

UN Human Rights Council
Ref: Universal Period Review – Brazil

Ipas is an international organization that works around the world to increase women's ability to exercise their sexual and reproductive rights, and to reduce abortion-related deaths and injuries. We believe that women everywhere must have the opportunity to determine their futures, care for their families and manage their fertility.¹

In light of the upcoming Universal Periodic Review (UPR) for Brazil of the Human Rights Council, we are submitting herewith a report with additional information regarding human rights related to the situation of unsafe abortion in Brazil. Our document provides information gathered with regard to the CEDAW Committee's 39th Session (July 2007) in which the Committee issued specific recommendations regarding unsafe abortion. Findings from our own research on the magnitude of abortions shows that the incidence of abortions declined during the period 1992-2005, but a large number of pregnancies are still being terminated. As many as 250,000 women are hospitalized every year in Brazil for complications of unsafe abortion, and this is just the tip of the iceberg; for every woman who is admitted to a hospital, there are five who are not. This study demonstrates that laws criminalizing abortion do not make abortion less rare; they just make abortion more dangerous.

1. Human rights and legal framework

Abortion represents a serious problem related to inequities of public health and social justice in Brazil. The practice of abortion has been criminalized through penal law except for only two circumstances: in cases of sexual violence (statutory rape) or when a woman's life is endangered by pregnancy (Article 128, I and II of the Penal Code). Nevertheless, many pregnancies are terminated through clandestine procedures using inadequate equipment and in unsafe conditions, causing injuries and maternal deaths.

The Brazilian government has ratified the main international treaties on human rights, within the United Nations' spectrum, which can be applied to the context of sexual and reproductive health, such as: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Covenant for the Elimination of all Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Moreover, the Brazilian government has ratified the main international treaties within the Inter-American System of Protection of Human Rights, such as, the American Convention on Human Rights, the Inter-American Covenant to Prevent and Punish Torture, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), the Inter-American Convention on Human Rights in the area of Economic, Social and Cultural Rights – Protocol of San Salvador, and also recognized the competence of the Inter-American Court of Human Rights.

The Brazilian government also adheres to international consensus documents which resulted from International Conferences, which include references to the government's obligations concerning sexual and reproductive health. The main ones are: the Programme of Action of the International Conference on Population and Development (1994), the World Development Summit (1995), the Platform for Action from the IV World Conference on Women (1995), the Special General Assembly of the United Nations on the International Conference on Population and Development (1994), the Resolution of the Declaration of the Millennium of the United Nations adopted by the General Assembly (2000).

¹ www.ipas.org

The Brazilian government has made a great many efforts to achieve the established goals to comply with international obligations on human rights as applied to maternal health. Among these, the most important one is the launching in March 2004 of the National Pact for the Reduction of Maternal and Neonatal Mortality. Despite the decrease in the maternal mortality rate, however, women are still dying due to preventable maternal mortality causes, such as unsafe abortion. This is especially true for women living in the North, Northeast and Middle West regions. With regard to these different regional realities in the country, in May 2003 the Committee on Economic, Social and Cultural Rights expressed its concern about the high ratio of maternal mortality due to illegal abortions, especially in the North region **where women have poor access to the public health system apparatus.** (Paragraph 27 – emphasis added). The Committee recommended that the State take legislative and other measures, including revision of its current legislation, in order to protect women from the effects of unsafe and illegal abortions and to guarantee that they do not need to resort to such procedures. The Committee asked the State to report on their statistics for maternal mortality and abortion in comparison to the national data in their next official report to be released in 2006 (Paragraph 51).

In 2003, the CEDAW Committee recommended that the government carry out **measures to guarantee women's effective access to services and information on health care, particularly regarding sexual and reproductive health, including young women, vulnerable groups and women living in rural areas.** Such measures are essential to reduce maternal mortality, to prevent women from resorting to unsafe abortion and to protect women from its negative health effects (Paragraph 52 – emphasis added).

Brazil has an advanced legal framework for the protection of the right to health, with rules and standards of the SUS, to guide its main reproductive health policies.² The Constitution regulates the right to health and protection of motherhood in the section on social rights.³ As mentioned before, Brazil has ratified human rights treaties and is legally obliged to take the necessary steps to guarantee women's equal right to have access to public health services. The development and implementation of health policies are the responsibility of local, district and the national government.

