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SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF BRAZIL

UN Human Rights Council
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Ipas was founded in 1973 and is a global nongovernmental organization dedicated to ending preventable deaths and disabilities from unsafe abortion. Through local, national and global partnerships, Ipas works to ensure that women can obtain safe, respectful and comprehensive abortion care, including counseling and contraception to prevent future unintended pregnancies.

(www.ipas.org)

The Sexual Rights Initiative is a coalition of organizations comprised of Action Canada for Population and Development (ACPD), Akahatá – Equipo de Trabajo en Sexualidades y Géneros, Coalition for African Lesbians, Creating Resources for Empowerment in Action (CREA; India), Egyptian Initiative for Personal Rights (EIPR) and Federation for Women and Family Planning (Poland).

www.sexualrightsinitiative.com

We would like to express our support and request to the HRC to take into consideration in the review the Recommendation below made by the state of France, especially considering the facts and information provided in this report:

119.149. Continue the process of expanding the possibilities of accessing the voluntary termination of pregnancy in order to ensure the full recognition of sexual and reproductive rights (France).

Executive Summary

1. This report has been prepared by Ipas in conjunction with the Sexual Rights Initiative and provides information about Brazil's restrictive abortion law. It explains why the government needs to eliminate judicial and administrative barriers that prevent women from accessing legal abortions, contraception, sexuality education and information on sexual and reproductive health and rights but also to minimize consequences of Zika virus epidemic in the country. Restrictions on abortion also contribute to the high rates of preventable maternal mortality. Only with the government's commitment to protect women's human rights constantly threatened by religious conservative efforts in the Congress and support for women's access to safe and legal abortion through law reform can Brazil comply with its international treaty obligations and the Human Rights Council's previous recommendations to the State.

National Context: discriminatory punitive abortion law and consequences in women health and lives

2. The Brazilian Constitution regulates on the right to health and motherhood protection in its session on social rights.¹ Also, the Brazilian government ratified the main International treaties on human rights, within the United Nations' spectrum, which can be applied to the context of sexual and reproductive health.²
3. Brazil has an advanced legal framework for the protection of the right to health; framed within the rules and standards of the Brazilian Universal Public Health System (Sistema Único de Saúde - SUS)³ that guide the main reproductive health policies.⁴

¹ Article 6. *"The following are considered social rights: education, health, employment, leisure, security, social security, protection of maternity and infancy, assistance to the abandoned, in the form of this Constitution."* Article 196 states that *„everyone has the right to health and it is the State's responsibility, by warranting social and economic policies, the reduction of the risk of diseases and other injuries and the universal and equalitarian access to actions and services for its promotion, protection and recovery."*

² Among them the ICCPR (1992), the ICESCR (1992), the CEDAW (1984), the ICERD (1968), the CRC (1990) and the CAT (1989)

³ Sistema Único de Saúde, usually known by the acronym SUS, is Brazil's publicly funded health care system.

⁴ Article 8 of the Federal Constitution states that: *"Everyone is equal according to law, without any whatsoever distinction, and it is warranted to any Brazilian and foreigners residing in Brazil the inviolable right to life, to liberty, to equality, to security and to property". : I – men and women are equal as to rights and obligations, under the terms of this Constitution; (...). III – nobody will be submitted to neither torture nor inhuman or degrading treatment; (...); XLI – the law will punish any discrimination against the fundamental rights and liberties. ""*

4. However, Brazil has one of the most restrictive legislations in the world on abortion. Since 1940, abortion is only allowed in Brazil in cases involving either risk to the woman's life or rape, and more recently in cases of fetal anencephaly⁵.
5. Yet abortion is common despite these legal restrictions. A national survey was carried out by Instituto Anis and the University of Brasília interviewed 2002 women aged 18-39 years living in state capitals and municipalities of over 5000 inhabitants; rural illiterate dwellers were excluded.⁷ They found that 1 in every 7 women up to the age of 40 years had had an abortion; when considering only women aged 35-39 years, the rate was 1 in every 5 women.⁸ Deaths resulting from clandestine abortions are one of the five main causes of avoidable maternal death⁹.
6. As with other public health failings, it is poor, Afro-Brazilians and young women, living in rural areas and suburbs, who most suffer from the burden of restrictive abortion laws¹⁰. Whereas wealthy Brazilian women can afford to leave the country or pay private providers for a safe abortion, poor women often have to resort to desperate measures, including buying black-market pills or going to clandestine clinics and face risk to their health and lives as well as of being investigated and prosecuted¹¹.
7. Clandestine and unsafe abortions are an unfortunate reality in Brazil, one that disproportionately affects poor women. Each year, complications due to unsafe abortions account for 250,000 emergency room visits and unsafe abortion is among the five causes of preventable maternal mortality in Brazil.¹²
8. The Human Rights Committee has concluded that the CCPR Articles related to equality between men and women require equal treatment in the area of health and the elimination

