HONORABLE MINISTER DR. CARMEM LÚCIA ROCHA, PRESIDENT OF THE SUPREME FEDERAL COURT, RAPPORTEUR OF DIRECT ACTION OF UNCONSTITUTIONALITY — ADI Nº 5581

Direct Action of Unconstitutionality nº 5581

HUMAN RIGHTS WATCH, hereinafter referred to as "HRW Brazil," a private entity constituted in the form of a non-profit civil association, registered with CNPJ/MJ Nº 17.836.413/0001-03, with an office at Alameda Jaú, nº 56, Cerqueira César, CEP 01420-000, in the city of São Paulo, state of São Paulo, through its attorney, undersigned, comes respectfully to Your Excellency to apply for admission as *AMICUS CURIAE* in the records of the Direct Action of Unconstitutionality cumulated with Argumentation of Noncompliance of Fundamental Precept – ADI Nº 5.581, pursuant to Article 7 of 1999 Law nº 9.868 and based on the facts and grounds set forth below.

1. ADMISSIBILITY

Human Rights Watch has the honor to submit to the Federal Supreme Court, as *amicus curiae* in the Direct Action of Unconstitutionality cumulated with Argumentation of Noncompliance of Fundamental Precept presented by the National Association of Public Defenders (ANADEP), the following statement on the incompatibility of articles 124 and 126 of the Penal Code, Decree-Law nº 2848, with Brazil's obligations in respect of human rights in the context of the Zika virus epidemic.

The admissibility of this statement is supported by §2° of art. 7° of 1999 Law n° 9.868, which provides for the direct action of unconstitutionality and for the declaratory action of constitutionality, allowing unequivocally the possibility for civil society entities to participate in the actions of concentrated control of constitutionality, in the following terms:

> Art. 7° (...)
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> §2° — The rapporteur, considering the relevance of the matter and the representativeness of the candidates, may, by an unappealable decision, admit,

observing the period established in the previous paragraph, the participation of other organs and entities

According to a consolidated understanding in the Federal Supreme Court, the *amicus curiae* constitutes a pluralizing and legitimizing factor in the constitutional debate.[1] The qualified participation of civil society entities with diverse experiences, including in the international context, and their wide scope of practice in the most diverse aspects of Brazilian society, before the Supreme Court, serves precisely this purpose of pluralizing and legitimizing the debate, democratizing the concentrated control of constitutionality.[2]

The present application fulfills all the requirements of the law and jurisprudence for the participation of civil society as *amicus curiae* and should therefore be admitted.

The relevance of the matter discussed in the Direct Action of Unconstitutionality cumulated with Argumentation of Noncompliance of Fundamental Precept, presented by the National Association of Public Defenders (ANADEP), and its impact on society are evident, especially with regard to women's rights. This demand, as will be shown, is directly related to the realization of human rights guaranteed by international law and by the Brazilian Constitution.

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[1] See ADI 5.022-MC judgment digest: AMICUS CURIAE. ABSTRACT NORMATIVE CONTROL. INTERVENTION OF THIS "CONTRIBUTOR OF THE COURT" JUSTIFIED BY THE NEED TO PLURALIZE THE CONSTITUTIONAL DEBATE AND TO REMOVE, WITH SUCH PROCEDURAL OPENING, AND ALWAYS IN RESPECT OF THE DEMOCRATIC POSTULATE, AN UNDESIRED "DEFICIT" OF LEGITIMACY OF THE SUPREME FEDERAL COURT'S DECISIONS IN THE EXERCISE OF THE CONSTITUTIONAL JURISDICTION. Rapporteur Minister Celso de Mello, monocratic decision, judgment on 10/16/13, DJE of 10/23/2013.

[2] See ADI 2130-3/SC judgment digest: DIRECT ACTION OF UNCONSTITUTIONALITY. PROCEDURAL INTERVENTION OF AMICUS CURIAE. POSSIBILITY. LAW No. 9.868/99 (Article 7, §2). POLITICAL-LEGAL MEANING OF AMICUS CURIAE ADMISSION IN THE ABSTRACT NORMATIVE CONTROL SYSTEM OF CONSTITUTIONALITY. APPLICATION FOR GRANTED ADMISSION. In the statute that governs the abstract normative control system of constitutionality, the Brazilian positive legal order has processed the figure of the amicus curiae (Law 9.868/99, article 7, §2), allowing third parties — provided they have adequate representation — to be admitted in the procedural relationship, for the purpose of participation on the question of law underlying the constitutional controversy itself. The admission of a third party, as an amicus curiae, in the objective process of abstract normative control, qualifies as a factor of social legitimacy of the Supreme Court decisions, as a Constitutional Court, because it allows, in support of the democratic postulate, the opening of the concentrated control of constitutionality process, in order to allow the possibility of formal participation of entities and institutions that effectively represent the general interests of the collectivity or that express the essential and relevant values of groups, classes or social strata. In short: the rule inscribed in art. 7, §2, of Law 9.868/99 — which contains the normative basis legitimating the procedural intervention of the amicus curiae — has as its primary purpose to pluralize the constitutional debate. Rapporteur Minister Celso de Mello, monocratic decision, judgment on 12/20/2000, DJ of 02/02/2001 P – 00145.

With regard to the representativeness and material legitimacy of the applicant, is important to remark that Human Rights Watch is a nongovernmental organization that is dedicated, since 1978, to defending and protecting human rights around the world. The organization is independent and impartial with respect to any political, religious, or economic organizations or movements. By mandate, the organization can receive no money, either directly or indirectly, from any government. It is headquartered in New York and it also has offices in several cities around the world, including São Paulo. Human Rights Watch enjoys consultative status with the United Nations Economic and Social Council, the Council of Europe, and the Organization of American States, and maintains a working relationship with the Organization of African Unity.

As part of its mandate, Human Rights Watch is committed to using judicial and quasi-judicial tools of domestic and international law to contribute to protecting and promoting human rights. That commitment has motivated this specific Human Rights Watch petition. With the *amicus curiae* brief, Human Rights Watch wishes to demonstrate the incompatibility of Penal Code, Decree-Law Number 2.848, arts. 124 and 126 with Brazil's international obligations in protecting the rights of women and girls in Brazil in the context of the Zika virus epidemic.

More precisely, Human Rights Watch has conducted research and legal analysis on abortion for over a decade, and has found that policies that impose overly restrictive or no access cause great harm to women and girls. In the judicial scope, the organization has submitted amicus curiae related to abortion in countries such as Nicaragua and Colombia. In this instance, the criminalization of abortion in Brazil impacts women's rights to life, health, nondiscrimination and equality, freedom and privacy, information, and the right to be free from torture and from cruel, inhuman or degrading punishment or treatment. The amicus brief submitted before the court provides an expert analysis of Brazil's international human rights obligations and the need to reform restrictive abortion laws.

In this sense, there is no doubt that the legitimacy and interest of the petitioner is evidenced, both through its institutional and statutory mission and the outstanding work in relation to the protection and defense of women's fundamental rights in different regions of the world. In view of the above, the admissibility as *amicus curiae* is demonstrated, according to the criteria of material relevance and representativeness.

2. THE MERIT

2.1. INTERNATIONAL OBLIGATIONS ON HUMAN RIGHTS

This section provides an overview of key international human rights that are at risk when abortion is criminalized, including the rights to life, health, nondiscrimination and equality, privacy, information, not to be subjected to cruel, inhuman and degrading treatment, and to decide the number and spacing of children. While most international treaties do not explicitly address abortion, authoritative interpretations of treaties ratified by Brazil have long established that highly restrictive or criminal abortion laws—such as those existing in Brazil—violate the human rights of women and girls.[3]

For over a decade, international human rights bodies and experts have criticized Brazil for these punitive restrictions on women's rights, and have called on the government to modify these laws. As described below, these bodies include the UN Committee on Economic, Social and Cultural Rights; the UN Committee on the Elimination of Discrimination Against Women; and the UN Committee on the Rights of the Child. Bodies in the Inter-American human rights system have also issued authoritative interpretations that, while not specifically referring to Brazil, interpret treaties ratified by Brazil and conclude that access to legal abortion is consistent with regional human rights law.

<u>2.1.1 - RIGHT TO LIFE</u>

Recent evidence indicates that between 8 percent to 18 percent of maternal deaths around the world are due to unsafe abortion, and estimates of the number of abortion-related deaths in 2014 ranged from 22,500 to 44,000.[4] The national abortion survey shows that, by the age of 40, approximately one in five Brazilian women has terminated a pregnancy and in 2015 there were an estimated 500,000 abortions.[5] According to official information, abortion was the direct cause of 55 and 69 maternal deaths in Brazil in 2014

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[3] This briefing paper includes interpretations of international law made by treaty bodies as of May 2016.
[4] Guttmacher Institute, "Facts on Induced Abortion Worldwide," https://www.guttmacher.org/fact-sheet/facts-induced-abortion-worldwide (accessed April 28, 2016), citing several sources, including: Kassebaum NJ et al., Global, regional, and national levels and causes of maternal mortality during 1990–2013: a systematic analysis for the Global Burden of Disease Study 2013, The Lancet, 2014, 384(9947):980–1004; and Say L et al., Global causes of maternal death: a WHO systematic analysis, Lancet Global Health, 2014, doi:10.1016/S2214-109X(14)70227-X.
[5] DINIZ, Débora; MADEIRO, Alberto Pereira; MEDEIROS, Marcelo. National Abortion Survey 2016. *Ciência & Saúde Coletiva*, 22(2):653-660, 2017.

and 2015, respectively, because they did not have access to a legal abortion.[6] These figures likely vastly underestimate the consequences of the criminalization of abortion to women's health and lives. Data obtained from the Ministry of Health by *Estadão* include deaths resulting from abortion complications. According to them, in 2015 there were 192,824 admissions for post-abortion care and 1,664 died due to the complications.[7]

The World Health Organization has noted that maternal mortality increases when countries criminalize abortion.[8] Similarly, in a 2012 report on maternal mortality, the UN Human Rights Council noted that "[i]f abortion laws are overly restrictive, responses by providers, police and other actors can discourage care-seeking behavior," leading some women to delay seeking life-saving care.[9]

The right to life is guaranteed by international and regional human rights treaties, in addition to being recognized as a part of customary international law. For example, article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) provides that: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."[10] Similarly, article 6 of the Convention on the Rights of the Child states that "every child has the inherent right to life."[11]

Restrictive abortion laws have a devastating impact on women's and girls' right to life, putting them at risk of preventable maternal deaths. In a 2013 press statement, the Inter-American Commission on Human Rights underscored the "importance of

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[6] Ministério da Saúde, Sistema de Vigilância em Saúde, http://svs.aids.gov.br/dashboard/mortalidade/materna.show.mtw (accessed February 8, 2017).

