The Outbreak of the Zika Virus and Reproductive Rights in Latin America

https://www.e-ir.info/2016/02/24/the-outbreak-of-the-zika-virus-and-reproductive-rights-in-latin-america/

MARIANNA LEITE, FEB 24 2016

On 1 February 2016, the World Health Organization affirmed that “a causal relationship between Zika infection during pregnancy and microcephaly is strongly suspected”. It said that because of “[t]he lack of vaccines and rapid and reliable diagnostic tests, and the absence of population immunity in newly affected countries […]”, “[a] coordinated international response is needed to improve surveillance, the detection of infections, congenital malformations, and neurological complications, to intensify the control of mosquito populations, and to expedite the development of diagnostic tests and vaccines to protect people at risk, especially during pregnancy”. A few days later, WHO’s situation report expressed particular concern with the Latin American region noting that Brazil, El Salvador, Venezuela, Colombia and Suriname “have reported an increase in the incidence of cases of microcephaly and/or Guillain-Barré syndrome (GBS) in conjunction with an outbreak of the Zika virus” and that “women’s reproductive health has been thrust into the limelight with the spread of the Zika virus”.

There has been a range of reactions to the Zika outbreak. The most alarming though are related to the impairment of women’s reproductive rights. Across the region, governments have issued calls pleading all women to avoid becoming pregnant; some even requesting a delay until 2018 (Kempner, 2016). These calls were faced with strong opposition from human rights activists who demanded expanded access to safe abortion services (Galli, 2016). As a result, this outbreak re-opened a much needed debate; women’s rights to terminate unwanted and/or dangerous pregnancies.

Shortly after the WHO declared the outbreak a global health emergency, the UN High Commissioner for Human Rights released a statement, criticising advice to delay pregnancies and asking Latin American countries to allow access to abortion to those women contaminated by Zika. The statement affirms that “laws and policies that restrict access to sexual and reproductive health services in contravention of international standards, must be repealed and concrete steps must be taken so that women have the information, support and services they require to exercise their rights to determine whether and when they become pregnant”. Not surprisingly, other international bodies have also called for the relaxation of abortion laws across the region (WHO, 2016). Pleas from international human rights organisations demanding the implementation of holistic measures to mitigate the effects of the Zika Virus include the availability of therapeutic abortions (Banchon, 2016; WHO, 2016).

Hands-on initiatives exist across the region but policy-based restrictions represent serious obstacles to reproductive freedom. For example, a web-based non-governmental organization is offering free medical abortions for pregnant women contaminated by the virus, but some governments like Brazil have implemented measures to ensure their packages are retained at customs. Of course these initiatives are valid and necessary but conservative backlashes coupled with an escalating epidemic mean that they are not enough to meet the demand. In Brazil, an activist group is preparing a challenge to the Supreme Court pushing for the relaxation of abortion restrictions for women who test positive for the Zika Virus, as well as requesting the availability of a range of reproductive health measures necessary to those women who have to and/or decide to take their pregnancy to term (Diniz, 2016). This challenge is extremely important as it will shed light on an unresolved public health issue. In fact, scholars have already determined that the issue of unsafe abortion in the region is serious and widespread (Gideon, Leite and Alvarez Minte, 2015).

Reproductive Rights in Latin America

In spite of profound changes in gender and sexuality during the past century in the region, patriarchal motherhood is still widespread and visible in 'machista' (chauvinist) attitudes towards women (Alves and Corrêa 2009; Gideon, Leite and Alvarez Minte, 2015). Although women are more present in work and public spaces, asserting their individuality and pushing for the separation of sexuality from reproduction (Alves and Corrêa 2009), these changes are usually followed by conservative backlashes (religious or otherwise), and are rarely accompanied by mechanisms that effectively acknowledge and/or guarantee sexual and reproductive autonomy (Alves and Corrêa 2009).

