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Harm Reduction, Human Rights, and Access to Information on Safer Abortion

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ETHICAL AND LEGAL ISSUES IN REPRODUCTIVE HEALTH

Harm reduction, human rights, and access to information on safer abortion

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ABSTRACT

A harm reduction and human rights approach, grounded in the principles of neutrality, humanism, and pragmatism, supports women's access to information on the safer self-use of misoprostol in diverse legal settings. Neutrality refers to a focus on the risks and harms of abortion rather than its legal or moral status. Humanism refers to the entitlement of all women to care and concern for their lives and health, to be treated with respect, worth, and dignity, and to the empowerment of women to participate in decision-making and political action. Pragmatism accepts the historical reality that women will engage in unsafe abortion, including self-induction, while addressing factors that render them vulnerable to this reality, and requires assessment of interventions to reduce abortion-related harms on evidence of their real rather than intended effect. Criminal law reform is a necessary conclusion to a harm reduction and human rights approach.

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1. Introduction

Medication abortion, the use of drugs to terminate a pregnancy, offers a critical opportunity to save the lives of women who die from unsafe abortion. While excessive concerns about legality and safety slowed the introduction of medication abortion into countries where it is most needed, women themselves proved to be the mothers of invention. Women are self-administering the drug misoprostol off-label to terminate their pregnancies. First and widely documented in Brazil, the practice has spread across Latin America and the Caribbean, and is growing in Sub-Saharan Africa and South Asia [1]. Women acquire the drug through various means: from physicians, from pharmacists over-the-counter, and through the black market. Misoprostol, which was originally marketed for gastric ulcer prevention and treatment, causes uterine contractions and cervical ripening. It is safe and effective for pregnancy termination, among other gynecological and obstetric indications.

Women's self-use of misoprostol has had a positive and dramatic impact on unsafe abortion, disrupting the common acceptance that self-induced abortion is necessarily "unsafe" [2]. The World Health Organization (WHO) defines unsafe abortion as "a procedure for terminating an unintended pregnancy that is carried out either by a person lacking the necessary skills or in an environment that does not conform to the minimal medical standards, or both" [3]. Compared to other clandestine methods, such as the insertion of objects into the uterus or the use of caustic agents, misoprostol self-use is associated with reduced severity of complications and abortion-related deaths [4].

The method has made unsafe abortion "safer," and can be made safer yet. While much information on the safe and effective use of misoprostol is available, women often lack access to this information. This includes information on dosage and routes of administration, gestational range of use, possible side effects, and complications. Innovation, however, breeds further innovation. A growing number of initiatives are responding to women's need for information on the safer self-use of misoprostol.

The Dutch nonprofit organization, Women on Waves, originated the *Safe Abortion Hotline*, now operating in 7 countries in Latin America and Asia that have restrictive criminal abortion laws [5]. Advertised in public spaces, the hotlines provide women with free information about misoprostol and instruction for use. Trained members of local women's organizations provide this information based on WHO standardized protocols.

Iniciativas Sanitarias contra el Aborto Provocado en Condiciones de Riesgo is the pioneering effort of a team of obstetrician-gynecologists in Uruguay to provide safer-use information through physician-patient consultations [6]. Women with unwanted pregnancies ineligible for a lawful abortion are provided with evidence-based information about the risks of different methods of clandestine abortion, including misoprostol as a safer self-induced method. Originally implemented as a pilot project in a public maternity hospital, the initiative was later endorsed by the national Ministry of Health, sanctioned in law, and implemented in all public sector facilities. The initiative does not merely provide safer-use information. The information is provided lawfully within a supportive policy framework.

One explanation for the political success of the Uruguay initiative is its explicit framing as a harm reduction intervention. It seeks only to reduce the risks and harms of unsafe abortion. Safer-use information in this respect is comparable to menstrual regulation and post-abortion care. Since 1975, Bangladesh has exempted early menstrual

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regulation, an “interim method of establishing non-pregnancy,” from criminal regulation by defining the service as a public health measure to reduce abortion-related harms [7].

2. Harm reduction and human rights

Harm reduction broadly describes interventions to reduce the harms of an activity without requiring prohibition of or abstinence from the activity [8]. Harm reduction as a concept and discourse was first developed in the drug use context to advocate for interventions other than criminal prohibition to prevent infection and overdose, for instance needle-exchange programs. A harm reduction approach to unsafe abortion seeks to reduce abortion-related death and disability without prohibiting or otherwise seeking to restrict women from engaging in unsafe abortion, which by the WHO definition may include self-induction. The objective rather is to make unsafe abortion as safe as possible.