⁵ Brazil's Penal Code penalizes women who undergo induced abortions with 1-3 years of imprisonment; physicians who provide abortions can receive up to 20 years' imprisonment (Penal Code articles 123-128).

⁶ In April 2012 the Supreme Court of Brazil issued a decision allowing pregnancy interruption in cases of anencephaly. <http://s.conjur.com.br/dl/acordao-interruptcao-gravidez-anencefalo.pdf>

⁷ DINIZ, Debora e MEDEIROS, Marcelo. Itineraries and methods of illegal abortion in five Brazilian state capitals. *Ciênc. saúde coletiva* [online]. 2012, vol.17, n.7, pp. 1671-1681. Accessible at:

http://www.scielo.br/scielo.php?script=sci_abstract&pid=S1413-81232012000700002&lng=pt&nrm=iso&tlng=en

⁸ Diniz D. & Medeiros M. 2010. Abortion in Brazil: a household survey using the ballot box technique. *Ciencia e Saude Coletiva* 15, suppl.1: 959-66

⁹ Research on mortality among women aged 10-49 years, with an emphasis on maternal mortality. Ministry of Health, Brasília, DF, 2006.

¹⁰ Fusco CLB. Aborto inseguro: um sério problema de saúde pública em uma população em situação de pobreza. *Reprod Clim* 2013; 28:2-9.

¹¹ Galli B. Negative Impacts of Abortion Criminalization in Brazil: Systematic Denial of Women's Reproductive Autonomy and Human Rights, *UNIVERSITY OF MIAMI LAW REVIEW*, Vol. 65:969, 2011

¹² Research on mortality among women aged 10-49 years, with an emphasis on maternal mortality. Draft Final Report Draft. Ministry of Health, Brasília, DF, 2006. Ministério da Saúde. Norma de Atenção humanizada ao abortamento. http://bvsms.saude.gov.br/bvs/publicacoes/atencao_humanizada_abortamento_norma_tecnica_2ed.pdf

of discrimination in the provision of goods and services; this implies a need to review abortion laws to prevent rights violations¹³. In General Comment 28, the Human Rights Committee notes that, to ensure women's right to life, States have a duty to take measures to keep women from having to resort to clandestine unsafe abortions which put their health and lives at risk.

9. CEDAW establishes the State's responsibility to "take all necessary measures in order to eliminate discrimination against women in the field of health so as to warrant their access to health care services based on equality between women and men."¹⁴ Moreover, the CEDAW Committee has noted that "other barriers to women's access to adequate health care service include the laws which criminalize procedures only women need and which punish the women who seek such services."¹⁵ The Committee has strongly disapproved of restrictive abortion laws, especially those that prohibit and criminalize abortion in all circumstances; ¹⁶ the Committee has framed such laws as violating the rights to life, health and information.

Barriers to access legal abortions for victims of sexual violence and political threats to reproductive rights¹⁷

10. In 2013, Brazil adopted the *Law 12.845* that ensures mandatory, comprehensive, and multidisciplinary care provision for persons that had suffered sexual assault, in all hospitals operating under the SUS.. This was a significant governmental step to secure women's rights for sexual violence victims.
11. According to the Technical Guidelines on the Prevention and Treatment of Injuries Resulting from Sexual Assault against Women and Adolescents¹⁸, health professionals may decide whether or not they want to perform the abortion, based on their personal convictions, but in such cases they have the obligation to refer the woman to another health service or health professional to perform the procedure.
12. That is, the health professional and health service administrator are required to ensure adequate care. Considering that a staggering 527,000 women suffer rape each year¹⁹, it is paramount for health care professionals to know about the rape exception. The Brazilian state should establish public campaigns to the population and health providers informing on

¹³ CCPR/C/21/Rev.1/Add.10, paragraphs 20, 28 and 31

¹⁴ CEDAW, Part I, Article 1

¹⁵ CEDAW Committee, General Recommendation 24, paragraph 14.

