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Submissions
by

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I. Abortion in Brazil

Trends of unintended pregnancy and abortion rates

The current population estimate of Brazil for 2018 is 210.87 million,[1] out of which 50.9% of the population is female.[2] The annual population growth is 0.8%.[3]

As of 2010-2014, the estimated unintended pregnancy rates in developing regions were 65 per 1,000 women aged 15–44. These rates were highest in Latin America and the Caribbean (96 per 1,000).[4] A study conducted in 2016 interviewed 23, 984 women, from which 55.4% postpartum women stated that their pregnancies had been unintended.[5] According to the latest Brazilian Demographic and Health Survey (2006), there was a higher ratio of unwanted pregnancy among older and black women, in lower income segments, with lower education level, not married or

[1] Brazil Population, World Population Review (2018), available at http://worldpopulationreview.com/countries/brazil-population/.
[2] Population, Female (% of total), Brazil, World Bank (2017), available at https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS.
[3] Population growth (annual %), World Bank (2017), available at https://data.worldbank.org/indicator/SP.POP.GROW.
[4] Susheela Singh et al., Abortion Worldwide 2017: Uneven Progress and Unequal Access, Guttmacher Institute (2018), p. 5, available at https://www.guttmacher.org/report/abortion-worldwide-2017.
[5] Mariza Miranda et al., Factors associated with unintended pregnancy in Brazil: cross-sectional results from the Birth in Brazil National Survey, 2011/2012, Reproductive Health 13(Suppl 1):118 (2016), p. 237.

committed, with higher parity and more children than expected.[6]A vast majority of abortions are performed due to unintended pregnancies.

Data from 2012 indicates that 6.9 million women in developing regions were treated for complications from unsafe abortion.[7] Between 8 percent to 18 percent of maternal deaths around the world are due to unsafe abortion and estimates of the number of abortion-related deaths in 2014 ranged from 22,500 to 44,000.[8]

Latin America has one of the highest estimated regional abortions rates in the world,[9] and in 2015, 95% of abortions were deemed unsafe.[10] The Brazilian National Abortion Survey, 2016 revealed that, by the age of 40 years, approximately one in five Brazilian women had terminated a pregnancy. In 2015 alone, there were an estimated 416,000 abortions among literate women in urban areas. Applying the same rate to illiterate women in rural areas, the estimated number of women who had had an abortion in 2015 would be approximately 503, 000.[11]

Seventeen per cent of maternal deaths in Latin America are caused due to unsafe abortions.[12] In Brazil, as per a 2014 study, the maternal near-miss-to-mortality ratio is 3.08%.[13]According to the latest data of the World Health Organization (WHO), the maternal mortality ratio of Brazil is 44 per 100, 000 live births.[14] Unsafe abortions are one of the top five causes of women's pregnancy-related deaths in Brazil.[15] As shall be demonstrated below, penalizing abortions does not achieve the objective of securing better health outcomes and causes unsafe abortions.

Trends of contraception and abortion services that are available in Brazil

[6] National Demographic Survey of Health of Children and Women (PNDS 2006), p. 136.
[7] Susheela Singh and Isaac Maddow-Zimet, Facility-based treatment for medical complications resulting from unsafe pregnancy termination in the developing world, 2012: A review of evidence from 26 countries, BJOG: An International Journal of Obstetrics and Gynaecology, 2015.
[8] Guttmacher Institute, Facts on Induced Abortion Worldwide (Nov., 2015), p. 2, available at https://www.guttmacher.org/sites/default/files/pdfs/pubs/fb_IAW.pdf.
[9]Susheela Singh et al., Abortion Worldwide 2017: Uneven Progress and Unequal Access, Guttmacher Institute (2018), p. 8, available at https://www.guttmacher.org/report/abortion-worldwide-2017.
[10]Guttmacher Institute, Facts on Induced Abortion Worldwide (Nov., 2015), p. 2, available at https://www.guttmacher.org/sites/default/files/pdfs/pubs/fb_IAW.pdf.
[11] Debora Diniz et al., National Abortion Survey, 2016, Science and Collective Health, 22(2):653-660 (2017) p. 653, 655.
[12] Grimes D et al., Unsafe abortion: The Preventable Pandemic, Lancet, 368:1908–1919 (2006), p. 3.
[13] Marcos Augusto Bastos Dias et al., Incidence of maternal near miss in hospital childbirth and postpartum: data from the Birth in Brazil study, Cad. Saúde Pública, Rio de Janeiro, 30 Sup:S1-S12 (2014), p. S1, available at http://www.scielo.br/pdf/csp/v30s1/en_0102-311X-csp-30-s1-0169.pdf.
[14] Maternal mortality in 1990-2015, Brazil, WHO, UNICEF, UNFPA, World Bank Group, and United Nations Population Division Maternal Mortality Estimation Inter-Agency Group, available at http://www.who.int/gho/maternal_health/countries/bra.pdf.
[15] Beatriz Galli, Effects of Abortion Criminalization in Brazil: Lack of Access, Lack of Good Quality of Health Care and Increased Risk of Morbidity and Maternal Mortality, IPAS BRAZ. 1, 7 (Nov. 25, 2009), www.ohchr.org/Documents/Issues/Women/WRGS/MaternalMortality/Ipas-Brazil.doc.

A study on public health services in Brazil revealed that from 2013-2015, only 37 of 56 health services listed as specialized services for the legal interruption of pregnancy were actually able to perform legal abortion, and 7 states had no active services.[16] These services were predominantly offered in the Southeast region of Brazil (70%), creating geographical obstacles for vulnerable women belonging to the Northern regions.[17]

In a survey carried out by Instituto Anis and the University of Brasília in 2010, women aged 18-39 years, who live in state capitals and in municipalities of over 5000 inhabitants, were interviewed. 1 in every 5 women up to 40 years old had had an abortion, 48% had used some medicine; and over half (55%) of them had been taken to hospital due to sequelae.[18] The most commonly used medicine for inducing abortions is Misoprostol,[19] which had been prohibited for regular commercial use in Brazil since the 1990s. In 1991, the State level authorities issued regulations in an effort to restrict use of the drug. In some states misoprostol sales were banned entirely, otherwise sales were limited to pharmacies only. Pharmacies were required to keep detailed records on the patient, prescribing physician and indications for the use of the drug.

Prohibition on the sale of misoprostol did not decrease its use by women, who turned to illegal sales of the drug.[20] However, such regulations have led to an increase in unsafe abortions as both young and adult women use misoprostol for abortion often with scarce or no information on how to use the drug and may even purchase wrong medication.[21]

Trends of unsafe abortions in Brazil

Unsafe abortion is defined by the World Health Organization (WHO) as a procedure for terminating an unintended pregnancy, carried out either by persons lacking the necessary skills