[7] Lígia Formenti, "Diariamente, 4 mulheres morrem nos hospitais por complicações do aborto," December 17, 2016, http://saude.estadao.com.br/noticias/geral,diariamente-4-mulheres-morrem-nos-hospitais-por-complicacoes-do-aborto,10000095281 (accessed February 7, 2017).

[8] World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems, second edition* (Geneva: WHO, 2012).

[9] Human Rights Council, "Technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality. Report of the Office of the United Nations High Commissioner for Human Rights," U.N. Doc. A/HRC/21/22, July 2, 2012, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-22_en.pdf (accessed October 24, 2015), para. 56.

[10] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force February 10, 1972, ratified by Brazil on January 24, 1992, art. 6(1).

[11] Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Brazil on September 24, 1990, art. 6.

recognizing therapeutic abortion as a specialized health service required by women, the purpose of which is to save the mother's life when it is at risk owing to a pregnancy."[12]

In this context, international human rights bodies and experts have repeatedly stated that restrictive laws on abortion—especially prohibitions with no exceptions—contribute to maternal death and violate the right to life.

For instance, the Human Rights Committee, which monitors compliance with the ICCPR, has explained that the right to life should not be understood in a restrictive manner.[13] It has instructed states that when they report on the right to life, they should provide information on measures to ensure that women do not have to undergo life-threatening, clandestine abortions.[14] In country-specific concluding observations related to a state's compliance with its obligations under the treaty, the Human Rights Committee has noted the relationship between restrictive abortion laws and threats to women's lives in many countries, has expressed concern with the criminalization of abortion, and has called for expanded exceptions to prohibitions on abortion.[15]

For its part, the CEDAW Committee, which monitors compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),[16] has also repeatedly expressed concern about the links between maternal mortality and unsafe abortion, and has called for the removal of punitive provisions

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[12] Inter-American Commission on Human Rights, "Annex to the Press Release Issued at the Close of the 147th Session," April 5, 2013, http://www.oas.org/en/iachr/media_center/PReleases/2013/023A.asp (accessed October 24, 2015).

[13] UN Human Rights Committee, "General Comment No. 6, The right to life," U.N. Doc HRI/GEN/1/Rev.9 (2008), para. 5.

[14] Human Rights Committee, "General Comment No. 28, Equality of rights between men and women," U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), para. 10.

[15] See, for example, concluding observations of the Human Rights Committee on Chile, U.N. Doc. CCPR/C/CHL/CO/6 (2014), para. 15, and U.N. Doc. CCPR/C/79/Add.104 (1999), para. 15; Costa Rica, U.N. Doc. CCPR/C/CRI/CO/6 (2016), para. 17 (referring to cases of rape, incest, and fatal fetal impairment); Malawi, U.N. Doc. CCPR/C/MWI/CO/1/Add.1 (2014), para. 9; Sierra Leone, U.N. Doc. CCPR/C/SLE/CO/1 (2014), para. 14; Malta, U.N. Doc. CCPR/C/MLT/CO/2 (2014), para. 13; Sri Lanka, U.N. Doc. CCPR/C/LKA/CO/5 (2014), para. 10; Paraguay, U.N. Doc. CCPR/C/PRY/CO/3 (2013), para. 13; Peru, U.N. Doc. CCPR/C/PER/CO/5 (2013), para. 14; Guatemala, U.N. Doc. CCPR/C/GTM/CO/3 (2012), para. 20; Mexico, U.N. Doc. CCPR/C/MEX/CO/5 (2010), para. 10; El Salvador, U.N. Doc. CCPR/C/SLV/CO/6 (2010), para. 10; Poland, U.N. Doc. CCPR/C/POL/CO/6 (2010), para. 12; Jamaica, U.N. Doc. CCPR/C/JAM/CO/3 (2011), para. 14; Dominican Republic, U.N. Doc. CCPR/C/DOM/CO/5 (2012), para. 15; Nicaragua, U.N. Doc. CCPR/C/NIC/CO/3 (2008), para. 13; and Djibouti, U.N. CCPR/C/DJI/CO/1 (2013), para. 9.

[16] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by Brazil on February 1, 1984.

imposed on women who undergo abortions.[17] In a 2014 statement, the CEDAW Committee said:

> Unsafe abortion is a leading cause of maternal mortality and morbidity. As such, States parties should legalize abortion at least in cases of rape, incest, threats to the life and/or health of the mother, or severe foetal impairment, as well as provide women with access to quality post-abortion care, especially in cases of complications resulting from unsafe abortions. States parties should also remove punitive measures for women who undergo abortion.[18]

In the case of Brazil, the CEDAW Committee stated in 2012 that:

> [I]t regrets that women who undergo illegal abortions continue to face criminal sanctions in the State party and that women's enjoyment of sexual and reproductive health and rights is being jeopardized by a number of bills under consideration in the National Congress, such as Bill N° 478/2008 (Estatuto do Nascituro).[19]

Five years after CEDAW raised this concern, several bills currently under consideration in the National Congress propose to restrict women's sexual and reproductive health and rights even more. One such bill—*Estatuto do Nascituro* (PL 478/2007)—would prohibit abortion in the case of anencephaly, contradicting a 2012 Supreme Court ruling, which authorized pregnancy termination in such instances.[20] A

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[17] See, e.g., CEDAW Committee concluding observations on Haiti, U.N. Doc. CEDAW/C/HTI/CO/8-9 (2016), para. 34; Tanzania, U.N. Doc. CEDAW/C/TZA/CO/7-8 (2016), para. 25; Bolivia, U.N. Doc. CEDAW/C/BOL/CO/5-6 (2015), para. 29; India, U.N. Doc. CEDAW/C/IND/CO/4-5 (2014), paras. 30 and 31; Venezuela, U.N. Doc. CEDAW/C/VEN/CO/7-8 (2014), paras. 30(d) and 31; Burkina Faso, U.N. Doc. CEDAW/C/BFA/CO/6 (2010), para. 39; Paraguay, U.N. Doc. CEDAW/C/PRY/CO/6 (2011), para. 30; Jamaica, U.N. Doc. CEDAW/C/JAM/CO/6-7 (2012), para. 30(d); Brazil, U.N. Doc. CEDAW/C/BRA/CO/7 (2012), para. 29(b); Zimbabwe, U.N. Doc. CEDAW/C/ZWE/CO/2-5 (2012), para. 34(e); New Zealand, U.N. Doc. CEDAW/C/NZL/CO/7 (2012), para. 3; Democratic Republic of the Congo, U.N. Doc. CEDAW/C/COD/CO/6-7 (2013), para. 32(e); Dominican Republic, U.N. Doc. CEDAW/C/DOM/CO/6-7 (2013), para. 37(c); Angola, U.N. Doc. CEDAW/C/AGO/CO/6 (2013), para. 32(g); Peru, U.N. Doc. CEDAW/C/PER/7-8 (2014), paras. 35(b) and 36(c); Saint Vincent and the Grenadines, U.N. Doc. CEDAW/C/VCT/CO/4-8 (2015), para. 39; and Namibia, U.N. Doc. CEDAW/C/NAM/CO/4-5 (2015), para. 34.

[18] CEDAW Committee, "Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review," 57th Session (Feb. 10-28, 2014), http://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/SRHR26Feb2014.pdf (accessed on October 24, 2015).

[19] CEDAW Committee, "Concluding observations of the Committee on the Elimination of Discrimination Against Women: Brazil," U.N. Doc CEDAW/C/BRA/CO/7, March 23, 2012, para. 28.

[20] Projeto de Lei 478/2007 (Estatuto do Nascituro), arts. 9 and 10.

similar bill, Projeto de Lei 5.069/2013, prohibits providing information relating to methods, substances, or objects to induce abortion and prohibits counseling or guidance on the issue, with the exception of the cases of legal abortion (victims of rape and risk to the mother's life). The punishment would be more severe if the crime is committed by public health providers, including doctors, nurses, or pharmacists. If passed, this law would make it a crime for doctors to counsel women on access to abortion in cases of anencephaly, despite the Supreme Court ruling decriminalizing abortion in that instance. Moreover, the bill extends the right to conscientious objection to entire institutions and to orientation and counseling.[21] In other words, under the language of the bill, health providers and institutions are not obliged to provide orientation, counseling, and abortion services, even in the cases permitted by the law. Together these measures, if passed, would restrict access to safe abortion and to freedom of expression and access to information, putting in jeopardy women's health and lives.[22]

The CEDAW Committee had already manifested its concerns in 2007 regarding the high rates of maternal mortality and unsafe abortions in Brazil, "[t]he punitive provisions imposed on women who undergo abortions and the difficulties in accessing care for the management of complications arising as a result."[23] It had also observed that *de facto* discrimination against women, especially women from the most vulnerable sectors, interferes in access to health services, as in the case of Alyne da Silva Pimentel Teixeira v. Brazil.[24]

Similarly, the Committee on the Rights of the Child, which monitors the implementation of the Convention on the Rights of the Child, has issued a draft General Comment (No. 20) concerning the rights of adolescents, which urges states to "decriminalize abortion, ensure that girls have access to safe abortion, review legislation with a view to guaranteeing the best interests of pregnant adolescents, and ensure that their views are always heard and respected in abortion decisions."[25] In concluding observations, it has asked governments to review legislation prohibiting abortions,

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[21] Projeto de Lei 5.069/2013 e substitutivos, arts. 2, 3, and 4.
[22] The European Court of Human Rights has ruled that similar restrictions on information about abortion violate the right to freedom of expression. See Open Door and Dublin Well Woman v. Ireland, (Application No. 14234/88, 1992 ECHR 68, judgement of 29 October 1992).
[23] CEDAW Committee, "Concluding comments of the Committee on the Elimination of Discrimination Against Women: Brazil," U.N. Doc CEDAW/C/BRA/CO/6, August 10, 2007, para. 29.
[24] CEDAW Committee, Alyne da Silva Pimentel v. Brazil (2011), Comm. No. 17/2008. U.N. Doc. CEDAW/C/49/D/17/2008, para. 7.7.
[25] CRC, "Draft General Comment on the implementation of the rights of the child during adolescence," Advance Unedited Version, U.N. Doc. CRC/C/GC/20 (2016), para. 65.

