Negative Impacts of Abortion Criminalization in Brazil: Systematic Denial of Women's Reproductive Autonomy and Human Rights

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INTRODUCTION

The magnitude of unsafe abortion in Brazil is a result of the country's restrictive abortion laws. Research shows a direct relation between legal restrictions on abortion and high rates of unsafe abortion.[1] In Brazil, abortion law is very restrictive despite existing progressive policies and legislation on sexual and reproductive rights. According to the 1940 Penal Code, abortion is permitted only in cases of rape or to save the life of a pregnant woman. The current trend to intensify discriminatory application of abortion criminal law by public security and judicial state authorities has been detrimental to a woman's full enjoyment of her right to health and rights related to reproductive self-determination, such as the rights to privacy, liberty and security of the person, equality, and freedom from discrimination in health care.

This article will focus on the negative effects of abortion criminalization and how it affects women's reproductive rights through an analysis of three key aspects: the major impact of unsafe abortion mortality and morbidity on public health; the lack of women's access to safe and legal abortion care in cases permitted by law; and the role of the judicial system in prosecuting women, therefore increasing abortion stigma as well as violating basic human rights principles and norms. This article aims to explore the discriminatory effects of abortion law in Brazil using the case of Mato Grosso do Sul as an example.

I. BACKGROUND ON RELIGIOUS INFLUENCE IN THE REGION

In a region where the Catholic Church has always held hegemonic power on morality over sexuality and reproduction, feminist and sexual diversity movements have fought to include sexual and reproductive

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1. Rachel Jewkes et al., *Prevalence of Morbidity Associated with Abortion Before and After Legalisation in South Africa*, 324 BRIT. MED. J. 1252 (2002).

rights in public agendas. As a result, recently, new anti-choice actors and more sophisticated conservative discourses have emerged to protect traditional values.[2] Religious leaders from different traditions, political elites, and civil organizations have emerged defending dogmatic religious interpretations using scientific research and apparent lay arguments to justify new societal demands in defense of traditional and religious values.[3] The expansion of the legal and political recognition of sexual and reproductive rights in the region, however, is a trend to be noted despite the increasing opposition sustained on conservative and religious voices against women's reproductive health autonomy.

This regional political landscape has implications in domestic political dynamics in Brazil and vice versa. In 2010, moral discourse about women's sexual and reproductive rights dominated the presidential campaigns and the electoral debate.[4] The growing opposition in Brazil's Congress is measured by the number of pending anti-choice bills denying women's sexual and reproductive autonomy: for example, measures to establish embryo rights in detriment of a woman's right to health as well as to establish mandatory registration of a pregnant woman in the early stage of pregnancy.[5]

II. Brazil as a Case in Point

A. *Unsafe Abortion: A Major Public-Health Concern*

One previous study in twenty-six Brazilian state capitals came up with the rate of 74 deaths per 100,000 live births in 2004, revealing the difficulty in determining the level of maternal mortality in Brazil.[6] Studies have shown, moreover, that there was no decline in maternal mortality rates between 1996 and 2006.[7] Unsafe abortion is one of the leading

2. Gillian Kane, *Abortion Law Reform in Latin America: Lessons for Advocacy*, 16 Gender & Dev. 361 (2008) (U.K.), *available at* http://www.genderanddevelopment.org/display.asp?K=002J1316&sf1=volume&st1=16&sort=sort_date/d&m=18&dc=29.

3. The international women's rights organization Association for Women's Rights in Development released a report "based on interviews with more than 1,600 activists worldwide . . . includ[ing] 240 women's rights activists from Latin America whose experiences provide a unique mapping of the fundamentalist phenomenon in this region." Juan Marco Vaggione, *Fundamentalist Strategy: The Secular and the Religious*, Hivos, http://www.hivos.nl/eng/Hivos-Knowledge-Programme/Themes/Promoting-Pluralism/News/Fundamentalist-strategy-the-secular-and-the-religious (last visited Apr. 1, 2011).

4. Karen Keller, *Abortion Becomes Issue in Brazil's Presidential Runoff*, AOLNews, (Oct. 8, 2010, 6:16 AM), http://www.aolnews.com/2010/10/08/abortion-becomes-an-issue-in-brazils-presidential-runoff/.

5. Beatriz Galli, *Celebrating Important Victories from the Women's Movement in Brazil*, RH Reality Check (Jan. 19, 2011, 9:21 AM), http://www.rhrealitycheck.org/blog/beatriz-galli.

6. Ministério Da Saúde, Atenção Humanizada ao Abortamento 8 (2005), *available at* http://www.ipas.org.br/arquivos /NT_atencao_humanizada.pdf.

7. Comissão de Cidadania e Reprodução et al., Mortalidade Materna e Direitos

causes of maternal mortality in Brazil; it is among the top five women's causes of death related to pregnancy.[8]

The 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.[9] A 2008 report revealed that all maternal mortalities that occurred as a result of unsafe abortions in the cities of Recife and Petrolina could have been prevented had safe abortion care been available.[10] Maternal deaths related to unsafe abortions are still occurring. For example, in 2009, five women died as a consequence of unsafe abortions in the state of Pernambuco, according to information provided by the Maternal Mortality State Committee. In Bahia, Salvador, where the majority of the population is of African descent, unsafe abortions have been the leading cause of maternal mortality for decades.[11]

Approximately 220,000 women are treated annually in Brazilian hospitals for complications arising from unsafe abortions.[12] In Brazil, maternal morbidity and mortality risks vary according to geographic region, racial and ethnic groups, and socio-economic situation.[13] For example, the south and southeastern regions of the country present better quality health care and also maintain better statistical records to monitor that care.[14]

In 2009, the U.N. Committee on Economic, Social and Cultural Rights expressed its concerns to Brazil, stating "that maternal mortality

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HUMANOS NO BRASIL (2009), *available at* http://www.ccr.org.br/uploads/noticias/seminário%20mortalidade%20materna.pdf.

8. MINISTÉRIO DA SAÚDE, MANUAL DOS COMITÊS DE MORTALIDADE MATERNA (2007), *available at* http://bvsms.saude.gov.br/bvs/publicacoes/comites_mortalidade_materna_3ed.pdf.

9. COMISSÃO PARLAMENTAR DE INQUÉRITO, RELATÓRIO DA DEPUTADA ELCIONE BARBALHO SOBRE A SITUAÇÃO DA MORTALIDADE MATERNA NO BRASIL (2001), *available at* http://www.portalmedico.org.br/biblioteca_virtual/cpi/CPIMortalidade_Matern.htm.

10. BEATRIZ GALLI ET AL., DOSSIÊ SOBRE A REALIDADE DO ABORTO INSEGURO EM PERNAMBUCO: O IMPACTO DA ILEGALIDADE DO ABORTAMENTO NA SAÚDE DAS MULHERES E NOS SERVIÇOS DE SAÚDE DE RECIFE E PETROLINA (2008), *available at* http://www.ipas.org.br/arquivos/dados/PE_dossie.pdf.

11. CECILIA SIMONETTI ET AL., DOSSIÊ SOBRE A REALIDADE DO ABORTO INSEGURO NA BAHIA: A ILEGALIDADE DA PRATICA E SEUS EFEITOS NA SAÚDE DAS MULHERES EM SALVADOR E FEIRA DE SANTANA (2008), *available at* http://www.ipas.org.br/arquivos/dados/BA_dossie.pdf.

12. MINISTERIO DA SAUDE, RELATÓRIO DE GESTÃO 2003 À 2006: POLÍTICA NACIONAL DE ATENÇÃO INTEGRAL À SAÚDE DA MULHER (2007), *available at* http://bvsms.saude.gov.br/bvs/publicacoes/relatorio_2003a2006_politica_saude_mulher.pdf.

13. Maria Beatriz Galli, A Human Rights Approach to Maternal Mortality in Brazil (2002) (unpublished LL.M. thesis, University of Toronto) (on file with University of Toronto); *see also* MARIA BEATRIZ GALLI ET AL., ADVOCACI, MORTALIDADE MATERNA E DIREITOS HUMANOS 14 (2005), *available at* http://www.ipas.org.br/arquivos/ Livro_Mortalidade_Materna_site.pdf.

14. Sandra Valongueiro Alves, *Maternal Mortality in Pernambuco, Brazil: What Has Changed in Ten Years?*, 15 REPROD. HEALTH MATTERS, Nov. 2007, at 134, 134–35 (U.K.), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1107794.

rates remain extremely high and that the risk of maternal death disproportionately affects marginalized communities, particularly Afro-Brazilians, indigenous women and women from rural areas."[15] Furthermore, the Committee noted "that these disparities are attributable, in part, to the inequitable distribution of emergency obstetric care facilities and to the fact that health-care funding fails to pay adequate attention to disadvantaged populations."[16] The Committee further noted "with concern that clandestine abortions remain a major cause of death among women . . . ."[17] The Committee reiterated

> the recommendation made in its concluding observations on the State party's initial report, namely that the Committee requests the State party to undertake legislative and other measures, including a review of its present legislation, to protect women from the effects of clandestine and unsafe abortions and to ensure that women do not resort to such harmful procedures.[18]

B. *Abortion Law in Brazil: The State's Neglect of Women's Health Needs*

Despite the Penal Code's criminalization of abortion, it is estimated that about a million abortions occur annually.[19] The abortion law is already very restrictive, and abortion is permitted only in cases of rape or to save the life of a pregnant woman. In all other circumstances, Brazil's 1940 Penal Code penalizes women who undergo induced abortions with one to three years of imprisonment; physicians who provide abortions can receive up to twenty years' imprisonment.[20]

A study in 2010 presented the first results of the National Abortion Survey (*Pesquisa Nacional de Aborto*), a household random sample survey of urban women in Brazil ages 18 to 39. The results showed that by the end of her reproductive years, one in five women has had an abortion. Abortions are especially frequent among women ages 18 to 29. No relevant differentiation was observed in the use of abortion among women of various religious groups, but abortion was found to be more common among women with lower educational levels. Medical drugs were used to induce abortions in about half of the cases. Approximately

15. United Nations, Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, ¶ 28, U.N. Doc. E/C.12/BRA/CO/2 (June 12, 2009).

16. *Id.*

17. *Id.* ¶ 29 (citations omitted).

18. *Id.* at 10.

19. BEATRIZ GALLI, IPAS BRASIL, EFFECTS OF ABORTION CRIMINALIZATION IN BRAZIL 4 (2009) (citing LEILA ADESSE & MÁRIO F.G. MONTEIRO, IPAS BRASIL, MAGNITUDE DO ABORTO NO BRASIL: ASPECTOS EPIDEMIOLÓGICOS E SÓCIO-CULTURAIS (2007)).

20. CÓDIGO PENAL [C.P.] arts. 123–28 (Braz.).

half of the women who aborted endured post-abortion hospitalization. These results substantiate the conclusion that abortion care should be a priority in Brazil's public-health agenda.[21]

The study also showed that women who have had abortions could belong in any Brazilian family. Women experience stigma and fear of prosecution. They are often "demonized for having an abortion and providers for offering comprehensive care."[22]

The World Health Organization advised that the health system also needs to improve its management of post-abortion care, thereby ensuring women's right to the benefits of scientific progress.[23] It is in this context that lack of safe abortion care leads to high rates of unsafe abortion, which tends to be a common event in women's lives, and one of the main causes of preventable maternal death in the country.[24]

C. *Barriers to Women's Right to Safe Abortion Care*

Between 1989 and 2008, only 1606 women were able to have legal abortions in Brazil because few abortion services are available, and most services are available in state capitals.[25] In 2008, just over 3000 legal abortions were registered. That is a significant increase from previous years,[26] but it is still insufficient to address women's health needs. According to expert medical opinion and statistical estimates, far fewer legal abortions are registered in Brazil than would be expected for a country of its size.[27] Brazil has a population of about 200 million.[28]

Nationwide, few public hospitals, which are located mainly in state capitals, provide legal abortion services to women. There is no effective and timely access to abortion services within five Brazilian states—

21. Debora Diniz & Marcelo Medeiros, *Aborto no Brasil: Uma Pesquisa Domicilar com Técnica de Urna*, 15 CIÊNCIA & SAÚDE COLETIVA 959 (2010).

22. Leila Hessini & Anu Kumar, *Legislating Abortion Stigma*, RH REALITY CHECK (Feb. 22, 2011, 6:02 PM), http://www.rhrealitycheck.org/blog/2011/02/22/legislating-abortion-stigma.

23. WORLD HEALTH ORG., SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 44–46 (2003).

24. COMISSÃO PARLAMENTAR DE INQUÉRITO, *supra* note 9; *see also* Galli, *supra* note 13; GALLI ET AL., *supra* note 13.

25. Rosângela Aparecida Talib, *Um (Im) Possível Diáologo Entre a Moral da Igreja Católica Apostólica Romana e a Posição Ética dos Professionais que Atuam nos Serviços de Aborto Legal*, FAZENDO GÊNERO 7, http://www.fazendogenero.ufsc.br/7/artigos/R/Rosangela_Aparecida_Talib_24_B.pdf (last visited Apr. 1, 2011).

26. *Abortos Legais Aumentam 242% em Oito no Brasil*, GAZETA DO POVO (Mar. 22, 2009), http://www.gazetadopovo.com.br/vidaecidadania/conteudo.phtml?tl=1&id=869499&tit=Abortos-legais-aumentam-242-em-oito-anos-no-Brasil (highlighting that in eight years there was a 242% increase in the number of legal abortions provided in the Universal Health System).

27. Angela Heimburger, *Brazil's Morning After*, HUFFINGTON POST (Feb. 25, 2009, 4:39 PM), http://www.huffingtonpost.com/angela-heimburger/brazils-mornings-after_b_169956.html.

28. The World Factbook: Brazil, CTR. INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/geos/br.html (last updated Mar. 16, 2011) (expand "People").

Mato Grosso do Sul, Ceará, Amapá, Piaui, Roraima, and Tocantins—although the Cairo Program of Action established that where abortion is legal, services must be provided and must meet certain standards.[29] This was reiterated in the Beijing Platform for Action.[30]

Research by Ipas Brasil in 2006 revealed that some physicians do not believe women are telling the truth when they report having been raped, so they do not believe the women qualify for a legal abortion. Ipas further found that of forty physicians working at sexual violence assistance services, only two female doctors were willing to perform legal abortions.[31] Sometimes patients had to wait at the hospital until a shift change because none of the doctors on duty would carry out the procedure. This led to some women leaving without obtaining a legal abortion. Clearly, the use of conscientious objection, expressed through refusal of care, violates women's rights to be treated without discrimination, to reproductive self-determination, and to liberty and security of the person.

Further, there is lack of implementation of the existing abortion law when a woman's life is at risk. Providers still lack proper orientation through health protocol or regulation, and often request that the woman have judicial authorization in order to perform the procedure. On the other hand, members of the judiciary interpret very narrowly the right to an abortion in this circumstance and recognize women's right to abortion only if there is an imminent risk to a woman's life, and do not take into account aggravated or future health risks that can lead to avoidable maternal death.[32]

This situation violates international human rights norms and principles. A landmark decision from the European Court on Human Rights established the Government of Poland's responsibility for not providing woman's access to legal abortion.[33] In Peru, even though therapeutic abortion is legal, the absence of a national protocol provides no guidance

29. International Conference on Population and Development, Cairo, Egypt, Sept. 5–13, 1994, *Summary of the Programme of Action*, ch. VIII, § C, U.N. Doc. DPI/1618/POP, *available at* http://www.un.org/ecosocdev/geninfo/populatin/icpd.htm.

30. Fourth World Conference on Women, Beijing, China, Sept. 4–15, 1995, *Beijing Declaration and Platform for Action*, ¶ 106(k), *available at* http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf.

31. Beatriz Galli & Edlaine de C. Gomes, *Representações dos Profissionais de Saúde em Relação ao Aborto: Entre Direitos e Deveres na Atenção,* FAZENDO GÉNERO 7 (Aug. 2006), www.fazendogenero7.ufsc.br/artigos/G/Galli-Gomes_11.pdf.

32. ANIBAL FAÚNDES ET AL., CEMICAMP, ABORTO INDUZIDO: OPINIÃO E CONDUTA DE MAGISTRADOS BRASILEIROS (2006), *available at* http://www.cemicamp.org.br/materia/FAUNDES-et_al_-_JUÍZES.pdf.

33. Tysiac v. Poland, 45 Eur. Ct. H.R. 42 (2007) (involving a woman who was denied access to abortion even though her health required it to preserve her eyesight and holding that Poland violated Article 8 (right to respect for private and family life) of the European Convention on

for when a therapeutic abortion can be performed, keeping women and health professionals uninformed and in fear of prosecution.[34]

In Brazil, cases of anencephaly have been sent to the judiciary because there is no legal provision authorizing abortion in these cases. Since 2004, a constitutional remedy has been pending decision in the Supreme Court to allow therapeutically anticipation of childbirth in these cases.[35]

D. *Criminalization, Stigma, and Discrimination*

1. Violations to Women's Right to Privacy, to Nondiscrimination, and to Health

In many parts of Brazil, women who wish to seek abortion-related care fear stigmatization, 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.[36] On April 13, 2007, police raided a clinic and confiscated the medical records of more than 9600 women who had been patients there, violating the women's right to privacy and confidentiality in health care.[37] Interviews by Ipas described the women's fear and shame at the disclosures and prosecutions, resulting in reactions from their families, work colleagues, and close friends; others have carried the burdens of the case alone in secrecy.[38] Their voices are absent from the public debate.