Three core principles of harm reduction can be applied to unsafe abortion. These are: neutrality, humanism, and pragmatism. The neutrality principle refers to harm reduction being normatively neutral on abortion, concerned with its risks and harms rather than with its legal or moral status. To say that harm reduction is value-neutral is not to say that it is value-free. The humanistic principle refers to the entitlement of all women to care and concern for their health and lives, and to be treated with respect, dignity, and worth. In acceptance of the simple humanity of individuals, the pragmatic principle accepts the inevitable reality that women engage in unsafe abortion, and assesses interventions to reduce its harms on evidence of real rather than intended effect.

A commitment to human rights has marked the thinking of a harm reduction approach since its inception. Harm reduction and human rights share a common cause, and each reflects core principles of the other [9]. Harm reduction provides the evidence-base for principled human rights interventions. Human rights provide the normative commitment for harm reduction interventions to protect lives and health. Harm reduction and human rights, in other words, bring together two theories of change. Sometimes public health evidence can be the trigger for change. It can create consensus, and afford political legitimacy for action on controversial issues, like abortion. Sometimes, precisely because an issue is so stigmatized, public health evidence alone provides no incentive to act. It will be the normative commitment of human rights that triggers action in service of broader social change. “Whether it is easier to establish a basic human right... and then push for public health than to establish public health and then push for human rights, depends upon the constellation of political circumstances in a given society at a given moment in history” [10].

A harm reduction and human rights approach, grounded in the principles of neutrality, humanism, and pragmatism, supports women’s access to information on the safer self-use of misoprostol in diverse legal settings [11].

3. Neutrality: Health-related harms

A harm reduction approach focuses on the health-related risks and harms of abortion, regardless of its normative status. Abortion is addressed not as a moral or legal act, or offense, but as a cause of maternal death and disability. Harm reduction seeks to shift the traditional terms of debate, and to move public policy on abortion away from crime and toward health. This discursive shift also brings about change in institutional responsibility. The answer to the problem of abortion is found in public health interventions rather than prohibition and punishment.

The public health discourse of harm reduction affords political legitimacy to government action on unsafe abortion amid ideological conflict. The values expressed and promoted, those of protecting life and health, are so widely accepted, they are seen as neutral social

goods on which consensus can be found [12]. A study in Nigeria, for example, revealed that policy-makers reluctant to engage on abortion law reform found consensus on health system reform to reduce maternal death [13].

This rhetorical power proves no less valuable in constructing a normative validation for harm reduction in international human rights law. Whatever human rights may require of criminal abortion law reform, the rights to life, health, and nondiscrimination provide an entitlement to the means of avoiding premature death and preventable suffering. Unsafe abortion and its harms constitute a legally cognizable harm, triggering government responsibility and requiring preventive measures. Governments are called upon to take “legislative and other measures...to protect women from the effects of clandestine and unsafe abortions and to ensure that women do not resort to such harmful procedures” [14].

The direct and immediate link between access to information and health protection creates government obligations specific to harm reduction. International human rights law “has evolved to the point where it now imposes...obligations on governments to provide, and to refrain from interfering with the communication of, information that is necessary for the protection and promotion of reproductive health and choice” [15]. These obligations are of two kinds: first, to refrain from interfering with, and second, to facilitate and support, access to information.

The right to health requires government to refrain from censoring, withholding, or misrepresenting health-related information [16]. In its judgment in *Open Door and Dublin Well Woman v. Ireland*, the European Court of Human Rights held that an injunction prohibiting counselors from providing information to women in Ireland about safe and lawful abortion services in the UK violated the freedom to receive and impart information [17]. The injunction could not be justified because of its adverse effects on women’s health and well-being. The Court further noted the discriminatory effects of the injunction on women with neither resources nor sufficient education to access alternative information sources. The right to health requires that information be accessible to all, especially the most vulnerable or marginalized, which harm reduction intervention through public hospitals and community programs seeks to ensure. Moreover, restriction of safer-use information cannot be justified on the ground that access may be provided to women seeking unlawful abortions. Information is provided to reduce risk and promote health, not to induce or counsel criminal action, and can thus be justified as necessary to avert harm. A clear distinction can and should be drawn between information on safer methods of self-induced abortion and the promotion of abortion per se.

