



Exposé

Title of the Doctoral Thesis

Combating Reproductive Coercion

States due diligence obligations towards refugees in international human rights law

submitted by

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Introduction

Recent actions by States have undermined the international women's rights agenda, including with regard to sexual and reproductive health rights, and have contributed to women's human rights remaining a controversial and contested issue. For instance, in 2017, the Trump administration reinstated the 'Global Gag rule' (see, e.g., Redden 2017). In 2020, Poland's parliament took action to make abortion illegal (Center for Reproductive Rights 2020). In March 2021, Turkey withdrew from the Istanbul Convention (OHCHR 2021). In the US, the landmark Supreme Court case *Roe v. Wade*, recognizing a person's right to choose an abortion, was overruled (Murray 2021; Center for Reproductive Rights 2022). Moreover, the Covid-19-pandemic exacerbated the risk for women to see their human rights violated, with, e.g., increasing rates of sexual and gender-based violence against girls and women being reported globally. With reference to European Union Member States, the United Nations (UN) has noted in its policy brief on the impact of Covid-19 on women that in France, for example, lockdowns to contain the spread of the coronavirus and subsequent quarantine at home led to an increase in domestic violence by 30 percent (UN 2020). Similarly, the UN reported a rising number of emergency requests via domestic violence helplines in Spain, France and Germany (UN 2020).

At the same time, feminism – 'a movement to end sexism, sexist exploitation and oppression' (hooks 2000) – has taken on the mainstream. Global movements on social media and in real life, such as the #MeToo campaign, have received widespread attention and have put the high prevalence of sexual and domestic violence in the spotlight. Notably, violations of the reproductive rights of girls and women have received increased attention. Against this backdrop, efforts have been reinforced to adequately define and raise awareness of the various forms and manifestations of sexual and gender-based violence. Newly coined terms such as 'stealthing' (Brodsky 2017) and 'upskirting' (McCann et al. 2018) make long-standing abusive practices visible, and some countries have introduced criminal provisions to fight them. More recently, and especially in the wake of Britney Spears' revelation that her legal conservators are forcing her to wear a contraceptive device (see, e.g., Donegan 2021), the issue of 'reproductive coercion' gained broader public attention.

The term 'reproductive coercion' was first explicitly mentioned and purposefully studied in 2010 by Elizabeth Miller and colleagues (Miller et al. 2010a; Miller et al. 2010b). It is defined as 'behavior that interferes with the autonomous decision-making of a woman, with regards to reproductive health' (Grace and Anderson 2016). Coercive behavior aims at maintaining

‘power and control in a relationship related to reproductive health’ (American College for Obstetricians and Gynecologists 2013) and manifests in three main ways: first, coercing a woman to become pregnant (referred to as pregnancy coercion); second, interfering in a woman’s decision to use birth control (referred to as birth control sabotage); and, third, interfering in a woman’s decision to continue or end a pregnancy (Miller et al. 2010b, American College for Obstetricians and Gynecologists 2013; Grace and Anderson 2016). The perpetrator of reproductive coercion against women is typically an intimate male partner (Miller et al. 2010a; Grace and Anderson 2016; Tarzia and Hegarty 2021), but it may also be perpetrated by other family members and/or in-laws (Gupta et al. 2012).

The often-insidious nature of reproductive coercion makes it difficult for women to recognize that they have been subjected to a violation. For instance, birth control sabotage, such as poking holes in or removing a condom during intercourse, can often be undetectable while having far-reaching consequences for women, including unwanted pregnancy, exposure to sexually transmitted diseases and psychological damage (Fay and Yee 2018). Depending on the study, the chosen study setting and the target group, existing data suggest that between 8 to 74 percent of women have been subjected to a form of reproductive coercion (Fay and Yee 2018; Tarzia et al. 2019).

