Tele-abortion: between privacy and women's reproductive rights

Sara Dal Monico
Università Ca' Foscari Venezia, Italy
ORCID 0000-0002-5058-8688

DOI: 10.54103/milanoup.215.c460

Abstract

Women's reproductive health in general and the right to abortion in particular have been targeted and challenged in recent years world-wide in a number of countries: to name a few, first the almost entire ban on abortion in Poland 2020, then the overthrow of Roe v. Wade by the Supreme Court of the USA in 2022. Although in international law a right to abortion has not been expressly codified in any international binding convention, regional courts have tried to recognise the existence of such right as a corollary to other human rights such as the right to privacy and the right to be free from inhuman or degrading treatment. To overcome such challenges, in some US States and in South America, a practice has emerged drawing from the most recent developments in e-health, which is that of tele-abortion, which would allow women in need of ending an unwanted pregnancy to access the service remotely, through the abortion pill and with the supervision of a doctor through a series of online meetings. Nonetheless, resorting to such method raises a number of legal issues, which this paper aims at analysing and examine in depth from an international law perspective. Among the issues addressed by this paper, is whether tele-abortion can be considered as a means to ensure women's reproductive rights, which will be approached through an intersectional lens, as well as the close connection between tele-abortion and women's right to privacy, focusing on the safeguarding of the collection and storage of data in case of tele-abortion. In this regard, the paper will highlight the legal vacuum in international law in terms of the developments of e-health particularly, and AI in general, fields in which the international legal framework is still lagging behind.

Keywords
Women's Reproductive Health Rights; Tele-Abortion; E-Health; Right to Privacy, Right to Abortion

1. Introduction

Modern technologies and artificial intelligence (AI) can be instrumental to the enjoyment of human rights. The digitalization has brought about changes and advancements in how human rights are enjoyed also in the field of health care, as well as challenges, which international law in particular might be unequipped for. As a global phenomenon, the digitalization is an issue which international law cannot overlook, especially when it impacts human rights. The practice analysed in this contribution defined as Teleabortion is particularly relevant in this regard, since it demonstrates how advancements in technologies and artificial intelligence can be of service in delivering several human rights, such as women's right to health, women's reproductive rights and the right to autonomy.

In times where the right to abortion, although not expressly recognised at the international level as it will be recalled, has received challenges and threats from different parts of the world, such as the almost total ban on abortion in Poland,[1] as well as the recent overturn of the US Supreme Court judgment *Roe v Wade,*[2] the use of telemedicine also in this field should be investigated, which this contribution aims at doing. The contribution will explore first the practice of Teleabortion, then investigate its possible advantages in terms of service delivery and enjoyment of women's reproductive rights and will move onto the considerations of one of the main possible challenges to the use of AI in that field: data protection. The purpose of this contribution is therefore to explore the access and use of Teleabortion as an 'enabler' of rights – borrowing the expression from the Office of the High Commissioner for Human Rights (OHCHR), which has however used it in the context of the right to privacy in

1 Letta Tayler, 'Two Years On, Poland's Abortion Crackdowns and the Rule of Law' (Human Rights Watch, 22 October 2022) <https://www.hrw.org/news/2022/10/22/two-years-polands-abortion-crackdowns-and-rule-law> accessed 26 April 2023; European Parliament, 'European Parliament Resolution of 11 November 2021 on the first anniversary of the de facto abortion ban in Poland 2021/2925(RSP)' [2021] OJ C 205/44. The Resolution underlines at paragraph 1: 'its strong condemnation of the illegitimate Constitutional Tribunal's ruling of 22 October 2020 that imposes a near-total ban on abortion', stressing the illegality of an almost total criminalization of abortion.

2 *Dobbs, State Health Officer of the Mississippi Department of Health, et al v Jackson Women's Health Organization et al*, Certiorari to the United States Court of Appeals for the Fifth Circuit, [2022] USSC 597 US.

the digital age[3] – in particular, women's reproductive rights and on the other hand, the possible threats deriving from it, focusing on the right to privacy and data protection. It will be pointed out that the current international law framework concerning data protection is still lacking behind especially in regards to sensitive data such as those concerning health care.

2. Abortion in international law

The central issue of this contribution is not to enquire whether a right to Teleabortion exists. This issue indeed falls under the broader notion of the right to abortion. The underlying question which needs to be addressed is whether there is a right to abortion in international law. The literature on abortion in this field is extensive, and it has been discussed under different perspectives: as a human rights issue, including the prohibition of torture and inhuman, cruel or degrading treatment and as violence against women.[4] Nonetheless, one aspect emerges in particular: international law is lacking behind in recognising the right to abortion both at the customary and treaty law level. No international treaty or custom expressly states that a (human) right to abortion exists, hence scholars have tried to ground the legitimacy of the right to abortion within other

3 Human Rights Council, Forty-eighth session 13 September–1 October 2021, 'The right to privacy in the digital age. Report of the UN High Commissioner for Human Rights' (13 September 2021) [2021] UN Doc A/HRC/48/31.

4 On abortion and human rights, see: Joanna N. Erdman, 'Abortion in International Human Rights Law' in Sam Rowlands (ed), *Abortion Care* (CUP 2014); Joanna N. Erdman and Rebecca J Cook, 'Decriminalization of abortion – a human rights imperative' [2020] 62 Best Practice & Research Clinical Obstetrics and Gynecology 11, 24; Daniel Fenwick, 'The modern abortion jurisprudence under Article 8 of the European Convention on Human Rights' [2013] 12 Medical Law International 249, 276; Mariana Prandini Assis, Joanna N. Erdman, 'Abortion rights beyond the medico-legal paradigm' [2022] 17 10 Global Public Health 2235, 2250; Ronli Sifris, 'Restrictive Regulation of Abortion and the Rights to Health' [2010] 18 Medical Law Review 185, 212; Sara De Vido, 'Conscientious Objection and Access to Abortion in the Case *CGIL v. Italy* Decided by the European Committee of Social Rights' [2019] 47 Hitotsubashi Journal of Law and Politics 45, 55. On abortion and violence against women: Sara De Vido, *Violence Against Women's Health in International Law* (Manchester University Press 2020); UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19' (26 July 2017) UN Doc CEDAW/C/GC/35. On abortion and cruel, inhuman or degrading treatment see: Ronli Sifris, *Reproductive Freedom, Torture and International Human Rights: Challenging the Masculinisation of Torture* (Routledge 2014); Alyson Zureick, '(En)gendering Suffering: Denial of Abortion as a Form of Cruel, Inhuman, or Degrading Treatment' [2015] 38 Fordham International Law Journal 99, 140; Sara Dal Monico, 'La criminalizzazione dell'aborto quale divieto di tortura e di pene o trattamenti crudeli, inumani o degradanti: la sentenza Dobbs e gli obblighi di diritto internazionale degli Stati Uniti d'America', (DEP – Deportate, Esuli e Profughe', 2023) <https://www.unive.it/pag/fileadmin/user_upload/dipartimenti/DSLCC/documenti/DEP/finestra/Finestra3_2023.pdf> accessed 26 April 2023.

human rights.[5] Only at the regional level the Maputo Protocol, the Additional Protocol to the African Charter on Human and People's Rights which concerns the rights of Women in Africa, at art 14(2)(c) mentions medical abortion.[6] It provides for State Parties to authorize medical abortion 'in cases of sexual assault, rape and incest' while also acknowledging the possibility of undergoing abortion in those cases in which the mental and physical health of the mother might be endangered or, the life of the mother and that of the foetus might be at risk.

