

***Alone on an Island: The Impact Of COVID-19 Containment Measures on Access to Abortion Care in Malta***

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ABSTRACT

Malta is a small, predominantly Catholic island-nation in the Mediterranean ocean where there is a complete ban on abortion – there are no exemptions for rape, incest, fetal anomalies, or to save a pregnant woman’s life. Both medical and surgical abortions are illegal. Those who choose to end pregnancies have often sought abortion care outside of Malta, traveling abroad at great personal cost. Medical care in Malta is otherwise free at the point of care. Options for pregnancy termination within Malta are essentially non-existent as there is great public support for the Maltese abortion ban. As the government of Malta imposed travel restrictions in the interest of containing the spread of SARS-CoV2, women faced further limitations in their ability to access safe, effective abortion care in other countries. Many women have ordered medications online and have self-managed their abortion care. Women who have had abortions or people who facilitate abortions in Malta face criminal charges. Women who seek medical management of complications of self-managed abortions do so with the possibility of facing legal charges. Denying women access to safe and private abortion care can cause significant physical, psychological, and social effects and unfairly harms those experiencing an unwanted pregnancy. Given the global COVID pandemic and in the event of future pandemics wherein lockdowns may be indicated to maintain public health and safety, the Maltese government has a responsibility to ensure access to safe abortion care whether abroad or self-managed and such care should be decriminalized.

**Keywords:** Abortion, Malta, Reproductive Care, COVID-19, Illegal Health Care, Pregnancy, Catholicism

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## INTRODUCTION

The official and predominant religion of Malta is Roman Catholicism. This is recognized in Article 2 of the Constitution of Malta; the Constitution gives the church the duty and right to “teach which principles are right and which are wrong,” and religious education is compulsory.<sup>1</sup> The Constitution does afford Maltese citizens freedom of religious choice though most citizens in Malta are Catholic. The Maltese Criminal Code is clear regarding abortion:

241. (1) Whosoever, by any food, drink, medicine, or by violence, or by any other means whatsoever, shall cause the miscarriage of any woman with child, whether the woman be consenting or not, shall, on conviction, be liable to imprisonment for a term from eighteen months to three years.

(2) The same punishment shall be awarded against any woman who shall procure her own miscarriage, or who shall have consented to the use of the means by which the miscarriage is procured.

242. If the means used shall cause the death of the woman, or shall cause a serious injury to her person, whether the miscarriage has taken place or not, the offender shall, on conviction, be liable to the punishment applicable to willful homicide or willful bodily harm, diminished by one to three degrees.

243. Any physician, surgeon, obstetrician, or apothecary, who shall have knowingly prescribed or administered the means whereby the miscarriage is procured, shall, on conviction, be liable to imprisonment for a term from eighteen months to four years, and to perpetual interdiction from the exercise of his profession.<sup>2</sup>

The language used in the Constitution reflects the persistence of Catholic values through time and excludes all methods of and exemptions for pregnancy terminations. The prohibitions above apply to cases of rape, incest, and where the pregnant woman's life is in jeopardy – the only other country in the European Union with equally restrictive laws is the Vatican. However, a key difference between Malta and the Vatican is that someone living in the Vatican wanting an abortion would have easy access to medical services in Rome. Malta is isolated in comparison.

The coronavirus placed additional stress on those seeking abortion care when infection control measures were implemented.<sup>3</sup> As Malta is an island, travel outside of the country requires travel by boat or plane, both prohibited as part of government-imposed infection control measures. Those who did return to Malta following international travel were required to quarantine for two weeks and risked fines of up to €10,000.<sup>4</sup> While someone in the first trimester of an unwanted pregnancy may have previously been able to plan a quick trip abroad without raising suspicion that they were traveling for abortion care, with travel restrictions in place, such trips were not easily executed. When pregnant women cannot access abortions, whether medical or surgical, they must self-manage their abortion care.