especially where unsafe abortion contributes to high rates of maternal mortality.[26] It has explicitly called for decriminalization of abortion "in all circumstances" in recent concluding observations.[27] In some instances, it has requested that governments undertake studies to understand the negative impact of illegal abortion,[28] while in others it has expressed concern about high maternal mortality rates among teenage girls that are the consequence of unsafe abortions.[29] Specifically in the case of Brazil, the Committee is concerned about "the increasing rates of pregnancy, particularly among girls aged 10 to 14 years who are in socioeconomically vulnerable situations" and that:

> [T]he criminalization of abortion, except in cases of rape, threat to the life of the mother, or anencephalic foetus, results in many girls resorting to clandestine and unsafe abortions that put their lives and health at risk.[30]

Indeed, according to official data, approximately 17 percent of the abortion-related deaths between 2011 and 2015 were of girls and adolescents between 10 and 19 years old.[31]

Moreover, the Committee on Economic, Social and Cultural Rights, which monitors compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR),[32] has called on states to amend restrictive abortion laws or to increase

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[26] See, e.g., concluding observations of the Committee on the Rights of the Child on Honduras, U.N. Doc. CRC/C/HND/CO/3 (2007), para. 61(a); Nicaragua, U.N. Doc. CRC/C/NIC/CO/4 (2010), para. 59(b); Argentina, U.N. Doc. CRC/C/ARG/CO/3-4 (2010), para. 58; Venezuela, U.N. Doc. CRC/C/VEN/CO/3-5 (2014), para. 57; Jordan, U.N. Doc. CRC/C/JOR/CO/4-5 (2014), para. 45; Liberia, U.N. Doc. CRC/C/LBR/CO/2-4 (2012), paras. 66 and 67(b); Namibia, U.N. Doc. CRC/C/NAM/CO/2-3 (2012), para. 57(a); and Iraq, U.N. Doc. CRC/C/IRQ/CO/2-4 (2015), para. 67(a).

[27] See, e.g., concluding observations of the Committee on the Rights of the Child on Haiti, U.N. Doc. CRC/C/HTI/CO/2-3 (2016), para. 51; Peru, U.N. Doc. CRC/C/PER/CO/4-5 (2016), para. 56; Kenya, U.N. Doc. CRC/C/KEN/CO/3-5 (2016), para. 50; Ireland, U.N. Doc. CRC/C/IRL/CO/3-4 (2016), para. 58; Gambia, U.N. Doc. CRC/C/GAM/CO/2-3 (2015), para. 63(b); Dominican Republic, U.N. Doc. CRC/C/DOM/CO/3-5 (2015), para. 52(d); Monaco, U.N. Doc. E/C.12/MCO/CO/2-3 (2014), para. 21; and Morocco, U.N. Doc. CRC/C/MAR/CO/3-4 (2014), para. 57(b).

[28] See, e.g., concluding observations of the Committee on the Rights of the Child on Armenia, U.N. Doc. CRC/C/15 (2000), para. 39; and Kenya, U.N. Doc. CRC/C/KEN/CO/2 (2007), para. 49.

[29] See, for example, concluding observations of the Committee on the Rights of the Child on Colombia, CRC/C/COL/CO/4-5 (2015), para. 44; Holy See, U.N. Doc. CRC/C/VAT/CO/2 (2014), para. 55; Mozambique, U.N. Doc. CRC/C/15 (2002), para. 46; and Tanzania, U.N. Doc. CRC/C/TZA/CO/3-5 (2015), para. 58.

[30] Committee on the Rights of the Child, "Concluding observations on the combined second to fourth periodic reports of Brazil," U.N. Doc. CRC/C/BRA/CO/2-4, October 30, 2015, para. 59.

[31] Ministry of Health of Brazil, "Painel de Monitoramento da Mortalidade Materna," http://svs.aids.gov.br/dashboard/mortalidade/materna.show.mtw (accessed on December 12, 2016).

[32] International Covenant on Economic, Social and Cultural Rights, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, acceded to by Brazil on January 24, 1992.

access to legal abortion in order to decrease avoidable maternal deaths.[33] In its General Comment No. 22 (2016) on the right to sexual and reproductive health, the Committee noted that denial of abortion often leads to maternal mortality or morbidity, which in turn constitutes a violation of the right to life or security.[34] The Committee has urged states to remove penalties for abortion in certain circumstances (including for therapeutic abortion, for pregnancies resulting from rape or incest, and in cases of fetal abnormality).[35] It has expressed its deep concern regarding the general prohibition of abortion with no exceptions.[36] Regarding Brazil, the Committee expressed concern "[t]hat clandestine abortions remain a major cause of death among women" and reiterated its recommendations to undertake measures, including review of the legislation, "to protect women from the effects of clandestine and unsafe abortions and to ensure that women do not resort to such harmful procedures."[37]

Furthermore, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has noted that an "absolute prohibition [of abortion] under criminal law deprives women of access to what, in some cases, is a life-saving procedure"[38] and has recommended that states decriminalize abortion.[39]

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[33] See, e.g., CESCR concluding observations on the Philippines, U.N. Doc. E/C.12/PHL/CO/4 (2008), para. 31; Argentina, U.N. Doc. E/C.12/ARG/CO/3 (2011), para. 22; Rwanda, U.N. Doc. E/C.12/RWA/CO/2-4 (2013), para. 26.

[34] CESCR, General Comment No. 22 (2016) on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), para. 10.

[35] See, e.g., See, e.g., CESCR concluding observations on the United Kingdom of Great Britain and Northern Ireland, U.N. Doc. E/C.12/GBR/CO/5 (2009), para. 25 (recommending that the 1967 Abortion Act apply in Northern Ireland so as to prevent "clandestine and unsafe abortions in cases of rape, incest or fetal abnormality"); Dominican Republic, U.N. Doc. E/C.12/DOM/CO/3 (2010), para. 29 (recommending lifting the prohibition on abortion "in cases of a serious threat to the health or life of the pregnant woman and pregnancies resulting from rape or incest"); Guatemala, U.N. Doc. E/C.12/GTM/CO/3 (2014), para. 23; Sri Lanka, U.N. Doc. E/C.12/LKA/CO/2-4 (2010), para. 34; Ecuador, U.N. Doc. E/C.12/ECU/CO/3 (2012), para. 29; Peru, U.N. Doc. E/C.12/PER/CO/2-4 (2012), para. 21; Rwanda, U.N. Doc. E/C.12/RWA/CO/2-4 (2013), para. 26; and Kenya, U.N. Doc. E/C.12/KEN/CO/2-5 (2016), para. 54.

[36] See e.g., CESCR concluding observations on El Salvador, U.N. Doc. E/C.12/SLV/CO/3-5 (2014), para. 22; Nicaragua, U.N. Doc. E/C.12/NIC/CO/4 (2008), para. 26; and the Philippines, U.N. Doc. E/C.12/PHL/CO/4 (2008), para. 31.

[37] CESCR concluding observations on Brazil, U.N. Doc. E/C.12/BRA/CO/2 (2009), para. 29.

[38] Report of the UN Special Rapporteur on the Right to Health, U.N. Doc. A/66/254, August 3, 2011, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement (accessed October 25, 2015), para. 31.

[39] Ibid., para. 65(h).

The UN Working Group on Discrimination against Women has also noted that the criminalization of abortion "leads to illegal abortions that can jeopardize women's lives."[40]

Regional human rights experts have also raised concerns about restrictive abortion laws. In a recent statement on sexual and reproductive rights, the OAS Rapporteur on the Rights of Women criticized the fact that women in the region face "very significant obstacles in exercising their sexual and reproductive rights" and are forced to "continue pregnancies that put their lives at risk" due to restrictive abortion legislation.[41] She and other UN and regional rapporteurs reiterated this concern in a joint statement that called on states to "remove punitive measures for women who undergo abortion, and at the very minimum, legalize abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the woman or the life of the woman."[42]

Despite these authoritative interpretations by treaty monitoring bodies and other UN and regional experts, opponents of legal abortion in Brazil and elsewhere sometimes argue that the "right to life" of a fetus should take precedence over a woman's human rights. A clear example is the bill *Estatuto do Nascituro* (PL 478/2007), already mentioned, that prohibits abortion in case of anencephaly, exposing women to health risks despite the unviability of the fetus.

While most international human rights instruments are silent concerning the starting point for the right to life, the American Convention on Human Rights is the only international human rights instrument that contemplates the right to life from the moment of conception. Under article 4, "[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."[43]

However, this provision is not unqualified and has been interpreted by the bodies that monitor the human rights provisions in the American regional system as not

[40] Human Rights Council, "Report of the Working Group on the issue of discrimination against women in law and in practice: Mission to Morocco," U.N. Doc. A/HRC/20/28/Add.1, June 19, 2012, para. 25.
[41] Inter-American Commission on Human Rights, "On International Women's Day, IACHR Urges States to Guarantee Women's Sexual and Reproductive Rights," March 6, 2015, http://www.oas.org/en/iachr/media_center/PReleases/2015/024.asp (accessed October 25, 2015).
[42] Joint Statement by UN human rights experts, the Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights and the Special Rapporteurs on the Rights of Women and Human Rights Defenders of the African Commission on Human and Peoples' Rights, September 2015, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16490&LangID=E (accessed April 28, 2015).
[43] American Convention on Human Rights, art. 4(1).

providing an absolute right to life before birth. In 1981, the Inter-American Commission on Human Rights was asked to establish whether or not the right-to-life provisions provided by the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man were compatible with a woman's right to access safe and legal abortions. The commission concluded that they are.