[16] Debora Diniz and Alberto Pereira Madeiro, Legal Abortion Services in Brazil – A National Study, Science and Collective Health, 21(2):563-572 (2016), p. 568.
[17] Debora Diniz and Alberto Pereira Madeiro, Legal Abortion Services in Brazil – A National Study, Science and Collective Health, 21(2):563-572 (2016), p. 564.
[18] Debora Diniz and Marcelo Medeiros, Abortion in Brazil: a household survey using the ballot box technique, Science and Collective Health, vol.15 suppl.1 (Rio de Janeiro, June 2010) cited in Misoprostol and violation of the Right to Health and the Right to Information on Sexual and Reproductive Health, Universal Periodic Review, Brazil (June 2012, Cycle 2), p. 2.
[19] Susheela Singh et al., Abortion Worldwide 2017: Uneven Progress and Unequal Access, Guttmacher Institute (2018), p. 27, available at https://www.guttmacher.org/report/abortion-worldwide-2017.
[20] Katherine Wilson et al., Misoprostol Use and Its Impact on Measuring Abortion Incidence and Morbidity, Chp. 14 in Methodologies for Estimating Abortion Incidence and Abortion-Related Morbidity: A Review (ed. Susheela Singh et al.)(2010), p. 191-201, available at https://www.guttmacher.org/sites/default/files/pdfs/pubs/compilations/IUSSP/abortion-methodologies.pdf.
[21] Debora Diniz et al., The trade of gender drugs in the Brazilian printed media: misoprostol and women, Cadernos de Saúde Publica, Rio de Janeiro, 27 (1): 94-102 (Jan 2011) cited in Misoprostol and violation of the Right to Health and the Right to Information on Sexual and Reproductive Health, Universal Periodic Review, Brazil (June 2012, Cycle 2), p. 1, 2.

or in an environment that does not conform to minimal medical standards, or both.[22] Complications of unsafe abortion include but are not limited to hemorrhage, sepsis, peritonitis, and trauma to the cervix, vagina, uterus and abdominal organs.[23]

The World Health Organization published its second edition of Safe abortion: Technical and policy guidance for health systems in June 2012, which includes important guidelines for provision of medical abortions and stresses that women should have the choice to access safe abortion methods.

When medical abortion is criminalized, it is hard to measure deaths and disabilities arising out of unsafe abortions due to stigmatization, poor response of healthcare providers and fear of punishment. The WHO has revealed that 3 out of 4 abortions that occurred in Latin America were unsafe.[24]

The impact of criminalization on abortions of women and girls in Brazil

Illegal abortions are widespread in Brazil. The restrictive abortion laws which criminalize access to medical abortion outside hospitals and dissemination of necessary healthcare information, do not necessarily reduce the number of abortions performed but result in women seeking clandestine abortions which are predominantly unsafe, traumatic and often result in serious health and life-threatening conditions.[25] Such punitive provisions are not only ineffective, but also harmful and cause acute pain, suffering and even death. Criminalization results in deaths that could have been prevented, morbidity and ill-health.[26] Criminalization has made abortion one of the biggest public health problems in Brazil.[27]

Disproportionate impact of unsafe abortions on minorities, marginalized and poor groups

[22] Safe abortion: Technical and Policy Guidance for Health Systems, World Health Organization, Department of Reproductive Health and Research (2nd ed., 2012), p. 18, available at http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf?sequence=1; see The Prevention and Management of Unsafe Abortion: Report of a Technical Working Group, World Health Organization (1993), available at http://apps.who.int/iris/bitstream/handle/10665/59705/WHO_MSM_92.5.pdf?sequence=1&isAllowed=y.

[23] Grimes D et al., Unsafe abortion: The Preventable Pandemic, Lancet, 368:1908–1919 (2006), p. 3.

[24] Preventing Unsafe Abortion, World Health Organization (19 Feb., 2018), available at http://www.who.int/en/news-room/fact-sheets/detail/preventing-unsafe-abortion.

[25] UN 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, Addendum : Mission to Poland, 20 May 2010, A/HRC/14/20/Add.3, para 46, available at: http://www.refworld.org/docid/4c0770ee2.html; Safe abortion: Technical and Policy Guidance for Health Systems, World Health Organization, Department of Reproductive Health and Research (2nd ed., 2012), p. 17, available at http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf?sequence=1.

[26] Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN General Assembly, A/66/254 (3 Aug., 2011), para 21.

[27] Debora Diniz et al., National Abortion Survey, 2016, Science and Collective Health 22(2):653, 659 (2017).

Criminalization of medical abortion has a disproportionate impact on the health and lives of women from marginalized communities, in particular Black women, indigenous women, poor women, women belonging to rural areas in North-eastern Brazil[28] and those with less access to education.[29] According to the Ministry of Health, about 250 thousand women per year are admitted to public hospitals for termination of insecure abortion; the majority of them are young, poor, and black.[30]Abortion rates are higher among Black, Brown, and Indigenous women (13% to 25%) than among White women (9%).[31] In comparison to white women, black women's mortality risks from complications of unsafe abortions are approximately three times greater.[32]

II. Criminal Law in relation to Abortion in Brazil

The Brazilian Penal Code, 1940 criminalizes induced and voluntary abortion by virtue of Articles 124-127. Illegal abortion in Brazil is punishable by one to four years of imprisonment for a third party performing the abortion[33] and the penalty is higher if the pregnant woman's consent is not obtained[34], if the woman suffers serious injury or dies[35], or if the woman is under 14 years of age.[36] When a pregnant woman performs the abortion herself or allows another person to perform it, the penalty is confinement from one to three years.[37]

Medical abortion is not available on request nor on the grounds of preservation of physical or mental health, fetal impairment or for socio-economic reasons. Abortion is legal only in the three cases enumerated in Article 128: a) if there is no other means of saving the life of the pregnant woman; b) if the pregnancy results from rape and the abortion is preceded by consent of the pregnant woman or, when incapable, of her legal representative; and c) if the fetus has been diagnosed with anencephaly.[38]

This is the law being challenged by means of ADPF 442.

[28]United Nations Committee on Economic, Social and Cultural Rights (CESCR), Concluding Observations of the Committee on Economic, Social and Cultural Rights on Brazil, U.N. Doc. E/C.12/1/Add.87, June 26, 2003, para. 27, available at http://www.refworld.org/docid/3f242bf04.html.

[29] Beatriz Galli, Negative Impacts of Abortion Criminalization in Brazil: Systematic Denial of Women's Reproductive Autonomy and Human Rights, 71 U. Miami L. Rev., 969, 971-72 (2011).

[30] Leila Adesse and MFG Monteiro M, Magnitude of Abortion in Brazil: Epidemiological and Sociocultural aspects, São Paulo: Ipas-Brasil (2010) cited in Misoprostol and violation of the Right to Health and the Right to Information on Sexual and Reproductive Health, Universal Periodic Review, Brazil (June 2012, Cycle 2), p. 2.

[31] Debora Diniz et al., National Abortion Survey, 2016, Science and Collective Health 22(2):653, 658-59 (2017).

[32] Beatriz Galli, Effects of Abortion Criminalization in Brazil: Lack of Access, Lack of Good Quality of Health Care and Increased Risk of Morbidity and Maternal Mortality, IPAS BRAZ. 1, 5 (Nov. 25, 2009).

[33] Article 126, Brazilian Penal Code, 1940.

[34] Article 125, Brazilian Penal Code, 1940.

[35] Article 127, Brazilian Penal Code, 1940.

[36] Sole Paragraph, Article 126, Brazilian Penal Code, 1940.

[37] Article 124, Brazilian Penal Code, 1940.

[38] Abortion in such cases was only decriminalized after a decision of the Supreme Federal Court in 2012: ADPF 54, Supreme Federal Court, Rapporteur: Minister Marco Aurelio, Full Court (Apr. 12, 2012).

III. The Right to Health

Brazil is a signatory to and has ratified many international instruments which recognize the Right to Health, such as the Universal Declaration of Human Rights (Art. 25), International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (Art. 5(e)(iv), International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966 (Art. 12), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 (Art. 11(1)(f), 12, 14(2)(b)), and the Convention on the Rights of the Child (CRC), 1989 (Art. 24). Further, Brazil is a party to several regional instruments which highlight the right to health including the American Declaration of the Rights and Duties of Man, 1948 (Art. VI, XI) and the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador),1988 (Art. 10).