¹⁶ CEDAW Committee, CEDAW/C/CH/CO/4, paragraph 19.

¹⁷ The information presented below is based on the findings from a study carried out by initiative coordinated by CFEMEA with Sexuality Policy Watch and Ipas during 2015 and beginning of 2016.

¹⁸ Ministério da Saúde. Norma Técnica de Prevenção e Tratamento dos Agravos Resultantes da Violência Sexual Contra Mulheres e Adolescentes. Brasília: Ministério da Saúde; 2012.

¹⁹ http://www.ipea.gov.br/portal/images/stories/PDFs/nota_tecnica/140327_notatecnicadiest11.pdf

current abortion law with information on where sexual violence victims should seek health care needed.

13. The current composition of the Brazilian National Congress shows a strong religiously-based conservatism whose agendas infringe the Brazilian state's secularity: the set of bills submitted by conservative forces against sexual and reproductive health and rights issues, raise threats of retrocession in established rights, as part of a political strategy organized under the "right to life of the unborn children"²⁰ that threat women's and girls' access to reproductive health care. For example, the Bill of Law known as the "Unborn Child's Statute" (*PL 478/07*) aims to provide absolute protection for the right to life of the Unborn Child²¹ that is, granting the embryo the same rights as already-born children and adolescents. If the bill passes, it may criminalize abortion in cases of rape, risk to the woman's life, or anencephaly, in addition to interfering negatively in the field of assisted reproduction. The bill is currently under review in the Committee on the Constitution and Justice, in Brazil's Lower House (CCJC).

14. Bill of *Law 5069/2013*²² proposes various barriers for women and adolescent victims of sexual assault to access health services and exercise their sexual and reproductive rights. The bill received approval by the Committee on the Constitution and Justice in October 2015. The bill revokes the expanded definition of sexual assault as "any form of nonconsensual sexual activity", guaranteed by *Law 12.845*, and reclaims the less comprehensive definition of rape, already altered by *Law 12.015*. This would narrow the definition of sexual assault and restrict access to health services and justice, which are established rights for rape victims. The bill also proposes a change to Article 1 of *Law 12.845*, striking the term "comprehensive" from care in cases of sexual assault. The proposed deletion ignores the complexity of rape cases and the multiple needs for clinical, social, and psychological care, legal assistance, and police protection, among others. *Law 12.845*, in addition to guaranteeing health care, provides each woman's right to receive sufficient information on her rights and orientation on the available services, including the right to choose legal and safe abortion in case of pregnancy resulting from rape. Meanwhile, Bill of *Law 5.069* typifies as a crime to "induce", "instigate", or "abet" the practice of abortion (Article 112) or to perform "advertising of means for abortion", and explicitly when the crime is "committed by an agent of the public health service or a practicing physician, pharmacist, or nurse". We can only imagine the consequences for free professional exercise and educational practices by all those working with reproductive health. The bill refers explicitly to the right to conscientious objection not only by health professionals, but also extending to institutions. The statement that "no health professional or institution, in any

²⁰ Galli B, Rocha H. Direitos sexuais e reprodutivos, autonomia reprodutiva, política e (des)respeito ao princípio da laicidade.

http://www.meel.org.br/wpcontent/uploads/2014/08/artigo_dsr_politica_principio_laicidade.pdf