Hence, the right to abortion has been anchored to other human rights, such as the right to health. The right to health is inscribed within the International Covenant on Economic, Social and Cultural Rights (ICESCR), at art 12, stating that State Parties are under the obligation to ensure that individuals enjoy the 'highest attainable standards of physical and mental health'.[7] Although the right to the highest attainable standard of health applies to every individual, Chinkin and Charlesworth have pointed out the gender bias with which human rights have been conceived, extending it to human rights such as those included within the ICESCR and underlying the male centric approach that human rights often include.[8] As Sifris pointed out starting from the same premises: 'while to most women it seems obvious that reproductive health is an essential component of the right to health, this is not obvious in the context of a system that has traditionally sidelined women's issues'.[9]

The Committee on Economic Social and Cultural Rights (CESCR) clarified in its General Comment No. 14 that the right to health entails freedoms as well as obligations and that those freedoms include the liberty of individuals to control their own health and body, as well as sexual and reproductive freedom.[10]

5 See: Erdman (n 4); Sifris (n 4) 186. See also, *Case of Manuela et al v. El Salvador* (Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 441 (2 November 2021); *Case of Manuela et al v El Salvado*r (Partially Dissenting Opinion of Judge Eduardo Vio Grossi) 6.

6 Maputo Protocol art 14(2)(c). See also: De Vido (n 4), p. 46; Charles G. Ngwena, 'Inscribing Abortion as a Human Right: Significance of the Protocol on the Rights of Women in Africa' [2010] 32 Human Rights Quarterly 783, 864.

7 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 3 (ICESCR).

8 Christine Chinkin and Hilary Charlesworth, *The boundaries of international law* (Manchester University Press 2022) 231 ff.

9 Sifris (n 4) 193.

10 UN Committee on Economic Social and Cultural Rights, 'General Comment No 14: The Right to the Highest Attainable Standard of Health' (11 August 2000) UN Doc E/C.12/2000/4. Concerning States' obligations in regards to health and removing barriers to health care, it is important to mention that the Convention on the Elimination of all Forms of Discrimination against Women, again at art 12, states the obligations of State Parties in regards to women's health care and underscores that State Parties have to ensure access to health care services including those related to family planning.

The Comment includes core obligations for States to ensure the enjoyment of the right to health and among those of comparable priority includes the need to ensure reproductive, maternal and child health care. When addressing the specific legal obligations, there is no specific mention to abortion, although CESCR stated that:

> States should refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health, from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, as well as from preventing people's participation in health-related matters.[11]

The fact that a clear mention to the right to abortion is lacking should not be interpreted as proof of the fact that the right is not protected under international law, but rather as demonstration of what Chinkin and Charlesworth have argued. Namely, human rights tend to have a male-centric interpretation and approach and for that reason, the way in which reproductive rights have so far been interpreted has resulted in side-lining such issue.

Apart from the already mentioned Maputo Protocol, which openly recognises women's right to reproductive freedom, as well as women's right to abortion, no acknowledgment of women's reproductive rights is found in other international binding documents. A definition of the concept of reproductive rights was offered by the UN Population Division, which stated that:

> Reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other relevant United Nations consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest attainable standard of sexual and reproductive health. It also includes the right of all to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in human rights documents.[12]

Sifris[13] has provided a comprehensive list of how reproductive rights branch out, including the right to birth control and to terminate a pregnancy; the right to choose the method of childbirth and to receive proper education and information on the matter, as well as to receive accurate education concerning sex; and lastly, the right to decide the number of children. This latter aspect could be read as both entailing the decision of having a larger family, or a family with

11 ibid.

12 United Nations Population Division, 'Report of the International Conference on Population and Development' (5-13 September 1994), UN Doc A/CONF.171/13. See also: Sifris (n 4).

13 ibid.

no children. The notion that this paper adopts of 'family' is therefore different from the one which has been mostly recognised at the legal level, which centres around reproduction, on the procreation of children. Indeed, Chinkin and Charlesworth have stressed that central to human rights treaties is the notion of family, which is presented as the fundamental group unity of society but the model which is assumed is that of the heterosexual married couple with children.[14] For instance, the recent work of Clarke and Haraway[15] offers a different conceptualization of family, which exceeds the boundaries of traditional families by proposing the concept of 'making kin'. Families should not be considered such only on the requirements of matrimony (hence of a legal recognition) and on children, either on the way or already present, but they should rather rely on the connection and relationship that human beings (and non-human beings) form with and amongst each other.

Claiming that reproductive rights are still not inscribed in any international legally binding document is not reason enough to state that there is no foundation for the right to abortion at the international level. Moreover, as Sifris pointed out, approaching abortion from the perspective of only one fundamental right, hence developing a one-directional approach leads to oversimplifications of an issue which spans out to several other human rights.[16] The foundations of the right to abortion have been framed within several already existing rights: the right to life, the already mentioned right to health, the right to be free from cruel, inhuman or degrading treatment, the right to be free from discrimination and the right to equality. Restricting, limiting or criminalizing access to abortion amount to violations of such rights under international law. Furthermore, De Vido has conceptualized the criminalization of access to abortion as a form of State's violence against women and against the reproductive health of women.[17] Particularly, De Vido underlines:

> When access is withheld because abortion clinics do not exist in the area where the woman lives, or because practitioners opt for conscientious objection, or

14 Chinkin and Charlesworth (n 8) 232.

15 Adele Clarke and Donna Haraway, 'Making Kin': Fare parentele, non popolazioni (Derive Approdi 2022). The authors propose a reconceptualization of the notion of family, starting from feminist considerations linked to climate crisis discourses, which are against the pro-birth rate policies which have been in place up until now. They infer that instead of biological families, we should refer to 'elective' families or to 'logical' families, hence groups of people which are not related only by blood but by the meaningful connections that they create throughout their lives. Such families are not limited to human beings but can and – according to Haraway – should include non-human animals as well.

16 Sifris (n 4) 189.

17 De Vido (n 5): the author contends that States should be viewed as perpetrators of violence against women and against women's health. By enacting laws and policies which criminalize abortion, from a vertical dimension, the State is responsible of violations of the positive obligations concerning violence against women's health under international law.

> because the fees are too high, or because the law does not allow women access to abortion and they are obliged to travel, it is evident that these health laws and policies cause violence against women's health (VAWH).[18]

International law is still lacking behind in providing full and formal recognition to women's reproductive rights and to the right to abortion. Yet, obligations stemming from international human rights law oblige States to ensure women's reproductive rights and the right to abortion under the framework of other human rights. Indeed, the right to abortion should be granted under the right to health, since abortion is a health issue. Furthermore, restrictions and limitations on abortion have detrimental effects on the health of women – both mental and physical – since they are forced to either travel long distances to undergo abortions legally, or to resort to illegal means which significantly impacts their mental health, adding pressure to an already stressful situation. Moreover, the mental health repercussions of having to carry to term an unwanted child, either because they were the result of a rape or simply because the woman has decided that she does not want to have children should be taken into account, since, in the future, it will not only affect the mother but also the child[19] Human rights apply to individuals, irrespective of sex: the right to health therefore includes, *per se,* sexual and reproductive health as well as the right to abortion.

