CENTER FOR REPRODUCTIVE RIGHTS

New York, Bogotá, September 21, 2016

Human Rights Council
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1201 Geneva 10
Switzerland

Re: Report of the Third Universal Periodic Review ("UPR") on Brazil, 27th Session of the UPR Working Group ("Working Group") of the Human Rights Council ("Council") (May 2017)

Distinguished members of the Council:

1. The Center for Reproductive Rights (the "**Center**") is an independent non-governmental organization that promotes gender equality and the fulfilment of women's reproductive rights across the world. The Center seeks to contribute to the Council's work by providing independent information concerning Brazil's obligations to guarantee women's reproductive rights under international human rights law.

2. In light of Brazil's upcoming review by the Council, this letter highlights Brazil's failure to comply with its obligations under international human rights law to take all appropriate measures to eliminate discrimination against women in the field of healthcare (including family planning), reproductive rights and other human rights and fundamental freedoms by: (a) criminalizing abortion except in the case of rape or where it threatens the life of the mother; (b) effectively preventing access to legal abortion and to post-abortion healthcare through unnecessary obstacles, persistent stigmatization and a culture of reporting suspected abortions to the authorities; (c) inadequate and ineffective maternal healthcare policies that fail adequately to take into account women's reproductive rights; and (d) failing to take adequate measures to facilitate women's reproductive rights in response to the outbreak of the Zika virus.

3. This letter is presented as follows: first, we set out the various recommendations issued by UN Treaty bodies, including recommendations by the UPR Second Cycle stakeholders and the CEDAW Committee in relation to reproductive rights that Brazil has failed to implement; second, we set out the tragic and fatal consequences of Brazil's continuing criminalization of abortion, which are compounded by inadequate and ineffective healthcare policies; third, we explain how Brazil's policies disproportionately affect women from poorer and rural backgrounds; fourth, we include a list of questions for the Working Group to ask the State party's representatives; and fifth, we include a list of recommendations that we respectfully propose the Working Group should make.

I. Brazil Has Failed to Implement Recommendations from UN Treaty Bodies

4. Two recommendations relating specifically to reproductive rights were made during the Second Cycle of the UPR in 2012.[1] Brazil responded that it would:

   (a) fully support a recommendation by Colombia that Brazil "*continue advancing in the development and implementation of the 'Stork Network' and the national system for*

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registration, monitoring and accompanying for pregnant women in order to prevent maternal mortality, in the context of the policy for integral assistance to women's health";[2] and

(b) partially support a recommendation by France that Brazil "*continue the process of expanding the possibilities of accessing the voluntary termination of pregnancy in order to ensure the full recognition of sexual and reproductive rights*".[3] Brazil explained its partial support on the basis that the State "*provides access to health services in the cases of termination of pregnancy allowed by the legislation and by decision of the Supreme Court*".[4]

5. As will be explained, Brazil has failed to implement either of these recommendations.

6. In 2011, the CEDAW Committee found that Brazil had violated several CEDAW rights in *Alyne de Lourdes da Silva Pimentel Teixeria v. Brazil* (the "**Alyne Case**").[5] In addition to condemning Brazil's policies, the CEDAW Committee made a number of recommendations, including that Brazil:

(a) Ensure women's right to safe motherhood and affordable access for all women to adequate emergency obstetric care;

(a) Provide adequate professional training for health workers, especially on women's reproductive health rights, including quality medical treatment during pregnancy and delivery, as well as timely emergency obstetric care; and

(b) Reduce preventable maternal deaths through the implementation of appropriate policies, in line with previous recommendations made.[6]

7. Further, in 2012, the CEDAW Committee made several recommendations relating to reproductive rights in Brazil ("**2012 CEDAW Report**").[7] This included requests for Brazil to:

(c) expedite the review of its legislation criminalising abortion in order to remove punitive provisions imposed on women;

(d) continue its efforts aimed at enhancing women's access to health care and monitor and assess the implementation of the *Rede Cegonha* programme with a view of effectively reducing the maternal mortality rate, in particular within disadvantaged groups of women; and,

(e) assess the impact of the *Estatuto do Nascituro* (Statute of the Foetus) in further restricting the existing narrow grounds for women to undergo legal abortions before it is adopted by the National Congress.

