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**“ONE CRISIS IS ALL IT
TAKES”: RESTRICTING
THE RIGHT OF
PREGNANT WOMEN/
PARTURIENT WOMEN,
THE COMPANION OF
THEIR FREE CHOICE IN
THE CONTEXT OF THE
COVID-19 PANDEMIC IN
BRAZIL**

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“Patriarchy is stony. Feminism, like the ocean, is fluid, powerful, deep, and has the infinite complexity of life; it moves in waves, currents, tides, and sometimes in raging storms. Like the ocean, feminism is not silent.

(Isabel Allende – women of my soul)

Abstract: This article mobilizes reflections on the restriction of the right of pregnant and parturient women to a companion of their free choice during labor, pre-delivery and post-partum during the course of the Covid-19 pandemic in Brazil, considering the context of measures of exception adopted globally. By distinguishing such acts, based on their democratic nature, or not, the restriction in question fits as an exceptional measure of an anti-democratic nature and violating human rights guaranteed in international diplomas and in Brazilian legislation. Moreover, in view of the concepts of obstetric violence and intersectionality, and in recourse to inter-American jurisprudence, it is reaffirmed the importance of the Judiciary taking ownership of the concepts of gender justice and reproductive justice, in order to guarantee the State's accountability for such violations. Thus, institutional discrimination based on gender and social class is evident, since the restriction in question takes place within the scope of the Unified Health System.

Keywords: Right to companion; gender justice; reproductive justice, intersectionality; obstetric violence.

INTRODUCTION

The Covid-19 pandemic, declared by the World Health Organization - WHO in March 2020, brought more visibility to the fact that “the economic and social impacts are filtered by ‘customary’ discrimination”, which include even more disastrous effects of the pandemic on the poorest classes, with “completely different contagion and death curves” (SAFATLE, 2020). Added to this is the reality that the workforce responsible for caring for the sick is “highly divided by gender, race and ethnicity in most parts of the world” (HARVEY, 2020, p. 15).

In the scenario of exceptional measures triggered by States in different parts of the planet, through the enactment, or not, of a state of emergency - which even included, in some places, electronic monitoring and surveillance mechanisms, as taught by Han (2020), among other rights -, the field for the discussion about the responsibility of the State, in the most different areas, is of great amplitude. Among such acts, it is observed, in some parts of the world, the restriction/SUS (Unified Health System) pension of the prerogative of pregnant women/parturients to have a companion of their free choice during labor, delivery and postpartum¹, what affects rights held by women and trans men.

As the United Nations entity - UN for gender equality and women's empowerment (UN Women) reported, since the outbreak of COVID-19, emerging data and reports have shown that all types of violence against women and girls, especially domestic violence, have intensified².

1 Labor begins with “the presence of spontaneous uterine contractions, at least two in 15 minutes and at least two of the following signs: cervical effacement, cervix dilated to 3 cm or more, spontaneous rupture of the membranes” (AMORIM; PORTO ; SOUZA, 2010, p. 528). Childbirth, on the other hand, refers to the expulsion period of the fetus, placenta and fetal membranes of the maternal reproductive tract (SOBRAL, 2020).

2 Check the information on the website: <https://eca.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19>. Accessed on September 14, 2021. Furthermore, as shown by Peterman et al (2020), vast global literature relates economic insecurity – which is identified as one of the effects of the ongoing health crisis – to forms of violence against women, which is why by which the World Health Organization - WHO includes economic strengthening programs as promising intervention typologies. Available on the website <https://www.un.org/sexualviolenceinconflict/wp->

The expansion of the disparity in access to rights caused by the coronavirus also affected issues related to the exercise of women's sexuality and reproduction. Researchers such as Church (2020) and Hussein (2020) reported that Covid-19 affected the provision of sexual and reproductive health services in different parts of the world³. In this context of increasing violence against women, a phenomenon of global reach, and considering the pandemic as a "mixture in which natural, economic and cultural processes are inextricably combined" (ZIZEK, 2020, p. 42), it will be of the aforementioned restriction from the field of women's rights and the concepts of gender justice – connected to the phenomena of internationalization of the cause of women and linked to a multitude of initiatives around their rights (TOVAR, 2011, p. 146)⁴ –, and reproductive justice.

The discussion is thus inserted in the broad context that involves discrimination by the State on grounds of gender, a field in which greater emphasis will be given to reproductive justice and, among the international diplomas that deal with women's rights, to the Convention of Belém do Pará, which is part of the framework of the Inter-American Human Rights System – IAHR.