I. Problem statement and guiding research questions

Despite some studies suggesting a high prevalence of reproductive coercion, there is insufficient research on the topic available. The notion of ‘reproductive coercion’ itself remains contested and there is ambiguity as to which activities are to be classified under the term. Following the legal concept of coercion, which means ‘being forced to do something under threat of negative consequences that will disadvantage or harm’ (Tarzia and Hegarty 2021), Tarzia and Hegarty, for example, argue that behavior classified as reproductive coercion must contain elements of control and/or fear. Furthermore, they claim that the perpetrator’s conduct must be *intentionally* directed towards inducing, preventing or terminating a pregnancy (Tarzia and Hegarty 2021). In contrast, Katz and colleagues do not take a perpetrator’s intent as a precondition for reproductive coercion (Katz et al. 2017). The lack of a clear definition of reproductive coercion, especially concerning the element of intent as noted by Tarzia and Hegarty, explains widely varying prevalence rates across different studies (Tarzia and Hegarty

2021). Also, information on the risk factors that enable reproductive coercion may be inconsistent due to definitional issues (Sheeran, Tarzia and Douglas 2022).

Moreover, existing research on reproductive coercion has primarily been conducted by health researchers, collecting prevalence data and/or exploring intervention strategies aimed at health care services (see, e.g., Gupta et al. 2012; Miller et al 2010a; Anderson, Grace and Miller 2017). Yet, to date, there appears to be limited awareness about this particular form of violence among legal scholars, resulting in little academic research on existing legal frameworks protecting girls and women from reproductive coercion. Isolated studies exist that cursorily address the subject or explore available legal remedies to victims of birth control sabotage in particular and investigate the understanding and response of legal services to reproductive coercion in Australia. However, the study authors emphasize that there is still need to understand better and examine in more depth reproductive coercion and its legal implications (Trawick 2012; Obreja 2019; Douglas et al. 2020).

The increase in women's rights violations, including a growing number of reports of cases of reproductive coercion, coupled with the lack of clarity on what reproductive coercion entails, drive my motivation to investigate how reproductive coercion is defined, by whom, and how it is distinguished from other violations of reproductive rights and forms of sexual- and gender-based violence. Furthermore, I am interested in examining and understanding the variety of factors and determinants, which enable or hinder its occurrence and therefore may require state action. This, in turn, will form the basis of an analysis of the human rights due diligence obligation of States¹ to address reproductive coercion and how this obligation has to be transformed into positive action to prevent and protect women and girls against practices of reproductive coercion, together with relevant UN organizations working in the domain of protecting women's rights. Concretely, my research aim is to adopt a human rights perspective in order to uncover and find answers to the below research questions:

1. Definition

Against the background of a substantial principle of autonomy, the concept of reproductive coercion shall be explored in the first step: What is reproductive coercion, how is it defined, by

¹ The legal principle of due diligence holds States responsible for human rights violations stemming from private conduct and obligates them to prevent, protect against, prosecute, punish and provide redress for them (Monnheimer 2021).

whom? What are the (legal) bases for these definitions? How does reproductive coercion sit within a broader framework of violence against women and girls, e.g., what is the relationship between reproductive coercion and intimate partner violence and sexual violence?

2. Determinants of reproductive coercion

In a further step, determinants and risk factors of reproductive coercion shall be examined: Given the various instances of reproductive coercion, what are its determinants and risk factors? Which structures and systems exacerbate reproductive coercion? To what extent do factors, such as sex and gender, age, ethnicity, geographic location, relationship status, class and socio-economic background, disability or legal status exacerbate the risk of being exposed to reproductive coercion?

3. Legal frameworks, policies and programming (prevention and response)

Lastly, the question shall be explored what can be done against reproductive coercion based on existing legal obligations: To what extent are reproductive coercion and its risk factors addressed in the international human rights framework and constitute a human rights violation? To what extent are States responsible for preventing and protecting women and girls against reproductive coercion? What is the legal basis for this responsibility? Which positive actions can States put in place to reduce the risk of girls and women to become victims of reproductive coercion? To what extent do development and humanitarian programmes of UN organizations operating in the domain of protecting women's rights address or demonstrate awareness of the phenomenon of reproductive coercion? How do people working with UN organizations in the field respond to reproductive coercion, when confronted with the issue by women and girls? How can UN organizations strengthen their response to reproductive coercion? Which measures should UN organizations put in place to prevent or reduce the risk of girls and women to become victims of reproductive coercion?