8. In December 2014, the Rapporteur for Follow-up on the 2012 CEDAW Report noted that Brazil had failed to implement a review of legislation criminalizing abortion and had failed to provide sufficient information on the remaining recommendations.[8]

9. Lastly, Brazil has maintained its stance against abortion and reproductive rights even in the face of the outbreak of the Zika virus, which the Center for Disease Control and Prevention have concluded is a cause of neurological disorders (including microcephaly) in foetuses.[9] This is even though Brazil is the country most affected and is projected to have more than double the number of infections than any other country.[10] Brazil's inadequate and counter-productive response has been to:

(a) urge women not to get pregnant;[11]

(b) provide women with entirely ineffective "emergency kits" containing vomiting bags, dipyrone, paracetamol, and oral serum to take home;[12] and

(c) instigate a renewed crackdown on abortion-inducing drugs, confiscating packages of abortion medication even though a third of the women who had ordered such medication did so out of fear of the Zika virus.[13]

10. Brazil's (in)actions in relation to the Zika virus contravene the World Health Organization's official interim guidance of 18 February 2016, which states that women at risk of being infected with the Zika virus should have "*ready access to emergency contraceptive services and counseling*".[14] In addition, in June 2016, Brazil introduced a declaration project at the Organization of American States (OAS) General's Assembly to strengthen cooperation among member States to control the outbreak of the Zika virus. Although the declaration represents a step forward to guarantee States' action in the region to address the issue, the declaration focus heavily on healthcare responses and disregards women's reproductive rights.[15] This contravenes the U.N. High Commissioner for Human Rights, Zeid Ra'ad Al Hussein statement, who stated that *"holding women's human rights is essential if the response to the Zika health emergency is to be effective."*[16]

II. Brazil's Criminalization of Abortion and Inadequate Healthcare Policies

11. Brazil continues to actively prosecute women who have unlawful abortions.[17] In Brazil, abortion is legal only where it is performed by a doctor, and even then only where it is necessary to save the life of the mother or where the pregnancy is the result of rape.[18] In addition, abortion is lawful when performed in respect of an anencephalic foetus.[19] In Rio de Janeiro State, between 2007 and 2011, there were 334 police reports involving women who had had illegal abortions.[20] Between 2007 and 2010, 128 women were prosecuted.[21]

A. Obstacles to obtaining legal abortion

12. In 2014, the Brazilian Minister of Health stated that any hospital with an obstetric practice should be capable of performing legal abortions.[22] However, only 37 out of the 68 medical centers listed by the Minister actually performed the procedure[23] and hospital staff are also frequently unaware of the rules regarding legal abortion.[24] Further, on 28 May 2014, the Minister effectively removed federal funding for free abortions in the public health service.[25]

13. Guidance issued by the Minister setting out standards of care and procedures has given rise to substantive barriers to obtaining legal abortion, including:

(a) Where pregnancy threatens the mother's life, judicial authorization is required before an abortion can be carried out. The woman must submit two technical reports signed by two different doctors before the judge considers the application.[26]

(b) Where the pregnancy is the result of rape, the woman must present written consent to the procedure.[27] Sometimes, the hospital requests a police or medical report confirming the rape[28] or even judicial authorization,[29] even though this is contrary to Ministry of Health guidance. Statistics from the Ministry found that almost 70% of rape victims (most of whom were underage) who fall pregnant do not resort to the procedure in public hospitals because they

either do not know they are entitled to one, because they are afraid to be judged,[30] or because they fear prosecution.[31]

B. Brazil's policies on maternal healthcare and reproductive rights are inadequate

14. Brazil has enacted various maternal health policies to address maternal health care more generally.[32] However, a number of these policies are formulated from the perspective of the foetus rather than from the perspective of the woman. For instance, the *Rede Cegonha* programme essentially only provides assistance for women who want to have children and has already been criticized by the CEDAW Committee.[33] In addition:

(a) There are limited public education programmes and limited access to information about family planning options, and public authorities such as hospitals do not provide facilities and appropriate prenatal care to enable women to exercise their reproductive rights;[34]

(b) Public authorities provide little or no information regarding abortion, even when it would be lawful such as where a woman has been raped;[35]

(c) Given the lack of infrastructure, abortion is not widely accessible: for example, a 2013 study conducted in Rio de Janeiro State found that most obstetric centres visited were not fit to provide emergency services,[36] prenatal care,[37] or legal abortion services;[38] and

(d) Women seeking abortions often have to wait long hours before a dilatation and curettage.[39]

15. Until this fundamental structural problem is addressed, Brazil's policies on maternal healthcare will continue to be inadequate and will continue to fail to give effect to women's reproductive rights.