The empirical research carried out adopts as a parameter the performance of the Public Defenders in the five regions of Brazil and the Federal District and the perspective of feminism, an expression that, historically, goes back to the "French political context of the 19th century to designate the different

groups that, in one way or another, they tried to improve the situation of women" (DAHL, 1993, p. 13).

The reflection also starts, with hooks (2018, p. 47), from the recognition that all positive changes in the conduct of health establishments in relation to the female body and women's medicine "are a direct result of the feminist struggle".

EXCEPTION AS A PARADIGM, GLOBALIZATION OF EXCEPTION AND ANTI-DEMOCRATIC EXCEPTION MEASURES:

When dealing with the current pandemic, Santos (2020a, p. 5) alludes to the concept of "normality of the exception", stressing that, as neoliberalism has been imposing itself, since the 1980s, the world has lived in a state of permanent crisis, which became, in turn, "the cause that explains everything else", which prevents the investigation of its true causes. Ferreira (2019, p. 305) also refers to the "normality of the exception", by highlighting "the emergence of models of social and economic organization, as is the case of the austerity society", which "constrain institutional, legal and social frameworks". standards of normativity".

In this context, Santos (2020b, p. 240) considers democratic states of emergency to be those in which the exceptional measures "are not an unconditional power of the sovereign", but defined "in the terms and with the limits allowed by the democratic Constitution". In this sense, democratic states of exception

content/uploads/2020/05/press/pandemics-and-violence-against-women-and-children/pandemics-and-vawg-april2.pdf. Accessed on September 14, 2021. Check this information too: World Health Organization (2019). RESPECT: Preventing violence against women. Geneva: World Health Organization. Available on the website <https://apps.who.int/iris/bitstream/handle/10665/312261/WHO-RHR-18.19-eng.pdf?ua=1>. Accessed on September 14, 2021.

³ The Population Fund of the United Nations Organization issued a document alerting to the need to guarantee, even in the pandemic context, both the continuity of maternal health care during pregnancy, pre-delivery, delivery and post-partum, as well as other health care sexual and reproductive health, such as access to contraception, emergency contraception, safe abortion where legally guaranteed, and postabortion care (UNFP, 2020).

⁴ Available on the website: <https://revistas.uexternado.edu.co/index.php/derpri/article/view/2985/2629>. Accessed in september 14, 2021.

consist of those governments in which there is an “emergency action for a limited period and using the measures strictly necessary to contain the pandemic” (SANTOS, 2020b, p. 233).

On the other hand, covered by the concept of anti-democratic states of exception, “very low-intensity democracies” can be placed, especially governed by right-wing and extreme right-wing political forces that “used the health emergency as a pretext to increase the authoritarian traits of governance”, through the “recourse to scapegoats” to “disguise the failure of their actions”; to “denialism”, which culminated in the failure to adopt timely measures; and the “use of the health emergency to legitimize new powers of exception” (SANTOS, 2020b, p. 242-243).

The author considers the use of denialism as an action adopted “in a continuous and extremist way by the government of Brazil”, where the “scapegoats” would have been “scientists and all non-Bolsonarist politicians, including right-wing governors who supported his election and, later, all those who did not believe in chloroquine” (SANTOS, 2020b, p. 243-245). In a converging sense, Mascaro (2020, p. 15) blames leaders such as Bolsonaro and Trump for the political strategy of resorting to denialism and putting themselves “in opposition to the very reality over which they govern, reducing political costs and responsibilities that are their own, taking advantage of their captive audiences of the extreme right and anti-scientific discourses and thoughts”.

After having carried out this synthetic contextualization, and considering that the Covid-19 pandemic was marked, in Brazil, by the strong absence of a timely articulation of measures, at the national level, with a view to

preventing the spread of Sars-Cov-2, inserts the restriction of the right to a companion of pregnant and parturient women, as an exceptional measure of an anti-democratic nature, in addition to violating human rights.

WOMEN’S HUMAN RIGHTS, THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AND INTERSECTIONALITY: A BRIEF OVERVIEW

The reflection around the responsibility of the State, in the hypothesis, turns, initially, to the scenario of International Human Rights Law, in which the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), already in 1979, dealt with the human rights of women and the need to seek gender equality.