In the case of the Declaration, the commission noted that the conferees in Bogotá in 1948 rejected language that would have extended the right to the unborn and "thus it would appear incorrect to read the Declaration as incorporating the notion that the right of life exists from the moment of conception."[44]

With regard to the Convention, the commission found that the wording of the right to life in article 4 was very deliberate and that the Convention's founders intended the "in general" clause to allow for non-restrictive domestic abortion legislation. As the commission phrased it: "it was recognized in the drafting session in San José that this phrase left open the possibility that states parties to a future Convention could include in their domestic legislation 'the most diverse cases of abortion,'" allowing for legal abortion under this article.[45]

Furthermore, the Inter-American Court of Human Rights, which issues binding decisions on state parties to the American Convention, has concluded that embryos cannot be understood to be a person for the purposes of article 4(1) of the Convention.[46] The Court noted that "it can be concluded from the words 'in general' that the protection of the right to life under this provision is not absolute, but rather gradual and incremental according to its development, since it is not an absolute and unconditional obligation, but entails understanding that exceptions to the general rule are admissible."[47]

Other international human rights treaties ratified by Brazil are either silent or ambiguous regarding the starting point for the right of life, whereas the negotiating history of the treaties, jurisprudence, and most legal analysis suggest that the right to life, as contemplated in those documents, does not apply before the birth of a human being.[48]

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[44] Inter-American Commission on Human Rights, White and Potter ("Baby Boy Case"), Resolution No. 23/81, Case No. 2141, U.S., March 6, 1981, OAS/Ser.L/V/II.54, Doc. 9 Rev. 1, October 16, 1981, para. 14(a).

[45] Ibid., para. 14(6).

[46] Inter-American Court, Artavia Murillo and others Case, Judgment of November 28, 2012, Inter-Am Ct.H.R., Series C. No. 257, para. 264.

[47] Ibid.

[48] For an analysis of the international consensus regarding the right to life in the ICCPR, see Cook and Dickens, "Human Rights Dynamics of Abortion Law Reform," Human Rights Quarterly, vol. 25 (2003), p. 24; and Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary (Kehl am Rhein: N.P. Engel, 1993), p. 123 (describing how several states proposed protecting a right to life of the

2.1.2 - RIGHT TO HEALTH

The right to health is protected in numerous human rights treaties. Article 12(1) of the ICESCR guarantees everyone the right to the highest attainable standard of physical and mental health.[49] Similarly, article 10(1) of the Protocol of El Salvador provides that "[e]veryone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being."[50] In addition, article 12 of CEDAW provides that, "[S]tates Parties shall 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."[51] Similarly, article 24 of the Convention on the Rights of the Child provides that, "[S]tates Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health."[52] In accordance with these provisions, the Federal Constitution affirms health as a right of everyone and a duty of the State.[53]

Unsafe abortions are a grave threat to the health of women and girls. Estimates for 2012 indicate that 6.9 million women in developing regions were treated for complications from unsafe abortion.[54] Denial of access to safe, legal abortion can have

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fetus during treaty negotiations, and that these proposals were voted down by the majority of the delegates).

[49] ICESCR, art. 12(1).

[50] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, O.A.S. Treaty Series No. 69 (1988), signed November 17, 1988, ratified by Brazil on August 21, 1996, art. 10(1). The Inter-American Commission on Human Rights has taken into consideration the right to health under article 10(1) of the Protocol of El Salvador to interpret articles 26 and 29 of the American Convention. See Inter-American Commission on Human Rights, Ana Victoria Sanchez Villalobos, Resolution No. 25/04, Case No. 12.316, Costa Rica, March 11, 2004, OEA/Ser.L/V/II.122, February 23, 2005, para. 52; Inter-American Commission on Human Rights, Jorge Odir Miranda Cortez et al., Resolution No. 27/09, Case No. 12.249, El Salvador, March 20, 2009, OEA/Ser.L/V/II, December 30, 2009, para. 77.

[51] CEDAW, art. 12.

[52] Convention on the Rights of the Child, art. 24. See also American Declaration on the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/11.82 doc. 6 rev. 1 at 17 (1992), art. XI; Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), art. 25.

[53] Federal Constitution, art. 196.

[54] Guttmacher Institute, "Facts on induced abortion worldwide," https://www.guttmacher.org/fact-sheet/facts-induced-abortion-worldwide#10 (accessed April 28, 2016), citing Singh S et al., "Facility-based treatment for medical complications resulting from unsafe pregnancy termination in the developing world, 2012: a review of evidence from 26 countries," BJOG, 2015, doi:10.1111/1471-0528.13552.

deleterious effects on mental health, including severe anguish and in some cases leading women to commit suicide.[55]

Therefore, international bodies have repeatedly stated that strict restrictions or prohibitions on abortion—especially prohibitions with no exceptions—violate the right to health. The Committee on Economic, Social and Cultural Rights in its General Comment 22 stated that "States must reform laws that impede the exercise of the right to sexual and reproductive health. Examples include laws criminalizing abortion…."[56] In its country-specific concluding observations, the Committee has recommended that states amend their legislation on abortion and provide for additional exceptions (see above under the section on the right to life).[57]

Specifically with regard to Brazil, in 2003 the Committee noted "[w]ith concern the high rate of maternal mortality from illegal abortions, particularly in the northern regions where women have insufficient access to health care facilities."[58]

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has also recommended that states decriminalize abortion.[59] He has stated that "criminal laws penalizing and restricting induced abortion are the paradigmatic examples of impermissible barriers to the realization of women's right to health and must be eliminated,"[60] and that the criminalization of abortion has a "severe impact on mental health."[61]

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[55] See, e.g., Report of the UN Special Rapporteur on the Right to Health, U.N. Doc. A/66/254, August 3, 2011, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/58/PDF/N1144358.pdf?OpenElement (accessed October 26, 2015), para. 36.

[56] CESCR, General Comment No. 22 (2016) on the Right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), para. 40.

[57] See, e.g., concluding observations of the Committee on Economic, Social and Cultural Rights on Nepal, U.N. Doc. E/C.12/1/Add.66 (2001), para. 55; Malta, U.N. Doc. E/C.12/1/Add.101 (2004), paras. 23 and 41; Monaco, U.N. Doc. E/C.12/MCO/CO/1 (2006), paras. 15 and 23; Mexico, U.N. Doc. E/C.12/CO/MEX/4 (2006), paras. 25 and 44; Philippines, U. N. Doc. E/C.12/PHL/CO/4 (2008), para. 31; Brazil, U.N. Doc. E/C.12/BRA/CO/2 (2009), para. 29; Dominican Republic, U.N. Doc. E/C.12/DOM/CO/3 (2010) , para. 29; Cameroon, U.N. Doc. E/C.12/CMR/CO/2-3 (2012), para. 27; Dijibouti, U.N. Doc. E/C.12/DJI/CO/1-2 (2013), para. 32; Paraguay, U.N. Doc. E/C.12/PRY/CO/4 (2015), para. 29(b).

[58] CESCR, concluding observations of the Committee on Economic, Social and Cultural Rights on Brazil, U.N. Doc. E/C.12/1/Add.87, June 26, 2003, para. 27.

[59] Report of the UN Special Rapporteur on the Right to Health, U.N. Doc. A/66/254, August 3, 2011, para. 65(h). See also UN Special Rapporteur on the Right to Health, "Country Visit to Paraguay, 23 September to 6 October 2015 by the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health Mr. Dainius Pūras: Preliminary observations," October 6, 2015, http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16566&LangID=E#sthash.fFFPLSDS.dpuf (accessed October 23, 2015).

[60] Ibid., para. 21.

[61] Ibid., para. 36.

The CEDAW Committee in its General Recommendation 24 affirmed states' obligation to respect women's access to reproductive health services and to "refrain from obstructing action taken by women in pursuit of their health goals."[62] It explained that "barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures."[63]

Consistently, when considering whether states are meeting their obligations in relation to women's right to health, the CEDAW Committee has recommended that states amend their legislation to decriminalize abortion at least in cases of rape, incest, risk to the life or health of the women, and severe fetal impairment.[64] The CEDAW Committee specifically urged Brazil to "[e]xpedite the review of its legislation criminalizing abortion in order to remove punitive provisions imposed on women, as previously recommended by the Committee"[65] and "collaborate with all relevant actors in order to discuss and analyze the impact of the *Estatuto do Nascituro* in further restricting the existing narrow grounds for legal abortions, before it is adopted by the National Congress."[66] It also

[62] CEDAW Committee, "General Recommendation 24, Women and Health (Article 12)," U.N. Doc. A/54/38/Rev.1 (1999), para. 14.

[63] Ibid.

[64] See, e.g., concluding observations of the CEDAW Committee on Honduras, U.N. Doc. CEDAW/C/HON/CO/6 (2007), para. 25; United Kingdom of Great Britain and Northern Ireland, U.N. Doc. CEDAW/C/UK/CO/6 (2009), para. 289; Japan, U.N. Doc. CEDAW/C/JPN/CO/6 (2009), para. 50; Timor-Leste, U.N. Doc. CEDAW/C/TLS/CO/1 (2009), para. 38; Rwanda, U.N. Doc. CEDAW/C/RWA/CO/6 (2009), para. 36; Haiti, U.N. Doc. CEDAW/C/HTI/CO/7 (2009), para. 37; Malta, U.N. Doc. CEDAW/C/MLT/CO/4 (2010), para. 35; Burkina Faso, U.N. Doc. CEDAW/C/BFA/CO/6 (2010), para. 40(b); Papua New Guinea, U.N. Doc. CEDAW/C/PNG/CO/3 (2010), para. 42; Malawi, U.N. Doc. CEDAW/C/MWI/CO/6 (2010), para. 37; Paraguay, U.N. Doc. CEDAW/C/PRY/CO/6 (2011), para. 31(a); Mauritius, U.N. Doc. CEDAW/C/MUS/CO/6-7 (2011), para. 33(b); Côte d'Ivoire, U.N. Doc. CEDAW/C/CIV/CO/1-3 (2011), para. 41(d); Republic of Korea, U.N. Doc. CEDAW/C/KOR/CO/7 (2011), para. 35; Djibouti, U.N. Doc. CEDAW/C/DJI/CO/1-3 (2011), para. 30; Sri Lanka, U.N. Doc. CEDAW/C/LKA/CO/7 (2011), para. 37(d); Kenya, U.N. Doc. CEDAW/C/KEN/CO/7 (2011), para. 38(c); Liechtenstein, U.N. Doc. CEDAW/C/LIE/CO/4 (2011), para. 39(a); Brazil, U.N. Doc. CEDAW/C/BRA/CO/7 (2012), para. 29(b); Zimbabwe, U.N. Doc. CEDAW/C/ZWE/CO/2-5 (2012), para. 34(e); Grenada, U.N. Doc. CEDAW/C/GRD/CO/1-5(2012), para. 34(d); Congo, U.N. Doc. CEDAW/C/COG/CO/6 (2012), para. 36(d); Brunei Darussalam, U.N. Doc. CEDAW/C/BN/CO/1-2 (2014), para. 34; Venezuela, U.N. Doc. CEDAW/C/VEN/CO/7-8 (2014), para. 30; Mauritania, U.N. Doc. CEDAW/C/MRT/CO/2-3 (2014), para. 39; Syria, U.N. Doc. CEDAW/C/SYR/CO/2 (2014), para. 40(f); Cameroon, U.N. Doc. CEDAW/C/CMR/CO/4-5 (2014), para. 33(d); Peru, U.N. Doc. CEDAW/C/PER/7-8 (2014), para. 36(a); Qatar, U.N. Doc. CEDAW/C/QAT/CO/1 (2014), para. 40; Ecuador, U.N. Doc. CEDAW/C/ECU/CO/8-9 (2015), para. 33(c); Tuvalu, U.N. Doc. CEDAW/C/TUV/CO/3-4 (2015), para. 29(b); Gabon, U.N. Doc. CEDAW/C/GAB/CO/6 (2015), para. 35(d); Bolivia, U.N. Doc. CEDAW/C/BOL/CO/5-6 (2015), para. 28; the Gambia, U.N. Doc. CEDAW/C/GMB/CO/4-5 (2015), para. 31(e); and Senegal U.N. Doc. CEDAW/C/SEN/CO/3-7 (2015), para. 31(c).

