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Lecture on March 8, 2022, at the Award Ceremony of the Aletta Jacobs Prize to Rebecca Gomperts, by prof. mr. dr. B.C.A. (Brigit) Toebes, Professor, Health Law in a Global Context

Right to abortion

Honoured guests,

We have gathered here today for the awarding of the Aletta Jacobs Prize to Rebecca Gomperts. This is a wonderful gesture.

I would like to talk to you about abortion as a human right, about the right to abortion. Is there such thing as a right to abortion? Do we have such a right?

After the Second World War, the United Nations has gradually adopted a number of human rights treaties that protect our human dignity. This dignity translates into the protection of our privacy, physical integrity and our health, among other matters. These values are crucial when it comes to the accessibility of abortions for women.

But the explicit right to abortion cannot be found anywhere in these treaties. For example, the right to healthcare in connection with pregnancy, confinement, and the post-natal period is mentioned in the 1979 Convention on the Elimination of All Forms of Discrimination Against Women. Yet, nothing is said about the right to contraception or abortion. Back when the treaty was adopted, this topic was too controversial. It still is in many parts of the world.

Yet, in these treaties we can see a number of rights that form the foundation for women's right to abortion: a woman's right to life, right to health, and right to privacy. An important question arises: to what extent do these rights guarantee access to abortions?

Internationally, population control was emphasized for a long time: fertility control (contraceptives) exists for managing population growth, not for embodying men's and women's reproductive rights. That was the idea.

As time went by, the emphasis shifted to women's autonomy and their control over their own bodies. The 1994 International Conference on Population and Development in Cairo was a turning point at an international level. The concept of reproductive health was put on the map during this conference. *Reproductive health implies that people are able to have a safe and satisfying sex life, and that they have the capability to reproduce and the freedom to decide if, when, and how often to do so.* You can imagine how big of a breakthrough this was.

Abortion was mentioned multiple times: it should not be disguised as a method of contraception, but unsafe abortions should be prevented.

Gradually, the discourse on human rights was set in motion, with more emphasis being given to the fact that the rights to life, privacy, and health should protect women in particular. Through these

rights, the right to abortion has been receiving more and more recognition. The United Nations and, for example, the Council of Europe, keep putting more emphasis on the rights of the woman and not those of the foetus—under certain conditions, of course.

So, we can say that since WWII, a gradual shift has occurred towards attaching more and more value to the rights of the woman, and less to the rights of an unborn foetus.

In 2019, a so-called General Comment was adopted by the Human Rights Committee, the most important treaty monitoring body of the UN. It explains the right to life mentioned in the International Covenant on Civil and Political Rights. The text is not a legally binding document but it is still extremely influential, which means that legislators and judges have to take it seriously. Since it is a compromise between countries, it is not a coherent text. I would like to present you with the most important quotations from there because I consider it to be groundbreaking. Allow me to sum it up in seven points to show where we are right now at an international level:

1. Measures designed to regulate abortions must not result in a violation of women's rights to life, physical and mental health, and privacy, and must not discriminate against women.
2. State parties must provide safe abortions if the lives and health of women are at risk, most notably if the pregnancy is the result of incest, or if the pregnancy is not viable.
3. State parties must also ensure that women and girls do not have to resort to unsafe abortions.
4. Applying criminal sanctions to women who undergo abortion or to those who assist them in doing so is unacceptable.
5. State parties should remove existing barriers for women to access safe and legal abortions, including those caused by conscientious objection by individual medical providers.
6. State parties should ensure access to information on contraceptive methods and prevent the stigmatization of women who seek abortion.
7. State parties should ensure the availability of post-abortion healthcare.

Dear guests, this authoritative explanation issued by the United Nations in 2019 is a breakthrough. Such an interpretation of women's right to life means that, in many circumstances, women have the right to abortion.

The right to an abortion in the way it exists internationally offers a valuable framework. Human rights are also called 'clotted ethics'. They provide a legally binding framework for laws to follow. Governments are legally obliged to translate human rights into their legislation and policies. And there are consequences to our rights being compromised: we can call the government to account, go to court, or take our case to an international body.