The right to health is elaborated most extensively in Article 12 of the ICESCR vide General Comment No. 14. Article 12 inter alia states that, "*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*"

General Comment No.14 formulated by the Committee on Economic, Social, and Cultural Rights (CESCR) provides a comprehensive interpretation of the right to health under Article 12 of the ICESCR.

States have an obligation to make health facilities, goods and services available on a basis of the overarching principles of non-discrimination and equality. Everyone is entitled to a facilities, goods and services that are: Available (in sufficient quantity); Accessible (physically, geographically, economically, and in a non-discriminatory manner); Acceptable (respectful of culture and medical ethics); and of Quality (scientifically and medically appropriate and of good quality).[39]

The Right to Health includes both freedoms and entitlements. Freedoms mandate that States must ensure that individuals have the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.[40] Entitlements include a functional health system with appropriate health care services, community- based services,

[39]Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 12, available at http://www.refworld.org/pdfid/4538838d0.pdf.

[40]Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 8, available at http://www.refworld.org/pdfid/4538838d0.pdf.

availability of health care institutions, access to essential medicines, adequate health care providers and provision of health-related education and information especially regarding health.[41]

The Right to Health under ICESCR is progressively realizable, but also imposes certain obligations, the core obligations, which are immediately enforceable. These include guarantees that the right to health will be exercised without discrimination of any kind and that the State shall take steps towards the full realization of Article 12.[42] The States must take deliberate, concrete and targeted steps towards the full realization of the right to health.[43]

States have the obligations: to 1) Respect (States must refrain from interfering directly or indirectly with the right to health); 2) Protect (States must take measures to prevent third parties from interfering with the right to health of its peoples); and 3) Fulfil (States are required to adopt appropriate legislative, judicial, administrative etc., measures towards the realization of the right to health.)[44]
Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes.[45] Rights to sexual and reproductive health are integral elements of the Right to Health.[46]

All persons, but women in particular, have the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of contraception of their choice and appropriate health-care services.[47] The right to health includes measures to improve maternal health, sexual and reproductive health services, including

[41] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 8, available at http://www.refworld.org/pdfid/4538838d0.pdf.
[42] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 30, available at http://www.refworld.org/pdfid/4538838d0.pdf.
[43] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 30, available at http://www.refworld.org/pdfid/4538838d0.pdf.
[44] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 33, available at http://www.refworld.org/pdfid/4538838d0.pdf.
[45] International Conference on Population and Development, Cairo, 1994, Principle 8, para 7.2.
[46] Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)(2 May, 2016), E/C.12/GC/22, para 1, available at https://www.escr-net.org/resources/general-comment-no-22-2016-right-sexual-and-reproductive-health.
[47] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, footnote 12, available at http://www.refworld.org/pdfid/4538838d0.pdf; Beijing Declaration and Platform for Action, 1995, para 94, 95; International Conference on Population and Development, Cairo, 1994, Principle 8, para 7.3.

the removal of all barriers interfering with availability, accessibility and availability of health services, education and information.[48]This includes access to legal abortion, and the State is obligated to address the effects of unsafe abortion.[49]

Further, the obligation to Fulfil requires States to a) Facilitate individuals and communities to enjoy the Right to health; b) Provide specific rights enumerated in the ICESCR when individuals and communities to do not have the means to realize the rights themselves; and c) Promote the Right to Health by taking measures to create, maintain and restore the health of the population. This would entail research and provision of information on improving health; ensuring that health-care staff are trained to recognize and respond to the specific needs of marginalized groups and groups that are susceptible to vulnerabilities; and supporting people in making informed choices about their health.[50]

The States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to health, including: the right of access to health facilities, goods and services on a non-discriminatory basis, access to the minimum essential food which is nutritionally adequate and safe, access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water; provision of essential medicines, as from time to time defined under the WHO Action Programme on Essential Drugs etc.[51]

IV. International Law and The Right to Health in Brazil

The Right to Health is constitutionally recognized as a social right of all,[52] and Article 196 of the Constitution of Brazil states that is the State's duty to guarantee the right to health by means of social and economic policies aimed at reducing the risk of illness and other hazards, and by universal and equal access to actions and services for its promotion, protection and recovery.

Brazil has ratified and acceded to several international human rights treaties and conventions, which may be considered to be equivalent to constitutional amendments if they are approved in each House of the National Congress, in two rounds of voting, by three fifths of the votes of the

[48]Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 14, 21, available at http://www.refworld.org/pdfid/4538838d0.pdf.
[49]Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 19, available at http://www.refworld.org/pdfid/4538838d0.pdf.
[50] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 37, available at http://www.refworld.org/pdfid/4538838d0.pdf.
[51] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 43, available at http://www.refworld.org/pdfid/4538838d0.pdf.
[52] Article 6, Constitution of Brazil, 1988.

respective members.[53]In December, 2008, the Brazil Supreme Federal Tribunal held that international human rights treaties to which Brazil has acceded have supra legislative status, and stated that treaties could gain supra legislative status if at any time they were approved according to the special procedure.[54] Though they are not equivalent to the Constitution, norms contained in these treaties have precedence over and render inapplicable all other diverging domestic norms, including those in force by the time of Brazil's accession. In case the special procedure has not been followed, international human rights treaties still have persuasive value in courts of Brazil.

V. Impact of Criminalization of Abortion on the Right to Health

Induced abortions are considered to be very safe medical procedures, when performed by skilled providers using correct medical techniques and drugs, and under hygienic conditions.[55]Conversely, they are unsafe in the hands of unskilled persons. The laws of a country largely shape the course for women with unplanned pregnancies towards safe or unsafe abortions.[56]

Declines in abortion-related mortality and morbidity—particularly in countries where abortion is illegal, and the replacement of unsafe methods by the drug Misoprostol for medication abortion—have spurred researchers to recognize the changing reality of abortion and re-conceptualize the framework for measuring and classifying the safety of abortion.

The World Health Organization (WHO) defines an abortion as safe if it is provided both by an appropriately trained provider and using a recommended method[57]. Less-safe abortions meet only one of these two criteria—for example, if provided by a trained health worker using an outdated method or self-induced by a woman using a safe method (such as the drug Misoprostol) without adequate information or support from a trained individual. Least safe abortions meet neither criteria; they are provided by untrained people using dangerous methods, such as sharp objects or toxic substances. Worldwide, an estimated 55% of abortions can be categorized as safe, 31% as less safe and 14% as least safe[58].

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[53] Article 5, LXXVIII, Para 3, Constitution of Brazil, 1988.

[54] See Banco Itaú v. Armando Luiz Segabinazzi, Decision of the Federal Supreme Tribunal on the merits of an individual constitutional complaint procedure, RE 349/703-1, 3 December 2008, ILDC 1375 (BR 2008).

[55]Safe Abortion: Technical and Policy Guidance for Health Systems, World Health Organization (2nd ed., 2012), p. 21, available at http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf?sequence=1.

[56] Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2008, World Health Organization (6th ed., Geneva, 2011), p. 2.

[57] Ganatra B et al., Global, regional and subregional classificationof abortions by safety, 2010–14: estimates from a Bayesian Hierarchical model, *Lancet,* 2017, 390(10110):2372– 2381, http://www.thelancet.com/journals/lancet/article/ PIIS0140-6736(17)31794-4/fulltext.