According to the Guttmacher Institute, 760,000 women are treated annually for complications arising from unsafe abortions performed in Latin America and the Caribbean. The Guttmacher Institute's Fact Sheet indicates that "[a]bortion is not permitted for any reason in seven of the 34 countries and territories in the region" and it "is allowed only to save the woman's life in eight others, and a few countries permit abortion in cases of rape (Brazil, Panama and some states of Mexico) or foetal impairment (Panama and some states of Mexico)". Young, poor, black and brown women are the ones who suffer the most from unreasonable abortion policies (Gideon, Leite and Alvarez Minte, 2015). They are also the ones most likely to contract Zika and face tremendous hardships in dealing with its consequences (Diniz, 2016). As Diniz (2016) puts it, the Zika epidemic has given countries a unique opportunity to reevaluate their conservative abortion policies in light of increasing social inequality in the Latin American region.

State Violence and the Right to Abortion

According to international human rights law, states have the positive duty to guarantee unrestrictive access to safe abortion services (Ngwena, 2016). In fact, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa recognised abortion as a human right (Ngwena, 2016). Based on this and on decisions taken by UN treaty-monitoring bodies and the European Court of Human Rights, Ngwena (2016) developed a normative human rights framework for the implementation of the right to abortion using national legislation in conjunction with a favourable interpretation of international standards. Indeed, the European Court of Human Rights has already established that according to articles 3 and 8 of the European Convention on Human Rights there is a minimum content of legislature required to guarantee the protection of human dignity which the court saw as "necessary for the *effective protection of women* against violence" (ECHR, 2003 in Rudolf and Eriksson, 2007: 514). In this sense, Rudolf and Eriksson (2007) affirm that a gendered perspective to human rights needs to also be applied to the case of abortion policies.

Building on the European Court of Human Rights' jurisprudence, the Committee on Human Rights adopted a view in favour of therapeutic abortions based on the right to live free from torture and of cruel, inhuman, or degrading treatment or punishment (Rudolf and Eriksson, 2007). The Committee claims that state officials' and/or private providers' refusal to perform therapeutic abortions, when allowed by national law, constitutes an unjustified interference in women's right to privacy, thus violating articles 7 and 17 of the International Covenant on Civil and Political Rights (Rudolf and Eriksson, 2007). Similarly, the Committee overseeing the implementation of the Convention on the Elimination of All Forms of Discrimination against Women – the CEDAW – asserted that states have a positive obligation to prevent violence against women, adding that it constitutes gender-based violence and violates the right to live free from discrimination, enshrined in article 2 of the CEDAW (Rudolf and Eriksson, 2007).

Cusack and Cook (2009) argue that article 12 of the CEDAW – demanding states to guarantee women's right to the highest attainable standard of health – when read in conjunction with articles 2(f) and 5(a) – urging states to eliminate wrongful gender stereotyping – encompasses state parties' obligation to: ensure that there is no direct or indirect discrimination against women in their laws; improve women's status in society through concrete and effective measures; and address pervasive gender stereotypes present in all sectors of society. Therefore, the CEDAW demands access to holistic reproductive health care. In Cusack and Cook's (2009: 72) words, "[i]ndirect discrimination against women may occur when a law, policy, or practice is facially neutral but has the effect of impairing or nullifying the recognition, enjoyment, or exercise by women, on a basis of equality of men and women, of their human rights and fundamental freedoms because it perpetuates a gender stereotype". That is, the non-

availability of health services that only women require, such as abortion services, constitutes a form of discrimination that should be prevented and/or remedied by states. General Recommendation 19 issued by the CEDAW Committee in 1992 defines gender discrimination as a form of gender-based violence. Therefore, we can ascertain that the criminalisation of abortion (partial or total) characterises state violence. This position in favour of unrestricted availability of abortion services is not unprecedented. In fact, the Committee on the Rights of the Child (2016: 14) recently urged the State of Peru to "**[d]ecriminalise abortion in all circumstances, [and to] ensure children's access to safe abortion and post-abortion care services**" mentioning that its 2003 General Comment No. 4 on adolescent health determines that "**pregnant girls should always be heard and respected in abortion decisions**".