This was a benchmark case in Brazil. Following it, similar cases occurred in the country.[39] Dr. Neide Mota Machado, the clinic owner,

Human Rights as it failed to establish an effective procedure through which the woman could have appealed her doctors' refusal to grant her request for abortion).

34. Angela Heimburger, Human Rights Watch, My Rights, and My Right to Know: Lack of Access to Therapeutic Abortion in Peru (2008), http://www.hrw.org/en/news/2008/07/09/peru-mulheres-em-situa-o-de-risco-s-o-negadas-abortos-legais.

35. Debora Diniz & Ana Cristina Gonzalez Vélez, *Aborto na Suprema Corte: O Caso da Anencefalia no Brasil*, 16 Revista Estudos Feministas 647 (2008), *available at* http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0104-026X2008000200019.

36. Nilcéa Freire, *Fúria Judicial Contra as Mulheres*, Ipas (Apr. 24, 2008), http://www.ipas.org.br/noticias2008.html#9800.

37. Ipas Brasil, Processos Judiciais Envolvendo Abortamento: Negacão dos Direitos Reprodutivos das Mulheres em Mato Grosso do Sul (2008), *available at* http://www.ipas.org.br/arquivos/RelatorioMS_FINAL.pdf.

38. Beatriz Galli et al., Ipas Brasil, Autonomia Reprodutiva em Questão: Relatos de Mulheres Sobre Aborto e Estigma em Mato Grosso do Sul (2010), http://www.ipas.org.br/arquivos/MS_Casos2010.pdf.

39. Police raids on clandestine abortion clinics in different states have led to the arrest and prosecution of women and doctors. For example, in August 2009, the police raided four clinics in the city of Rio de Janeiro. These events are little known in Brazil outside the states where they took place. *See* Ronaldo Braga, *Operação da Polícia Civil Fecha Duas Clínicas de Aborto em Botafogo*, O Globo (Aug. 13, 2009), http://oglobo.globo.com/rio/mat/2009/08/13/operacao-da-

and the other health-care providers were prosecuted based on TV interviews and on the basis of seized health documents and medical equipment. In December 2009, Dr. Mota Machado was found dead in her car in Campo Grande. A police investigation concluded that she had committed suicide. On April 8, 2010, four health-care providers who worked at the clinic were found guilty and sentenced by jury. The psychologist S.C.S. was condemned to six years and six months of imprisonment. The three nursing auxiliaries also received prison sentences: M.N.S was condemned to four years, R.A. to seven years, and L.J.C. to one year and three months. They had been accused of participating in twenty-five abortions performed at the clinic.[40]

Brazilian law provides explicit procedures to protect medical privacy, which were blatantly ignored in Mato Grosso do Sul. Article 154 of the Penal Code punishes illegal disclosure of professional secrets with detention for up to a year.[41] In addition, the Code of Medical Ethics outlines specific procedures to safeguard medical privacy during criminal investigations. In 2000, the Brazilian Federal Medical Council (CFM) addressed the issue of privacy of medical records in resolution no. 1.605/2000.[42] Article 1 of the resolution states that a doctor cannot disclose the contents of a medical record without the patient's consent. Article 3 of the resolution affirms that, in the event of a criminal investigation, a doctor is forbidden from revealing private information that may expose the patient to a criminal prosecution. Most importantly, Article 4 guarantees that if a competent judicial authority requires the presentation of medical records during a criminal prosecution, the doctor will make these documents available *only* to the medical expert appointed by the judge; as stated above, that expert will exclusively examine the facts in question.

A demand from the judiciary does not eliminate the necessity of applying these medical privacy protections. To legally obtain medical information, a judge is required to appoint a medical expert to handle the

policia-civil-fecha-duas-clinicas-de-aborto-em-botafogo-757384655.asp; Laurlindo Ernesto, *Polícia Descobre Clínica de Aborto em Botafogo*, O DIA (Aug. 13, 2009), http://odia.terra.com.br/portal/rio/html/2009/8/policia_descobre_clinica_de_aborto_em_botafogo_29277.html; *Polícia Fecha Duas Clínicas de Aborto em Botafogo*, GLOBO.COM (Aug. 13, 2009), http://g1.globo.com/Noticias/Rio/0,,MUL1265484-5606,00.html.