[58] Ibid.

Unsafe abortions are estimated to account for nearly 13 per cent of all maternal deaths globally.[59] Complications of unsafe abortion include hemorrhage, sepsis, peritonitis, and trauma to the cervix, vagina, uterus and abdominal organs.[60] Further, 5 million women are estimated to suffer disability as a result of complications due to unsafe abortion.[61] More unsafe abortions are likely to occur in legal regimes that are more restrictive of abortion. The rate of unsafe abortions and the ratio of unsafe to safe abortions both directly correlate to the degree to which abortion laws are restrictive and/or punitive.[62] Legal restrictions on abortion do not result in fewer abortions nor do they result in significant increases in birth rates.[63]

Restrictive abortion policies contribute directly to the risk of maternal mortality by limiting the available options for safely terminating an unwanted pregnancy.[64]Criminalization of abortion compels women to resort to illegal and unsafe measures to end unwanted pregnancies, thereby risking their lives and health due to unsafe abortions.[65] Approximately 250,000 women are treated annually in Brazilian hospitals for complications arising from unsafe abortions.[66]

Costs of including safe abortion care within existing health services are likely to be low, relative to the costs to the health system of treating complications of unsafe abortion.[67] In 2005, when abortion was criminalized in Mexico City, unsafe abortions were estimated to cost the Mexico City health system US$ 2.6 million. With access to safe abortion, the system was deemed to save

[59]Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2008, World Health Organization (6th ed., Geneva, 2011), p. 2.
[60]Safe Abortion: Technical and Policy Guidance for Health Systems, World Health Organization (2nd ed., 2012), p. 19, available at http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf?sequence=1.
[61]Safe Abortion: Technical and Policy Guidance for Health Systems, World Health Organization (2nd ed., 2012), p. 17, available at http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf?sequence=1.
[62]Safe Abortion: Technical and Policy Guidance for Health Systems, World Health Organization (2nd ed., 2012), p. 17, available at http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf?sequence=1.
[63]Legal and Policy Considerations, Safe Abortion: Technical and Policy Guidance for Health Systems, World Health Organization (2015), p. 2, available at http://apps.who.int/iris/bitstream/handle/10665/173586/WHO_RHR_15.04_eng.pdf?sequence=1.
[64] Abortion Policies and Reproductive Health around the World, United Nations Department of Economic and Social Affairs, Population Division (2014), p. 16, available at http://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf.
[65]UN 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, Addendum : Mission to Poland, A/HRC/14/20/Add.3 (20 May 2010), para 46, available at: http://www.refworld.org/docid/4c0770ee2.html.
[66]UN 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, Anand Grover, Addendum: Summary of communications sent and replies received from States and other actors, A/HRC/17/25/Add.1. (16 May 2011), para 59, available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.25.Add.1_EFS_only.pdf.
[67]Safe Abortion: Technical and Policy Guidance for Health Systems, World Health Organization (2nd ed., 2012), p. 8, available at http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf?sequence=1.

US$ 1.7 million annually.[68]A study conducted in 2009 found that the cost of management of abortion was lower in legal settings that allowed elective abortion as compared to costs incurred in the restrictive legal setting. The costs also reduced when abortion services were made accessible at all service levels.[69] Similarly, a 2017 study by Guttmacher Institute indicates that if all women at risk of unintended pregnancy used modern contraceptive methods, the resulting declines in unintended pregnancy and unsafe abortion would reduce the cost of post-abortion care from about $370 million to about $230 million a year (and to $9 million if all abortions were safe).[70]

The costs incurred by the healthcare system due to complications arising out of unsafe abortions would decrease drastically if unintended pregnancies were prevented by effective contraception, and safe abortion was accessible. The money conserved could be redirected to meeting other urgent needs, including the provision of quality services using up-to-date standards and guidelines, trained providers and appropriate technologies.[71]

Violation of the Right to Health

Articles 124-128 of the Brazilian Penal Code, 1940 violate the Right to Health enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

1. ***Abortion facilities, medicines and services are not available, accessible, acceptable or of good quality.***

Brazil has an obligation to ensure that women have access to health good, facilities and services, relating to abortion available, accessible to them and of good quality.[72] However, criminalization of abortion in Brazil violates all these essential elements of the Right to Health.

Lack of Availability

Between 1989 and 2008, only 1606 women were able to have legal abortions in Brazil because few abortion services were available, and most services were only available in state capitals.[73] In

[68] Levin C et al. Exploring the costs and economic consequences of unsafe abortion in Mexico City before legalisation. Reproductive Health Matters, 2009, 17:120–132.
[69] Johnston HB, Gallo MF, Benson J. Reducing the costs to health systems of unsafe abortion: a comparison of four strategies. Journal of Family Planning and Reproductive Health Care, 2007, 33(4):250-257.
[70]Susheela S. et al., Adding It Up: The Costs and Benefits of Investing in Family Planning and Maternal and Newborn Health, Guttmacher Institute (2017), p. 27, available at https://www.guttmacher.org/sites/default/files/report_pdf/addingitup2009_3.pdf.
[71]Safe Abortion: Technical and Policy Guidance for Health Systems, World Health Organization (2nd ed., 2012), p. 26, available at http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf?sequence=1.
[72] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 12, available at http://www.refworld.org/pdfid/4538838d0.pdf.

2008, just over 3000 legal abortions were registered in Brazil, which is far fewer than would be expected for a country with the population then being approximately *200 million*.[74]However, in 2015, an estimated 503,000 Brazilian women had abortions.[75] The Brazilian Ministry of Health informed the Human Rights Watch that doctors administered only 1,667 legal abortions that year.[76]Thus, there are immense discrepancies in the number of abortions legally registered and those taking place in a clandestine manner.

A 2016 study on public health services in Brazil has revealed that only 37 of 68 health services authorized to perform legal abortion actually delivered such services , and 7 states had no active services.[77]These services were predominantly offered in the Southeast region of Brazil (70%), creating geographical obstacles for vulnerable women belonging to the Northern regions.[78] Pertinently, a 2009 report by IPAS Brazil revealed that 100 percent of maternal mortality resulting from unsafe abortion in Recife and Petrolina in 2005 could have been prevented had safe medical abortion care been available.[79]

Medical abortion refers to the use of a drug or a combination of drugs to terminate pregnancy. Misoprostol is an analog of prostaglandin E1 that causes the cervix to soften and the uterus to contract, resulting in the expulsion of the uterine contents.[80] Mifepristone followed by misoprostol is the most effective and recommended regime.[81] Till up to 9 weeks of pregnancy, effectiveness is 98% for the combined regime and between 75% and 90% for misoprostol alone.[82] Until 63 days of gestation, WHO recommends 200 mg of mifepristone administered orally followed by 800 mcg of misoprostol administered vaginally, buccally or sublingually 24 to