Moreover, abortion is also a matter of equality, of non-discrimination and autonomy, since it impacts women *because* they are women and should therefore be granted due to the obligations of non-discrimination and the right to equality and autonomy. Criminalizing access to abortion amounts to a violation of *jus cogens* norms, namely from the prohibition of cruel inhuman or degrading treatment. Forcing women to resort to illegal and usually unsafe abortion methods, to experience situations which impact their autonomy, and their dignity amounts to torture or ill treatment. Last but not least, limiting and criminalizing access to abortion is a form of violence against women and women's health as conceived by De Vido, and States should refrain from creating conditions which facilitate VAWH.[20]

3. Telehealth, telemedicine and telecare

Although the concepts of telehealth, telemedicine and telecare might seem as recent developments in the field of medical care, early applications of

18 ibid.

19 Henry P David, 'Born Unwanted: mental health costs and consequences' [2011] 82 The American Journal of Orthopsychiatry 184, 192.

20 See: De Vido (n 4), but also Sara De Vido, '"Under His Eye": riflessioni sul ruolo della tecnologia sul corpo delle donne a seguito della sentenza *Dobbs* della Corte Suprema degli Stati Uniti' [2023] BioLaw Journal 343, 359.

telemedicine date back to the invention of the ECG by Wilhelm Einthoven at the beginning of 1900,[21] showing that developments in technology and in medicine have gone hand in hand since the beginning of the 20*th* century. After that, specialized fields such as radiology and neurosurgery have started to implement technological developments which have become a routine practice, with the use of digital images being a fundamental tool to deliver healthcare for instance.[22] At the same time, telemedicine started to become useful in those fields in which there was a need for health care services to be delivered despite the physical distance, such as the case of NASA, where telehealth was used to monitor the health condition of astronauts, or in scientific expeditions in the Antarctic. In this case, for several months weather conditions are particularly adverse and might prove difficult to overcome in case of emergencies. Although medical staff is usually present in expeditions, there might be the need for a specialist who is not among the staff at that time, therefore telemedicine becomes valuable and useful.[23]

Since then, telemedicine has further improved and become more and more embedded in people's lives. For instance, in the field of telecare, third generation[24] telecare systems are now extremely advanced and have improved up to the point of being referred to as 'lifestyle monitoring': indeed, these devices are able to measure, collect and analyse data in the users' homes. These data can be accessed by the users themselves, relatives or their physicians and provide a clearer picture of the patient's habits. Other devices trigger an alarm when they detect specific hazards without the need for the user to trigger it themselves. This is followed by a call, which can be to a relative or to an appropriate responder up to the level of an ambulance in case the patient is in need. Interestingly, the alarm also sends signals to the patients within their homes which can occur 'through an audible alarm, flashing lights and even vibrating pillows to wake the user from sleep'.[25] The use of these devices has increased especially due to the COVID-19 pandemic which, in the case of diabetes management for instance, has helped patients who need to have frequent checks with their physicians in the most chronic cases. The tools implemented in diabetes management are not

21 Sarah Stowe and S Harding, 'Telecare, telehealth and telemedicine' [2011] 1 European Geriatric Medicine 196.

22 ibid.

23 Adam William Darkins and Margaret Ann Cary, *Telemedicine and Telehealth* (Springer 2000) 8, 9.

24 There is also a first and second generation of telecare devices, see: Stowe and Harding (n 21) 194. See also: Yasser El-Miedany, 'Telehealth and telemedicine: how the digital era is changing standard health care' [2017] Dove Press Journal: Smart Homecare Technology and Telehealth 43, 51.

25 ibid.

limited to devices, they also include virtual visits, telemonitoring, secure electronic communications either via message or phone calls.[26]

The use of devices and technology related to medical issues has been referred to in different manners: telecare, telehealth and telemedicine, or even e-health. The World Health Organization (WHO) Guidelines have adopted the following definition of telemedicine:

> the provision of healthcare services at a distance with communication conducted between healthcare providers seeking clinical guidance and support from other healthcare providers (provider-to-provider telemedicine); or conducted between remote healthcare users seeking health services and healthcare providers (client-to-provider telemedicine).[27]

Still, different definitions and interpretations have developed, focusing on different aspects: Darkins and Cary quote at least four different notions of telemedicine, from the simplest ones which define it as 'health care carried out at a distance',[28] with the physical element being the only element worth noticing, to others which almost mirror the one provided by the WHO.

All definitions have some common features: they stress the fact that the physical presence is not a necessary element, since being in person face to face with the physician is not instrumental for the health care service to be carried out. This is replaced by the distance communications referred to in the WHO definition, which can happen through phone calls, messaging systems and / or videoconferences. Although Darkins and Cary opt for an all-encompassing approach, stating that it should be based on individual preferences which definition to adopt, they do however understand the need of the WHO to distinguish between telehealth and telemedicine. Telehealth is conceived by the organization as 'the integration of telecommunications systems into the practice of protecting and promoting health',[29] while telemedicine concerns the incorporation

26 Rajnish Dhediya, Manoj Chadha, Arpan D. Bhattacharya, Shreerang Godbole and Shreeharsh Godbole, 'Role of Telemedicine in Diabetes Management' [2023] Journal of Diabetes Science and Technology 775. See more on telemedicine and its current uses in Ramesh Madhavan and Shahram Khalid, *Telemedicine* (InTech 2013).

27 World Health Organization, 'WHO guideline: recommendations on digital interventions for health system strengthening' (2019) <https://apps.who.int/iris/handle/10665/311941> accessed 26 April 2023.

28 Darkins and Cary (n 23) 2, 3. Other definitions provided by Darkins and Cary are: 'Telemedicine involves the use of modern information technology, especially two-way interactive audio/video communications, computers, and telemetry, to deliver health services to remote patients and to facilitate information exchange between primary care physicians and specialists at some distances from each other' and also: 'telemedicine – the use of advanced telecommunications technologies to exchange health information and provide healthcare services across geographic, time, social and cultural barriers'.