40. Tribunal de Justiça de Mato Grosso do Sul, *Júri: Ex-Funcionárias de Clínica de Aborto São Condenadas*, DIREITO2 (Apr. 9, 2010), http://www.direito2.com.br/tjms/2010/abr/9/juri-ex-funcionarias-de-clinica-de-aborto-sao-condenadas.

41. To reveal secrets, without just cause, acquired through the exercise of one's profession and disclosure of which may bring harm to a third party may result in detention of three months to one year or a fine. C. P. art. 154 (Braz.).

42. Resolução CFM No. 1.605/2000, *available at* http://www.saude.sc.gov.br/geral/orgaos_vinculados/samu/portarias_resolucoes/ResolucaoCFM1605-00.htm.

medical records; that person reads the information and writes a report to the judicial authorities.

During the investigations in the Mato Grosso do Sul case, the authorities failed to apply these procedures. Instead, the files were seized by the police during the clinic raids and handled by the police, the prosecutor, and other judicial authorities.

The obligation to fulfill and promote the right to health requires Brazil to take measures to protect vulnerable women and enable them to enjoy their right to health care when in need. By criminalizing women and health providers for abortion, Brazil impedes the right to health by constructing barriers and creating an environment of stigma and discrimination against them.[43] Criminalization fails to achieve the aims of the criminal law, which is to prevent women's use of abortion. Moreover, criminalization has not been shown to have any public-health benefit since it contributes to an increase in unsafe abortion rates and places more women at risk of dying or having health complications.[44]

"Sexual and reproductive health and rights (SRHR) are integral elements of the right to health. They encompass both freedoms, such as freedom from discrimination or freedom to control one's health and body, and entitlements, such as a right to a functioning health system."[45] In addition, respect for physical integrity and freedom to control one's own body are particularly important for women

A woman's need to have an abortion is not dependent on whether abortion is legal. However, her access to safe abortion is impacted by criminalization of abortion. When abortions are legal, they must be both safe and accessible. In this context, the role of health professionals, both doctors and nurses, is of great importance. Abortion criminalization perpetuates and enforces stigmatization preventing legislative and policymaking institutions from adequately addressing health-related matters regarding vulnerable groups of women and their enjoyment of the right

43. *See* Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Standard of Physical and Mental Health, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶¶ 68–71, U.N. Doc.A/HRC/14/20 (Apr. 27, 2010) (by Anand Grover), *available at* http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.20.pdf (discussing stigma, discrimination, and violence in the context of HIV/AIDS).

44. Daniel A. Grimes et al., *Unsafe Abortion: The Preventable Pandemic*, 368 THE LANCET 1908–19 (2006), *available at* http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(06)69481-6/fulltext.

45. Press Release, UN Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Visit to Poland, 5–11 May 2009 (May 11, 2009), *available at* http://www.unhchr.ch/huricane/huricane.nsf/view01/F1269CA5311CDAF3C12575B50041AEBE?opendocument.

to health in a nondiscriminatory manner.[46]

III. International Human Rights Framework to Protect Women's Reproductive Autonomy in Brazil

Despite the fact that states have an obligation to ensure services directly related to sexual and reproductive health, countries throughout the world continue to criminalize abortion and implement policies directly impacting women's right to control their sexual and reproductive health and human rights. Such policies are of significant concern because they can increase women's vulnerability to abuse and violence, and further disempower them.[47] Moreover, criminalization of women's access to sexual and reproductive health services raises significant public health and human rights concerns.

In Article 12.1, the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that the state must take necessary measures to eliminate discrimination against women in order to guarantee their access to health-care services, based on the principle of equality between men and women.[48] In Brazil, the human right to equality and nondiscrimination in accessing health-care services has not yet been realized, as shown by data on maternal morbidity and mortality. This is particularly true for women belonging to certain socioeconomic groups, such as those of African heritage, adolescents, and women living in the poorer regions of the country.