International human rights law creates government obligations not merely of restraint, but obligations to enact positive measures to protect life and health, which can include introduction and support of harm reduction interventions. The right to health guarantees access to healthcare services, including information, which will enable women to survive pregnancy [16]. Access to safer-use information allows women to survive unwanted pregnancies, and human rights may thus require that government facilitate, rather than merely allow, harm reduction interventions through enactment of the kinds of legal and policy measures that support the Uruguay initiative. The objective “is not to keep the state out of health programmes...[but to] encourage states and other relevant actors to provide...reproductive health information in a way that vindicates rights, health and the well-being of women and society” [18].

Safer-use information interventions, however, depend on misoprostol being available for self-use. Misoprostol is not registered for obstetric-gynecologic indications in many countries. Even when the drug is registered, high legal market prices and/or restrictive distribution limit access to the black market. Restrictions on availability enacted only to curb the use of misoprostol in abortion, and which affect quality and cost, may violate human rights because of the health-

related harms they create. Access to medicines is thus essential to a harm reduction and human rights approach to unsafe abortion.

4. Humanism: Respect, worth, and empowerment

The harm reduction principle of humanism reflects two sets of human rights values. The first are values of respect, worth, and dignity. Neutrality extends beyond the activity of self-induced abortion to the woman engaged in it. Regardless of their moral status or deviance from legal rules, all women are deserving of care and concern for their health and lives. This is far from what many women currently experience in the health system, where degradation, humiliation, and mistreatment are widespread [19]. More than technical interventions in health information and services, harm reduction seeks to counter stigmatization, and to restore worth to the woman as a member of the community whose health and life matter.

This moral imperative is reflected in the right to life, interpreted to require state protection for the “life of all persons, including women whose pregnancies are terminated” [20]. The right to health is similarly violated when care is denied to prisoners, minorities, asylum seekers, and illegal immigrants [16]. Health status is independent of legal status. The latter cannot be a reason to neglect the former. Reflecting this principle of nondiscrimination, the Inter-American Court of Human Rights held that a physician could not be penalized for providing health care to individuals, notwithstanding their characteristics, activities, or the origins of their injuries (as suspected antigovernment terrorists) [21]. Neither may a government use individuals and their health needs as instruments of state policy. Whatever goals may underlie criminal abortion laws, depriving women of health protection is an inhumane means to achieve them.

A second set of humanistic values, empowerment and participation, applies in two domains. Within a harm reduction intervention, access to information can empower women by respecting and trusting them to make free and informed decisions to protect their lives and health. The objective is to ensure that women are in the best position to make and to act on their own decisions. In its judgment in *R.R. v. Poland*, the European Court of Human Rights emphasized access to information as essential to informed decision-making on abortion [22].

Participation extends to women as “makers and shapers,” not only as “users and choosers,” of interventions [25]. The right to health requires that women enjoy a right to participate in the design and delivery of public health interventions enacted for their benefit [16]. Participation is important, because harm reduction interventions differ not only in their designs, but also in their objectives. Information, for example, means something more than health protection in the *Safe Abortion Hotline*, and its communication by women to women is crucial to this more expansive meaning. By sharing information within communities of women, the hotline seeks to empower women to take control over their health and lives, and to change social institutions, beginning with the demedicalization and decriminalization of abortion. Human rights empower women to participate not only as individuals in healthcare decision-making, but collectively as a movement seeking social and legal change.

5. Pragmatism: Inevitability and evidence

One aspect of the pragmatic orientation of harm reduction is acceptance that women will engage in unsafe abortion; that is, acceptance of the inevitability that women self-induce outside the health system in both restrictive and liberal legal settings. Under the right to health, individuals have the right to be fully informed of available alternatives, which are not limited to services within the health system. A common phrase in harm reduction is “meeting people where they are.” Women have historically engaged in unsafe abortion, including self-induction, for different reasons, and do so today. For

some women, safe alternatives are legally unavailable. For others, self-induction remains preferred despite liberalization and available services within the health system [23]. The reasons for this preference are many: lack of knowledge, prohibitive costs, poor quality of care, privacy concerns, feared exploitation and mistreatment, and shame [24]. While these barriers to the health system should be addressed, it is equally important to meet the needs of women where they are: self-inducing abortions outside the health system.

Unsafe abortion is an enduring but nevertheless contingent or incidental feature of women's lives. While meeting the needs of women, harm reduction does not discharge government of its responsibility to address the abusive, repressive, or limiting constraints that create these needs. This is recognized in the ways in which risk-reduction and vulnerability-reduction supplement each other [26]. Access to information is a form of risk reduction. It seeks to minimize the risk of harm resulting from self-induced abortion by changing the method by which women self-induce, or by ensuring safer use of misoprostol. The objective is to make unsafe abortion safer. Vulnerability reduction, in contrast, seeks to understand and address the factors that render a woman vulnerable to unsafe abortion, or that otherwise influence her decision to self-induce. Vulnerability reduction shifts the focus of intervention from the woman to her environment. By making visible and acting on the legal and policy environment that structures vulnerability, harm reduction becomes a human rights approach.