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[73]Beatriz Galli, Negative Impacts Of Abortion Criminalization In Brazil: Systematic Denial Of Women's Reproductive Autonomy And Human Rights, 65 U. Miami L. Rev. 969 (2011), p. 973.
[74]Beatriz Galli, Negative Impacts Of Abortion Criminalization In Brazil: Systematic Denial Of Women's Reproductive Autonomy And Human Rights, 65 U. Miami L. Rev. 969 (2011), p. 973.
[75] Debora Diniz et al., National Abortion Survey 2016, Science and Collective Health, 22(2):653-660 (2017), p. 655, available at http://www.scielo.br/pdf/csc/v22n2/en_1413-8123-csc-22-02-0653.pdf.
[76]World Report 2018-Brazil, Human Rights Watch (18 Jan., 2018), available at http://www.refworld.org/docid/5a61ee95a.html.
[77]Debora Diniz and Alberto Pereira Madeiro, Legal Abortion Services in Brazil – A National Study, Science and Collective Health, 21(2):563-572 (2016), p. 568, available at http://www.scielo.br/pdf/csc/v21n2/en_1413-8123-csc-21-02-0563.pdf.
[78]Debora Diniz and Alberto Pereira Madeiro, Legal Abortion Services in Brazil – A National Study, Science and Collective Health, 21(2):563-572 (2016), p. 564, available at http://www.scielo.br/pdf/csc/v21n2/en_1413-8123-csc-21-02-0563.pdf.
[79]Beatriz Galli, Information regarding Resolution 11/8 on Preventable maternal mortality and morbidity and human rights: Rio de Janeiro, IPAS (November 25th 2009), p. 5.
[80]Providing Medical Abortion in Low-Resource Settings: An Introductory Guidebook, Gynuity Health Projects, New York (2009), available at http://gynuity.org/downloads/resources/clinguide_pacguide_en.pdf.
[81] Providing Medical Abortion in Low-Resource Settings: An Introductory Guidebook, Gynuity Health Projects, New York (2009), available at http://gynuity.org/downloads/resources/clinguide_pacguide_en.pdf; Safe Abortion: Technical and Policy Guidance for Health Systems, World Health Organization (2012, 2nd ed.).
[82] Safe Abortion: Technical and Policy Guidance for Health Systems, World Health Organization (2012, 2nd ed.), p. 44, available at http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf?sequence=1.

48 hours following ingestion of mifepristone.[83] In settings where mifepristone is not available, misoprostol alone is used.[84]

In Brazil, the Ministry of Health has considered misoprostol an essential medicine since 2010. Even though Misoprostol has been recognized by the medical community worldwide as a safe medicine for the purposes of inducing abortions, if taken in the wrong dosage, it can lead to several health complications. Women's access to information and access to the drug in Brazil has been restricted due to National Regulatory Agency on Health policies and regulations.

Since the early 1990´s, health authorities in Brazil have issued regulations to restrict use of the drug. In some states Misoprostol sales were banned entirely, and in others, pharmacies were required to keep detailed records on the patient, prescribing physician and indications for the use of the drug. In 1998, when ANVISA (the National Health Surveillance Agency) was established, Regulation 344 /1998 was adopted prohibiting the commercial distribution of Misoprostol in the country as a whole and limiting its access only to public hospitals. The regulation also included the drug in the list of medicines whose commercialization was punishable under Article 273 of the Penal Code, as altered by Law 9766/1998.[85] This norm is openly at odds with the inclusion of Misoprostol, in 2010, in the list of essential medicines. In 2006 and 2011, new ANVISA resolutions 911/2006 and 1050/2006 (updated by Resolution 1534 (April, 2011)), established draconian rules to not only restrict access to the medicine through the internet but also to restrict the mere access to information on the drug, its uses and effects.[86] As a result, in March 2012, a doctor and 10 pharmacy workers in the states of Mato Grosso and Goiás were for allegedly providing illegal abortions or selling abortion-inducing drugs.[87]

A survey using two methodological approaches found that half of abortions in urban Brazil in 2010 involved misoprostol alone.[88]The National Abortion Survey of Brazil, 2016 revealed that half of the women interviewed used the main medication, misoprostol, to abort.[89]

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[83] Safe Abortion: Technical and Policy Guidance for Health Systems, World Health Organization (2012, 2nd ed.)., p. 3, available at http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf?sequence=1.

[84] Zamberlin et al., Latin American women's experiences with medical abortion in settings where abortion is legally restricted, Reproductive Health 9:34 (2012), p. 2.

[85] Paragraph B1 of Article 273 criminalizes the commercialization of drugs and medicines not approved by ANVISA. In the case of Misoprostol, the only approved use is for obstetric hospital based procedures, which includes its use in public services providing abortion in the case of rape, life risk or anencephaly until a certain stage of pregnancy.

[86] Commission on Citizenship and Reproduction (2012) Misoprostol and the violation of the right to health and the right to information on sexual and reproductive health, presented to the 2nd Periodical Universal Periodical Review of Brazil by the UN Human Rights Council, available at: http://www.sxpolitics.org/wp-content/uploads/2012/01/ccr-un-hrc2011.pdf.

[87]World Report 2013 - Brazil, Human Rights Watch (31 Jan., 2013), available at: http://www.refworld.org/docid/510fb4f237.html.

[88]Susheela Singh et al., Abortion Worldwide 2017: Uneven Progress and Unequal Access, Guttmacher Institute (2018), p. 27, available at https://www.guttmacher.org/report/abortion-worldwide-2017.

[89]Debora Diniz et al., National Abortion Survey 2016, Science and Collective Health, 22(2):653-660 (2017), p. 656, available at http://www.scielo.br/pdf/csc/v22n2/en_1413-8123-csc-22-02-0653.pdf.

Misoprostol is purchased either from pharmacies, street vendors or over the Internet.[90] There is a flourishing clandestine and illegal market for misoprostol and women may end up purchasing fake or contaminated medicines that risk their life and health.[91]Due to criminalization of abortion, accurate information on the use of misoprostol and other safe abortion practices is neither disseminated and made accessible or available, nor discussed.[92]Both young and adult women use misoprostol for abortion often with scarce or no information on how to use the drug.[93] About half of the women interviewed in the National Abortion Survey of Brazil, 2016 had to be hospitalized to complete an abortion, and in 2015 alone two-thirds of women who confirmed having aborted were hospitalized to complete the abortion.[94]

Even if a woman is granted a legal abortion by the government, doctors often refuse to perform the procedure due to their personal religious beliefs,[95] the fear of being sued, or the fear of facing negative legal and social consequences related to the stigma of abortion.[96] Thus, the stigma resulting from criminalization creates a vicious cycle. Criminalization of abortion results in women seeking clandestine, and likely unsafe, abortions. The stigma resulting from procuring an illegal abortion perpetuates the notion that abortion is an immoral practice and that the procedure is inherently unsafe, which then reinforces continuing criminalization of the practice.[97] As a result, health facilities, goods and services for even legal abortions are unavailable.

[90]Susheela Singh et al., Abortion Worldwide 2017: Uneven Progress and Unequal Access, Guttmacher Institute (2018), p. 27, available at https://www.guttmacher.org/report/abortion-worldwide-2017; Luis Tavara Orozco et al., Regulation of obstetric use of misoprostol in the countries of Latin America and the Caribbean Peruvian Journal of Gynecology and Obstetrics, vol.59 no.2 Lima (2013); Silvia de Zordo, The Biomedicalisation of Illegal Abortion: the Double Life of Misoprostol in Brazil, História, Ciências, Saúde-Manguinhos, 23(1), 19-36 (2016).

[91]Silvia de Zordo, The Biomedicalisation of Illegal Abortion: the Double Life of Misoprostol in Brazil, História, Ciências, Saúde-Manguinhos, 23(1), 19-36 (2016).

[92]UN General Assembly, Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Note by the Secretary-General, A/66/254 (2011), para 31, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement.

[93] Debora Diniz et al., The trade of gender drugs in the Brazilian printed media: misoprostol and women, Cadernos de Saúde Publica, Rio de Janeiro, 27 (1): 94-102 (Jan 2011) cited in Misoprostol and Violation of the Right to Health and the Right to Information on Sexual and Reproductive Health, Periodic Universal Review, Cycle 2, Brazil (June 2012), p. 1, 2.