III. Brazil's Anti-Abortion Legislation and its Failure to Guarantee Reproductive Rights Violates International Human Rights Law

1. Violation of the Right to Substantive Equality and the Freedom from Discrimination

16. Instead of advancing women's rights, Brazil's restrictive laws on abortion exacerbate and entrench discrimination against women, in contravention of the central tenet of CEDAW and other international human rights laws.[40]

17. Abortions are the fifth-leading cause of maternal mortality for women in Brazil.[41] Each year over a million illegal abortions are performed illegally in clandestine clinics or are self-induced,[42] and over 200,000 women seek hospital treatment for unsafe abortions.[43] Unsurprisingly, illegal abortions carry immense health risks and are directly related to the high incidence of maternal mortality in Brazil.[44]

18. Due to fear of prosecution, many women decline to seek medical treatment even though they are in a highly vulnerable situation, with the result that in many cases, women have died through lack of medical attention, or as a result of unsafe clandestine abortions.[45]

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2. Brazil is in Violation of the Right of Equal Access to Healthcare[46]

19. Even though Brazil has taken steps to enhance women's access to healthcare, several international bodies, including the CEDAW Committee, have voiced serious concerns as to the efficacy of these measures.[47]

(a) In 2012, Brazil attempted to improve access to maternal care by passing Provisional Measure 557 ("**PM 557**"), creating a registry of pregnant women and allowing them access to funding for prenatal care. However, this law has been criticized for various reasons including: (a) the violation of women's privacy; (b) its aim to monitor and control women's reproductive choices; and (c) its failure to address the preservation of women's human rights.[48] Indeed, PM 557 does not guarantee, for example, access to health exams, timely diagnosis, providers trained in obstetric emergency care, or immediate transfers to better facilities. In any event, PM 557 was only provisional and expired in June 2012.[49]

(b) Brazilian women continue to lack access to quality healthcare and quality public health services.[50] A 2013 study conducted in Rio de Janeiro State found that most obstetric centres visited were not fit to provide emergency services,[51] prenatal care,[52] or legal abortion services.[53] The Alyne Case exemplifies this.

(c) As set out above, even when legal, women in Brazil continue to face significant *de facto* barriers to legal abortion.

3. Brazil Violates the Right to Reproductive Freedom[54]

20. Brazil has failed to translate normative provisions in relation to reproductive freedom into effective policies and programs. Hospital staff are often unaware of the rules regarding legal abortions, and are incapable of providing adequate and accessible abortion information to patients.[55] This is exacerbated by Brazil's criminalization of abortion.

21. This prevents women from exercising their reproductive rights in contravention of international human rights law and, in particular, Article 16(1)(e) of CEDAW.

IV. Disproportionate Effect on Poor, Rural Women and Adolescents[56]

22. Brazil's restrictive abortion laws and its inadequate maternal healthcare policies have a differential impact on Afro-Brazilian women, rural and low-income women, and adolescents. Indeed, in the north-east (the poorest and least developed region of Brazil), two-thirds of pregnancy-related deaths occur as a result of unsafe abortions.[57]

23. Notwithstanding repeated recommendations from the CEDAW and CESCR Committees,[58] Brazil has failed to alleviate the plight of these women:

(a) Brazil's restrictive abortion laws disproportionately affect women from poor or rural areas. Relatively safe though illegal clandestine abortions cost at least $800, over four times the monthly minimum wage.[59] As a result, poor and rural women resort to unskilled providers or perform self-induced abortions using hazardous or ineffective means.[60] Out of desperation, many are defrauded by unscrupulous traffickers who sell fake and dangerous abortion pills.[61] Poor and rural women are therefore more likely than other women to experience severe

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complications from unsafe abortion, a problem illustrated by the high rate of pregnancy-related deaths in rural areas.[62]

(b) Limited access to healthcare is a particular problem for rural women: in the rural north and north-east regions, for example, there are only two doctors per 1,000 people.[63]

(c) Poor women in Brazil are still viewed by certain doctors as irresponsible in their use of unsafe pills and procedures and are viewed as a burden on public maternity services.[64]

(d) Women arrested or prosecuted are disproportionately poor, illiterate, and use public health services.[65] Over half of women investigated and charged with illegal abortions have only finished primary school, and only 8% have graduated from high school.[66] By contrast, women with higher levels of education are more likely to have an abortion, and are less likely to have complications afterwards.[67]

24. In addition, Brazil has not addressed the differential impact of its policies against adolescents and Afro-Brazilian women:

(a) There is limited sympathy on the part of public authorities about the impact of anti-abortion policies on adolescent women: between 2007 and 2010, 45% of women in Rio de Janeiro charged with illegal abortion were under the age of 24.[68]

(b) In the north-east, half of adolescent women interviewed as part of a recent study had not received any guidance at all on where to give birth.[69]

(c) In Ceará, Bahia, Pernambuco, Paraíba and Sao Paulo, adolescents disproportionately make up over 22% of those who require emergency post-abortion care.[70]

(d) Afro-Brazilians have suffered the most from Brazil's anti-abortion and inadequate maternal healthcare policies. Even though they make up only half of Brazil's total population,[71] in 2015, they represented an astonishing three-quarters[72] of the already high[73] 44 deaths per 100,000[74] live births in Brazil. Additionally, young black women with low educational backgrounds use more dangerous and risky methods to induce abortion.[75] Indeed, *Alyne* herself was an Afro-Brazilian woman: her case is symptomatic of the severe and disproportionate obstacles faced by Afro-Brazilians in a country where the obstacles to adequate maternal healthcare are already significant.