Although the 1945 United Nations Charter established the principle of isonomy between men and women, later enshrined in the Universal Declaration of Human Rights - UDHR, the inalienability of the human rights of women and girls was only expressly proclaimed in 1993, in the Vienna Declaration and Program of Action. Subsequently, the International Conference on Population and Development (ICPD), held in Cairo in 1994, recognized women’s sexual and reproductive health as a human right and a fundamental element for achieving gender equality, a theme that was also the subject of the Beijing Conference, from 1995.

The Beijing Program of Action was more comprehensive with regard to the promotion of gender equity, by stating the need to see guaranteed different human rights of women, such as education, work and life free of violence⁵.

The conception of the notion of reproductive

⁵ The Beijing Program of Action also defined the concept of reproductive rights by asserting that it “is based on the recognition of the fundamental right of all couples and individuals to decide freely and responsibly the number of their children, the time of their birth and the interval among them, to have information on the means to do so and to achieve the highest level of sexual and reproductive health.” Check the information on the website: <https://www.onumulheres.org.br/wp-content/uploads/2013/03/>

justice is contemporary with the cycle of United Nations conferences that recognized the human rights of women⁶ and comes from black women's movements, which associate the exercise of sexual and reproductive rights with the guarantee of other human rights necessary for a life with dignity, such as the rights to employment, education, housing and health⁷, considered presuppositions of those, where they emphasize that such rights are always denied to part of the population affected by structures of oppression of a patriarchal, capitalist and racist order. (ROSS, 2017, p.13; ROLAND, 1998).

Reproductive justice is, therefore, linked to the concept of social justice and the impossibility of ensuring the freedom to exercise reproductive rights to those who find themselves in a situation of marginality, caused by different systems of social oppression, and without access to basic rights. Thus, it is not enough to assert reproductive rights, but it is necessary to ensure that people have the resources to exercise them.

This concept is also linked to the notion of gender justice, which, despite being addressed by some theorists since the 1990s, has been used by the United Nations only since the first decade of the 2000s, to emphasize the relationship between women's demands and state responses in order to overcome or lessen

their condition of subalternity (TOVAR, 2011, p. 123). Santiago, Andrade and Carvalho (2020) point out that the debate on gender justice aims to “understand how the overview of legal, state, economic and social structures contribute to the maintenance of the status quo”, while seeking ways to promote fissures in such structures in order to face and overcome gender inequality (SANTIAGO; ANDRADE; CARVALHO, 2020, p. 257). Both concepts – reproductive justice and gender justice – claim the possibility of a life free of violence as a premise for women to have access to their sexual and reproductive rights.

Within the scope of the ISHR, the Convention of Belém do Pará, of 1994, focuses on violence against women, having been applied by the Inter-American Court of Human Rights – IDH, for the first time, in the Case of “Prison Miguel Castro v. Peru”, also the first of that Court to deal with gender violence against women (PAIVA; HEEMANN, 2017, p. 347). In the aforementioned judgment, specifically because three of the women arrested in that establishment were pregnant at the time of the facts, Judge Cançado Trindade highlighted that the issue could not be “adequately examined without a gender analysis” (paragraph 58), as well as that maternity “must be surrounded by care and respect and recognition” (paragraph 60)⁸.

declaracao_beijing.pdf.

6 In June 1994, in Chicago, at a meeting in preparation for the Cairo Conference, twelve American women who called themselves: *Women of African Descent for Reproductive Justice*, launched a movement that gave rise to the concept of reproductive justice (ROSS, 2017, p. 13). One of these women, Loretta Ross, founded in 1997 the group: *SisterSon Woman of Color Reproductive Justice Collective*, who coined the concept of reproductive justice, which centered on three human rights values that must be interconnected: “the right not to have children using safe birth control, abortion or abstinence; the right to have children on terms we choose; and the right to care for the children we have in safe and healthy environments.” (ROSS, 2017, p. 13).

7 The expression “reproductive justice” gained great popularity within the scope of women's social movements and in 2006 the collective met in order to define criteria for reproductive justice, affirming its intersectionality character, connection of local problems to global ones, its foundation of rights rights, to place marginalized people at the center of the analysis and to seek state responsibility. (ROOS, 2017 p. 18-19).

