Association; On the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health; On the Situation of Human Rights Defenders; On the Rights of Indigenous Peoples; On the Human Rights of Internally Displaced Persons; On the Human Rights of Migrants; On Minority Issues; On Extreme Poverty and Human Rights, and Independent Experts on the Promotion of a Democratic and Equitable International Order; On Human Rights and International Solidarity and On Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity.
3. https://es.slideshare.net/saludmujeres/manual-aborto-con-pastillas-argentina.
4. https://es-la.facebook.com/666945700148654/videos/849984428511446/?__so__=channel_tab&__rv__=all_videos_card
5. https://womenhelp.org/en/page/751/abortion-dream-team-1-facebook-logo

Acknowledgements

We would like to thank Women Help Women and the students in our 2020 International Sexual and Reproductive Health and Rights Practicum at the Schulich School of Law, Dalhousie University for early explorations and discussions of SMA in international human rights law.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This work was supported by the Canadian Institutes of Health Research [grant number 153012].

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