International human rights law requires government to address vulnerability factors conditioning unsafe abortion. Unequal gender relations—which limit the capacity of women and adolescent girls to refuse sex or engage in contraceptive practices—are expressly named as causes of unwanted pregnancy [27]. Governments are called upon to prioritize prevention of unwanted pregnancy through sex education programs that challenge dominant gender and sexual norms of male superiority and entitlement underlying sexual violence, and through family planning services, provided free of charge when necessary [27]. International human rights law also addresses denial of access to lawful abortion as a vulnerability factor. Many women resort to unsafe abortion because they cannot access services to which they are lawfully entitled. Human rights require state regulation and procedural safeguards to ensure that women are not wrongly denied safe and acceptable services when lawful [28].

A vulnerability approach in harm reduction inevitably leads to reform of the criminal law. Women resort to unsafe abortion because safe options are legally prohibited. On another interpretation, criminalization is sometimes itself claimed a harm reduction intervention in that abstinence from abortion reduces harm. Harm reduction, however, does not refer to all interventions intended to reduce harm. A second aspect of harm reduction's pragmatic orientation is the favoring of evidence-based assessment of effectiveness. Harm reduction refers to interventions shown to have a positive impact on behavior change, such as the safer use of misoprostol, or on health outcomes, such as reduced mortality or severity of complications. Criminal prohibition fails as harm reduction precisely on the evidence. Millions of unsafe abortions are documented every year in countries with restrictive criminal laws, resulting in high rates of abortion-related death and disability [4]. It is so overwhelmingly evident that criminal laws generate more harm than they prevent that it is difficult not to advocate for legal reform under a harm reduction rationale. Abortion rates are lower in countries with liberal laws, but more importantly, liberalization shifts clandestine, unsafe procedures to safe and legal ones, provided that practitioners are trained, proper facilities and equipment are available, and information and services are accessible. Human rights support criminal abortion law reform on the pragmatic terms of harm reduction. Laws likely to result in bodily harm, unnecessary morbidity, and preventable mortality violate the rights to health and life [16]. Governments are thus called upon to reform laws criminalizing abortion to ensure that women need not resort to unsafe abortion.

6. Harm reduction and human rights in legal reform

The pragmatic and neutrality principles of harm reduction can work together in advocacy for legal reform, but they may also work against it. By reducing the health-related harms produced by criminal laws through interventions directed to individual behavior change, these laws cannot be challenged on pragmatic grounds opposing harm production, and because harm reduction is neutral on underlying ideological claims, it offers no alternative grounds of challenge. “[B]y ameliorating their worst effects, harm reduction simply relieves the institutions of prohibition...of responsibility for those harms. It reduces their incentive to fundamentally change those damaging policies” [29]. In the legal case of *A.B.C. v. Ireland*, the European Court of Human Rights upheld the country’s near prohibition of abortion precisely on the reasoning that, because women had the right lawfully to travel abroad for abortion with access to information and medical care—which are harm reduction measures—the criminal law did not violate women’s human rights [30].

Harm reduction is well suited to reveal the rational flaws in prohibition, but when prohibition is morally unjust and not simply ineffective or dysfunctional, harm reduction, by allowing the law to stand, converges not with human rights but with their continued violation [31]. A normative anchor in human rights is thereby needed to resuscitate the claim for legal reform. Criminal abortion laws violate women’s human rights for reasons more than their contribution to unsafe abortion. These laws fail to respect a woman’s decision to terminate her pregnancy as an act of self-determination. The Inter-American Commission on Human Rights emphasizes the importance of reducing unsafe abortion for women “not only from a health perspective, but...[also from that of] their rights as women, which include the rights to personal integrity” [32].

6. Conclusion

Harm reduction and human rights support women’s access to information on safer methods of abortion in complementary and distinctive ways. The practical achievements of harm reduction cannot be minimized against the sweeping transformative aspiration of human rights [12]. There is nothing minimal about meeting the everyday needs of women to protect their lives and health. Yet neither should meeting these needs relieve efforts to challenge the legal and political orders that endanger, degrade, and oppress women in violation of their human rights.

Conflict of interest

The author has no conflicts of interest to declare.

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