8 Judgment and opinion of Judge Cançado Trindade available at: <https://www.cnj.jus.br/wp-content/uploads/2016/04/7ef9a6d58703704d6c5e9a8a04cb09e9.pdf>. Accessed on September 14, 2021. Subsequently, the Inter-American Court analyzed, for the first time, a situation involving structural gender violence in the Case of Gonzáles et al. (“Cotton Field” vs. respect of the Convention of Belém do Pará. Sentence Available on the website: https://www.corteidh.or.cr/docs/casos/articulos/seriec_205_esp.pdf. Accessed on September 14, 2021. According to Paiva and Heemann (2017, p. 401 ff), this is the first time that an international court recognized the existence of femicide as a crime.

The Inter-American Court has mentioned structural situations of violation of human rights, such as in the Case “Workers of Fazenda Brasil Verde v. Brazil”⁹ and in the recent trial of the Case “Employees of the Fábrica de Fogos de Santo Antônio de JeSUS (Unified Health System) and their Families versus Brazil”¹⁰, when, in recognition of the intersectionality between the matrices of oppression present in social processes, the concurring opinion of Judge Pérez Manrique stated that, “Employees of the Fire Factory is, above all, a case about black and poor women” (FACHIN; FERREIRA, 2020).

Regarding the Brazilian State, despite being outside the sphere of the inter-American system, it is also worth mentioning its responsibility by the CEDAW Oversight Committee linked to the United Nations, for the violation of the human rights of Alyne da Silva Pimentel Teixeira, in 2011. Alyne, woman black, 27 years old, 6 months pregnant, died in a maternity hospital in Belford Roxo-RJ in 2003, due to lack of adequate medical assistance. The decision recognized the failure of the Brazilian State in its duty to protect the human rights to life, health, equality and non-discrimination in access to health, considering the situation as a form of violence against women and strengthening the understanding that this violence.

“It’s a kind of discrimination and that discrimination against black, poor and peripheral women has been systemic in health services in the country” (DE CÁSSIA CATOIA

9 It was the first case in which the IDH System expressly determined the international responsibility of a State for perpetuating a structural and historical situation. Judgment delivered on October 20, 2016. Available on the website: http://www.corteidh.or.cr/docs/casos/articulos/seriec_318_por.pdf. Accessed on September 28, 2021.

10 Judgment of July 15, 2020. Available on the website: https://www.corteidh.or.cr/docs/casos/articulos/seriec_407_por.pdf. Accessed on September 28, 2021.

11 This is the case of “Gonzales Lluy et al v. Ecuador”. Judgment of September 1, 2015. For more information, Check the information on the website: Paiva; Heemann, 2017, p. 586-590.

12 Check out article 19-J of Law 8080/1990: “The health services of the Unified Health System - SUS (UNIFIED HEALTH SYSTEM), of their own or affiliated network, are obliged to allow the presence, next to the parturient, of 1 (one) companion during the entire period of labor, delivery and immediate postpartum.”

13 Check out the content of the article: 8, paragraph 6 of Law 8069/1990: “The pregnant woman and the parturient woman are entitled to 1 (one) companion of her choice during the prenatal, labor and postpartum period of immediate delivery.”

et al, 2020). This is the first responsibility of the Brazilian State in the Global System for the Protection of Human Rights.

In this sense, given that the context of violations of rights that affect women “is often shaped by other dimensions of their identities, such as race and social class” (CRENSHAW, 1991, p. 1242), and given the fact that the The Inter-American Court has already recognized the impact arising from the combination, in an intersectional way, of multiple factors of discrimination and vulnerability¹¹, the premise of intersectionality appears to be of fundamental relevance for the analysis of the constraint under examination.

OBSTETRIC VIOLENCE – RIGHT TO A COMPANION AND ITS RESTRICTION IN BRAZIL IN THE CONTEXT OF THE COVID-19 PANDEMIC

In Brazil, the pregnant woman’s right to a companion is guaranteed in the Organic Law of the Unified Health System - SUS (UNIFIED HEALTH SYSTEM), of 1990, modified in 2005, through Law in public and private health units, by a person of their free choice, throughout labor, delivery and postpartum¹². Also, the Child and Adolescent Statute, through an amendment dated 2016, ensures the pregnant woman’s right to screen, extending it to the prenatal phase¹³.

From the concept of reproductive rights signed at the Beijing Conference (1995) which, according to the lessons of Corrêa

and Petchesky (1996), assume as ethical bases the guarantees of bodily integrity, personal autonomy, equality and diversity, it is possible to state that having a companion with you at the time of childbirth is a reproductive human right, which must be guaranteed to all people with the capacity to conceive (CORRÊA; PETCHESKY, 1996, p.150).