29 ibid.

of those systems into curative medicine, therefore focusing more on the clinical aspect. According to the WHO, telehealth corresponds to the activities that the organization itself carries out at the international level in the field of public health, since it covers public and community health as well as development of health care systems and epidemiology.[30] On the other hand, the definition of telecare is more focused on the aspect of communications, and precisely to the use of technological tools and devices in order to communicate with the patient and deliver health care directly. Stowe and Harding refer to it as a tool to support individuals and professionals in health care delivery.[31]

3.1 Where does Teleabortion situate itself?

The definition of telemedicine which this paper considers as the basis upon which to build its argument is the one provided by the WHO. Teleabortion fits the parameters of the above-mentioned *client-to-provider* telemedicine, since it is usually women who seek the help of physicians and health care professionals to undergo abortions. The WHO Abortion Care Guideline of 2022 speaks of 'telemedicine approaches to delivering medical abortion care', refraining from using the term Teleabortion specifically or the alternative *e*-abortion, which refers to the same practice. In recommending that telemedicine, where available, be offered as an alternative to in-person options to access abortion, the Guideline does not provide an exact definition of Teleabortion, but rather operates a distinction, where medical abortion refers to the intaking of drugs (mifepristone and misoprostol) to end a pregnancy as opposed to surgical abortion, which refers to the removal of the foetus through surgical means.[32]

Definitions can be found in literature (although still scarce); for instance, Chong *et al* have referred to it as 'telemedicine abortion' and defined it as 'broad term that describes the use of telecommunications (phone, videoconference, texting, email) to provide one or more aspects of abortion care such as counseling, eligibility assessment, medication provision, guidance through the process, and follow-up assessment'.[33] The reason behind the fact that the literature

---

30 ibid.

31 Stowe and Harding (n 21) 193. The authors recall also the definition provided by Barlow et al, see: James Barlow, Debbie Singh, Steffen Bayer and Richard Curry, 'A systematic review of the benefits of home telecare for frail elderly people and those with long-term conditions' [2007] 13 Journal of Telemedicine and Telecare 172, 179.

32 World Health Organization (WHO) and Human Reproduction Programme (HRP), 'Abortion Care Guideline' (World Health Organization 2022).

33 Erica Chong et al, 'Expansion of a direct-to-patient telemedicine abortion service in the United States and experience during the COVID-19 pandemic' [2021] 104 Contraception 43, 44. Fang and Perler on the other hand simply state that teleabortion refers to providing medications for abortion via telemedicine, hence a more restrictive definition of the practice. They add that telemedicine refers to use of remote health care services which are delivered through the help of technology, usually a phone or communication via internet. See: Katherine Fang

on Teleabortion is, especially from the international law perspective, still scarce, is that the practice is rather recent and has emerged particularly due to the recent threats to the right to abortion and as a response to the COVID-19 pandemic.[34] The pandemic has necessarily determined a change in the way in which abortion services were thought since women could not easily access hospitals to undergo abortions during the pandemic. Moreover, in countries such as the US, the pandemic has also caused a lack in financial means for some women, who were no longer able to pay for the service, due to a loss of income.[35] For these reasons, some hospitals in the US, as well as abortion providers more in general, have started to slowly incorporate telemedicine tools and services to provide women with the possibility of terminating their unwanted pregnancies.

Terminating a pregnancy usually entails two phases, divided in abortion care and follow-up or post-abortion care. These two phases characterize Teleabortion as well, although the means through which it is carried out differ from in-person ones. The first phase of Teleabortion relies on the use of telecommunications such as emails, phone calls and messaging systems and/or videoconferences: with the help of these means, women seek the counsel of physicians and abortion service providers. In this phase, women receive counselling and instructions on the next steps, while an eligibility assessment is also conducted: women could be asked to undergo some tests easily accessible at local labs, clinics, or hospitals.[36] Once that eligibility has been assessed, the second phase begins, which consists in receiving through mail the *abortion pills*, namely mifepristone and misoprostol. The second phase includes follow-up after drugs-intaking to assess that the pregnancy has been terminated, and in supporting women as to the next steps, such as for instance which contraceptives to use after the abortion.

The WHO Guideline specifies that there is no single recommended approach to delivering abortion services, since it heavily relies on the decisions made by the patient, from the service provider to the location. Yet, it also stresses that while approaches might be different, some conditions must be ensured, namely: access to scientifically accurate and comprehensible information; access to quality assured medicines – particularly relevant in the case of medical or

and Rachel Perler, 'Abortion in the Time of COVID-19: Telemedicine Restrictions and the Undue Burden Test' [2021] Yale Journal of Law and Feminism 135, 151.

34 On this note, see: Chong (n 33); Fang and Perler (n 33); see also: Margit Endler, A Lavelanet, A Cleeve, B Ganatra, R Gomperts, K Gemzell-Danielsson, 'Telemedicine for medical abortion, a systematic review' [2019] BJOG: An International Journal of Obstetrics and Gynecology 1094, 1102.

35 Chong (n 33) 44.

36 Ibid. See also: Mohana Ravindranath and Darius Tahir, 'Virtual medicine may be the future of abortion' (Politico, 28 October 2020) <https://www.politico.com/newsletters/future-pulse/2020/10/28/virtual-medicine-may-be-the-future-of-abortion-791238> accessed 26 April 2023.

Teleabortion; back-up referral support and support in choosing post-abortion contraceptives. The Guideline also stresses that sexual and reproductive health services must be available, accessible, affordable, acceptable and of good quality. Particularly, the 'delivery of services must be respectful of the culture of individuals, minorities, peoples and communities, and sensitive to gender, age, disability, sexual diversity and life-cycle requirements'.[37]

4. Teleabortion from the perspective of women's rights

4.1. The advantages of Teleabortion

Abortion is first and foremost a women's issue, and limitations or restrictions aimed at impairing access to the service affect women because they are women. Another aspect should be considered, once the gender dimension of abortion has been laid out, namely the intersectional lens: abortion affects women in a different way. An intersectional approach[38] to abortion is necessary to identify and highlight how women from different backgrounds experience and are affected by abortion in different ways. This discussion could be widened to encompass women's reproductive rights more in general, starting from methods of contraception[39] for instance, but due to space constraints the discussion will be focused on abortion. Indeed, women and young girls coming from ethnic minorities and marginalized groups are more deeply affected by limitations of access to abortion.

The overruling of *Roe v Wade*,[40] the US Supreme Court judgement which granted women the right to abortion in the US, has indeed demonstrated how restrictions on access to abortion affect women differently. In Dobbs the Supreme Court restored a power which should have been prerogative of the legislators in the first place – according to the majority of the judges: each State can now decide whether to restrict, limit or criminalize abortion. This means that not only women seeking and undergoing abortions in those States might be arrested, but also those helping women undergoing abortions, such as professionals and healthcare facilities would commit criminal acts under the newly passed legislations. Thirteen States have already banned abortion throughout the pregnancy, authorizing it only in specific cases in which women might face serious or certain health consequences: for instance, Utah allows abortion in

37 WHO and HRP (n 32).

38 Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics', [1989] 1 The University of Chicago Legal Forum 139, 167.

39 Clarke and Haraway (n 15) 34.

40 *Jane Roe, et al v Henry Wade* [1973] USSC 70-18, 410 US 113.

case of foetus abnormalities, and Louisiana allows exceptions to the abortion ban in case in which the pregnancy is deemed as 'medically futile'.[41]

At the same time, States such as California, Delaware and Connecticut have expanded the eligibility criteria for reproductive care services,[42] aimed at including also those women who live in those States which have enacted abortion bans. Still, not all women can afford to travel to a different or even neighbouring country if in need of terminating a pregnancy, and this affects especially women from marginalized groups, ethnic minorities, but also young girls who either do not have the means to travel nor information on how to access reproductive care services. In this context, Teleabortion would provide particularly instrumental and useful: internet connection is available almost everywhere in the US and devices to access it can be easily found. Smartphones and devices which connect to the internet, tablets and personal computers are part of many people's lives, especially after the COVID-19 pandemic, which has underscored the necessity of having access to the internet. Teleabortion would be an alternative in those Countries where access to the internet can be easily achieved, not a worldwide solution to the issue of restrictions on abortion.