[94]Debora Diniz et al., National Abortion Survey 2016, Science and Collective Health, 22(2):653-660 (2017), p. 656, available at http://www.scielo.br/pdf/csc/v22n2/en_1413-8123-csc-22-02-0653.pdf.

[95]Debora Diniz et al., Conscientious Objection, Barriers, and Abortion in the case of Rape: A Study among Physicians in Brazil, Reprod Health Matters, 22(43):141-148 (2014); Silvia Zordo, Representations and Experiences on Legal and Illegal Abortion of Gynecologists and Obstetricians working in two maternity hospitals in Salvador da Bahia, Science & Collective Health, 17 (7), 1745-1754 (2012); Debora Diniz and Alberto Pereira Madeiro, Legal Abortion Services in Brazil – A National Study, Science and Collective Health, 21(2):563-572 (2016), p. 564; Beatriz Galli, Effects of Abortion Criminalization in Brazil: Lack of Access, Lack of Good Quality of Health Care and Increased Risk of Morbidity and Maternal Mortality, IPAS, Brazil (Nov. 25, 2009), p. 1, 3.

[96]Debora Diniz and Alberto Pereira Madeiro, Legal Abortion Services in Brazil – A National Study, Science and Collective Health, 21(2):563-572 (2016), p. 567, 569.

[97]UN General Assembly, Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Note by the Secretary-General, A/66/254 (2011), para 35, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement.

Lack of Accessibility

Accessibility under the Right to Health has four overlapping dimensions: 1) Non-discrimination; 2) Physical Accessibility; 3) Economic Accessibility; and 4) Information Accessibility.[98]

Even when abortion may be available on legal grounds, stigma surrounding abortion and lack of health-care providers willing to perform the abortion may drastically reduce the accessibility of safe abortions. This occurs across Latin American countries where abortion is criminalized.

For instance, L.M.R. was a young Argentinian woman who had a mental impairment due to which her mental age was between 8 and 10 years old. In 2011, she was raped and became pregnant. In such circumstances though abortion is legal, her abortion was prevented by an injunction against the hospital. Eventually, the Supreme Court of Buenos Aires ruled the abortion could take place. However, under pressure from anti-abortion groups the hospital refused to perform the abortion and she had to seek an illegal abortion.[99]

Similarly, AN was a 26 year-old pregnant woman from Costa Rica, and the fetus was diagnosed with a severe malformation that represented a threat to her life and health. In 2011, she was denied the legal abortion that she requested before the competent authorities.[100]

Aurora was 32 year-old pregnant woman from Costa Rica, and her fetus suffered from Prune Belly syndrome. In September 2012, she sought a therapeutic abortion as her physical and mental health were deteriorating. However, despite having legal grounds for an abortion, the Supreme Court of Costa Rica took 36 days to respond. She had to undergo an emergency cesarean section and ended up delivering a stillborn.[101]

In 2013, Beatriz, an ill, pregnant 22-year-old Salvadoran woman, sought to end her pregnancy as the fetus was anencephalic. Beatriz also suffered from Lupus and kidney disease, which made her pregnancy very high-risk. In May 2013, the Inter-American Court of Human Rights granted provisional measures ordering El Salvador to take all necessary measures to protect her life and personal integrity. Despite the Commission's grant of precautionary measures, the Salvadoran Constitutional Chamber decided on May 30, 2013 that Beatriz could not receive an abortion. She

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[98] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 12, available at http://www.refworld.org/pdfid/4538838d0.pdf.

[99] L.M.R. v. Argentina, Views of the Human Rights Committee under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights, CCPR/C/101/D/1608/2007 (28 April 2011).

[100] Call on Costa Rica now, Centre for Reproductive Rights (10 Dec., 2017), available at https://www.reproductiverights.org/feature/call-on-costa-rica-now.

[101] Unspeakable Cruelty, Centre for Reproductive Rights (9 June, 2013), available at https://www.reproductiverights.org/feature/unspeakable-cruelty-in-costa-rica.

ultimately had to undergo a caesarean procedure, and the baby died within 5 hours of the procedure.[102]

There is no effective and timely access to abortion services within at least five Brazilian states—Mato Grosso do Sul, Ceará, Amapá, Piaui, Roraima, and Tocantins.[103] Between 2007–2011 in Rio de Janeiro state, there were 334 police reports involving women who had had illegal abortions. Court records from 2007– 2010 show that 128 women were prosecuted.[104] In 2014 alone, at least 33 women were arrested for having abortions, seven of whom had been reported by doctors after the women went to hospitals to seek post-abortion care. One media report stated that one of these women spent three days handcuffed to a hospital bed.[105] Lack of accessibility to safe medical abortion led to 55 and 69 maternal deaths in Brazil in 2014 and 2015, respectively.[106]

Further, fearing prosecution, many women refuse to seek treatment for debilitating and often fatal complications resulting from self-induced or otherwise unsafe abortions, or even from miscarriages. They may even be denied treatment due to either the healthcare provider's hostility or the provider's fear of facing prosecution him or herself.[107]Criminalization of abortion violates the Right to Health as women cannot access healthcare facilities and services for complications arising out of unsafe abortions.

Lack of Acceptability and Poor Quality of Medical Services and Goods

Due to such punitive provisions relating to abortion, there is a lack of State and professional regulation of medical practices. Most abortions are performed by unskilled practitioners, in unhygienic conditions, in order to evade law enforcement.[108]Criminalization of abortion renders an otherwise safe medical procedure unsafe.[109] Criminalization further prevents practitioners

[102]Nina Lakhani, Dying woman denied abortion in El Salvador, Aljazeera (11 May, 2013), available at https://www.aljazeera.com/indepth/features/2013/05/20135101127154222231.html; See Matter of B (2013), available at http://www.corteidh.or.cr/DOCS/MEDIDAS/B_SE_01.PDF.

[103]Beatriz Galli, Negative Impacts Of Abortion Criminalization In Brazil: Systematic Denial Of Women's Reproductive Autonomy And Human Rights, 65 U. Miami L. Rev. 969 (2011), p. 974.

[104] When Abortion is the threat to vulnerable women in Latin America, IPAS (2014), p. 1, available at http://www.ipas.org/en/Resources/Ipas%20Publications/When-Abortion-is-a-Crime-The-threat-to-vulnerable-women-in-Latin-America.aspx. Brazil: Court Reviewing Criminalization of Abortion, Human Rights Watch (25 Apr., 2017), available at http://www.refworld.org/docid/590984c14.html.

[105]Brazil: Court Reviewing Criminalization of Abortion, Human Rights Watch (25 Apr., 2017), available at http://www.refworld.org/docid/590984c14.html.

[106]Brazil: Court Reviewing Criminalization of Abortion, Human Rights Watch (25 Apr., 2017), available at http://www.refworld.org/docid/590984c14.html.

[107] United Nations, Conclusions and recommendations of the Committee against Torture: Chile, CAT/C/CR/32/5 (2004) para. 6 (j).

[108]Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2008, World Health Organization (6th ed., Geneva, 2011), p. 7.