IV Questions for Brazil

25. We respectfully suggest that the Working Group ask Brazil the following questions:

(a) Please report on whether reforms to Brazil's anti-abortion legislation are being planned, particularly in light of the outbreak of the Zika virus.

(b) As requested by the CEDAW Committee, please report on the state of implementation of the General Recommendations set out in the Alyne Case, specifically:

(i) The steps being taken to address the effective prevention of access to healthcare for women, owing to fear of prosecution.[76] In particular, please report on: (A) the extent

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to which health professionals report women seeking obstetric care on suspicion of abortion; and (B) whether any (and if so, what) steps are being taken to provide women in these circumstances with adequate healthcare, without fear of prosecution.

(ii) The nature of the investigation process both after a woman has (A) been reported for a suspected abortion and (B) reported a violation of her reproductive rights.[77] In particular, please explain whether any policies exist to minimise the time taken to investigate women reported in such circumstances (while according women all necessary fair trial rights), and whether steps are being taken to eliminate prohibited ill-treatment during the investigation process and during any period of incarceration.

(iii) The steps being taken to provide *all* women – particularly those who are poor, young, rural and/or Afro-Brazilian – with access to adequate family planning information to enable them to have full capacity to exercise their reproductive rights.[78]

(c) Please report on the steps being taken to reform laws and policies so that women can access free contraception, counselling, and sex education programs, and on the steps being taken to address the stigma around abortion, contraception and reproductive rights.

V Recommendations

26. We respectfully request the Working Group address the following recommendations to Brazil:

(a) Urgently repeal Brazil's highly restrictive anti-abortion legislation.

(b) *Alternatively*, urgently amend Brazil's anti-abortion legislation to permit exceptions not merely in the case of rape and where there is a threat to the mother's life, but also where there is a threat to the mother's *health*, and where the foetus is unviable.

(c) *In any event*, formulate and actively implement policies to:

(i) ensure that maternal healthcare is conducted from the perspective of the woman and not from the perspective of the unborn foetus;

(ii) remove substantive barriers to lawful abortion, in particular the overly bureaucratic requirement to obtain judicial authorization and police reports, which unnecessarily prolongs the process of a lawful abortion, and which exacerbates the sense of shame and stigma on the part of vulnerable women through unnecessary publicity;

(iii) educate health professionals and other public officials on women's reproductive rights to inform and facilitate women's access to reproductive rights, and to combat stigmatization;

(iv) provide for the widespread dissemination of contraceptive products (particularly emergency contraception); and

(v) disseminate accurate family planning information to allow women (and particularly adolescents in rural areas) to exercise their reproductive rights.

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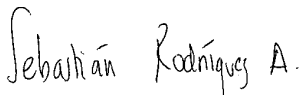
We appreciate this Council's longstanding commitment to reproductive rights and to the eradication of discrimination in the provision of reproductive health care. If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Respectfully,



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1 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Brazil*, A/HRC/21/11 (July 9, 2012), ¶ 119.

2 Recommendation 119.146 accepted at Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Brazil – Addendum – Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review* (A/HRC/21/11), 9 July 2012, p. 23; Human Rights Council, *Brazil's Views on conclusions and/or other recommendations, voluntary commitments and replies* (A/HRC/21/11/Add.1), 13 September 2012, ¶ 27 ("**Brazil's Response**").

3 Brazil's Response, ¶ 28.

4 *Ibid*.

5 Alyne attended a health center six months into her pregnancy, suffering from severe nausea and abdominal pain. She was sent home but returned two days later. Upon examination, it was confirmed that the foetus had died. Alyne was given medication to induce a delivery; however, after delivery, her health deteriorated significantly. 14 hours after the delivery, she underwent curettage surgery but her health continued to deteriorate and she was transferred to a hospital. The only hospital that had space refused to send an ambulance, resulting in severe delays in her admittance to hospital. Upon arriving at a hospital, she was placed in a makeshift area in the emergency room hallway as there were no available beds. Her medical records were not transferred with her. Alyne died three days later, with an autopsy finding the cause of death to be digestive haemorrhage from the delivery of the stillborn foetus. *See*, CEDAW Communication No 17/2008, 27 September 2011.

6 CEDAW, Communication No 17/2008, 27 September 2011, ¶ 8.

7 CEDAW Committee, Concluding Observations (CEDAW/C/BRA/CO/7), 23 February 2012, ¶¶ 28-29.

8 Letter from the Rapporteur for Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women, 16 December 2014, pp. 4-5.

9 Centers for Disease Control and Prevention, *CDC Concludes Zika Causes Microcephaly and Other Birth Defects*, 12 April 2016, http://www.cdc.gov/media/releases/2016/s0413-zika-microcephaly.html; World Health Organization, *Zika Virus Microcephaly and Guillain-Barré Syndrome, Situation Report*, 26 February 2016, p. 1.