The case of young girls is particularly relevant to demonstrate the advantages of Teleabortion. The Special Rapporteur on the right to health highlighted in the 2016 Report that '[a]dolescents face multiple barriers to health services, including the following: restrictive laws and policies; unavailability of contraception or safe abortions' and that 'lack of awareness or understanding of their unique health needs can render adolescents invisible'. Moreover, the report stressed that: '[a]dolescent sexual and reproductive health services must be welcoming, adolescent-friendly, non-judgmental and guarantee privacy and confidentiality'.[43] The argument that Teleabortion is particularly adolescent-friendly could be advanced especially if one were to look at the tools it relies upon: most young girls who have access to a smartphone, a tablet, or a computer and to an internet connection could potentially access Teleabortion services.[44]

In terms of its advantages, it should be noted that the WHO conducted a systematic review, which features in the Abortion Care Guideline of 2022, on the use of telemedicine and medical abortion. The report confirms the safety of medical abortions and that no significant differences were noticed as

---

41 Nicole Dube, James Orlando and Jessica Schaeffer-Helmecki, *Research Report on State Abortion Laws Enacted Post-Dobbs Decision* (Office of Legislative Research, 2022-R-0227, 2022) 1, 20.

42 ibid.

43 Human Rights Council, 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (4 April 2016) UN Doc A/HRC/32/32.

44 According to ITU (International Telecommunication Union) 80% of people between the ages of 15 and 24 can access the internet. See: <https://www.itu.int/itu-d/reports/statistics/2023/10/10/ff23-youth-internet-use/#:~:text=Almost%2080%20per%20cent%20of,and%2024%20use%20the%20Internet> accessed 7 January 2025.

opposed to in person medical abortion care services. Controlled trials and observational studies have been conducted in Bangladesh, Cambodia, Egypt and Indonesia, Canada, Peru and the USA. According to the Guideline: 'there was no difference between the two groups in rates of successful abortion or ongoing pregnancies. Referrals for surgical intervention were fewer among women who used telemedicine. Satisfaction with telemedicine services was high and comparable to the usual clinical services'.[45] Therefore, resorting to telemedicine and medical abortion is safe and as effective as surgical abortions and should be allowed were available.

Beside safety and efficacy, the advantages provided by Teleabortion are first and foremost the potential outreach of the service. Clinics which grant access to the service, have the possibility of reaching a wider range of women who would not be forced to travel physically to a clinic or hospital, or, in cases where abortion bans are in place, to another country since they would be able to interact with a professional through a video conference. Consequently, Teleabortion entails also a significant reduction in costs, since travel expenses are ruled out and also the cost of the service is substantially reduced, hence, allowing a broader number of women and young girls to access it. In the wake of the overruling of *Roe v Wade*, women from one of the states which have enacted bans on abortion would have to travel abroad to get one. This would entail having the means to afford such travel, since they would have to bear all the costs of the procedure, and – De Vido warns – also those of risks due to possible medical complications.[46]

Another fundamental aspect that speaks in favour of Teleabortion is the opportunity of avoiding a common phenomenon which women undergoing abortion experience also in those countries in which the right is granted, which this paper refers to as abortion-related obstetric violence.[47] This term indicates the humiliating comments and practices, names-calling and psychological abuse which women seeking abortion tend to experience in hospitals, perpetrated by those among the medical staff who oppose abortion. Examples of such abuses

45 WHO and HRP (n 32).

46 De Vido (n 4) 144.

47 This phenomenon has been referred in this way by some scholars or as obstetric violence related to abortion. It has been mostly discussed in those Countries in which abortions are performed by the obstetric staff. In Italy, for instance, such practice would still be unnamed, due to the fact that the medical staff involved in abortion procedures is not the obstetric one, even though there are substantial numbers of accounts of women seeking abortion in Italy who have experienced such abuse. See: Juliana Tamayo Muñoz et al. 'Obstetric Violence and Abortion. Contributions to the Debate from Colombia' (Grupo Médico por el Derecho a Decidir, November 2015) <https://globaldoctorsforchoice.org/wp-content/uploads/Obstetric-Violence_and_Abortion_EN-final-1.pdf> accessed 26 April 2023; Lorenzo Bernardini, Sara Dal Monico, 'A Way Forward: Criminal Law as a Possible Remedy in Addressing Gynaecological and Obstetric Violence?' [2024] 95 2 International Review of Penal Law 269.

are recalled by women worldwide, and the psychological impact that such violence has on women has been recognised as amounting to torture or ill treatment, by the UN Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment.[48] De Vido has well underlined that such violence is enacted also through laws and policies, and one of the most significant in the context of abortion is ultrasound: women are obliged to listen to the sound of the foetus' heartbeat or to look at the screen and see its image, even if the need for such practice is not supported by scientific evidence.[49]

Teleabortion is safe and appears as cost effective while also offering the opportunity for a wider range of women and young girls to access the service, which would help avoiding that abortion becomes available only to a restricted number of women. Furthermore, due to the fact that it relies on internet connection, videoconferences and messaging (either via email or texts) it is widely available (not everywhere of course, but this matter will be addressed in the following paragraph). Last but not least, it would allow women to access the service from a – possibly comfortable – location of their choice and avoid the psychological and emotional toll of going to the hospital, which can be per se a traumatic experience for women, not to mention instances in which they are

48 Human Rights Council, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment' (5 January 2016) UN Doc A/HRC/31/57.

49 The need for performing an ultrasound is not questioned here, but the practice of showing the image to women or force them to listen to the heartbeat is. Women undergoing ultrasounds should not be forced by law to look at the image or listen to its heartbeat but could be asked if they want to. If the aim of such practices is to give women full knowledge of what is happening, then they should be able to decide whether or not they want to look at it or listen to it. Forcing this upon them could constitute a form of violence against women's health, a violation of their reproductive rights and of their right to autonomy. See further: De Vido (n 4) 160. On the scientific relevance of performing ultrasounds in case of abortion, see: Jen Russo, 'Mandated Ultrasound Prior to Abortion' (AMA Journal of Ethics, 2016) <https://journalofethics.ama-assn.org/article/mandated-ultrasound-prior-abortion/2014-04> accessed 26 April 2023; Marianne Kielsvik, Ragnhild JT Sekse, Elin M Aasen, and Eva Gjengedal, 'Viewing the image? Ultrasound examination during abortion preparations, ethical challenges' [2022] 29 Nursing Ethics 511. The authors have conducted a study in Norway where women wishing to undergo abortion were asked whether they wanted to see the image of the foetus or listen to the heartbeat, since the country does not require that by law, while ultrasound are common practice. It is also reported that while in Norway no law mandates such practice, and in the UK it is recommended that women are given the option, in the USA some States require by law that women are shown the image and, when present, forced to listen to the heartbeat, thus showing that no scientific evidence supports such choice, which is, in fact, a choice. Lastly, see: Sophie Wylomanski and Norbert Winer, 'Role of ultrasound in elective abortions' [2016] 45 Journal de Gynécologie Obstétrique et Biologie de la Reproduction 1477, 1489. The authors underline how in the case of women who are positive about the dates of their last cycle and/or of the sexual encounter at risk, ultrasound should not be forced or even, its lack should not impair their ability to access abortion.

later shamed and degraded by hospital staff.[50] Furthermore, as most telemedicine tools, it can be considered as user-friendly: women are followed step by step by physicians and/or service providers and once they have received the drugs at the designated location, they should have been carefully instructed on how to proceed.