[109]Safe Abortion: Technical and Policy Guidance for Health Systems, World Health Organization (2012, 2nd ed.)., p. 46, available at http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf?sequence=1.

from accessing accurate health information and, even though exceptions to criminalization exist[110], the chilling effect created by its associated stigma may prevent health-care providers from seeking training and information on abortion.[111] Thus, health-care providers may be uninformed and untrained on appropriate abortion procedure and post-abortion care, severely impacting the quality of even legal abortions.[112] They may even be reluctant and/or afraid to disseminate information, including even the basic facts about the appropriate dosage or potential complications after induced abortion. These risks were exemplified in the case of *Jandira dos Santos Cruz*, who died due to complications arising out of an unsafe abortion performed in a clandestine clinic in 2014, and whose body was later mutilated to obscure her identity.[113]

2. *Criminalization of Abortion deprives women of Freedoms and Entitlements under Right to Health*

The Right to Health under Article 12 of the ICESCR mandates that States must ensure that individuals have certain freedoms and entitlements.

Freedoms

The freedoms include the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health.[114]

Criminalization of abortion interferes with human dignity and restricts the freedom of women to make personal decisions without interference from the State, especially in an area as important and intimate as sexual and reproductive health.[115] By restricting access to sexual and reproductive health-care goods, services and information, criminalization of abortion discriminates against women. It constitutes a violation of the right to life or security, and in

[110] Article 128, Brazilian Penal Code, 1940.
[111] Safe Abortion: Technical and Policy Guidance for Health Systems, World Health Organization (2012, 2nd ed.)., p. 94, available at http://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf?sequence=1.
[112] UN General Assembly, Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Note by the Secretary-General, A/66/254 (2011), para 32, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement.
[113] World Report 2015- Brazil, Human Rights Watch (29 Jan., 2015), available at http://www.refworld.org/docid/54cf83bc480.html.
[114] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 5 and 8, available at http://www.refworld.org/pdfid/4538838d0.pdf.
[115] UN General Assembly, Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Note by the Secretary-General, A/66/254 (2011), para 15, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement.

certain circumstances can amount to torture or cruel, inhuman or degrading treatment.[116] Women and girls are punished both when they abide by these laws and are subjected to poor physical and mental health outcomes, and when they do not, they are vulnerable to being incarcerated.[117]

Entitlements

The entitlements include unhindered access to a whole range of health facilities, goods, services and information, which ensure all people full enjoyment of the right to sexual and reproductive health under Article 12 of the ICESCR.[118]Criminal laws denying women abortion result in lack of access to essential medicines and to equal and timely access to basic medical services. Further, there is no participation of the population in health-related decision making and this impacts maternal and child health.

3. Criminalization of Abortion violates Right to Privacy and Confidentiality in Health Care

The Right to Health includes the rights to privacy and confidentiality of personal data.[119]However, these rights are compromised when criminal laws enable authorities to confiscate private information and details concerning abortion.[120]

On April 13, 2007, police raided a clinic in Mato Grosso do Sul and confiscated the medical records of more than 9, 600 women who had been patients, thereby violating their rights to privacy and confidentiality in healthcare.[121] Criminal investigations into women's health clinics in Mato Grosso do Sul, Sao Paulo, and Rio Grande do Sul have raised similar privacy concerns. In many parts of Brazil, women who wish to seek abortion-related care fear stigmatization,

[116]Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)(2016), para 10, available at https://www.escr-net.org/resources/general-comment-no-22-2016-right-sexual-and-reproductive-health.

[117]UN General Assembly, Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Note by the Secretary-General, A/66/254 (2011), para 17, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement.

[118]Committee on Economic, Social and Cultural Rights, General comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)(2016), para 5, available at https://www.escr-net.org/resources/general-comment-no-22-2016-right-sexual-and-reproductive-health.

[119] Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 3, 12, available at http://www.refworld.org/pdfid/4538838d0.pdf.

[120] O'Neill Institute for National and Global Health Law & Ipas. Betraying Women: Provider duty to report: Legal and human rights implications for reproductive health care in Latin America. Chapel Hill, NC: Ipas; 2016, available at http://www.ipas.org/en/Resources/Ipas%20Publications/Betraying-women-Provider-duty-to-report.aspx.

[121]Beatriz Galli, Negative Impacts Of Abortion Criminalization In Brazil: Systematic Denial Of Women's Reproductive Autonomy And Human Rights, 65 U. Miami L. Rev. 969 (2011), p. 975, 76; World Report 2009-Brazil, Human Rights Watch (14 Jan., 2009), available at http://www.refworld.org/docid/49705faa78.html.

criminal investigation, and revelation of their private medical histories to their families, coworkers, or the public at large, as a result of intense and discriminatory investigations and application of the criminal law in Mato Grosso do Sul.[122]

4. Criminalization of Abortion violates the principles of Non-Discrimination and Equality

Non-discrimination and equality are fundamental human rights principles and critical components of the right to health. Article 12 of the ICESCR proscribes discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.[123] Further, States have a special obligation to provide those who do not have sufficient means with the necessary health-care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services.[124]

Criminalization of abortion deprives women of access to what, in some cases, is a life-saving procedure. Even where a clandestine abortion can be performed in a relatively safe, hygienic setting, it may be financially inaccessible for the most vulnerable women. Criminalization of abortion discriminates against women on the basis of sex as even though both sexes have a role to play in unplanned pregnancies, it is only women who are penalized. In 2006, the Constitutional Court of Colombia acknowledged that issues of sexuality and reproduction affect women differently and to a greater extent by stating that, "[By criminalizing abortion] the legislature must not impose the role of procreator on a woman against her will….Criminal laws prohibiting abortion in all circumstances extinguish women's fundamental rights, and violate their dignity by reducing them to mere receptacles for the fetus."[125]Similarly, while addressing the constitutionality of decriminalization of abortion, the Supreme Court of Justice of Mexico held that "the woman's right must take prevalence because the process of gestation takes place in her body."[126]The legislation permitting women to take the final decision concerning termination of pregnancy was neither discriminatory nor unreasonable as it was based on "the obvious

[122]Beatriz Galli, Negative Impacts Of Abortion Criminalization In Brazil: Systematic Denial Of Women's Reproductive Autonomy And Human Rights, 65 U. Miami L. Rev. 969 (2011), p. 975.
[123]Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 18, available at http://www.refworld.org/pdfid/4538838d0.pdf.
[124]Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)(11 August, 2000), E/C.12/2000/4, para 19, available at http://www.refworld.org/pdfid/4538838d0.pdf.
[125] Case C-355/06, Constitutional Court of Colombia, Sections 7, 8.1., 10.1.
[126] Action of Unconstitutionality 146/2007 and its Cumulative 147/2007, Supreme Court of Justice, Mexico.

disparity of [the woman's] position with other people (i.e. one of male sex, that deems participated in the creation of that embryo, or any third party)."

Poor and marginalized women who do not have access to safe medical abortion are further discriminated against on the grounds of race and class.[127]Women of color especially suffer a greater proportion of deaths due to easily preventable pregnancy-related causes, such as edema, proteinuria, hypertensive disorders, problems during childbirth and in the puerperium, and unsafe abortions, since they are usually more excluded from access to health due to socioeconomic reasons.