### I. The Harms of a Lack of Access to Care

As the pandemic is a time of significant mental, spiritual, and existential distress, the added stress of an unwanted pregnancy can cause great harm to an individual. Some may argue that the societal benefits of restricting travel, thus limiting disease spread to individuals and their communities, can outweigh the rights of the individual. But even during a public health emergency, such as a pandemic, it is important that

medical care continue where possible to ensure robust baseline health of the community. Abortion care is essential medical care,<sup>5</sup> and in the case of a global infectious pandemic, it would ideally be available locally so as not to harm the community through needless travel abroad. Given the significant implications and downstream effects caused by the continuation of an unwanted pregnancy, those seeking abortion care are likely to pursue the options available to them even if there is the potential risk to the individual or their community.

Underlying the increased challenges regarding access to abortion care is the existing legislation that does not have provisions for emergency care. The potential harms to pregnant women in criminalizing access to abortion care, especially given the ongoing COVID-19 pandemic, are significant. The current legislation does not provide exemptions for abortions that would save the woman's life. Rather, the woman and her health care team are at risk of criminal consequences if they implement this lifesaving care. If a woman remains in Malta and is unable to self-manage abortion care, or if self-managed care is not medically appropriate or safe, she faces the possibility of dying because of pregnancy continuation. Alternately, the woman can leave the country to pursue the appropriate care, though there is the potential for social and financial repercussions, and pandemic travel restrictions severely limit this option.<sup>6</sup>

## II. Injustice

Malta's criminalization of all abortions is a significant violation of the bioethical principle of justice. The Maltese Criminal Code legislates no other medical procedures.<sup>7</sup> The burden that results from these restrictions weighs most heavily on Maltese women. Pregnant women seeking an abortion must either determine a strategy to get such care (potentially violating the criminal code) or continue a dangerous or unwanted pregnancy. Although those who seek to support and help women may also face criminal consequences, the criminal code essentially targets women with unwanted or unsafe pregnancies. Furthermore, as their request for abortion puts doctors or other facilitators at risk, the potential criminal liability of healthcare professionals is a deterrent to their seeking abortion care. Thus, the criminal code undervalues women and creates a crime that categorically applies to women only.

Restrictive reproductive care policies in Malta also create significant socio-economic injustice, which was amplified by stay-at-home orders and travel bans. Those who can afford to leave the island to seek medical care abroad are also those who are most likely to have the financial flexibility for a post-travel two-week quarantine. The financial stress associated with seeking medical care abroad or self-managed abortion care disproportionately affects women of low socioeconomic standing. There are non-profit organizations outside of Malta that may be able to facilitate access to medically supervised abortion care outside of the country. However, COVID-19 travel restrictions likely limited their ability to help women.

## III. Autonomy and Healthcare Decisions

Ultimately, allowing pregnant women access to the reproductive care they require is important for the preservation of individual autonomy. Ideally, women would have the assistance of healthcare providers to inform reproductive decisions with accurate, evidence-based information that is free from bias. Certainly, where a provider is at risk of criminal charges, a patient is denied the information necessary to make an autonomous choice regarding the appropriateness of such care. The provision of comprehensive and exhaustive information is also essential to the preservation of trust between the medical care team and the patient. Abortion care is acceptable in many jurisdictions, and information around this care should be included as part of comprehensive family planning discussions whether the provider is willing to facilitate the care or not.

#### IV. Denying the Consequences of a Local Ban on Abortion

There is a perception among those supporting the complete abortion ban that those wanting abortion care, even in pregnancies resulting from rape, can easily travel to other countries to do so. As discussed above, this perception does not consider financial inequities and the burdens on those with limited financial resources.<sup>8</sup> People holding this “not in my backyard” stance on abortion may be using the perceived easy international access to abortions as an excuse to avoid considering the consequences of a total ban (for example, the death of pregnant women from pregnancy complications, a woman forced to continue a pregnancy despite severe fetal abnormality that is not compatible with survival upon delivery). Because international travel for abortion can no longer be presumed, ban supporters can no longer use it as a shield to avoid grappling with difficult problems. Issues like the ethics of permitting a woman to die or forcing a birth resulting from rape or incest would be addressed head-on if the legislators did not dismiss the issues using the assumption women can travel for care. Exploration of an ethical justification for a complete ban is sidelined by the perception of the ability to access care elsewhere.