[65] CEDAW Committee, "Concluding observations of the Committee on the Elimination of Discrimination against Women: Brazil," U.N. Doc CEDAW/C/BRA/CO/7, March 23, 2012, para. 29(b).

[66] Ibid.

recommended that Brazil "[e]nsure women's right to safe motherhood and affordable access for all women to adequate emergency obstetric care."[67]

Similarly, the Committee on the Rights of the Child in its General Comment 15 regarding the right of the child to the enjoyment of the highest attainable standard of health recommended that "states ensure access to safe abortion and post-abortion care services, irrespective of whether abortion itself is legal."[68] In its country-specific concluding observations, it has urged states with restrictive legislation on abortion—including Brazil—to review their legislation on abortion and provide for additional exceptions, including pregnancy resulting from rape or incest, when the pregnancy poses a risk to the life or to the health of the adolescent girl, and when abortion is in the best interests of the pregnant girl to prevent her from resorting to unsafe abortion.[69] As noted under the discussion of the right to life above, recent concluding observations of the CRC have called for decriminalization of abortion "in all circumstances," without specifying narrow grounds.

In addition, the Inter-American Commission on Human Rights, calling for the integration of a gender perspective in the design of laws affecting women, has repeatedly noted that restrictions to abortion constitute a "serious problem" for women's health.[70] The commission has also stated that women cannot fully enjoy their human rights without having timely access to comprehensive health care services, and to information and

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[67] CEDAW Committee, Alyne da Silva Pimentel v. Brazil (2011), Comm. No. 17/2008. U.N. Doc. CEDAW/C/49/D/17/2008, para. 7.7.
[68] Committee on the Rights of the Child, "General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health," U.N. Doc. CRC/C/GC/15 (2000), para. 70.
[69] Committee on the Rights of the Child, "Consideration of reports submitted by states parties under article 44 of the convention. Concluding observations: Chile," U.N. Doc. CRC/C/CHL/CO/3, April 25, 2007, paras. 55 and 56. See also, e.g., concluding observations of the Committee on the Rights of the Child on Namibia, U.N. Doc. CRC/C/NAM/CO/2-3 (2012), paras. 57 and 58; Uruguay, U.N. Doc. CRC/C/URY/CO/2 (2007), para. 51; Kuwait, U.N. Doc. CRC/C/KWT/CO/2 (2013), para. 59; Holy See, U.N. Doc. CRC/C/VAT/CO/2 (2014), paras. 55 and 57; Morocco, U. N. Doc. CRC/C/MAR/CO/3-4 (2014), paras. 56 and 57; Venezuela, U.N. Doc. CRC/C/VEN/CO/3-5 (2014), para. 57.
[70] Inter-American Commission on Human Rights, "Third Report on the Situation of Human Rights in Colombia," OEA/Ser.L/V/II.102 Doc. 9 rev. 1, chapter XXI, http://www.cidh.org/countryrep/Colom99en/chapter-12.htm (accessed October 25, 2015), para. 49; Inter-American Commission on Human Rights, "Access to Maternal Health Services from a Human Rights Perspective," OEA/Ser.L/V/II. Doc. 69, http://cidh.org/women/SaludMaterna10Eng/MaternalHealthTOCeng.htm (accessed October 25, 2015), paras. 29 and 84; Inter-American Commission on Human Rights, "Legal Standards Related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application," OEA/Ser.L/V/II. 143 Doc. 60, http://www.cidh.oas.org/pdf%20files/REGIONAL%20STANDARDS.pdf (accessed October 25, 2015), para. 172 (citing C-355-06, Constitutional Court of Colombia, Judgment, May 10, 2006).

education in this sphere.[71] The IACHR has "emphasized the importance of recognizing therapeutic abortion as a specialized health service required by women when the [woman]'s life is at risk due to the pregnancy."[72] In February 2010, the Inter-American Commission granted a Nicaraguan woman precautionary measures to protect her right to receive medical treatment necessary to treat her metastatic cancer even though the procedure had, according to the local hospital, a high risk of causing an abortion.[73] More recently, in June 2015, the Commission called on Paraguay to adopt "all measures necessary" to protect the physical and psychological health of a 10-year-old girl who had become pregnant as a result of rape.[74]

2.1.3 - RIGHT TO BE FREE FROM CRUEL, INHUMAN OR DEGRADING TREATMENT

The right to be free from cruel, inhuman or degrading treatment or punishment is protected by international customary law, as well as by several international and regional human rights treaties, including article 7 of the ICCPR and article 5 of the American Convention on Human Rights.[75]

International bodies and experts have stated that criminalization and inaccessibility of abortion can amount to cruel, inhuman or degrading treatment. The Committee against Torture, which monitors the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[76] has

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[71] Inter-American Commission on Human Rights, "Access to Information in Reproductive Health from A Human Rights Perspective," OEA/Ser.L/V/II. Doc. 61, http://www.cidh.oas.org/pdf%20files/womenaccessinformationreproductivehealth.pdf (accessed January 15, 2014), para. 91; Inter-American Commission on Human Rights, Paulina del Carmen Ramirez Jacinto, Resolution No. 21/07, Case No. 161-02 (Friendly Settlement), Mexico, March 9, 2007, OEA/Ser.L/V/II.130, Doc. 22 Rev. 1, December 29, 2007.

[72] See Inter-American Commission on Human Rights, "Legal Standards related to Gender Equality and Women's Rights in the InterAmerican Human Rights System: Development and Application Updates from 2011 to 2014," 2015, http://www.oas.org/en/iachr/reports/pdfs/LegalStandards.pdf (accessed May 2, 2016) citing Inter-American Commission on Human Rights, "Annex to the Press Release Issued at the Close of the 147th Session: Human rights and the criminalization of abortion in South America," held on March 15, 2013.

[73] Inter-American Commission on Human Rights, "Precautionary Measures: PM 43 – "Amelia," Nicaragua, http://www.oas.org/en/iachr/decisions/precautionary.asp (accessed October 25, 2015).

[74] Inter-American Commission on Human Rights, "Niña Mainumby," http://www.oas.org/es/cidh/decisiones/pdf/2015/mc178-15-es.pdf (accessed October 26, 2015).

[75] ICCPR, art. 5; American Convention on Human Rights, art. 5.

[76] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Brazil on September 28, 1989.

repeatedly urged states to amend their legislation on abortion for cases of therapeutic abortion and pregnancy resulting from rape or incest.[77] The Committee against Torture has noted that the prohibition of abortion in cases of rape means that "women concerned are constantly reminded of the violation committed against them, which causes serious traumatic stress and carries a risk of long-lasting psychological problems."[78] It has also criticized restrictions on access to legal abortions in cases in which, for example, laws are unclear, abortions require third party authorizations, or physicians or clinics refuse to perform legal operations on the basis of conscientious objection.[79]

Similarly, the Human Rights Committee has ruled in individual cases against Peru and Argentina that the governments had violated a woman's right to be free from torture or cruel, inhuman or degrading treatment by failing to ensure access to abortion services.[80] In both decisions, the Human Rights Committee pointed out that pursuant to its General Comment No. 20, the right of freedom from torture and cruel, inhuman or degrading treatment relates not only to physical pain, but also to mental suffering.[81] The Committee on Economic, Social and Cultural Rights has also said that denial of abortion "in certain circumstances can amount to torture or cruel, inhuman or degrading treatment."[82]

The UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has said, "Highly restrictive abortion laws that prohibit abortions even in cases of incest, rape or fetal impairment or to safeguard the life or health of the

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[77] See, e.g., concluding observations of the Committee against Torture on Nicaragua, U.N. Doc. CAT/C/NIC/CO/1 (2009), para. 16; Paraguay, U.N. Doc. CAT/C/PRY/CO/4-6 (2011), para. 22; Peru, U.N. Doc. CAT/C/PER/CO/5-6 (2013), para. 15(a); Sierra Leone, CAT/C/SLE/CO/1 (2014), para. 17; and Kenya, U.N. Doc. CAT/C/KEN/CO/2 (2013), para. 28.

[78] Committee against Torture, "Consideration of reports submitted by States parties under article 19 of the Convention. Concluding observations of the Committee against Torture: Paraguay," U.N. Doc. CAT/C/PRY/CO/4-6, December 14, 2011, para. 22. See also, in similar terms, Committee against Torture, "Consideration of reports submitted by States parties under article 19 of the Convention. Concluding observations of the Committee against Torture: Nicaragua," U.N. Doc. CAT/C/NIC/CO/1, June 10, 2009, para. 16.

[79] See, e.g., concluding observations of the Committee against Torture on Ireland, U.N. Doc. AT/C/IRL/CO/1 (2011), para. 26; Peru, U.N. Doc. CAT/C/PER/CO/5-6 (2013), para. 15; Bolivia, U.N. Doc. CAT/C/BOL/CO/2 (2013), para. 23; Poland, U.N. Doc. CAT/C/POL/CO/5-6 (2013), para. 23; and Kenya, U.N. Doc. CAT/C/KEN/CO/2 (2013), para. 28.

[80] K.L. v. Peru, Human Rights Committee, Comm. No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005), para. 6, and L.M.R. v. Argentina, Human Rights Committee, Comm. No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011), para. 9(2).

[81] Ibid. See Human Rights Committee, "General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)," U.N. Doc. HRI/GEN/1/Rev.1 (1994), para. 5.

[82] CESCR, General Comment 22, para. 10.

woman violate women's right to be free from torture and ill-treatment."[83] He went on to say:

> The denial of safe abortions and subjecting women and girls to humiliating and judgmental attitudes in such contexts of extreme vulnerability and where timely health care is essential amount to torture or ill-treatment. States have an affirmative obligation to reform restrictive abortion legislation that perpetuates torture and ill-treatment by denying women safe access and care….
>
> The practice of extracting, for prosecution purposes, confessions from women seeking emergency medical care as a result of illegal abortion in particular amounts to torture or ill-treatment.[84]

Furthermore, the Committee of Experts of the Follow-up Mechanism to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, noted that laws that establish an absolute prohibition of abortion "perpetuate the exercise of violence against women, girls and adolescents … and violate the prohibition of torture and mistreatment."[85] The committee concluded that states "should establish laws and policies that enable the termination of pregnancy at the very least in the following cases: i) risk to the life or health of the woman; ii) inability of the fetus to survive; and iii) sexual violence, incest and forced insemination."[86]

In country-specific concluding observations, the Committee against Torture urged states to "[e]liminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion; investigate and review convictions where statements obtained by coercion in such cases have been admitted into evidence, and take remedial measures including nullifying convictions which are not in conformity with the Convention," given that such practices contravene the provisions of the Convention against Torture.[87] Additionally, the special rapporteur

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[83] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/HRC/31/57 (2016), para. 43.

[84] Ibid., para. 44.

[85] Follow-up Mechanism to the Convention of Belém Do Pará (Mesecvi) Comittee Of Experts (Cevi), "Declaration on Violence against Women, Girls and Adolescents and their Sexual and Reproductive Rights," OEA/Ser.L/II.7.10, September 19, 2014, http://www.oas.org/es/mesecvi/docs/CEVI11-Declaration-EN.pdf (accessed October 25, 2015).

[86] Ibid.

[87] Committee against Torture, "Consideration of reports submitted by states parties under article 19 of the Convention. Conclusions and recommendations of the Committee against Torture: Chile," U.N. Doc. CAT/C/CR/32/5 (2004), para. 7(m). See also, concluding observations of the Committee against Torture on Peru, U.N. Doc. CAT/C/PER/CO/5-6 (2013), para. 15(d).

on torture and other cruel, inhuman or degrading treatment or punishment called upon all "[s]tates to ensure that women have access to emergency medical care, including post-abortion care, without fear of criminal penalties or reprisals."[88]

The Brazilian legislation does not oblige medical doctors to report the commission of crimes if reporting them will amount to a criminal charge against the patient.[89] Thus, doctors are not required to report women seeking post-abortion care to authorities. The Code of Medical Ethics also protects professional confidentiality.[90] Similarly, in 2010 the Health Ministry published a technical norm establishing guidelines on the provision of abortion services. It reaffirms confidentiality as a legal and ethical duty and that its violation subjects the author to civil, criminal, and ethical-professional procedures.[91] However, there have been breaches of medical secrecy over the last years. In 2014, at least seven women were denounced by doctors after having come to hospitals in need of post-abortion care, while one of them spent three days handcuffed to the bed.[92] More concerning, there is a bill (PL 4.880/2016), under consideration in the National Congress, obliging health institutions to report the occurrence of abortions, including attempts, to police authorities.[93]

2.1.4 - RIGHT TO NONDISCRIMINATION AND EQUALITY

The rights to nondiscrimination and equality are set forth in article 2 of both ICCPR and ICESCR, and in articles 1(1) and 24 of the American Convention on Human Rights.[94] CEDAW, for its part, prohibits discrimination against women in all spheres, including in the field of health care and when accessing health care services. Its article 2(f) requires that states "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."[95]

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[88] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, U.N. Doc. A/HRC/22/53, February 1, 2013, para. 90.
[89] Lei das Contravenções Penais (DL n° 3.688/1941), art. 66, II.
[90] Código de Ética Médica, art. 73.
[91] Ministério da Saúde, "Atenção Humanizada ao Abortamento", Brasília, 2011, 2nd edition, p. 19.
[92] Edgar Maciel, "De 1 milhão de abortos ilegais no País, 33 viraram casos de polícia em 2014," *Estadão*, http://saude.estadao.com.br/noticias/geral,de-1-milhao-de-abortos-ilegais-no-pais-33-viraram-casos-de-policia-em-2014,1610235 (accessed December 9, 2016).
[93] Projeto de Lei n° 4.880/2016.
[94] ICCPR, art. 2; ICESCR, art. 2; American Convention on Human Rights, art. 24.
[95] CEDAW, art. 2(f).

In a 2014 statement, the CEDAW Committee called for legalization of abortion in a broad range of circumstances, and observed that "failure of a State party to provide services and the criminalization of some services that only women require is a violation of women's reproductive rights and constitutes discrimination against them."[96] In its General Recommendation No. 24 on women and health, the CEDAW Committee criticized discriminatory obstacles to health care for women, noting that "barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo these procedures."[97] Furthermore, in its country-specific concluding observations, the CEDAW Committee has stated consistently that restrictive abortion laws constitute discrimination against women.[98]

Moreover, the Human Rights Committee has held that lack of availability of reproductive health information and services, including abortion, undermines women's right to nondiscrimination.[99] It has also noted that restrictions on abortion result in the disproportionate practice of illegal, unsafe abortions by poor and rural women or women unable to travel outside the state's jurisdiction.[100] The Committee on the Rights of the Child has also said that punitive abortion laws constitute a violation of children's right to freedom from discrimination.[101]

In this regard, a recent study found only 37 health services registered by health authorities perform legal abortion in all of Brazil, and that seven states do not have any

[96] CEDAW Committee, "Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review," 57th Session (Feb. 10-28, 2014), http://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/SRHR26Feb2014.pdf (accessed on October 25, 2015).

[97] CEDAW Committee, "General Recommendation 24, on article 12 of the Convention on the Elimination of All Forms of Discrimination against Women, Women and Health," U.N. Doc. No. A/54/38/Rev.1, Part I (1999), para. 14.

[98] See, e.g., the CEDAW Committee concluding observations noted under the analysis of the right to life and right to health above.

[99] See, e.g., concluding observations of the Human Rights Committee on Colombia, U.N. Doc. CCPR/C/79/Add.76 (1997), para. 24; Argentina, U.N. Doc. CCPR/CO.70/ARG (2000), para. 14; Philippines, U.N. Doc. CCPR/C/PHL/CO/4 (2012), para. 13; Paraguay, U.N. Doc. CCPR/C/PRY/CO/3 (2013), para. 13; Peru, U.N. Doc. CCPR/C/PER/CO/5 (2013), para. 14; and Ireland, U.N. Doc. CCPR/C/IRL/CO/4 (2014), para. 9. See also L.M.R. v. Argentina, Human Rights Committee, Comm. No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011), para. 6(9).

[100] See, for example, concluding observations of the Human Rights Committee on Argentina, U.N. Doc. CCPR/CO.70/ARG (2000), para. 14. See also Ireland, U.N. Doc. CCPR/C/IRL/CO/4 (2014), para. 9 (citing concerns Ireland's restrictive abortion laws have a discriminatory impact on women who cannot travel abroad for services).

[101] See CRC, concluding observation on Namibia, U.N. Doc. CRC/C/NAM/CO/2-3 (2012), paras. 57 and 58.

institutions that offer this service.[102] The unavailability of and restricted access to legal abortion epitomize the failure of the government in guaranteeing sexual and reproductive health and rights. It forces women and girls to look for unsafe and clandestine abortion clinics, even when their circumstance falls within the exceptions provided by law.

Moreover, the Committee on Economic, Social and Cultural Rights has said, "A wide range of laws, policies and practices undermine the autonomy and right to equality and non-discrimination in the full enjoyment of the right to sexual and reproductive health, for example criminalization of abortion or restrictive abortion laws."[103] It has also noted that restrictions on abortion particularly affect poor and less educated women.[104] Similarly, six UN special mandates stressed in a 2015 joint press release that in El Salvador, "the total ban on abortion disproportionately affects women who are poor."[105]

UN and regional rapporteurs issued a joint statement in 2015 saying, "The criminalization of or other failure to provide services that only women require, such as abortion and emergency contraception, constitute discrimination based on sex, and is impermissible."[106] Furthermore, the Special Rapporteur on the independence of judges and lawyers has expressed concern with "provisions of criminal law that are discriminatory to women … includ[ing] … the criminalization of abortion."[107]

And, the Inter-American Commission on Human Rights has expressed that limitations on accessing health services that are required only by women, including

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[102] MADEIRO, Alberto Pereira *et* DINIZ, Débora. Legal abortion services in Brazil – a national study. Ciência & Saúde Coletiva, 21(2):563-572, 2016.

[103] CESCR General Comment No. 22, para. 34.

[104] See, e.g., concluding observations of the Committee on Social, Economic and Cultural Rights on El Salvador, U.N. Doc. E/C.12/SLV/CO/3-5 (2014), para. 22; and Nepal, U.N. Doc. E/C.12/NPL/CO/3 (2014), para. 26.

[105] Emna Aouij, Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice, et al, "Guadalupe's pardon: UN experts urge El Salvador to pardon all women jailed for pregnancy complications and repeal restrictive abortion law," January 28, 2015, http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15520&LangID=E#sthash.YurbWgmU.dpuf (accessed October 25, 2015).

[106] Joint Statement by UN human rights experts, the Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights and the Special Rapporteurs on the Rights of Women and Human Rights Defenders of the African Commission on Human and Peoples' Rights, September 2015, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16490&LangID=E (accessed April 28, 2015).

[107] UN Human Rights Council, "Interim report of the Special Rapporteur on the independence of judges and lawyers," U.N. Doc. A/66/289, August 10, 2011, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/449/71/PDF/N1144971.pdf?OpenElement (accessed October 26, 2015), para. 74.

therapeutic abortion, generate inequalities between men and women with respect to the enjoyment of their rights.[108]

2.1.5 - RIGHT TO PRIVACY AND MEDICAL CONFIDENTIALITY

Article 17(1) of the ICCPR provides that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation."[109] Similarly, article 11(2) of the American Convention on Human Rights states that "[n]o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation."[110]

The CEDAW Committee noted in General Recommendation No. 24 that while breaches of patient confidentiality affect both men and women, they may deter women from seeking advice and treatment for diseases of the genital tract, contraception, incomplete abortion, and in cases where they have suffered sexual or physical violence.[111] The CEDAW Committee has noted that policies that require spousal authorization for abortion impinge on women's right to privacy,[112] and has recommended that states adopt policies guaranteeing the privacy of patients who undergo abortion.[113] Its 2014 statement on sexual and reproductive health and rights emphasized women's "right to access sexual and reproductive health information and services with *the consent of the individual alone*."[114]

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[108] Inter-American Commission on Human Rights, "Access to Maternal Health Services from a Human Rights Perspective," OEA/Ser.L/V/II. Doc. 69, http://cidh.org/women/SaludMaterna10Eng/MaternalHealthTOCeng.htm (accessed October 25, 2015), para. 53. See also Inter-American Court, Artavia Murillo and others Case, Judgment of November 28, 2012, Inter-Am Ct.H.R., Series C. No. 257, paras. 294 and 299. And, Inter-American Commission on Human Rights, "Legal Standards related to Gender Equality and Women's Rights in the InterAmerican Human Rights System: Development and Application Updates from 2011 to 2014" (2015) http://www.oas.org/en/iachr/reports/pdfs/LegalStandards.pdf (accessed May 2, 2016) citing Inter-American Commission on Human Rights, "Annex to the Press Release Issued at the Close of the 147th Session: Human rights and the criminalization of abortion in South America," held on March 15, 2013.
[109] ICCPR, art. 17(1).
[110] American Convention on Human Rights, art. 11(2).
[111] CEDAW Committee, General Recommendation 24, para. 12(d).
[112] See, e.g., the CEDAW Committee's concluding comments on Turkey, U.N. Doc. A/52/38/Rev.1, Part I (1998), paras. 184 and 196; and Indonesia, U.N. Doc. CEDAW/C/IDN/CO/6-7 (2012), para. 41(f).
[113] CEDAW Committee concluding observations on Peru, U.N. Doc. CEDAW/C/PER/CO/7-8 (2014), paras. 35 and 36; and Paraguay, U.N. Doc. CEDAW/C/PRY/CO/6 (2011), para. 31(b).
[114] CEDAW Committee, "Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review."

The UN Human Rights Committee has remarked that "where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion," this may constitute a violation of a woman's privacy.[115] It has discussed how such reporting can deter women from seeking treatment, thereby endangering their lives, and has called for protection of confidentiality of such medical information.[116] In several individual cases, the Human Rights Committee has found that a state's refusal to act in accordance with a woman's decision to undergo a legal abortion, and judicial interference with that decision, constituted a violation of the right to privacy.[117]

The Committee on the Rights of the Child emphasized confidentiality for adolescents who receive abortion services in its draft General Comment No. 20, saying, "All adolescents must have access to confidential adolescent-responsive and non-discriminatory reproductive and sexual health information and services, available both on and off-line, including … safe abortion services."[118] In concluding observations, it has recommended that governments ensure children have access to confidential medical counsel and assistance without parental consent, including for reproductive health services, when in the adolescent girl's best interests.[119] It has specifically called for confidential access for adolescent girls to legal abortions.[120] The Committee has further called on states to ensure, in law and in practice, that the views of the child are always heard and respected in abortion decisions.[121]

The CESCR has also recommended that states ensure that the personal data of patients undergoing an abortion remain confidential, and has commented on the problem

[115] Human Rights Committee, "General Comment 28, Equality of Rights between Men and Women (article 3)," U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), para. 20.
[116] Concluding observations of the Human Rights Committee on Venezuela, U.N. Doc. CCPR/CO/71/VEN (2001), para. 19.
[117] See K.L. v. Peru, Human Rights Committee, Comm. No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005), para. 6.4; and L.M.R. v. Argentina, Human Rights Committee, Comm. No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011), para. 9(3).
[118] CRC, "Draft General Comment on the implementation of the rights of the child during adolescence," Advance Unedited Version, U.N. Doc. CRC/C/GC/20 (2016), para. 64.
[119] See, e.g., the CRC's concluding observations on Indonesia, U.N. Doc. CRC/C/IDN/CO/3-4 (2014), para. 50; Bulgaria, U.N. Doc. CRC/C/BGR/CO/2 (2008), para. 47; Georgia, U.N. Doc. CRC/C/GEO/CO/3 (2008), para. 48; Belize, U.N. Doc. CRC/C/15/Add.252 (2005), para. 23; Albania, U.N. Doc. CRC/C/15/Add.249 (2005), para. 57; Liberia, U.N. Doc. CRC/C/LBR/CO/2-4, para 67(b); Kuwait, U.N. Doc. CRC/C/KWT/CO/2 (2013), para. 60; Venezuela, U.N. Doc. CRC/C/VEN/CO/3-5 (2014), para. 57; Morroco, U.N. Doc. CRC/C/MAR/CO/3-4 (2014), para. 57(b).
[120] See, e.g., CRC concluding observations on India, U.N. Doc. CRC/C/IND/CO/3-4 (2014), para. 66.
[121] See, e.g., CRC concluding observations on Jordan, U.N. Doc. CRC/C/JOR/CO/4-5 (2014), para. 46; Venezuela, U.N. Doc. CRC/C/VEN/CO/3-5 (2014), para. 57(b); and India, U.N. Doc. CRC/C/IND/CO/3-4 (2014), para. 65(b).

of women seeking health care after unsafe abortions being reported to authorities.[122] Finally, the Committee against Torture has called for protection of privacy for women seeking medical care for complications related to abortion.[123] It has also called on states—including Brazil—to eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion.[124] (See discussion above under the right to be free from cruel, inhuman and degrading treatment.)

As observed earlier, although the Brazilian legislation does not require doctors to report cases of abortion to police authorities, breaches of the right to privacy are common. In 2014 seven women were arrested and prosecuted due to reports from doctors.[125]

2.1.6 - RIGHT TO INFORMATION

The right to information is set forth in article 19(2) of the ICCPR and article 13(1) of the American Convention on Human Rights.[126] Furthermore, CEDAW provides that states must eliminate discrimination against women in order to ensure, on the basis of equality of men and women, "[a]cess to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning"[127] and provide "[t]he 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."[128]

The right to information includes both the negative obligation for a state to refrain from interference with the provision of information by private parties and a positive responsibility to provide complete and accurate information necessary for the protection

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[122] See CESCR concluding observation on El Salvador, U.N. Doc. E/C.12/SLV/CO/3-5 (2014), para. 22; and Slovakia, U.N. Doc. E/C.12/SVK/CO/2 (2012), para. 24.
[123] Committee against Torture, concluding observations on Chile, U.N. Doc. CAT/C/CR/32/5 (2004), para. 7(m); Paraguay, U.N. Doc. CAT/C/PRY/CO/4-6 (2011), para. 22; Peru, U.N. Doc. CAT/C/PER/CO/5-6 (2013), para. 15 (d).
[124] Committee against Torture, "Consideration of reports submitted by states parties under article 19 of the Convention. Conclusions and recommendations of the Committee against Torture: Chile," U.N. Doc. CAT/C/CR/32/5 (2004), para. 7(m).
[125] Edgar Maciel, "De 1 milhão de abortos ilegais no País, 33 viraram casos de polícia em 2014," *Estadão*, http://saude.estadao.com.br/noticias/geral,de-1-milhao-de-abortos-ilegais-no-pais-33-viraram-casos-de-policia-em-2014,1610235 (accessed December 9, 2016).
[126] ICCPR, art. 19(2); American Convention on Human Rights, art. 13(1). See also Inter-American Court, Claude-Reyes and others Case, Judgment of September 19, 2006, Inter-Am Ct.H.R., Series C. No. 151, para. 264.
[127] CEDAW, art. 10(h).
[128] Ibid., art. 16(e).

and promotion of rights, including the right to health.[129] Women and girls stand to suffer disproportionately when information concerning safe and legal abortion is withheld.

The Human Rights Committee has specifically addressed the role that insufficient public information on abortion plays in endangering women's lives. It has called on states to facilitate access to public information on access to legal abortions, and ensure that health care providers who offer information on safe abortion services abroad are not subject to criminal sanctions.[130]

The Committee on Economic, Social and Cultural Rights in its General Comment 14 has stated that the right to health includes the right to health-related education and information, including on sexual and reproductive health.[131] It also noted that "[t]he realization of women's right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health."[132] In its General Comment No. 22, the Committee notes that, "Information accessibility includes the right to seek, receive and disseminate information and ideas concerning sexual and reproductive health issues…. All individuals and groups, including adolescents and youth, have the right to evidence-based information on all aspects of sexual and reproductive health, including … safe abortion and post abortion care"[133] In concluding observations, the CESCR has called on states to conduct dissemination campaigns on the legality of abortion, and ensure that information on abortion is available without discrimination.[134]

The CEDAW Committee, for its part, has described states' duty to ensure, on the basis of equality between men and women, access to information as a part of women's right to health.[135] The committee has also noted that, under article 10(h) of CEDAW, women must have access to information about contraceptive measures, sex education,

[129] See ICESCR, art. 2(2). See also Committee on Economic, Social and Cultural Rights, "General Comment No. 14, The Right to the Highest Attainable Standard of Health," U.N. Doc. E/C.12/2000/4 (2000), paras. 12(b), 18, and 19.
[130] See concluding observations of the Human Rights Committee on Colombia, CCPR/C/COL/CO/6 (2010), para. 19; and Ireland, U.N. Doc. CCPR/C/IRL/CO/4 (2014), para. 9.
[131] Committee on Economic, Social and Cultural Rights, "General Comment No. 14, The Right to the Highest Attainable Standard of Health," U.N. Doc. E/C.12/2000/4 (2000), para. 11.
[132] Ibid., para. 21.
[133] CESCR General Comment No. 22, para. 18.
[134] See concluding observations of the CESCR on Romania, U.N. Doc. E/C.12/ROU/CO/3-5 (2014), para. 22; and Nepal, U.N. Doc. E/C.12/NPL/CO/3 (2014), para. 26.
[135] CEDAW Committee, "General Recommendation 24, Women and Health (Article 12)," U.N. Doc. No. A/54/38/Rev.1 (1999), para. 13.

and family-planning services in order to make informed decisions.[136] It has called on states to raise awareness among women and girls about when abortion is legal, and to provide comprehensive information on sexual and reproductive health, including the risks of unsafe abortion.[137] It has urged governments to cease negative campaigns that stigmatize abortion.[138] It has said that specific attention is needed to ensure that adolescent girls "have access to accurate information about their sexual and reproductive health and rights."[139]

The Committee on the Rights of the Child has also called on states to ensure that children have access to reproductive and sexual education and information, including in schools.[140] In its General Comment No. 20, the CRC urged states to "adopt or integrate a comprehensive gender-sensitive sexual and reproductive health policy for adolescents, emphasising that unequal access by adolescents to such information and services amounts to discrimination."[141]

The Inter-American Commission on Human Rights has noted that women cannot fully enjoy their human rights without information and education on health care services.[142] It has specifically held that states' obligation to provide information on sexuality and reproduction is "particularly relevant" since it "helps people be prepared to make free and informed decisions concerning these aspects that are so intimate to their lives."[143] For this reason, the commission has called states to provide timely, complete, accessible, and reliable information on reproductive health, in a proactive manner.[144]

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[136] CEDAW Committee, "General Recommendation no. 21, on equality in marriage and family relations," HRI/GEN/1/Rev.9 (Vol.II), para. 22.
[137] See concluding observations of the CEDAW Committee on Ghana, U.N. Doc. CEDAW/C/GHA/CO/6-7 (2014), para. 37(c); Sierra Leone, U.N. Doc. CEDAW/C/SLE/CO/6 (2014), para. 33; Paraguay, U.N. Doc. CEDAW/C/PRY/CO/6 (2011), para. 31; Zambia, U.N. Doc. CEDAW/C/ZMB/CO/5-6 (2011), para. 34; and Denmark, U.N. Doc. CEDAW/C/DNK/CO/8 (2015), para. 32.
[138] See concluding observations of the CEDAW Committee on Hungary, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013), para. 31.
[139] CEDAW Committee, "Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review."
[140] See, e.g., CRC concluding observations on Panama, U.N. Doc. CRC/C/PAN/CO/3-4 (2011), para. 57; Costa Rica, U.N. Doc. CRC/C/CRI/CO/4 (2011), para 64(f); and Nicaragua, U.N. Doc. CRC/C/NIC/CO/4 (2010), para. 65.
[141] CRC, General Comment No. 20, para. 64.
[142] Inter-American Commission on Human Rights, "Access to Information in Reproductive Health from A Human Rights Perspective," OEA/Ser.L/V/II. Doc. 61, http://www.cidh.oas.org/pdf%20files/womenaccessinformationreproductivehealth.pdf (accessed October 25, 2015), para. 91.
[143] Ibid., para. 25.
[144] Ibid., para. 92.

3. THE RIGHT TO ABORTION IN THE CASE OF CONFIRMED ZIKA INFECTION

United Nations treaty and other international human rights institutions responsible for furthering the implementation of international human rights law—including CESCR, CRC, CEDAW, CAT, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Inter-American Commission on Human Rights—have urged states to decriminalize abortion or, at the very least, legalize it in cases of rape, incest, threats to the life and/or health of the woman, or severe fetal impairment.

This is consistent with a recent ruling of this honorable Court. In November 2016, the first panel (1° Turma) of the Brazilian Supreme Court issued a decision arguing in favor of the decriminalization of abortion until the third month of pregnancy. In a decision on a case challenging the pre-trial detention of five workers accused of performing abortions at a clandestine clinic in Rio de Janeiro, the justices stated that the criminalization of abortion in the first trimester of pregnancy violates women's rights to autonomy, physical and psychological health, sexual and reproductive health and rights, and gender equality, and has a disproportionate impact on women.[145] The decision, though non-binding and applicable only to the case considered by the court, represents an important step toward aligning Brazilian law with its international legal obligations.

The pending case before the Court implicates the same constitutional and international legal questions. ANADEP's claim for decriminalizing abortion in the case of confirmed Zika infection during pregnancy is also based on the international human rights obligations assumed by Brazil—protecting the human rights of thousands of women, especially their rights to health and life, from the negative consequences of the Zika epidemic.

Brazil's response to the Zika epidemic does not fully ensure the protection of women's rights. The protocol on the health care response to the Zika virus, elaborated by the Ministry of Health, included guidance on pre- and post-natal care, and emphasized contraception. However, it did not address a number of relevant reproductive rights, including abortion when legal, the risk of sexual transmission, and barriers in access to

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[145] Habeas Corpus 124.306, Supremo Tribunal Federal. November 29, 2016. http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=330769; http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/HC124306LRB.pdf.

contraception among traditionally underserved populations.[146] The Ministry of Health also fails to provide accurate and consistent information about the Zika virus. In a list of frequently asked questions on its website, it contradictorily states at one point that "the virus cannot be classified as sexually transmissible," and later that "there is growing evidence that the virus can be sexually transmitted."[147]

The full impacts of the Zika virus on pregnant women and their fetuses are still unknown, and this lack of information and scientific uncertainty can cause extreme and unnecessary anxiety, depression, and mental suffering in pregnant women who have been confirmed to have contracted the Zika virus. Indeed, at the moment there are more questions than answers regarding the extent and longevity of the harm the Zika virus can cause. Recent research found that infants with prenatal exposure to Zika virus but born with average head size at birth might develop microcephaly in the months after birth.[148] According to Brazil's ministry of health, in 2016, 10,820 pregnant women had confirmed Zika infection, and continued pregnancies in this extremely stressful context.[149]

Continuing a pregnancy where the consequences are unknown and unclear may pose a serious threat to a pregnant woman's mental health, not only during pregnancy, but also for the rest of her life. The anguish associated with the deep uncertainty about long-term prognosis of fetuses exposed to the Zika virus may even lead a pregnant woman to self-harm, including seeking a clandestine and unsafe abortion that could threaten her life. A July 2016 study analyzed requests for abortion in 19 Latin American countries received by Women on Web—a nonprofit organization providing abortion medication in countries where safe abortion services are highly restricted—before and after a November 2015 Pan American Health Organization (PAHO) announcement related to Zika virus risks. The study found a 108 percent increase in abortion requests from Brazil following the PAHO Zika announcement, as compared to a statistical model based on data from prior years.[150] Additionally, since often health providers report cases of women who have

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[146] BAUM, Paige *et al.* Ensuring a Rights-Based Health Sector Response to Women Affected by Zika. Cadernos de Sáude Pública, vol. 32, n° 5, 2016.
[147] Ministério da Saúde, "*Zika: Como é transmitido*?" ("How is the zika virus transmitted?"), http://combateaedes.saude.gov.br/pt/tira-duvidas#chikungunya (accessed February 11, 2017).
[148] LINDEN, Vanessa van der *et al.* Description of 13 infants born during October 2015-January 2016 with congenital Zika virus infection without microcephaly at birth – Brazil. US Department of Health and Human Services/Centers for Disease Control and Prevention. Morbidity and Mortality Weekly Report. December 2, 2016, Vol. 65, n° 47, p. 1343-1348.
[149] Secretaria de Vigilância em Saúde – Ministério da Saúde. Boletim Epidemiológico v. 48, n° 2, 2017. Brasil.
[150] Supplement to: AIKEN, Abigail. R. A. *et al.* Requests for abortion in Latin America related to concern about Zika virus exposure. New England Journal of Medicine, vol. 375 (2016), pp. 396-398.

undergone abortion to authorities, women may be deterred from seeking post-abortion care, exacerbating the serious consequences to women's health and life.

Understood in this context, the termination of pregnancy in the case of confirmed Zika infection should qualify as an abortion performed to preserve the health or life of the pregnant woman. Consistent with international human rights law, abortion in this context should be legal. Forcing women to continue a pregnancy—or seek clandestine abortions—under such circumstances would violate their human rights, especially the rights to health, life, and to be free from cruel, inhuman or degrading treatment.

4. CONCLUSION

The government of Brazil has an international human rights obligation to eliminate from its legal framework any restriction on abortion that unreasonably interferes with a woman's exercise of her full range of human rights. The denial of a pregnant woman's right to make an independent decision regarding abortion violates or poses a threat to a wide range of basic human rights.

The Zika epidemic may increase mental suffering among pregnant women, especially in those infected by Zika virus. Prohibiting abortion in case of confirmed Zika infection violates women's health and reproductive rights, her autonomy and the rights to be free from cruel, inhuman and degrading treatment, privacy, information, and life. While not all pregnant women infected with the Zika virus will suffer mental anguish, the scale of the impact is likely significant. In 2016 alone, more than 10,000 pregnant women were infected by the Zika virus.

Therefore, Brazil should take all necessary steps, both immediate and incremental, to ensure that women and girls with confirmed cases of Zika virus during pregnancy have access to safe and legal abortion services, should they choose, in line with international human rights standards.

5. THE ORDERS

Based on all that has been stated above, Human Rights Watch asks to be granted the following requests:

a) to be admitted as *amicus curiae* in the records of ADI 5581;

b) to be summoned for all the acts of the process through its attorney and legal representative [redacted], registered in the OAB/PB under number [redacted].[redacted];
c) that oral arguments should be granted during trial;
d) alternatively, participation to be admitted as a memorial.

On merit, once admitted to the court as *amicus curiae*, as expected, the present Direct Action of Unconstitutionality cumulated with Argumentation of Noncompliance of Fundamental Precept should be fully granted, for the reasons explained above.

In these terms, it requests approval
São Paulo, April 25, 2017

[redacted]
OAB/PB [redacted].[redacted]