II. UN precedents on unsafe abortion and human rights

The problems arising from unsafe abortion in Brazil are among the top five women's causes of death related to pregnancy.⁴ The practice of abortion is criminalized in numerous situations as it is legally permitted only to save a woman's life or in the case of rape. However, despite the law against it, abortion is widely performed – over 1 million abortions take place every year according to 2005 estimates – often under unsafe conditions that injure and even kill women.

² Article 8 of the Federal Constitution states that: “Everyone is equal according to law, without any whatsoever distinction, and it is warranted to any Brazilian 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 neither torture nor inhuman or degrading treatment; (...); XLI – the law will punish any discrimination against the fundamental rights and liberties.* ““.

³ Article 6. “*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.*” 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.*”

⁴ Study Research on Women's Mortality, aged between 10 and 49, with an emphasis on Maternal Mortality, Final Report Draft, Ministry of Health, Brasília, DF, 2006.

The Executive branch of government has made significant efforts to reduce maternal mortality due to unsafe abortion through a reform process targeting the pertinent current law. The decriminalization/legalization of abortion turned into a public debate in 2004 by the decision of the federal government, through the Special Secretary for Women's Public Policies⁵, to set up a tripartite commission (representatives of the Executive, Legislative and Judiciary Powers and of Civil Society) in order to review the restrictive and punitive legislation. This is evidence of the efforts made by the government to comply with the international agreements signed at the Cairo (1994) and Beijing (1995) Conferences to guarantee humane care to deal with unsafe abortion and to review laws that punish abortion and make it difficult for women to access high-quality health care services.

The supervisory and monitoring UN bodies have expressed their concern about unsafe abortion. For example, General Comment²⁸ of the Human Rights Committee states that women's right to life implies States' duty to take measures to keep them from having to resort to clandestine and unsafe abortions which put their health and lives at risk, especially poor and ethnic minority women.

Article 12(1) of the CEDAW Convention establishes the State's responsibility to "take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning." The fact that adolescents and black and mestizo women who live far from metropolitan areas and who have little schooling are the ones whose lives and health are at a greater than average risk as a consequence of unsafe abortion shows how unfair their limited access to health care services is.

Access to abortion in safe conditions is denied to Brazilian women due to its criminalization by the Penal Code which has been in force since 1940. Article 2 of CEDAW Convention establishes that countries must abolish penal provisions which entail discriminatory criminalization of women, such as those which criminalize abortion and consequently violate women's right to health without discrimination. In this respect, in 2003 the Committee on Economic, Social and Cultural Rights demanded that the Brazilian government take legal steps to revise its legislation so as to protect women against the effects of unsafe and clandestine abortions. The CEDAW Committee's General Recommendation 24, paragraph 31(c), establishes that: "When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion."

III. Limited access to safe and legal abortion in Brazil: violations of the right to life, the right to liberty and security of the person, the right to equality and non-discrimination and the right to health

The consequences of unsafe abortions have made this entirely preventable health problem one of the top five causes of women's pregnancy-related deaths in Brazil.⁶ The percentage distribution of mortality due to abortion complications further shows evidence of having a greater negative impact on women of certain races: white women: 7.62%; black women: 14.19%; and women of mixed race: 11.04%.⁷

Estimates for 2005 produced a total of 1,054,243 million abortions performed in the country; about 85% of these cases end up for treatment in the public health system because of complications. The illegality of most of these procedures means that women feel constrained and fearful of presenting with complications to health services; this in turn means that the phenomenon is under-reported. Indeed, there have been cases

⁵ Results of the recommendations of the I National Conference on Policies for Women, held in Brasília in 2003.

⁶ Research on mortality among women aged 10–49 years, with an emphasis on maternal mortality. Draft Final Report Draft. Ministry of Health, Brasília, DF, 2006.