²¹ <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=345103>

²² <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=565882>

- case, may be obliged to counsel, prescribe, or administer a procedure or medication that he/she/it considers abortive” clearly leaves room for omission of responsibility for the care, encouraging denial of information to women by health professionals, institutions, and administrators.
15. Another serious aspect of this bill is the establishment of mandatory certification of rape by a forensic medical examiner and reporting to the police authorities prior to authorization of the abortion, disregarding the prevailing Ministry of Health directive, which makes the woman’s affidavit sufficient.
 16. Finally, the bill alters the technical definition of “prevention of pregnancy” to “non-abortive procedure or medication, with early efficiency to prevent pregnancy resulting from rape”. This leaves room for the tortuous and conservative debate on preventive versus abortive medication, jeopardizing access to emergency contraception, which is guaranteed by the Federal Constitution when it provides the right to family planning (Article 226 of the Federal Constitution, paragraph 7) and Federal *Law 9.263/1996*.
 17. On the other, barriers to access and quality of care, expressed in Bill of Law 5.069, may influence adult and adolescent rape victims into delaying or desisting from seeking public health care services, turning to unsafe procedures to interrupt the pregnancy, with all the inherent risks. In addition, such barriers pose a risk to health professionals that fulfill their ethical and professional duties to rape victims and expose themselves to criminal prosecution.
 18. The Brazilian government should protect women’s sexual and reproductive rights against regression through these legislative efforts undertaken by conservative religious groups and take steps to remove barriers for the full implementation of health services to treat sexual violence victims in accordance with the current law *12.845/2013*.

The Zika epidemic: Brazilian state’s failures to protect women’s human rights²³

1. The situation of a public health emergency declared by The World Health Organization (WHO) points out state’s responsibility for failure to take effective measures to control the vector and the woman’s right to dignity and health, considering the situation of aggravated social and economic vulnerability of the most affected women and their babies born with serious health consequences of the Zika virus, including neurological disorders and microcephaly²⁴.

²³ The present session presents the conclusions from a public health and human rights analysis of the Brazilian Ministry of Health Protocol on Zika carried out by Ipas, Global Health Justice Partnership (GHJP/Yale), the research institution Instituto Fernandes Filgueira/Fiocruz, Anis and Promundo.

²⁴ **WHO interim guidance on pregnancy management in the context of Zika virus infection [commentary]**. Olufemi T Oladapo, João Paulo Souza, Bremen De Mucio, Rodolfo Gómez Ponce de León, William Perea, A Metin

2. Brazil runs the risk of counteracting the measures needed to guarantee women’s sexual and reproductive health, as expressed by the World Health Organization and the Office of the United Nations High Commissioner for Human Rights, calling on governments to fulfill their responsibility to review restrictive abortion laws and policies, expand access to comprehensive sexual and reproductive health services, and guarantee access to information and the right to health and right to life for all women, without discrimination.²⁵.
3. In March 2016, the Brazilian Ministry of Health published its most recent guidelines for the health care response to Zika-related microcephaly (the “Protocol”)²⁶. The Protocol provides recommendations for provision of care in the contexts of family planning through prenatal and infant care.
4. The Protocol failed to address legal and socio economic constraints that affect women’s health and human rights and orient health professionals on how to best support women in a context of difficult and constrained reproductive choices, for the reasons explained below.
5. Contraception may be legal and free in Brazil, but the government has failed to ensure that individuals have actual access to information and services²⁷ during the Zika epidemic. Research indicates significant levels of unmet need: as many as 20% of sexually active adolescent women in Brazil are not using birth control, and approximately half of all births in Brazil are unintended²⁸. The Protocol correctly recognizes that proper contraceptive use will play a large role in curbing the impact of the Zika epidemic. However, it fails to acknowledge and address the barriers many women, particularly poor, Afro-Brazilians and young women, face in contraceptive use. Women who have been infected with Zika or who are more vulnerable to infection have the right to quality counseling, advice to make informed decisions, especially regarding potential health risks and fetal development risks.