However, this reproductive right was not always ensured. From the mid-twentieth century, childbirth almost completely left the home sphere, becoming institutionalized in maternity wards and hospitals where women began to give birth in the absence of people closest to them, in the exclusive presence of health professionals (DINIZ et al, 2014, page: 141)¹⁴. However, still in the second half of the 20th century, women's movements began to denounce violent practices resulting from experiences of institutionalized childbirth, highlighting the high rates of maternal and infant mortality in that context, added to the profound suffering caused to parturients by excessive interventions. (DINIZ et al., 2015, page: 378).

Thus began the movement for humanized childbirth,¹⁵ which went on to denounce a form of gender violence in the context of medicalized childbirth, later named by the movement as obstetric violence.

14 The new hospital-centered delivery model, based on interventional practices that even included deep sedation of pregnant women (DINIZ et al., 2015, p.378), did not admit the presence of family members, whose absence was even recommended in compendiums of medical and nursing education. The main focus of the delivery process was on the life outcome for mother and baby, attributing less relevance to the phenomena experienced to achieve this outcome (DINIZ et al., 2014, p.141).

15 Diniz *et al.* (2005, p. 631) state that the women's movement for humanized childbirth "is a complaint, but also a demand for justice and a program of changes" and that humanization refers "to a multiplicity of interpretations and a broad set of proposals for changing practices, bringing new and challenging concepts to daily service" (DINIZ *et al.*, 2005, p. 635).

16 Scientific studies point out that "women who had this intervention" – the presence of a companion – "were more likely to have spontaneous vaginal delivery and less likely to use intrapartum analgesia or to report dissatisfaction; labor was shorter, these women were also less likely to have a caesarean section or instrumental vaginal delivery, to have regional analgesia, or the baby to have a low Apgar score in the fifth minute of life" (DINIZ *et al.*, 2014, p. 142).

17 However, this right, despite being part of the law for more than 15 years, even before the pandemic, was still far from being a reality for all Brazilian women, since a survey carried out between 2011 and 2012 showed that around 24.5% of women still gave birth without the presence of a companion (DINIZ et al, 2014, p. 143-144).

18 Law 3.385/2018, which provides for the implementation of information and protection measures for pregnant women and women in labor against obstetric violence in the State of Tocantins, considers, in its article 3, item IX, that obstetric violence constitutes the conduct of "preventing the woman is accompanied by someone of her choice throughout the labor".

"the appropriation of the female body and reproductive processes by health professionals, through dehumanized treatment, abuse of medicalization and pathologization of natural processes, causing the loss of autonomy and ability to decide freely about their bodies and sexuality, negatively impacting the quality of life women's lives (BRAZIL, 2017).

In this scenario, public health scholars, supported by the WHO, began to analyze obstetric practices and systematize them into positives and negatives, which led to the publication, in 1996, of a document in which countries are recommended to abolish what are considered bad practices. obstetrics and adopt the so-called good practices for a positive childbirth experience, among which the presence of a companion of the pregnant woman's free choice throughout the delivery period¹⁶ (World Health Organization, 1996).

The recognition of this right, by law, in Brazil, only took place in 2005, as previously stated, and its violation, insofar as it contributes to reducing the autonomy of women in the moment of delivery, it is characterized as obstetric violence¹⁷, as they recognize certain state laws, such as that of Tocantins.¹⁸

More recently, in 2018, the World Health Organization published a new global guideline for care related to the pregnancy-puerperal cycle, comprising, among recommendations

based on scientific evidence, the right to choose a companion for labor and birth¹⁹. But in the course of the Sars-Cov-2 pandemic, aware of the various violations of this right, the World Health Organization strongly recommended that women have access to a companion of their free choice during labor and delivery, including during the COVID pandemic.¹⁹²⁰.

It must be noted that Federal Law number: 13,979/2020, which provided for measures to deal with the public health emergency resulting from contamination by the new coronavirus, at no time imposed a restriction on the right of pregnant/parturient women to have a companion of their own free will. choice²¹. However, what happened in several Brazilian states was the adoption of measures, at the state level, with a view to SUS (Unified Health System) to overrule the right of pregnant/parturient women to have a companion of their own choice, based on preventing the spread of contagion of Sars-Cov-2. In addition to such restrictions, it appears that once provoked in several states of the country, the response of the justice system to this violation took place in a markedly

heterogeneous way.