4.2 Where it gets tricky: Teleabortion and women's right to privacy

Teleabortion is not a world-wide applicable solution to allow access to abortion. The opportunity offered by this technology is in some way limited to those countries where access to a device with internet connection is easily available, which therefore would not be the case for most developing countries. Moreover, access to internet does not always equal knowing how to use or navigate it, which could possibly restrict the range of women even more. The International Telecommunication Union (ITU), the UN specialized agency for information and communication technologies has assessed that 2.9 billion people worldwide are still offline, which adds up to almost 37% of the world population. Although a growth in internet users has been noticed, there is still a large portion which does not have access to it making access to the internet unbalanced.[51] This would entail, in the context of Teleabortion, that due to the lack of availability of the main element and, consequently, a lack in telemedicine services altogether, it cannot be regarded as a worldwide applicable option for women wishing to end their pregnancies. Teleabortion limits to those areas of the world where telemedicine has developed and where connection to internet is granted and easily accessible. It should also be noted that ITU highlighted a gender gap in internet access: as of 2021, 62% of internet users are men compared to 57% for women.[52]

The second biggest concern in the context of Teleabortion and one of the crucial aspects investigated by this paper relates to the issue of privacy and data

50 On this note, see: Sara Larrea, Mariana Prandini Assis and Camila Ochoa Mendoza, '"Hospitals have some procedures that seem dehumanising to me": Experiences of abortion-related obstetric violence in Brazil, Chile and Ecuador' [2021] 35 Agenda 54, 68.

51 See ITU, 'Facts and Figures 2021: 2.9 billion people still offline' (2021) <https://www.itu.int/hub/2021/11/facts-and-figures-2021-2-9-billion-people-still-offline/> accessed 26 April 2023. On the right to access internet, which has been discussed at the UN level, see: Human Rights Council, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' (16 May 2011) UN Doc A/HRC/17/27, which does not speak of a human right to access internet per se but refers to accessing the world wide web as an 'enabler' for other human rights. See also: Oreste Pollicino, 'The Right to Internet Access: Quid Iuris?' in Andreas von Arnauld, Kerstin von der Decken and Mart Susi (eds), *The Cambridge Handbook of New Human Rights: Recognition, Novelty, Rhetoric* (CUP 2020) 263, 275.

52 ITU, 'Global Connectivity Report 2022' (2022) <https://www.itu.int/itu-d/reports/statistics/global-connectivity-report-2022/index/> accessed 26 April 2023.

protection. The right to privacy is protected at the international level under the ICCPR and particularly at art 17. This article provides the right of every person to be protected against unlawful interferences in their private sphere, family life or home which might be enacted by State authorities but also from legal and natural persons. State parties are under an obligation to adopt legislative measures to prohibit such interferences.[53] The Special Rapporteur on the right to privacy has also highlighted that it is not an absolute right but a qualified right, which can be limited but in a 'carefully delimited way'.[54] In its 2021 report, the UN High Commissioner for Human Rights stated that the right to privacy is a cornerstone for a democratic society. Moreover, the report stated that the right to privacy 'is an expression of human dignity and is linked to the protection of human autonomy and personal identity'.[55] Although the report, which focuses on the right to privacy in the digital age, does not provide a comprehensive understanding of how privacy and human autonomy intertwines with sexual and reproductive autonomy, the link has been reiterated by human rights courts at the regional levels. For instance, the Inter-American Commission of Human Rights (IACommHR) has stressed in the case *López Soto et al v Venezuela* that the violence which Linda López Soto suffered amounted to a violation of her right to privacy, autonomy and dignity. In this case, Linda was kidnapped and sexually assaulted (therefore, it is not strictly linked to the abortion issue) but both the report and later the judgement by the court (IACtHR) reiterated that violations of her sexual and reproductive autonomy would hinder her right to privacy as well, which in this context refers to the aspect of privacy attaining to right to private life.[56]

53 UN Committee on Civil and Political Rights, 'General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation' (8 April 1988) UN Doc. HRI/GEN/1/Rev.1.

54 Human Rights Council, Fortieth session, 25 February–22 March 2019, 'Report of the Special Rapporteur on the right to privacy' (16 October 2019) UN Doc. A/HRC/40/63. The right to privacy can be limited provided that such interreferences be neither arbitrary nor unlawful. It was the Human Rights Committee that clarified in their General Comment No. 16 that 'unlawful' refers to interferences which are not envisaged by law, which are therefore prohibited, and that 'arbitrary' interferences refers also to those which can be envisaged by law but that act in contrast with the object and purpose of the Convention. These two guarantees have been introduced to safeguard the right to privacy and the requirement or arbitrariness is particularly relevant in this context since it aims at safeguarding the private life of individuals from interferences which may be introduced by law, hence lawful, but that infringe on the rights provided under the Convention. See ibid.

55 Human Rights Council (n 3).

56 *Case of López Soto et al v Venezuela* (Interpretation of the Judgment on Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No. 379 (14 May 2019). See also De Vido (n 4) 148. De Vido also recalls another report from the IACommHR, concerning the case *Manuela y Familia v El Salvador*, in which a woman was detained after having a miscarriage and later died while being imprisoned. Within its report, the IACommHR mentioned the connection between freedom from violence and the rights to personal integrity, 148. This

At the European level, the European Court of Human Rights (ECtHR) has adopted a careful approach in addressing the right to abortion, which according to its jurisprudence is protected under art 8 of the European Convention on Human Rights (ECHR). This article protects the right to respect for private and family life, home and correspondence and the court has used it, by broadly interpreting the notion of private and family life, in cases of abortion. Yet, as Fenwick notices:

> At first glance, it might appear anomalous that the Convention jurisprudence on Article 8, which has adopted an expansive concept of "private life", encompassing broad rights associated with personhood and the environment, has not decisively recognised that women have a right to choose to terminate their pregnancies. In the modern abortion jurisprudence, the Court has firmly refused to allow its stance to be freighted with the typical values underpinning Article 8 as to bodily autonomy.[57]

The breadth of the right to privacy is much wider than reproductive rights, clearly. Although connected and deeply intertwined with the right to abortion,[58] the right to privacy covers and widens to other aspects. In the context of Teleabortion, one aspect of the right to privacy is particularly relevant apart from the already mentioned connection with women's reproductive rights: the

---

case is also particularly relevant because the victim was also actively prevented from accessing abortion, which is not allowed in El Salvador. The IACtHR, in its judgement of 2021, found El Salvador responsible for the violation of Manuela's right to free from cruel, inhuman or degrading punishment under the American Convention on Human Rights, due to her detainment and the mistreatment at the hospital, which includes the denial of undergoing abortion.