10 WHO, *Zika situation report*, 7 April 2016, http://www.who.int/emergencies/zika-virus/situation-report/7-april-2016/en/. In January 2016, the Minister of Health declared that Brazil was "*losing the battle against the mosquito*". *See*, E. Teixeira & P. Santiago, Estamos perdendo a guerra contra o Aedes, diz ministro da Saúde no Piauí, 22 January 2016, http://g1.globo.com/pi/piaui/noticia/2016/01/estamos-perdendo-guerra-contra-o-aedes-diz-ministro-da-saude-no-piaui.html; T.A. Perkins & A.S. Siraj *et al.*, Model-based projections of Zika virus infections in childbearing women in the Americas, Nature Microbiology, Article no. 16126, 25 July 2016, p. 1.

11 B. Douglas, *Brazil warns women not to get pregnant as Zika virus is linked to rare birth defect*, The Guardian, 4 December 2015, https://www.theguardian.com/global-development/2015/dec/04/brazil-zika-virus-pregnancy-microcephaly-mosquito-rare-birth-defect.

12 Jornal de Sabado, *HCE distribui kits para tratamento do Zika Víru*, 23 February 2016, http://jornaldesabado.net/noticia/hce-distribui-kits-para-tratamento-do-zika-virus-2.

13 A.M. Simmons & C. Rigby, *Brazil seizes abortion drugs sent to women living in fear of Zika*, Los Angeles Times, 27 March 2016, http://www.latimes.com/world/mexico-americas/la-fg-global-abortion-drugs-20160327-story.html.

14 World Health Organization, *Prevention of Potential Sexual Transmission of Zika Virus: Interim* Guidance (WHO/SIKV/MOC/16.1), 12 February 2016; OHCHR, *Upholding Women's Human Rights*

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Essential to Zika Response, 5 February 2016, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17014&LangID=E.

15 Organization of American States, *Proyecto de Declaración sobre el Virus del Zika: Cooperación Interamericana para Enfrentar una Amenaza Mundial a la Salud (*OEA/Ser.P AG/doc.5521/16) June 7, 2016, ¶¶ a-h

16 OHCHR, *Upholding Women's Human Rights Essential to Zika Response Zeid* (February 5, 2016), available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17014&LangID=E (last accessed March 30, 2016).

17 The 1984 Brazil Criminal Code contains three separate abortion offences as follows: (a) A woman who performs a self-induced abortion, or who consents to have an abortion induced by a third party, is liable to between one and three years' imprisonment. Save in respect of anencephaly, there are no exceptions and no defences to this offence; (b) A third party (such as a doctor) who performs an abortion is liable to imprisonment of: between one and four years, where the woman consents to the abortion; and (c) between three and ten years, where the abortion is conducted without consent. *See*, Articles 124-128 of Lei N°7.209, Código Penal (1984) (the "**Brazil Criminal Code**").

18 Article 128 of the Brazil Criminal Code.

19 In 2012, the Brazilian Supreme Court held that discontinuing a pregnancy of an anencephalic foetus is not an abortion and therefore falls outside the scope of the Criminal Code. The scope of this decision is limited: it is unlikely to apply outside the case of anencephaly since the basis of the decision was that an anencephalic foetus faces certain death, such that no question of potential life arises. *See*, Supreme Court of Brazil, ADPF 54, p.60.

20 G. Kane, B. Galli & P. Skuster (Ipas), *When Abortion is a Crime – The Threat to Vulnerable Women in Latin America*, November 2014, p. 1.

21 *Ibid*., p. 1.

22 Publica, *Dor em Dobro*, 29 May 2014, http://apublica.org/2014/05/dor-em-dobro-2/.

23 Exame, *Hospitais barram aborto até em casos previstos por lei*, 21 June 2016, http://exame.abril.com.br/brasil/noticias/hospitais-barram-aborto-ate-em-casos-previstos-por-lei.

24 Publica, *Dor em Dobro*, 29 May 2014, http://apublica.org/2014/05/dor-em-dobro-2/.

25 O Globo, Ministério revoga portaria que incluiu aborto legal na tabela do SUS , 29 May 2014, http://g1.globo.com/bemestar/noticia/2014/05/ministerio-revoga-portaria-que-incluiu-aborto-legal-na-tabela-do-sus.html. *See also*, Portaria, Decree N. 437 (2014).

26 E. L. Santos Cabette, *TJ/MG permite aborto em caso de risco de morte para a mãe*, Jus Brasil, 2013, http://eduardocabette.jusbrasil.com.br/artigos/121937776/tj-mg-permite-aborto-em-caso-de-risco-de-morte-para-a-mae.