The right to health is recognized in various international treaties and by the World Health Organization, which conceptualizes health as "'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity . . . .'"[49] International law, except for the Protocol on Women's Rights for the African Charter on People's and Human Rights, has not yet explicitly recognized a right to abortion. "Consequently, advocates of such a right have framed the abortion right as falling within a number of existing, clearly recognized human rights."[50] The Committee on Economic, Social and Cultural Rights states in its General Comment 14 to Article 12 of the Covenant

46. *Id.*

47. U.N. Dev. Programme, Outlawing Women: Effects of Laws Criminalizing Women's Sexuality (Mar. 4, 2010), http://content.undp.org/go/newsroom/2010/march/outlawing-women—effects-of-laws-criminalizing-womens-sexuality.en.

48. Convention on the Elimination of All Forms of Discrimination Against Women, art. 12, ¶ 1, *adopted* Dec. 18, 1979, http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article12.

49. Ronli Sifris, *Restrictive Regulation of Abortion and the Right to Health*, 18 Med. L. Rev. 185, 193 (2010) (quoting U.N. Dep't of Econ. & Soc. Affairs, *Report of the International Conference on Population and Development*, U.N. Doc. A/CONF.171/13 (Oct. 19, 1994)).

50. *Id.* at 186.

that "[h]ealth is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life with dignity."[51]

The right to health, therefore, means that preventable maternal deaths must indeed be prevented. Brazil has an advanced legal framework for the protection of the right to health, with rules and standards of the public-health system to guide its main reproductive health policies.[52] The Constitution regulates the right to health and protection of motherhood in the section on social rights.[53] Nevertheless, in Brazil, unsafe abortion continues to be one of the main causes of maternal mortality.[54]

The Brazilian government should immediately enact legislation protecting gender equality and women's rights to privacy and confidentiality during police investigations of clandestine abortion clinics and guaranteeing human rights principles of presumption of innocence, due process of law, and legal defense. The criminalization of a medical procedure that only women need is per se discriminatory.

Furthermore, the state has direct responsibility for discriminatory law enforcement, stigmatizing women who have had abortions and are facing prosecutions. The state thereby neglects its international obligations to fulfill women's health-related human rights and all recommendations made on the issue by treaty-monitoring bodies.

The Brazilian government should take measures to protect and fulfill women's human rights to reproductive self-determination, to liberty and security of the person, to health, and to equality and nondiscrimination in access to health care, according to the secular state principle in

51. United Nations, Econ. & Soc. Council, Comm. on Econ., Soc. & Cultural Rights, General Comment No. 14, U.N. Doc. E/C.12/2000/4, ¶ 1 (Aug. 11, 2000).

52. Article 5 of the Federal Constitution states that

> Everyone is equal according to law, without any distinction whatsoever, and it is warranted to any Brazilians and foreigners residing in Brazil the inviolable right to life, to liberty, to equality, to security and to property. I–men and women are equal as to rights and obligations, under the terms of this Constitution; . . . III–nobody will be submitted to either torture or inhuman or degrading treatment; . . . XLI–the law will punish any discrimination against the fundamental rights and liberties.

CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 5 (Braz.).

53. "The following are considered social rights: education, health, employment, leisure, security, social security, protection of maternity and infancy, assistance to the abandoned, in the form of this Constitution." *Id.* art. 6. Article 196 states that "everyone has the right to health and it is the State's responsibility, by warranting social and economic policies, the reduction of the risk of diseases and other injuries and the universal and equalitarian access to actions and services for its promotion, protection and recovery." *Id.* art. 196.

54. Leila Adesse et al., *Grave Problema de Saúde Pública e de Justiça Social*, RADIS COMUNICAÇÃO EM SAÚD, Feb. 2008, at 10, *available at* http://www4.ensp.fiocruz.br/radis/66/pdf/radis_66.pdf.

the Brazilian Constitution.[55] This includes opposing any measures, police investigations, or legislative proposals that intend to increase criminalization of abortion, thereby threatening sexual and reproductive rights already established in Brazilian law and the international human rights treaties ratified by Brazil.

As different U.N. bodies have already established, the necessary review of abortion law is a matter of social justice, human rights, and access to reproductive health. In particular, more advocacy work needs to be developed regarding the state's accountability for not complying with international human rights obligations to reduce the perverse effects of abortion criminalization, which increases stigma and harms women's health and lives. Brazil still has to comply with its international human rights obligations and effectively secure women's right to safe and legal abortion and review its punitive legislation on abortion as a matter of human rights, nondiscrimination and gender equality.

55. *See* C.F. art. 19 (Braz.).