57 Fenwick (n 4) 273. The author also underlines how different the approach of the ECtHR is from that of the Supreme Court of the USA undertaken in *Roe v Wade*, where the Supreme Court found that the basis for abortion rights were incorporated within the right to privacy, especially in *ABC v Ireland.* The approach of the ECtHR hence shows a careful and not clear-cut position in favour of women's right to abortion. See further: De Vido (n 4) 161. Furthermore, in the Guide on Article 8 drafted by the Court, the ECtHR stated that in terms of reproductive rights, when prohibitions to abortion are set in place for reasons of health and/or wellbeing they fall within the scope of art 8 (2), which regulates State's interferences with the right to private life. See Registry of ECtHR, *Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence* (Report, 31 August 2022) 1, 172.

58 Sifris notes that Justice Ruth Bader Ginsburg and Reva Siegel have highlighted the close connection between autonomy and equality in the context of abortion. Indeed, prohibitions aimed at restricting access to abortion violate both the right to autonomy and the principle of equality, hence criticizing the approach taken by Roe which altogether trumped the perspective of equality. She continues: 'According to Siegel, one of the hallmarks of patriarchy is the restriction of women's autonomy thus there is a clear connection between violations of women's autonomy and discrimination against women. Similarly, Rebecca J Cook has observed that '[t]he pursuit of women's autonomy requires their reproductive self-determination. Respect for human rights to reproductive self-determination requires the prohibition of all forms of discrimination against women', Sifris (n 4) 108.

protection of personal data. One of the advantages of Teleabortion is the reduction of costs as well as its availability, which is due to the fact that is relies upon the use of internet connection, email exchanges and videoconferences, etc. To understand more clearly, let us paint the example of a young woman, who is seeking to terminate her unwanted pregnancy through Teleabortion. The first step is to surf the internet and look for providers of that service. The next step is to contact the provider via email or phone call and set up a video conference. Before receiving the drug at home, she will have to undergo – let us say, for the sake of this example – at the bare minimum at least a blood sample exam. She will then send the results, probably via email, or they will be sent to the physician or the provider, who will store them in her file. Let us say that that young woman lives in the USA after the overruling of *Roe v Wade* (although, we could imagine a young woman living in Europe, maybe in Hungary[59] or in Poland[60]). Let us continue our example, by imagining that the country where she lives is one of those which has enacted abortion ban policies and that she travelled to a relative's or a friend's house, in a nearby country, where the service of Teleabortion is legally provided. She undergoes the procedure, thus terminating her pregnancy and goes back home, the only trace of her unwanted pregnancy being the data exchanged via email and the clinical file stored by the Teleabortion provider.

In the wake of the overruling of *Roe v Wade*, the press in the USA started to share articles and posts which voiced concerns over the possible dangers of AI, due to the fact that some governments had advanced the proposal of creating tip-off lines, where individuals would call and tip-off a neighbour, a friend, a colleague and a patient and receive a bounty for their service.[61] In this case,

59 For instance, on the impact of the Dobbs judgment in Hungary see: Katalin Kelemen, 'Una breve nota sull'impatto della sentenza Dobbs in Ungheria' [2023] BioLaw Journal 483, 488. The author suggests that changes in Hungary's legislation only two months after the Dobbs judgment, although different in content, highlight a change in perspective. The 'heartbeat rule' as it is being referred to could be a forerunner of more conservative changes in the national legislation of the country.

60 On Poland, see: Marta Tomasi, '*Abortion Rights* e spazio costituzionale europeo: gli orizzonti ristretti dell'ordinamento polacco', [2023] BioLaw Journal 403, 415.

61 See: Jeremy Kahn, 'After Roe, fears mount about A.I.'s ability to identify those seeking abortions' (*The Fortune*, 28 June 2022) <https://fortune.com/2022/06/28/after-roe-v-wade-fear-of-a-i-surveillance-abortion/> accessed 26 April 2023; Emma Bowman, 'As states ban abortion, the Texas bounty law offers a way to survive legal challenges' *NPR* (11 July 2022) <https://www.npr.org/2022/07/11/1107741175/texas-abortion-bounty-law> accessed 26 April 2023. Within her post, the author addresses Texas Heartbeat Law, or Senate Bill No 8 (available here: <https://legiscan.com/TX/text/SB8/2021>) which not only bans abortion but also sets up a bounty mechanism for tipping off either women who have undergone or are seeking to undergo abortions as well as those aiding and abetting abortion seekers, namely physicians, abortion providers, drivers or peoples who have helped financially the woman in order to have enough money to undergo the procedure.

which could be a reality in Texas, data coming from apps which track menstrual cycles, walking apps which pinpoint your location, might be used against women where abortion is criminalized. It needs to be stressed that this is still an extreme example, yet it offers insights on how necessary the protection of data concerning health is. From this perspective, international law is still lacking behind. The protection of personal data in regards to health has been underlined at the regional level by the jurisprudence of both IACtHR and the ECtHR. In *Manuela et al v El Salvador* the Court stated:

> Even though personal health data is not explicitly established in Article 11 of the Convention, this is information that described the most sensitive or delicate aspects of an individual, so that it should be understood as protected by the right to privacy. Information on an individual's sex life should also be considered as personal and highly sensitive.[62]

WHO guidelines underline how abortion is a stigmatised and personal matter, hence the worry that confidential data might be disclosed, which in the case of a woman wanting to terminate her pregnancy might be a reason stopping her from using the service, if she fears that such sensitive information is not safeguarded.[63] A similar conclusion can be found within the Guide on Article 8 drafted by the Registry of the ECtHR, which in referring to the case *M.S. v Sweden* states that:

> The disclosure – without a patient's consent – of medical records, including information relating to an abortion, by a clinic to the Social Insurance Office, and therefore to a wider circle of public servants, constituted an interference with the patient's right to respect for private life.[64]

In the aforementioned report on the right to privacy in the digital age, the High Commissioner for Human Rights has stressed that where there is a high risk for human rights the legal requirements governing the use of AI should be stricter and that sectors such as health where 'the stakes for individuals are particularly high' should have priority. The report also stresses that 'uses of AI

On the possible use of technology in this field as an instrument to control women see also De Vido (n 20) 355. De Vido recalls that a recent report by the Congressional Research Service of the USA has highlighted that federal law in relation to data privacy offers relatively limited constraints to the ability of law enforcement to acquire and use personal data relating to criminal activity. In response, De Vido also recalls actions at the legislative level to prevent local authorities and privates to acquire, use and share data concerning the reproductive health of a person without their written consent.

62 *Manuela et al v El Salvador* (n 5).

63 WHO, 'Guideline Recommendations on Digital Interventions for Health System Strengthening' (World Health Organization 2019).