While in some States, such as Bahia and Amazonas²², the SUS (Unified Health System) right was resumed through the extrajudicial action of the Public Defender's Office.

In other places just like in the cities of Mogi das Cruzes and Limeira/SP²³, there was a positive and immediate response from the Judiciary to restore this right even in the pandemic context. On the other hand, in states such as Paraná²⁴ and Tocantins, the restriction still continues, despite the efforts of the institutions of the justice system.

The disparity in the response to the SUS (Unified Health System) pension of the right to a companion in the scope of the Brazilian States can be related to the (still) small number of demands that contribute to the justice system, related to situations of obstetric violence. Studies carried out within the scope of superior courts and in the states of Rio Grande do Sul and Minas Gerais point to the difficulty in finding mention of the term "obstetric violence" in judicial decisions and to the "timid existence" of decisions that recognize the objective responsibility of the State and subjective view of health agents for

19 Available on the website <https://apps.who.int/iris/bitstream/handle/10665/260178/9789241550215-eng.pdf>. Accessed on September 28, 2021.

20 Available on the website <https://www.who.int/news/item/09-09-2020-every-woman-s-right-to-a-companion-of-choice-during-childbirth>. Accessed on September 29, 2021.

21 The Ministry of Health, in turn, issued a Technical Note in which it advised that the presence of the only companion and asymptomatic for Covid-19 be maintained, only not allowing the rotation of companions and limiting their presence to the place of assistance to the parturient woman. (Technical Note number: 09/2020- COSMU/CGCIVI/DAPES/SAPS/MS. Available at: https://portaldeboaspraticas.iff.fiocruz.br/wp-content/uploads/2020/04/SEI_MS-0014382931-Nota-Tecnica_9.4.2020_parto.pdf. Accessed on September 29, 2021.

22 Check the information on the website: <https://www.defensoria.ba.def.br/noticias/coronavirus-audiencia-publica-virtual-em-vitoria-da-conquista-assinala-direito-de-gestantes-a-acompanhante-mesmo-durante-pandemia/>; <https://d24am.com/coronavirus-no-amazonas/defensoria-alerta-que-direito-a-acompanhante-em-partos-nao-pode-ser-violado/>; and http://saude.am.gov.br/docs/covid19/NT012021_URGEM_GMA_SESAM.pdf. Accessed on September 29, 2021..

23 Check the information on the website: <https://diariodejustica.com.br/justica-de-limeira-garante-direito-a-gestantes-de-acompanhante-no-parto-e-pos-parto/> e <https://www.defensoria.sp.def.br/dpesp/Conteudos/Noticias/NoticiaMostra.aspx?idItem=89559&idPagina=3086>. Accessed on September 29, 2021.

24 Check the information on the website: <https://www.defensoriapublica.pr.def.br/2020/04/1884/DPE-PR-e-DPU-expedem-Recomendacao-a-maternidades-de-Curitiba-sobre-direito-da-gestante-ao-acompanhante.html>; <https://mppr.mp.br/2021/04/23545,11/Promotoria-de-Justica-de-Maringa-emite-recomendacao-para-que-hospital-garanta-as-gestantes-o-direito-de-terem-acompanhante-durante-o-parto.html> and <https://g1.globo.com/to/tocantins/noticia/2021/07/27/gravidas-pedem-liberacao-de-acompanhantes-durante-parto-nos-hospitais-publicos-do-tocantins.ghtml>. Accessed on September 29, 2021.

the practice of this form of violence. (VELOSO; SERRA, 2016, p. 274; NOGUEIRA; SEVERI, 2017).

The interconnection between public institutions and civil society organizations can also be a preponderant factor for the effective guarantee of this right, as happened in Amazonas, which has a network to combat obstetric violence, integrated by the Public Ministry, the Public Defender's Office, Secretariats of Government and Universities²⁵.

A fundamental issue concerns the fact that the SUS (Unified Health System) pension of the right to a companion carried out in several Brazilian states happened, above all, in public maternity hospitals linked to the SUS (UNIFIED HEALTH SYSTEM). This situation places black and peripheral women, who make up most of those who access the public health system²⁶, in a situation of total disadvantage in relation to women who access private assistance for maternal and reproductive health, demonstrating the importance of analyzing the issue from the perspective of intersectionality, since, also in the context of pandemic, women face different forms of oppression, which intersect (CRENSHAW, 2002, p. 177).