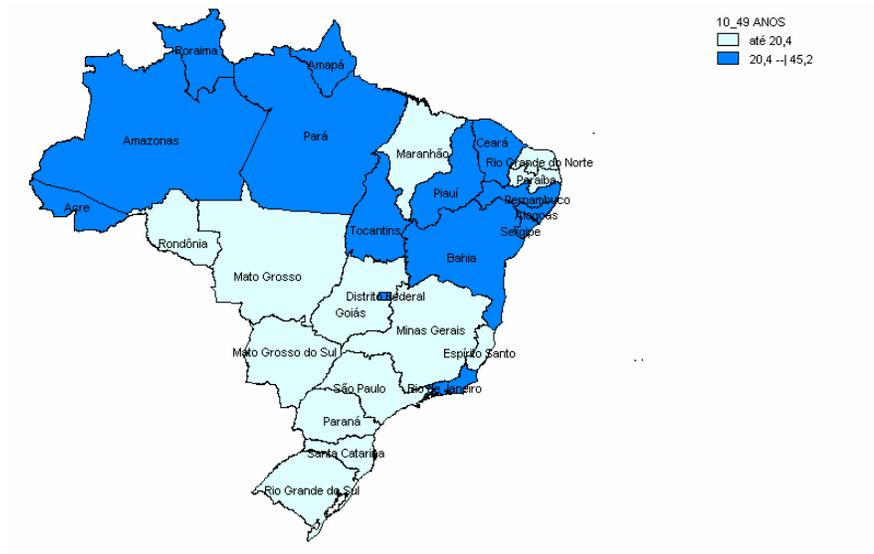
⁷ Ministry of Health/Secretary of Health Watch/Brazilian Health 2005; <http://tabnet.datasus.gov.br>

in which health-care providers have reported women suspected of having an induced abortion to law enforcement authorities. In some instances, women have subsequently been imprisoned.⁸

Research in hospitals and maternity clinics in 2005 indicated that only 37 cases of abortion for women and girls who suffered incest and rape had been recorded. Research by Ipas Brazil 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 40 physicians working at sexual violence assistance services, only two female doctors were willing to perform legal abortions. Sometimes patients had to wait at the hospital until a shift change as none of the doctors on duty would carry out the procedure. This situation led to some women leaving the service without obtaining a legal abortion. Clearly, the use of conscientious objection is leading to a violation of women's rights to be treated without discrimination, to self-determination, to freedom and personal safety.

IV. Ipas Brazil Abortion Magnitude Study Findings

The geographic distribution of health risks related to abortions is unequal throughout Brazil. The economically better-off states of the Southeastern (except for Rio de Janeiro), Southern and Midwestern (except for the Federal District) regions presented rates lower than 20.4 abortions/1000 women aged 10-49 years. In the more economically deprived states of the North (except for Rondônia) and Northeast (except for Rio Grande do Norte and Paraíba), the rates are greater than 21.1/1000 (State of Rio de Janeiro), culminating in a rate of more than 40 abortions/1000 women aged 10-49 years in the States of Acre and Amapá (see the figure below).



Source: Ministry of Health–System of Hospital Information of the UHS (SIH/UHS)

The data further show that adolescents aged 15-19 years in the Northern and Northeastern regions, the Federal District, and the states of Mato Grosso South and Rio de Janeiro suffer greater risks from induced abortions (see figure below).

⁸Report on Maternal Mortality and Human Rights, ADVOCACI, 2005.



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. In comparison with white women, black women's mortality risks from these causes are approximately three times greater.

In Article 12.2, CEDAW 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 equal rights between men and women. In Brazil, the human right to equality and non-discrimination in accessing health-care services has not yet been reasonably guaranteed as shown by data on maternal morbidity and mortality; this is particularly true for women belonging to certain social groups such as those of African heritage, adolescents and women living in the poorer regions of the country.

Considering data provided by non-governmental organizations, including Ipas, the CEDAW Committee issued the following recommendation to the Brazilian government in 2007: "expedite the review of its legislation criminalizing abortion with a view to removing punitive provisions imposed on women who undergo abortion, in line with general recommendation 24 and the Beijing Declaration and Platform for Action.1 The Committee also urges the State party to provide women with access to quality services for the management of complications arising from unsafe abortions."

Considering the challenges presented in most Latin-American countries regarding the high prevalence of unsafe abortion and related morbidity and mortality, and the conservative challenges in the Brazilian Congress to impede any efforts to expand legal indications for abortion or reform the current criminal legislation, we hope that the Human Rights Council will adopt and strengthen the CEDAW and CSECR Committees' previous recommendations asking the Brazilian government to initiate necessary reforms of the current abortion law so as to protect women's rights to equality and non-discrimination, the right to liberty and security of the person, the right to life and the right to health.

We appreciate the opportunity to present information to the Human Rights Council in the context of the Universal Periodic Review. We remain at your disposal for further information as needed.

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