II. Theoretical Framework and Methodology

Reproductive coercion interferes with a woman's human right to reproductive autonomy (Fay and Yee 2018), that is, the individual's ability to freely exercise decision-making about her reproduction (Wapler 2018). However, reproductive decisions do not take place in a vacuum. Rather, they are subject to certain conditions (Holzleithner 2016), and are influenced by legal,

political, economic, religious, social and technological circumstances and interests. The State, in particular, has a considerable interest in the reproductive capacity of its childbearing citizens (e.g., to create a workforce or for religious reasons) and may intervene in reproductive choices of individuals through the body of law (Ross and Solinger 2017). For example, a Texan abortion law, known as Senate Bill 8 or The Texas Heartbeat Act, was passed in 2021. It has raised accusations of enabling reproductive coercion by creating financial incentives for private individuals to sue anyone who ‘aids or abets’ (Senate Bill 8 2021) a Texan seeking an abortion after the sixth week of pregnancy, giving potential abusers and in-laws another tool to control women's reproductive choices (see, e.g., Vagianos 2021). In this context, fundamental questions arise about the meaning and scope of reproductive autonomy, as well as the extent to which state obligations to act or refrain from action can be derived from it, especially in combating reproductive coercion.

To gain a comprehensive understanding of reproductive coercion and find answers to the above questions, it is therefore necessary to undertake in-depth research on the right to reproductive autonomy and the role and interest of the state with regard to reproduction. In this context, it is essential to recognize that infringements of reproductive autonomy do not affect all women equally. For example, efforts in the United States to secure reproductive autonomy have in part neglected low-income and other marginalized groups of women, who have remained disadvantaged in exercising their reproductive rights (Sands 2017). Disadvantaged groups also include individuals capable of childbearing but who do not fit the ‘traditional, biologically based binary definitions of gender’ (Ross and Solinger 2017), such as transgender or intersex individuals. For this reason, the concept of gender in and of itself also requires closer examination. In this light, intersectionality matters and will play a significant role in discussing reproductive autonomy and rights. The term, coined by Kimberlé Crenshaw, describes intersecting forms of oppression, intending to help us understand how gender, gender identity, race, class, etc., interact to shape lived experiences (Crenshaw 1989) including those related to reproductive autonomy. In this context, I pay particular attention to employ a reproductive justice lens that incorporates the concept of intersectionality (Ross and Solinger 2017). In doing so, my goal is to identify the social, political, economic and cultural factors that enable the exploitation of women and girls and make them vulnerable to practices of reproductive coercion.

Empirically, I aim to investigate the above issues by conducting a case study focusing on a particularly vulnerable group, namely refugee girls and women in camp settings. Research has shown that this group is commonly exposed to violations of their reproductive rights (Endler et al. 2020). I wish to investigate the extent to which interventions and programmes of States and UN organizations address and respond to the issue of reproductive coercion in particular and formulate concrete recommendations for positive action.

In order to provide an answer to these complex questions, I will employ a mixed-methods approach consisting of the following elements:

1. Document analysis

As an initial step, I aim to engage in an in-depth desk review to gain an understanding of reproductive coercion and its causes. For this purpose, I will examine existing texts and studies conducted on the subject.

Regarding the legal questions and responsibilities addressed in the doctoral thesis, I will focus on interpreting existing sources of international law addressing violence against women in general and reproductive health and rights in particular. In this regard, I will review and analyze international treaties, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), customary international law and decisions, and official publications of the UN explicitly or implicitly targeting the fight against reproductive coercion. Since many missions tasked with protecting refugees operate on basis of a mandate from the United Nations High Commissioner for Refugees (UNHCR), special attention will be paid to the policies of the UNHCR.

2. Qualitative methods

To complement my document analysis, I plan to make use of qualitative methods such as semi-structured interviews (with refugee women, actors working in programmatic and legal teams of UN organizations and States, actors working in refugee camps, etc.) in order to explore how States and UN organizations address and (should) respond to reproductive coercion.

III. Ethical considerations

Lastly, I want to emphasize the delicate and personal nature of the topic I wish to investigate and my aim to generate knowledge on the violation of rights of people in vulnerable settings. I

am acutely aware of the need to reflect on the ethical implications and boundaries of my research endeavor, the need to obtain informed consent of research participants and, more generally, the need for me to reflect an awareness of my own positionality and social location.

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