27 Ministério da Saúde, *Prevention and Treatment of Injuries Resulting from Sexual Violence* (*Prevenção e tratamento dos agravos resultantes da violência sexual contra mulheres e adolescentes: norma técnica*), 2011, p. 70.

28 D. Diniz & A. Pereira Madeiro, *Serviços de aborto legal no Brasil – um estudo nacional*, Ciência & Saúde Coletiva, vol. 21 no.2, 2016, p. 566.

29 B. Galli, *Caso Alyne Pimentel Relatorio sobre Mortalidade Materna no context[o] de implentacao da decisao do Comite CEDAW contra o estado brasileiro*, July 2013, p. 57, https://www.researchgate.net/publication/280624768_Caso_Alyne_Pimentel_Relatorio_sobre_Mortalidade_Materna_no_context_de_implentacao_da_decisao_do_Comite_CEDAW_contra_o_estado_brasileiro.

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30 B. Galli, *Negative Impacts of Abortion Criminalization in Brazil: Systematic Denial of Women's Reproductive Autonomy and Human Rights*, University of Miami Law Review (Vol. 65, 2011), 1 April 2011, p. 974.

31 G. Kane, B. Galli & P. Skuster (Ipas), *When Abortion is a Crime – The Threat to Vulnerable Women in Latin America*, November 2014, p. 8.

32 *For e.g.*, Ministério da Saúde, Biblioteca Virtual em Saúde, *Pacto Nacional pela Redução da Mortalidade Materna e Neonata* (2004) (National Pact for the Reduction of Maternal and Neonatal Death),http://bvsms.saude.gov.br/; Ministério da Saúde, Biblioteca Virtual em Saúde, *Política Nacional de Atenção Integral à Saúde da Mulher: princípios e diretrizes* (2004) (National Comprehensive Women's Health Care Policy) which sought to address (among others) maternal mortality and contraceptive care, http://bvsms.saude.gov.br/; Ministério da Saúde, Biblioteca Virtual em Saúde, *Direitos sexuais e direitos reprodutivos: uma prioridade do governo* (2005) (National Policy on Sexual Rights and Reproductive Rights), which set out guidelines for public health professionals in relation to sexual and reproductive health, http://bvsms.saude.gov.br/; Lei do Acompanhante, Law No. 11108, which ensures that pregnant women have the right to a companion during labor and birth), http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2005/Lei/L11108.htm; Decree 1459 (2011) (*i.e.*, the Rede Cegonha (Stork Network) programme), established as part of a wider plan to tackle maternity mortality rate, which seeks to provide women of reproductive age with comprehensive healthcare from pregnancy until the second year of life of the child, http://bvsms.saude.gov.br/bvs/saudelegis/gm/2011/prt1459_24_06_2011.html; Ministério da Saúde, *Portaria Nº 1.020, de 29 de Maio de 2013* (National Guidelines for High Risk Maternity, Newborn and Postpartum Healthcare), http://bvsms.saude.gov.br/bvs/saudelegis/gm/2013/prt1020_29_05_2013.html.

33 *See*, CEDAW Committee, Concluding Observations (CEDAW/C/BRA/CO/7), 23 February 2012, ¶¶ 28-29; Letter from the Rapporteur for Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women, 16 December 2014, pp. 4-5.

34 B. Galli, *Caso Alyne Pimentel Relatorio sobre Mortalidade Materna no context[o] de implentacao da decisao do Comite CEDAW contra o estado brasileiro*, July 2013, p. 57, https://www.researchgate.net/publication/280624768_Caso_Alyne_Pimentel_Relatorio_sobre_Mortalidade_Materna_no_context_de_implentacao_da_decisao_do_Comite_CEDAW_contra_o_estado_brasileiro.

35 Like in the case of A. The case of A., a 29-year old rape victim, illustrates some of the hurdles women have to overcome in order to exercise their right to a legal abortion. A. was walking home from work when she was assaulted by a knife-wielding man who dragged her under a bridge and raped her. She did not report the crime to the police nor told her family or friends about it. A month later, she noticed her period was late and sought assistance from the USP University Hospital. It was only when her pregnancy test result was positive that she told the hospital staff that she had been raped. While the hospital had a duty to provide care to victims of sexual violence, the hospital staff said that there was nothing they could do and sent her home. A. only found out about her ability to obtain a legal abortion through the internet. She then contacted the public authorities responsible for health services, who instructed her to seek medical services from another hospital. The doctor responsible for performing abortions was on leave, and so she was sent to yet another medical center. By this time, A. was 12 weeks' pregnant and was no longer eligible for the safest method of abortion. *See*, Agência Públic, http://apublica.org/2014/05/dor-em-dobro-2/.

36 B. Galli, *Caso Alyne Pimentel Relatorio sobre Mortalidade Materna no context[o] de implentacao da decisao do Comite CEDAW contra o estado brasileiro*, July 2013, pp. 45-46.