64 *Guide on Article 8* (n 57) 58.

that inherently conflict with the prohibition of discrimination should not be allowed'.[65] On a similar note, the report of 2019 by Task Force on Privacy and Protection of Health-Related Data (instituted under the mandate of the Special Rapporteur on the Right to Privacy) was issued with the purpose of providing guidelines on the processing of health-data, emphasizing the need for a legitimate basis. It proposes principles with which data processing should comply such as transparency and fairness of the collection process and that data must be collected for explicit, specific and legitimate purposes 'in a manner which is compatible with the purposes for which it was originally collected'.[66]

In regards to Teleabortion, it can be argued that health data regarding abortion concern women, due to the fact that abortion is a woman's issue. Attempts at criminalizing abortion affect women because they are such, as well as using data for that purpose. It follows that any attempts at using against women health data regarding abortion, and especially those which are instrumental in Teleabortion practices, would constitute a violation of their right to privacy, of the right to non-discrimination and that of equality, since they would be targeted because they are women undergoing a medical procedure which only affects women. The Special Rapporteur highlighted in their report on the gender perspective relating to the right to privacy that while State surveillance is generally portrayed as targeting male individuals, on the other hand 'women can expect that nearly every detail of their intimate lives will be subject to multiple forms of surveillance by State as well as private actors, from domestic violence to sexual objectification and reproduction'.[67]

5. Conclusion

The purpose of this contribution was to investigate the practice of Teleabortion from an international law perspective, in light of the recent attempts to hinder the right to abortion in several countries. In particular, Teleabortion has been considered as a means to women's enjoyment of their reproductive rights: a right to Teleabortion is not being discussed here, as it would fall under the broader category of the right to abortion. Although international law is lacking in terms of an express recognition of the right to abortion, this does not entail that there is no obligation for States to ensure access to the service. Such obligations stem from human rights law and *jus cogens* norms: the criminalization of abortion amounts to cruel inhuman or degrading treatment as it was already underlined, and the right to abortion is inscribed within the

65 OHCHR (n 53) 45.

66 Committee of Ministers of the Council of Europe, 'Recommendation CM/Rec(2019)2 of the Committee of Ministers to the Member States on the protection and use of health-related data' (27 March 2019) CM/Rec(2019)2 [4].

67 Human Rights Council (n 4).

parameters of the right to health and the right to privacy. Criminalizing women seeking abortion affects their rights to equality and non-discrimination as well, since it is a practice which only women can undergo. Moreover, following De Vido's conceptualization of violence against women's health, criminalizing abortion is also a form of violence against women and women's health.

From these premises, the paper has built on how Teleabortion works, highlighting its advantages especially if an intersectional approach is taken into account: it would provide access to the service to a wider range of women since the costs would be significantly reduced, as well as being easily accessible and available. On the other hand, with Teleabortion comes the issue of data protection, which needs to be ensured since health data are particularly sensitive. Lacks in international law in this regard should be addressed: there is no international framework for data protection which entails a lack of harmonization in how data are protected worldwide. An international framework safeguarding health related data seems difficult to imagine. Regional systems have been set in place, with the European Union being at the forefront in terms of data protection.[68]

As a possible solution in terms of the harmonization of data protection practices, Kuner suggests the adoption by non-CoE Members as well of the Council of Europe Convention 108, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data[69] which after the Amendment of 2018 which saw also the adoption of an additional protocol and is now referred to as Convention 108+, the modernised version. The Convention is open for accession to non-Member States of the Council of Europe, hence presenting a possible universal framework providing the basis for global data protection standards.[70] Kuner yet warns on the difficulty of finding a possible agreement on global data protection standards and suggests also that some countries might opt for a non-binding set of standards.[71] The Convention deals with health and sexual life data at Article 6, referring to the special categories of data, and states that the processing of these data is only to be allowed where appropriate safeguards have been implemented in national legislations, complementing those of the Convention. Paragraph 2 provides a

68 Christopher Kuner, 'An international legal framework for data protection: Issues and prospects' [2009] 25 Computer Law & Security Review 307, 313; De Vido (n 20) 358, 359: the author came to the same conclusion that so far, the most efficient responses can be found at the regional level, especially at the EU and CoE levels: 'Alla luce del quadro normativo qui descritto, sia nel quadro del Consiglio d'Europa, sia nel quadro del sistema dell'Unione europea, ci sembra difficilmente argomentabile che una restrizione al diritto alla privacy delle donne, mediante geolocalizzazione dei loro spostamenti o mediante comunicazione alle autorità del loro accesso ad un ospedale che pratica l'interruzione di gravidanza, possa giustificarsi alla luce del sistema europeo di tutela dei diritti umani fondamentali' [359].

69 ibid.

70 Kuner (n 68) 313.

71 ibid [316].

further clarification of safeguards, stating that they 'shall guard against the risks that the processing of sensitive data may present for the interests, rights and fundamental freedoms of the data subject, notably a risk of discrimination'.[72]

Still, Teleabortion is not yet a wide-spread practice and its uses have been mostly concentrated in the USA and South America. However, it is not difficult to imagine its implementation also in Europe since the means and the drugs it relies upon are available as well.[73] Indeed, access to the internet is granted almost everywhere in Europe and the drugs necessary to perform medical abortions, namely misoprostol and mifepristone, are used in Europe as well. On a wider scale and for different fields Telemedicine is being implemented in Europe and that might soon include Teleabortion too.

The analysis on Teleabortion has allowed to further reflect on fundamental human rights and it should be clear that Teleabortion touches upon several other rights: the right to abortion, the right to health and the right to privacy. If made available, it is a means to ensure women's reproductive rights. Furthermore, the strength of Teleabortion resides in allowing women to avoid having to deal with the stigma and degradation that oftentimes they face in hospitals, as if the psychological and physical toll of undergoing a pregnancy termination was not difficult enough.[74] This would be due to the fact that women using Teleabortion services would be followed by physicians who would clearly have to be non-objectors, since, in the USA for instance, the service is provided by pro-choice associations and clinics. Indeed, one of the main barriers that women have to face even where abortion is legal and granted is conscientious objection.[75] Referral mechanisms[76] have been discussed at the international level as a possible solution, or another option would be a system of quotas, where States guarantee a certain number of pro-choice physicians, hence willing to perform abortions. Provided that there are not yet positive obligations for States with regard to access to abortion,[77] there are obligations in this regard stemming from the rights to health, to privacy and autonomy, to non-discrimination and equality.

72 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data [2018] CETS. No. 108+.

73 In the case of Italy for instance the NGO Women on Web has been helping women access safe abortion through Teleabortion, allowing women to get a consult online and have the abortion pills sent home. See: <https://www.womenonweb.org/it/page/521/women-on-web> last accessed 30 December 2024.

74 On the social stigma attached to abortion see: Sifris (n 4) 212.

75 See: Zoe L Tongue, 'On conscientious objection to abortion: Questioning mandatory referral as compromise in the international human rights framework' [2022] 22 Medical Law International 277, 371. See also De Vido (n 4) 55.

76 See: ibid.

77 De Vido (n 4) 55.