#### CONCLUSION

It is an oversimplification to consider the legality of abortion the sole barrier to accessing this care, especially in a country driven by culture and religion. Yet abortion and reproductive care are essential to the wellbeing of pregnant individuals and should be part of every health system. The COVID-19 pandemic remains a significant public health concern and has highlighted some of the consequences of not having any abortion care available within Malta. Illegal self-managed abortions remain one of the few options for many pregnant women in the country. It can be challenging to navigate abortion care, particularly in a country where the prohibition of such care is widely accepted, and it is important to allow for provisions that support safe reproductive care. Research and examination of the pandemic’s effect on access to abortion care would provide much-needed data. Protections and immunity in place for those who sought or delivered such care during the pandemic would be a just response to the restrictive policies. The pandemic has successfully highlighted significant inequities in care, and access to safe and effective abortions for those who wish to have them should be facilitated – whether it be in Malta or abroad.

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<sup>1</sup> “Constitution of Malta,” 1964., 7.

<sup>2</sup> Malta Criminal Code, CAP. 9, Book First, Part II, Title VIII, Sub-title VII, Articles 241-243, *available at* Refworld, accessed April 24, 2021, <https://www.refworld.org/docid/5d36fc847.html>.

<sup>3</sup> Different countries in Europe responded to the COVID-19 pandemic in different ways. Hungary, for example, stopped all non-life-threatening surgeries in state hospitals, while in the Netherlands, those who had or lived with someone with COVID-19 symptoms were restricted from accessing abortion care. Caroline Moreau et al., “Abortion Regulation in Europe in the Era of COVID-19: A Spectrum of Policy Responses,” *BMJ Sexual & Reproductive Health*, October 22, 2020, <https://doi.org/10.1136/bmjsex-2020-200724>.

<sup>4</sup> “COVID-19: Confirmed Patients Who Ignore Isolation Orders to Be Fined €10,000,” *Times of Malta*, accessed April 24, 2021, <https://timesofmalta.com/articles/view/covid-19-fines-may-be-increased-up-to-10000.780452>.

<sup>5</sup> Elizabeth Janiak and Alisa B. Goldberg, ‘Eliminating the Phrase “Elective Abortion”: Why Language Matters’, *Contraception*, 93.2 (2016), 89–92, <https://doi.org/10.1016/j.contraception.2015.10.008>.

<sup>6</sup> Of course, It is also important to consider the well-being of women who have unwanted pregnancies and are choosing abortion care. The abortion argument is often framed solely in the context of pregnancies where a

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woman's health and/or life are in jeopardy or in cases of incest and rape – this neglects the needs of the women who have unwanted pregnancies outside of those circumstances. The continuation of such pregnancies can have significant social and financial consequences for an individual – ensuring that appropriate and safe care can be pursued is essential to the minimization of harm to that individual. Legislation that denies any individual the opportunity to seek such care, and that goes so far as to criminalize it, can cause significant emotional and physical harms to pregnant individuals. This can happen regardless of the motivation for pursuing abortion care and the argument is most appropriately framed in general terms to preserve the right to seek abortion care for all pregnant women.

<sup>7</sup> Malta Criminal Code, CAP. 9, amendments up until 2018, *available at* Refworld, accessed April 24, 2021, <https://www.refworld.org/docid/5d36fc847.html>.

<sup>8</sup> "Abortion Debate: Between Progress, Catholic Morality and Patriarchy," MaltaToday.com.mt, accessed April 8, 2021, [http://www.maltatoday.com.mt/news/national/100419/abortion\\_debate\\_between\\_progress\\_catholic\\_morality\\_and\\_patriarchy](http://www.maltatoday.com.mt/news/national/100419/abortion_debate_between_progress_catholic_morality_and_patriarchy).