In 2015, the public health crisis in Brazil that followed the Zika virus infection was exacerbated due to inadequate access to water and sanitation, racial and socioeconomic health disparities, and restrictions on sexual and reproductive rights.[128] The long-term impacts of the Zika outbreak fell disproportionately on young, single women and girls of color. The northeast region of Brazil, one of the poorest in the country accounted for more than three-quarters of the confirmed cases of babies born with Zika syndrome since the start of the epidemic.[129] Nearly half of the women and girls who gave birth to babies with microcephaly were single and more than three quarters identified as "black" or "brown".[130]

In Brazil, in comparison with white women, black women's mortality risks from these causes are approximately three times greater.[131] Studies have shown that women most likely to die or suffer from complications due to unsafe abortions in Brazil are low-income women of African descent with minimal education and limited access to family-planning services.[132]

Importantly, the Inter-American Commission for Human Rights has noted that in Brazil, a disproportionally high number of poor, indigenous, and/or afro- descendent women, most of whom live in rural areas, are the women who most often do not fully enjoy their human rights with respect to maternal health. These marginalized groups of women are vulnerable to intersectional forms of discrimination such as sex, gender, race, ethnicity, poverty, and geographical location, which impact their access to health services.[133]In 2008, the Committee on

[127]UN General Assembly, Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Note by the Secretary-General, A/66/254 (2011), para 31, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement.

[128]Neglected and Unprotected: The Impact of the Zika Outbreak on Women and Girls in Northeastern Brazil, Human Rights Watch (12 July 2017), p. 18, available at: http://www.refworld.org/docid/59671dcb4.html.

[129]Neglected and Unprotected: The Impact of the Zika Outbreak on Women and Girls in Northeastern Brazil, Human Rights Watch (12 July 2017), p. 26, available at: http://www.refworld.org/docid/59671dcb4.html.

[130] Neglected and Unprotected: The Impact of the Zika Outbreak on Women and Girls in Northeastern Brazil, Human Rights Watch (12 July 2017), p. 26, available at: http://www.refworld.org/docid/59671dcb4.html.

[131] Beatriz Galli, Information regarding Resolution 11/8 on Preventable maternal mortality and morbidity and human rights: Rio de Janeiro, IPAS (November 25th 2009), p. 4.

[132]Beatriz Galli, Negative Impacts Of Abortion Criminalization In Brazil: Systematic Denial Of Women's Reproductive Autonomy And Human Rights, 65 U. Miami L. Rev. 969 (2011), p. 971.

[133] Access to Maternal Health Services from a Human Rights Perspective, Inter-American Commission on Human Rights (2010), para 11.

Elimination of Discrimination Against Women presented its views on the death of Alyne da Silva Pimentel Teixeira and her daughter, due to inadequate and inaccessible maternal health services.[134] The Committee noted that lack of access to quality medical care during delivery was a systematic problem in Brazil and this had a differential impact on the right to life of women. By failing to provide necessary and emergency care to her daughter, resulting in her death, the State had discriminated against Alyne da Silva Pimentel Teixeira, not only on the basis of her sex, but also on the basis of her status as a woman of African descent and her socio-economic background.

Thus, criminalization of abortion has a disproportionate impact on the health and lives of marginalized women and violates principles of non-discrimination and equality.

5. *Criminalization of Abortion violates the State's duty to Respect, Protect and Fulfil the Right to Health*

International human rights bodies and experts such as the CEDAW, CESCR and CRC have specifically critiqued punitive approaches of Brazil towards abortion and the harmful consequences for reproductive health. In 2000, the Human Rights Committee through General Comment No. 28 on the Equality of Rights between Men and Women (Article 3) highlighted the need for States to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions.[135]In 2003, the CESCR in its Concluding Observations for Brazil noted that illegal abortions, particularly in northern regions of Brazil were causing high rates of maternal mortality and requested a review of criminal provisions on abortion.[136] In General Comment No. 4 (2003), the CRC has highlighted the vulnerability of adolescent girls' health when unsafe abortions are performed and the need for safe abortion services in Brazil.[137] In the Concluding Comments of CEDAW for Brazil in 2007 and 2012, the Committee stated that it was concerned about "the high number of unsafe abortions, the punitive provisions imposed on women who undergo abortions and the difficulties in accessing care for the management of complications arising as a result."[138]

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[134]Committee on the Elimination of Discrimination against Women, Communication No. 17/2008 (10 August 2011), CEDAW/C/49/D/17/2008.

[135] CCPR, General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women), UN Human Rights Committee (29 March, 2000), para 10, available at http://www.refworld.org/docid/45139c9b4.html.

[136]CESCR, Concluding Observations: Brazil (26 June 2003), E/C.12/1/Add.87, para 27, 51, available at http://www.refworld.org/publisher,CESCR,,BRA,3f242bf04,0.html.

[137] CRC, General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child (July, 2003), para 27, available at http://www.refworld.org/docid/4538834f0.html.

[138]Concluding observations of the Committee on the Elimination of Discrimination against Women (Aug., 2007), CEDAW/C/BRA/CO/6, para 29-30, available at http://www.un.org/womenwatch/daw/cedaw/cdrom_cedaw/EN/files/cedaw25years/content/english/CONCLUDING_COMMENTS_ENGLISH/Brazil/Brazil%20-%20CO-6.pdf; Concluding observations of the Committee on the Elimination of Discrimination against Women, Brazil (Feb., 2012), Concluding observations of the Committee on

Brazil has failed in its duties to Respect, Protect and Fulfil the Right to Health under Article 12 of the ICESCR. Firstly, by criminalizing abortion, the State has imposed legal barriers impeding access by individuals to sexual and reproductive health services. It has violated its obligation to respect by banning and denying access in practice to sexual and reproductive health services and medicines, such as emergency contraception.[139]Secondly, when abortion is criminalized, public health and safety regulations regarding abortion, such as provisions for the training and licensing of health-care workers, cannot exist, thus increasing the potential for unsafe abortion practices.[140] By failing to take measures to prevent interference in the right to health of women across the country, it has violated its obligation to protect. Thirdly, by adopting legislative and administrative measures which consistently generate poor physical health outcomes, resulting in deaths that could have been prevented, morbidity and ill-health, as well as negative mental health outcomes, the State has violated its obligation to fulfil the Right to Health.[141]

The criminalization of abortion compels women to resort to clandestine and unsafe abortion procedures thereby violating fundamental precepts enshrined in the Constitution of Brazil, including, human dignity, citizenship, equality and non-discrimination, inviolability of the right to life and to liberty, privacy, prohibition of torture or inhuman or degrading treatment, right to health, and family planning enshrined in Article 1, items II and III; Article 3, item IV; Article 5, items I, III, X; Article 6 and Article 196; and Article 226 of the Federal Constitution of Brazil, 1988 respectively.

The Supreme Federal Tribunal of Brazil should hold that criminalization of abortion unconstitutional on the abovementioned grounds.

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the Elimination of Discrimination against Women, Brazil (2012) CEDAW/C/BRA/CO/7, para 29(b), available at http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-BRA-CO-7.pdf.

[139]Committee on Economic, Social and Cultural Rights, General comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)(2016), para 57, available at https://www.escr-net.org/resources/general-comment-no-22-2016-right-sexual-and-reproductive-health.

[140]UN General Assembly, Right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Note by the Secretary-General, A/66/254 (2011), para 28, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement.

[141]UN General Assembly, Right of everyone to the enjoyment of L.M.R. was a young Argentinian woman who had a mental impairment due to which her mental age was between 8 and 10 years old. In 2011, she was raped and became pregnant. In such circumstances though abortion is legal, her abortion was prevented by an injunction against the hospital. Eventually, the Supreme Court of Buenos Aires ruled the abortion could take place. However, under pressure from anti-abortion groups the hospital refused to perform the abortion and she had to seek an illegal abortion.[141] the highest attainable standard of physical and mental health, Note by the Secretary-General, A/66/254 (2011), para 21, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement.