

## Ensuring a rights-based health sector response to women affected by Zika

Garantindo uma resposta do setor de saúde com foco nos direitos das mulheres afetadas pelo vírus Zika

La importancia de asegurar una respuesta del sector de la salud basada en los derechos de las mujeres afectadas por el virus Zika

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In March 2016, the Brazilian Ministry of Health published its most recent guidelines for the health care response to Zika-related microcephaly (the “Protocol”) <sup>1</sup>. The Protocol provides recommendations for provision of care in the contexts of family planning through prenatal and infant care. Unfortunately, although the Protocol emphasizes the importance of access to information and contraception, it fails to appropriately acknowledge the practical challenges that many individuals face in obtaining and using contraception, particularly poor, black and brown and young women, living in areas most affected by the epidemic. It also entirely ignores the fact that unsafe abortion is a public health reality in Brazil and one that is likely to worsen in light of the Zika epidemic and its uncertainties. As we discuss below, in order for Brazil to meet its constitutional and international obligations to protect women’s health and rights, the Protocol must acknowledge the legal and socio-economic constraints that affect women’s health and orient health professionals on how to best support women in a context of difficult choices.

### The Protocol ignores the challenges many women, especially poor women, experience in obtaining and using contraception

Contraception may be legal and free in Brazil, but the government has failed to ensure that individuals have actual access to information and services. Research indicates significant levels of unmet need: as many as 20% of sexually active adolescent women in Brazil are not using birth control, and approximately half of all births in Brazil are unintended <sup>2,3</sup>.

The Protocol correctly recognizes that proper contraceptive use will play a large role in curbing the impact of the Zika epidemic. However, it fails to acknowledge the barriers many women, particularly poor, black and brown and young women, face in contraceptive use. Persistent social inequalities – from under-resourced public health care clinics and lack of proper sexual education in public schools to unequal power dynamics in intimate relationships – create difficulties for many women to access and use contraceptive information and methods. Other barriers include: cost and difficulty of transportation to health care clinics; limited access to information and services about the full range of methods, including emergency contraception; and lack of adequate training for health care personnel. The Protocol, as a guide to health professionals, must address and contextualize these barriers.

Above all, the Protocol must emphasize women's autonomy in decision-making about pregnancy prevention. Women who have been infected with Zika or who are vulnerable to infection have the right to quality counseling, advice, and information to make the contraceptive decisions that are best for themselves.

### **The Protocol fails to acknowledge the widespread reality of abortion in Brazil and the urgency of improving access to information and services**

One of the most concerning aspects of the Protocol is its complete silence on the subject of abortion. Despite extreme legal restrictions, abortions are common in Brazil: one in five Brazilian women have terminated at least one pregnancy in their lifetimes, and there are approximately 860,000 abortions in the country each year<sup>4,5</sup>. However, the criminalization of most forms of abortion means that the vast majority of abortions occur outside the ambits of the law and the formal public health system. As the World Health Organization (WHO) declared: "*Whether abortion is legally more restricted or available on request, a woman's likelihood of having an unintended pregnancy and seeking induced abortion is about the same. However, legal restrictions, together with other barriers, mean many women induce abortion themselves or seek abortion from unskilled providers*"<sup>6</sup>.

As with other public health failings, it is poor, black and brown and young women, living in rural areas and suburbs, who most suffer from the burden of restrictive abortion laws<sup>7</sup>. Whereas wealthy Brazilian women can afford to leave the country or pay private providers for a safe abortion, poor women often have to resort to more dangerous measures, including trying to induce abortions with black-market pills. Therefore, not only is the Protocol's silence on abortion a failure of the government's promise of equitable health care, it also undermines women's human rights and contradicts international health standards.

### **The Protocol misses a crucial opportunity to educate providers about existing legal exceptions for abortion and the procedures for ensuring access**

Although abortion is legally available in instances of rape, anencephaly, or risk to the woman's life, the Protocol does not address how health care providers should assess for these factors or how to help women access abortions in such cases. Considering that a staggering 527,000

women suffer rape each year, it is paramount for health care professionals to know about the rape exception<sup>8</sup>. Current levels of ignorance about abortion law are unacceptable; a national survey of OB-GYNs found that less than half had accurate knowledge of abortion law<sup>9</sup>. The Protocol thus misses a crucial opportunity to educate health providers, and in turn women, about legal abortion.

### **The Protocol fails to appropriately acknowledge and respond to the fact that unsafe abortion is a public health reality in Brazil and one that disproportionately affects poor women**

Clandestine and unsafe abortions are an unfortunate reality in Brazil, one that disproportionately affects poor women<sup>7</sup>. Each year, complications due to unsafe abortions account for 250,000 emergency room visits<sup>10</sup>. Given the uncertainties surrounding Zika infection and fetal abnormalities, it is likely the figures for unsafe abortion will rise<sup>11</sup>. Thus the Protocol provides a critical opportunity to equip health service professionals to provide information and counseling to help reduce the risks and harms associated with unsafe abortions. As the WHO advises, women who wish to terminate a pregnancy "*should receive accurate information about their options to the full extent of the law, including harm reduction where the care desired is not readily available*"<sup>12</sup>.

The harm reduction model, which seeks to ensure that women have access to scientifically-based and neutral counseling, has been implemented in other contexts with similarly restrictive abortion laws, including Uruguay prior to its liberalization of abortion laws<sup>13</sup>. Such neutral counseling includes information on the risks associated with different means to induce abortion and signs of complications that require immediate attention. The health care professional is not involved in inducing the abortion, only in providing information to help women reduce avoidable harm.

### **The Protocol's silence on abortion undermines Brazil's national and international human rights commitments**

Currently, thousands of Brazilian women face tremendous uncertainty and suffering because of the Zika epidemic. The Protocol's failure to acknowledge the realities faced by these women and their right to reproductive autonomy is a violation of the Constitutional "right to health" mandate as well as international human rights commitments. Per these commitments,

affected women have the right to safe abortion<sup>14</sup>, as grounded in the:

**(a) Right to health:** Women have the right to “*the highest level of physical, mental and social well-being*”<sup>15</sup>. As discussed above, severe restrictions on abortion force thousands of poor Brazilian women each year to undergo unsafe abortions that compromise their health and, too often, their lives. As a result of the Zika epidemic, an increased number of poor women will likely seek out unsafe, health-threatening abortions.

**(b) Right to life:** Because of deficiencies in access to and education about contraception and legal abortion, pregnant women concerned about the potential effects of Zika on fetal development may risk their lives by resorting to unsafe clandestine abortions.

**(c) Right to equality:** Current abortion restrictions discriminate against poor women, many of whom are black and brown, because these women lack the resources and information that their wealthier counterparts might use to access safe abortions.

**(d) Right to self-determination:** Forcing a woman to continue a pregnancy against her will violates her autonomy and right to be “*able to have a responsible, satisfying, and safe sex life and the capability to reproduce and the freedom to decide if, when, and how often to do so*”<sup>16</sup>.

The United Nations has urged governments to liberalize access to comprehensive sexual and reproductive health services, including abortion. Neighboring country, Colombia, has already put the UN’s advice into action: despite having similarly restrictive abortion laws, they have expressly recognized an exception allowing Zika-infected women to seek legal abortions<sup>17,18</sup>.

Echoing the calls from women and families affected by Zika, as well as the international community, and considering Brazil’s duties to respect health and human rights, we urge Brazil to revise its position on abortion. Zika is a wake-up call, and it is time for rights-based health policies that respect women’s autonomy to make decisions about their bodies and lives.

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