Our laws are not necessarily fair: we all know that abortion laws in many countries do not pass the test of human rights. Many women all around the world still do not have access to safe abortions. We all remember the images from Poland: since late 2020, the Polish Constitutional Court made a statement on adopting even stricter abortion legislation. Now, women can only get an abortion if the

pregnancy is a result of rape, or if the woman's life is at risk. The foetus has to be protected under all circumstances (now). A recognition of women's rights to life and health is nowhere to be found. This is tragic, and it hits close to home.

Not to be complacent, let us take a critical look on what is happening in the Netherlands.

In 1981, the Dutch Termination of Pregnancy Act was introduced. It was preceded by a long fight, both in the Netherlands and in Europe.

As a side note: in the '60s and '70s, French philosopher Simone de Beauvoir led a campaign for the right to contraception and abortion. She aptly wrote: 'In the current economic circumstances, how can you work towards a career and a happy family life, raise children, serve society, and achieve personal development, when you can be ambushed and crushed by a new pregnancy at any moment?'

The 1981 abortion law was a milestone, but it is also vulnerable. The political discussion on abortion seems to have resurged in the past years. For example, there have been more anti-abortion demonstrations.

It is also important to keep being critical about this law and judging it from the point of view of the time period that we live in. Considering recent insights and developments, is this law still enough?

From 2015 to 2019, I was supervising Dr Lucía Berro Pizarossa, then a PhD student from Uruguay, on the right to abortion. Her message included the following: decriminalize, demedicalize, and de-stereotype. From this point of view, there is still a lot of room for improvement in the Netherlands.

When it comes to decriminalization, we need to note that our abortion law still lies within criminal law. According to the law, the termination of pregnancy is punishable unless it satisfies the conditions defined in the Criminal Code. In terms of decriminalization, our law definitely has room for improvement.

Demedicalization also requires attention in the Netherlands. At the moment, we have the 'abortion pill': a set of two pills that can be taken by women to terminate pregnancy up until the ninth week. Currently, this pill is included in the WHO list of essential medicines. It can definitely be called revolutionary that women can terminate their pregnancy in the early stages via medication. However, we are lagging behind in the Netherlands when it comes to the prescription of this pill. The abortionpill can currently only be prescribed by a clinic or a hospital. An initiative has been submitted to the Dutch House of Representatives to allow general practitioners to prescribe abortion pills. From the view of demedicalization, this would seem to be a good idea. We should also discuss the possibility to make the pill directly available at pharmacies, as well as systematically offering the abortion pill via telemedicine. So, demedicalizing...

Thirdly: de-stereotyping. Berro Pizarossa describes how abortion legislation around the world reflects stereotypes through disregarding women's capacities, wishes, and circumstances and through depriving them of their freedom of choice and their reproductive rights. Within this context, we should critically assess the requirements established in those abortion laws, and ask ourselves if

they may sometimes raise unnecessary barriers. For example, the five-day waiting time that Dutch women still have to go through before they can make a decision. If you take women seriously, you should give them space to make their own decision and not make them wait. But there is also good news in this regard: the Dutch House of Representatives has approved the abolishment of this rule, and decision on the waiting time is now subject to the Senate.

But, all in all, we cannot rest on our laurels here in the Netherlands either. There are still things to fight against, and they demand our constant efforts.

Until now, I've discussed the right to abortion and the abortion legislation.

Yet, rights and laws are just words on paper. In the end, it all comes down to women having rights in the real world, in this case access to abortions, whether they are in the Polish countryside, in Kenyan slums, or in the deprived neighbourhoods of Rotterdam. The most difficult part is translating rights into reality and making sure that they are actually enforced. As a lawyer working in academia, I am standing on the sideline and waiting for others to achieve this.

That is why I have such admiration for Rebecca Gomperts, who has spent decades fighting for access to abortions. Despite the opposition, criticism, insults, and potential threats (possibly even against her family), she kept her head held high and fought to provide many women with an opportunity to undergo a safe abortion. Those women were then able to go on with their lives. They could work, take care of their families and of themselves, perhaps get an education, and develop their careers.

Today, we are honouring Rebecca Gomperts, and it is a great pleasure for me to get to be a part of this ceremony.

Thank you so much for listening.

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