Conclusion

We are unable to forecast the next epidemic nor are we able to prepare for its effects over the population. What we can do however is to ensure that adequate reproductive health policies are put in place removing all barriers preventing access to holistic services to women of all sectors of society. Failure by states to implement unrestricted abortion laws violates international human rights treaties and more importantly national constitutions protecting the right to health, the right to privacy, the right to human dignity, the right to family planning, the right to gender equality, the right to live free from discrimination, the right to live free from violence, the right to physical and mental integrity and the right to live free from torture and of cruel, inhuman, or degrading treatment or punishment. The criminalisation of abortion characterises state violence according to the CEDAW and therefore it should be remedied not only in the context of the Zika Virus and during its outbreak but in all cases and at all times.

References

Alves, J. & Corrêa, S. (2009). Igualdade e desigualdade de gênero no Brasil: um panorama preliminar, 15 anos depois do Cairo. In ABEP, *Brasil, 15 anos após a Conferência do Cairo. Campinas: ABEP-UNFPA* (pp. 121-231). Campinas/Sao Paulo: ABEP/UNFPA. Available at http://www.abep.nepo.unicamp.br/docs/outraspub/cairo15/Cairo15_3alvescorrea.pdf.

Banchon, M. (2016). El zika pone de manifesto la violacion de los derechos de las mujeres. *Deutsche Welle*, February 2. Available at http://m.dw.com/es/el-zika-pone-de-manifiesto-la-violación-de-los-derechos-de-las-mujeres/a-19021204.

CRC Committee. (2016). Concluding observations on the combined fourth and fifth periodic reports of Peru, 71st session, U.N. Doc. CRC/C/PER/CO/4-5, January 29 (para. 56(b)). Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPER%2fCO%2f4-5&Lang=en.

Cusack, S. & Cook, R. J. (2009). Stereotyping Women in the Health Sector: Lessons from CEDAW.*Washington and Lee Journal of Civil Rights and Social Justice*, *16*(1): 47-78. Available at http://heinonline.org/HOL/LandingPage?handle=hein.journals/walee16&div=7&id=&page=.

Diniz, D. The Zika Virus and Brazilian Women's Right to Choose, *The New York Times*, February 8. Available at http://www.nytimes.com/2016/02/08/opinion/the-zika-virus-and-brazilian-womens-right-to-choose.html.

Galli, B. (2016). The Zika Virus is a Matter of Reproductive Justice. *RH Reality Check,* February 3. Available at http://rhrealitycheck.org/article/2016/02/03/zika-virus-matter-reproductive-injustice-2/.

Gideon, J., Leite, M. & Minte, G. A. (2015). What is hindering progress? The marginalization of women's sexual and reproductive health and rights in Brazil and Chile. *Journal of International and Comparative Social Policy*, *31*(3), 255-270. Available at http://dx.doi.org/10.1080/21699763.2015.1091784.

Kempner, M. (2016). Why Are Some Countries Advising Against Pregnancy as the Zika Virus Spreads?*RH Reality Check*, February 1. Avaliable at http://rhrealitycheck.org/article/2016/02/01/countries-advising-pregnancy-zika-virus-

spreads/.

Ngwena, C. G. (2016). Taking Women's Rights Seriously: Using Human Rights to Require State Implementation of Domestic Abortion Laws in African Countries with Reference to Uganda. *Journal of African Law*, *60*(1): 110-140. Available at http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=10167378&fileId=S002185531500025X.

Rudolf, B. & Eriksson, A. (2007). Women's rights under international human rights treaties: Issues of rape, domestic slavery, abortion and domestic violence. *International Journal of Constitutional Law, 5*(2): 507-525. Available at https://icon.oxfordjournals.org/content/5/3/507.full.

WHO. (2016). *Zika Situation Report: Zika and Potential Complications,* Geneva: WHO, February 12. Available at http://www.who.int/emergencies/zika-virus/situation-report/who-zika-situation-report-12-02-2016.pdf?ua=1.

About the author:

Dr Marianna Leite is an independent researcher and works in the area of International Human Rights Law in Rio de Janeiro, Brazil. She has a Ph.D. in Development Studies from Birkbeck, University of London, which employed a Foucauldian discourse analysis to explore the significant shifts in maternal mortality reduction policies over the past decades in Brazil. This research was the extension of work she conducted as a visiting scholar at the International Gender Studies Centre at the University of Oxford.