37 For example, 80% to 90% of women who gave birth at the Nossa Senhora da Gloria de Belfrod Roxo medical centre had either not received prenatal care or had incomplete and unreliable prenatal care

reports. *See*, B. Galli, *Caso Alyne Pimentel Relatorio sobre Mortalidade Materna no context[o] de implentacao da decisao do Comite CEDAW contra o estado brasileiro*, July 2013, pp. 42, 55.

38 For example, the medical staff at the Nova Iguacu General Hospital, which is meant to be the leading provider of legal abortion care services in Rio de Janeiro, stated that the hospital does not have a health professional willing to perform the procedure and that, in any case, and notwithstanding Ministry of Health guidelines, a judicial authorization is necessary before a legal abortion can be performed. *See*, B. Galli, *Caso Alyne Pimentel Relatorio sobre Mortalidade Materna no context[o] de implentacao da decisao do Comite CEDAW contra o estado brasileiro*, July 2013, p. 57.

39 Aquino *et al.*, *Qualidade da atenção ao aborto: o que dizem as mulheres?*, 2012, http://www.scielo.br/pdf/csc/v17n7/15.pdf.

40 Brazil's restrictive abortion laws discriminate against women by violating the various rights described below. As Dr Carmel Shalev, a former member of the CEDAW Committee, has said: "*Laws which criminalize health services that only women need – whether aimed at the persons who provide such services, or the women who receive them – are discriminatory, as such. The criminalization of abortion is particularly heinous, because it not only impairs women's right to reproductive choice – to make free and responsible decisions concerning matters that are key to control of their lives – but also exposes them to the serious health risks of unsafe abortion, violating their rights to bodily integrity and, in the most extreme cases, to life itself*". *See*, C. Shalev, *Right to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Women*, paper presented at the International Conference on Reproductive Health, Mumbai (India), 18 March 1998, p. 10.

41 D. Bowater, *Abortion in Brazil: a matter of life and death*, *The Guardian*, 1 February 2015, https://www.theguardian.com/world/2015/feb/01/abortion-in-brazil-a-matter-of-life-and-death.

42 S de Zordo, *The biomedicalisation of illegal abortion: the double life of misoprostol in Brazil*, História, Ciências, Saúde – Manguinhos, Rio de Janeiro, 23(1), Jan-Mar 2016, pp. 19-35.

43 *See*, Martins-Melo *et al*, *Temporal trends and spatial distribution of unsafe abortion in Brazil, 1996-2012*, June 2014, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4203075/#fn4; Monteiro, A Adesse and Drezett, *Atualizac¸ão das estimativas da magnitude do aborto induzido, taxas por mil mulheres e razões por 100 nascimentos vivos do aborto induzido por faixa etária e grandes regiões. Brasil, 1995 a 2013*, Reprodução & Climatério (2015).

44 Human Rights Watch, *World Report 2015: Brazil*, https://www.hrw.org/world-report/2015/country-chapters/brazil. *See also*, S de Zordo, *The biomedicalisation of illegal abortion: the double life of misoprostol in Brazil*, História, Ciências, Saúde – Manguinhos, Rio de Janeiro, 23(1), Jan-Mar 2016, pp. 19-35.

45 S de Zordo, *The biomedicalisation of illegal abortion: the double life of misoprostol in Brazil*, História, Ciências, Saúde – Manguinhos, Rio de Janeiro, 23(1), Jan-Mar 2016, p. 24.

46 Article 196 of the Brazilian Constitution states that "*[h]ealth is the right of all persons and the duty of the State and is guaranteed by means of social and economic policies aimed at reducing the risk of illness and other hazards and at universal and equal access to all actions and services for the promotion, protection and recovery of health*". This reflects international human rights instruments which Brazil has ratified recognizing and protecting the right to access healthcare. *See*, CEDAW (Article 12) and ICESCR (Articles 10(2) and 12).

47 CEDAW Committee, Concluding Observations (CEDAW/C/BRA/CO/7), 23 February 2012, ¶ 28.

48 Kelli K. Garcia, *Brazil's Compulsory Pregnancy Registration Violates Women's Privacy*, O'Neill Institute for National & Global Health Law (October 1, 2012), http://www.oneillinstituteblog.org/brazils-compulsory-pregnancy-registration-violates-womens-privacy/.

49 Camera dos Deputados, MPV 557 /201, expired in 15 June 2012, http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=533510.

50 G. Kane, *Brazil's Insidious New Pregnancy Registration Law Violates the Privacy of Women*, Slate, 6 January 2012, http://www.slate.com/blogs/xx_factor/2012/01/06/brazilian_pm_557_how_the_pregnancy_registration_law_violates_the_privacy_of_women.html.