Gülmezoglu. *The Lancet Global Health*, 4 (8): e510-e511. (August

2016)[http://www.thelancet.com/pdfs/journals/langlo/PIIS2214-109X\(16\)30098-5.pdf](http://www.thelancet.com/pdfs/journals/langlo/PIIS2214-109X(16)30098-5.pdf)

²⁵ Baum et al. Ensuring a rights-based health sector response to women affected by Zika.

http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0102-311X2016000500605&lng=en&nrm=iso&tlng=en

²⁶ Secretaria de Atenção à Saúde, Ministério da Saúde. Protocolo de atenção à saúde e resposta à ocorrência de microcefalia. http://combateaedes.saude.gov.br/images/sala-de-situacao/04-04_protocolo-SAS.pdf

²⁷ Instituto Patricia Galvao survey found that pregnant women are lacking complete information, health exams and good quality of prenatal care during Zika epidemic: http://agenciapatriciagalvao.org.br/wp-content/uploads/2016/08/Apresenta%C3%A7%C3%A3o-zika-quali_FINAL.pdf

²⁸ Ministério da Saúde. Pesquisa Nacional de Demografia e Saúde da Criança e da Mulher 1996 e 2006. http://bvsmms.saude.gov.br/bvs/publicacoes/pnds_crianca_mulher.pdf

6. Unsafe abortion is likely to increase during Zika epidemic. Desperate women have to resort to other means to be able to interrupt pregnancy²⁹ and face risk of being investigated and criminalized³⁰.

Summary of the main gaps in Brazilian protocol:

- It fails to acknowledge that unsafe abortion is a public health reality in Brazil and one that disproportionately affects poor women.
- It misses a critical opportunity to educate health services providers about the existing legal exceptions for abortion and the proper procedures for ensuring access.
- It ignores challenges many women face in obtaining and using contraception especially for more marginalized groups of women such as young women and afro-descendent women.

Conclusion

The Brazilian state's neglect and failure in taking effective measures to protect women's reproductive rights from during Zika epidemic is systematic³¹. The Brazilian state is violating women's human right to make informed decisions during pregnancy, right to information, right to health and life, right to equality and non-discrimination in health care.

Recommendations to the Brazilian state:

1. Protect women's human rights constantly threatened by religious conservative efforts in Congress and support existing policies for sexual violence victims access to safe and legal abortion.
2. Provide equal access to comprehensive reproductive health care to all women without discrimination, particularly black women, living in areas more affected by lack of sanitation and with poor socio economic conditions, more likely to be affected by Zika

²⁹ Miller ME. With a abortion banned in Zika countries, women beg on web for a abortion pills. Washington Post 2016; 17 feb. <https://www.washingtonpost.com/news/morningmix/wp/2016/02/17/help-zika-in-venezuela-i-need-abortion/>

³⁰ Ipas, 2016. Zika underscores need for reproductive justice for all women <http://www.ipas.org/en/Resources/Ipas%20Publications/Zika-underscores-need-for-reproductive-justice-for-all-women.aspx>

Requests for Abortion in Latin America Related to Concern about Zika Virus Exposure <http://www.nejm.org/doi/pdf/10.1056/NEJMc1605389>

³¹ Using a Human Rights Accountability Framework to Respond to Zika <http://www.hhrjournal.org/2016/05/using-a-human-rights-accountability-framework-to-respond-to-zika/>

epidemic and suffer health consequences during pregnancy, including access to quality prenatal care, sexual and reproductive health information, contraception, emergency contraception, counseling and safe abortion services.

3. Provide access to information to all women to be able to freely decide whether to continue or terminate a pregnancy, particularly during the Zika outbreak, to address women's specific health needs and wellbeing concerns in particularly young and afro-descendent women living in the most affected areas.
4. Decriminalize abortion and guarantee women and girls' right to legal abortion for women that decide to not continue their pregnancies and are facing aggravated health risks associated with zika infection.
5. Adopt the harm reduction model, which seeks to ensure that women have access to scientifically-based and neutral counseling, has been implemented in other contexts with similarly restrictive abortion laws, including Uruguay prior to its liberalization of abortion laws. Such neutral counseling includes information on the risks associated with different means to induce abortion and signs of complications that require immediate attention.³²
6. Educate health-care professionals about women's sexual and reproductive rights and how to refer women to safe, legal abortion services.
7. Provide information, services and secure social policies to women infected with Zika who choose to continue their pregnancies and give birth to children with microcephaly or other impairments.

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

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³² Erdman JN. Harm reduction, human rights, and access to information on safer abortion. *Int J Gynecol Obstet* 2012; 118:83-6.