In this light, the notions of gender justice and reproductive justice, currently the subject of feminist theoretical debates, can help outline public policies that ensure a minimum condition of autonomy for women users of reproductive health care services, a scenario in which it deserves to be highlighted respect for the right to a companion object of this

reflection²⁷. However, such notions of justice also presuppose the adoption of public policies that ensure other basic rights essential to a life with dignity, since guaranteeing the exercise of sexual and reproductive rights “does not make sense, especially for the poorest social groups and those deprived of rights”. – when the conditions that allow its exercise are absent” (CORRÊA; PETCHESKY, 1996, p. 150).

The absence of a solid position in the sense of assuring, unequivocally, the right of people with the capacity to become pregnant to keep with them, at the moment of childbirth, a companion of their free choice may be linked to the still incipient familiarity of the Brazilian justice system with the conceptions of gender justice and reproductive justice and the lack of perception that gender violence, which has a structural character, also occurs institutionally. As a consequence, the State-judge, which must propose to put an end to the gender violations committed by the State-executive in relation to users of public health services, ends up corroborating such violence, distancing itself from its necessary action in the sense of recognize the state responsibility that imposes individual and collective moral damages as a result of this exceptional measure, which is undemocratic and violates human rights.

FINAL CONSIDERATIONS

The Covid-19 pandemic was very enlightening that, in the list of crises that easily give rise to the questioning of women's rights, health crises must also be included, which we

25 In this regard, check the information on the website: <https://www.anpr.org.br/imprensa/artigos/24537-a-rede-de-enfrentamento-a-violencia-obstetrica-no-amazonas>. Accessed on September 29, 2021.

26 In this sense, check the information on the website: <https://www.brasildefato.com.br/2020/10/21/ibge-mulheres-negras-e-pardas-sao-as-principais-usuarias-da-atencao-basica-a-saude>. Accessed on September 29, 2021.

27 Within the scope of such a restriction, attention is drawn to the serious offense against the postulate of proportionality, since there are, evidently, much less burdensome means available to the State to prevent contagion in the context of childbirth, pre-delivery and post-delivery, such as testing of applicants for the status of companion, considered by ANVISA Resolution number 36/2008, as a SUS (UNIFIED HEALTH SYSTEM) user (item 3.12 of the Annex, which deals with the Technical Regulation for the Operation of Obstetric and Neonatal Care Services). Available on the website: https://bvsmms.saude.gov.br/bvs/saudelegis/anvisa/2008/res0036_03_06_2008_rep.html. Accessed on September 29, 2021.

may have to live with, much more than we imagine, throughout the 21st century. At this juncture, it is worth thinking about how much such crises can give rise to the mobilization of equality to “clearly or implicitly erase the gender difference in order to make women assimilate into male social norms” (BOCK, 2008, page: 90).

The posture of the Brazilian justice system, still far from assuring women’s reproductive rights in their fullness, especially when one considers that the restriction of the right to a companion has been occurring only in the public health system, reveals that the right “while institution, contributes greatly to the maintenance of traditional male hegemony in society” (DAHL, 1993, p. 7), and also “the hierarchy of white supremacist capitalist patriarchy” (hooks, 2018, p. 86).

Without going into the merits of the case, the mere possibility of the occurrence of similar situations to the one that had wide repercussions in Brazil in July 2022 – the alleged practice of the crime of rape of vulnerable “against a woman who had just given birth, in the surgical center at the Hospital da Mulher Heloneida Studart²⁸ –, tragically exemplifies the absolute fundamentality that the right dealt with in these lines is fully guaranteed.

Changing this scenario requires a deepening of the notion of reproductive justice, which requires “free, universal and non-profit health care, as well as an end to racist and eugenic practices in the medical profession” (ARRUZZA; BHATTACHARYA; FRASER, 2019, pages: 34-35) which would include the end of class discrimination, such as what stems from this restriction. It also demands the full realization of gender justice, because, in the current scenario, everything leads to believe, paraphrasing Steinem’s report (2015, p. 90), that, if men became pregnant, the right to a companion it would be a sacrament.

28 Available on the website: <https://www.tjrj.jus.br/web/guest/noticias/noticia/-/visualizar-conteudo/5111210/98588986>. Accessed on September 23, 2022.

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