51 B. Galli, *Caso Alyne Pimentel Relatorio sobre Mortalidade Materna no context[o] de implentacao da decisao do Comite CEDAW contra o estado brasileiro*, July 2013, pp.45-46.

52 For example, 80% to 90% of women who gave birth at the Nossa Senhora da Gloria de Belfrod Roxo medical centre had either not received prenatal care or had incomplete and unreliable prenatal care reports. *See*, B. Galli, *Caso Alyne Pimentel Relatorio sobre Mortalidade Materna no context[o] de implentacao da decisao do Comite CEDAW contra o estado brasileiro*, July 2013, pp.42, 55.

53 For example, the medical staff at the Nova Iguacu General Hospital, which is meant to be the leading provider of legal abortion care services in Rio de Janeiro, stated that the hospital does not have a health professional willing to perform the procedure and that, in any case, and notwithstanding Ministry of Health guidelines, a judicial authorization is necessary before a legal abortion can be performed. *See*, B. Galli, *Caso Alyne Pimentel Relatorio sobre Mortalidade Materna no context[o] de implentacao da decisao do Comite CEDAW contra o estado brasileiro*, July 2013, p.57.

54 Article 16(1)(e) of CEDAW requires Brazil to provide women with the "*same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights*". This requires States to facilitate the exercise of women's choice and independence in making family planning decisions, and increase awareness of, and access to, healthcare facilities, and by making family planning information available to women and girls (see also Article 10(h) of CEDAW). States must also provide effective access to information and services relating to modern contraception. This means *all women*, regardless of marital status. *See*, CEDAW, General Recommendation 21, ¶ 13; CEDAW, *Commentary* (2012), p. 417; CEDAW, Concluding Observations: Equatorial Guinea (A/59/38), 2004, ¶¶ 187-188. *See also*, CEDAW, General Recommendation *24*, ¶ 23; CEDAW, CEDAW/C/OP-8/PHL/1/7679/E/0, 2008. The right to reproductive information is a fundamental right. Without access to information about safe, effective, affordable and acceptable methods of family planning, including information about abortion services even where abortion is legally restricted, women are ignorant of and unable to assert their reproductive rights. Brazil must therefore create the necessary conditions for women to control their reproductive capacity, including by ensuring that information on abortion is widely available in a medium understandable by the populace. *See also*, Article 19 of the ICCPR, Article 19 of the UDHR and Article 13 of the ACHR. In the case of *K.L. v Peru*, the U.N. Human Rights Committee found that Peru's refusal to act in accordance with K.L.'s decision to terminate her pregnancy violated Article 17 of the ICCPR. The Human Rights Committee held that requiring K.L. to carry a pregnancy to term impermissibly interfered with a decision by K.L. affecting her own body and life, and prevented her from having the opportunity to exercise her right to make independent decisions on her reproductive life. Further, as explained by the CEDAW Committee in the case of *L.C. v Peru*, the State must provide effective access to reproductive health services in a way that protects and gives effect to women's reproductive rights. HRC, Communication No. 1153/2003, *K.L. v Peru*, CCPR/C/85/D/1153/2003, 24 October 2005), ¶¶ 3.6 and 6.6. *See also*, CEDAW, Communication No. 22/2009, *L.C. v Peru*, CEDAW/C/50/D/22/2009, 17 October 2011), ¶ 8.15.

55 S de Zordo, *The biomedicalisation of illegal abortion: the double life of misoprostol in Brazil*, História, Ciências, Saúde – Manguinhos, Rio de Janeiro, 23(1), Jan-Mar 2016, p. 26.

56 As at 2015, nearly fifteen per cent of Brazil's population lives in rural areas. Article 14 of CEDAW requires Brazil to eliminate discrimination against women in rural areas, including by providing access

to adequate health care facilities, information, counseling and services in family planning. Rural living increases women's socio-economic disadvantages by excluding them from services and opportunities, and constitutes a distinct source of discrimination against women. *See*, World Bank Report for Brazil, http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?end=2015&locations=BR&start=1987; CEDAW, *Commentary* (2012), pp. 358-359.

57 *See*, IPAS, *Advocacy for Access to Safe Legal Abortion: Similarities in the Impact of Abortion's Illegality on Women's Health and Health Care in Pernambuco, Bahia, Mato Grosso do sul, Paraiba, and Rio de Janeiro*, March 2011, pp. 5, 17

58 CEDAW, Committee Concluding Observations: Brazil (CEDAW/C/BRA/CO/7), 23 February 2012, ¶¶ 31, 37; Letter from the Rapporteur for Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women, 16 December 2014, pp. 5; CEDAW, Communication No 17/2008, 27 September 2011, ¶ 8.

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60 Guttmacher Institute, *Facts on Abortion in Latin America and the Caribbean*, November 2015, p. 2.

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77 *Ibid.*, General Recommendation 2(c)-(e).

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