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## Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name 'Alliance Defending Freedom'), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report focuses on the right to life of the unborn and Brazil's failures in promoting and defending this right given threats posed by the Zika virus epidemic.

### (a) Right to Life

#### *Background*

3. The right to life is protected in the Constitution of the Federative Republic of Brazil (the Constitution). Article 5 of the Constitution states:

All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property[.]
4. The Constitution does not specify the scope of the provision, namely, when life begins or whether the right to life of the unborn is covered.
5. Under Article 128 of the Brazilian Criminal Code, abortion is allowed only in cases of rape and danger to the woman's life.
6. Illegal abortion is widely performed. It is estimated that there are between 1 and 4 million illegal abortions per year.<sup>1</sup> Furthermore, approximately 250,000 illegal abortions result in hospitalization due to post-abortion complications.<sup>2</sup> Prosecution of the illegal practice of abortion is rare.
7. In 2013 the maternal mortality rates in Brazil were high, with 69 deaths per 100,000 live births.<sup>3</sup> Nonetheless, the maternal mortality ratio has improved, decreasing from 120 in 1990, 100 in 1995, 85 in 2000, and 73 in 2005.<sup>4</sup> This means that since 1990, Brazil managed to decrease the maternal mortality rates by 43% without liberalizing abortion regulations.
8. The adolescent pregnancy rate in 2015 was high at 67 per 1,000 women aged 15 to 19 years, having decreased from 69 in 2011.<sup>5</sup>

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<sup>1</sup> Adesse, Leila e Monteiro, Mario. Magnitude do aborto no Brasil: aspectos epidemiológicos e sócio-culturais. IPAS Brasil/IMS/UERJ. 2007; Human Rights Watch, Abortion, available at: <https://www.hrw.org/news/2009/03/31/abortion#Brazil>.

<sup>2</sup> Lourdes Garcia-Navarro, Brazil's Restrictions On Abortion May Get More Restrictive, available at: <http://www.npr.org/sections/parallels/2013/10/29/241410709/brazils-restrictions-on-abortion-may-get-more-restrictive>.

<sup>3</sup> World Health Organization, Trends in Maternal Mortality 1990 to 2013, 29.

<sup>4</sup> *Ibid.*, 36.

<sup>5</sup> The World Bank, Adolescent fertility rate, available at: <http://data.worldbank.org/indicator/SP.ADO.TFRT>.

9. Violence against women and girls in Brazil is high and continues to increase.<sup>6</sup> The high level of violence is used to advocate for abortion liberalization. However, little attention is paid to the fact that a liberal abortion law would not address or end sexual and domestic violence.
10. In February 2016, Brazil came under increased pressure from the OHCHR to liberalize its abortion law.<sup>7</sup> On 5 February 2015, the High Commissioner for Human Rights expressed concern:

In Zika-affected countries that have restrictive laws governing women's reproductive rights, the situation facing women and girls is particularly stark on a number of levels. In situations where sexual violence is rampant, and sexual and reproductive health services are criminalized [by which he means abortion], or simply unavailable, efforts to halt this crisis will not be enhanced by placing the focus on advising women and girls not to become pregnant.

11. The Brazilian government also called for liberalization of the abortion law in Brazil.<sup>8</sup>

#### *Right to Life in International Law*

12. The right to life of the unborn is protected under international law. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) states, 'Every human being has the inherent right to life.' Furthermore, Article 6(5) of the ICCPR states, 'Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and *shall not be carried out on pregnant women.*' The ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. As the *travaux préparatoires*<sup>9</sup> of the ICCPR explicitly state, 'The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to *save the life of an innocent unborn child.*'<sup>10</sup> Similarly, the Secretary General report of 1955 notes that the intention of the paragraph 'was inspired by humanitarian considerations and by *consideration for the interests of the unborn child.*'<sup>11</sup>
13. The protection of unborn life is also found through an ordinary reading of the language in the preamble of the Convention on the Rights of the Child (CRC). The preamble states, '[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth.*' Article 1 of the CRC defines a child as 'every human being below

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<sup>6</sup> PRI, Brazil's shocking violence against women, in five charts, available at: <http://www.pri.org/stories/2015-11-18/brazils-shocking-violence-against-women-five-charts>.

<sup>7</sup> High Commissioner of Human Rights, Upholding women's human rights essential to Zika response – Zeid, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17014&LangID=E>.

<sup>8</sup> Simon Romero, Surge of Zika Virus Has Brazilians Re-examining Strict Abortion Laws, available at: <http://www.nytimes.com/2016/02/04/world/americas/zika-virus-brazil-abortion-laws.html>.

<sup>9</sup> In accordance with the Article 32 of the Vienna Convention, the *travaux préparatoires* are considered to be a "supplementary means of interpretation."

<sup>10</sup> Report of the Third Committee to the 12<sup>th</sup> Session of the General Assembly, 5 December 1957. A/3764 § 18.

<sup>11</sup> Report of the Secretary-General to the 10<sup>th</sup> Session of the General Assembly, 1 July 1955. A/2929, Chapter VI, §10.

the age of eighteen years.' This provides an upper limit as to who is a child, but does not provide a lower limit on when the status of 'child' attaches.

14. Providing access to abortion means that more women suffer from abortion-related complications. There are numerous maternal risks associated with abortion. A major study published in the *British Medical Journal* in 2015 concluded that States with 'less permissive' abortion laws 'exhibited consistently lower maternal mortality rates.'<sup>12</sup> Although the study explains these differences in terms of other independent factors rather than in terms of abortion legislation itself, it nevertheless concludes, 'No statistically independent effect was observed for abortion legislation, constitutional amendment or other covariates.'<sup>13</sup> Because abortion legislation has no effect on maternal mortality, abortion need not be legalized to protect women's health. Abortion is further associated with a high risk of haemorrhaging, developing sepsis, and developing injuries to internal organs, including intrauterine perforations.<sup>14</sup> Moreover, abortion can never be safe because it takes the life of the unborn child and harms the mother through the loss of her child. It has also been reported that women who have had abortions are more vulnerable to self-destructive tendencies, depression, and other unhealthy behaviour aggravated by the abortion experience.<sup>15</sup>
15. Therefore, Brazil must focus on protecting the right to life of the unborn and on helping women get through pregnancy and childbirth safely, rather than on ending pregnancies. A more relaxed abortion law does not address the problem of sexual and domestic violence in Brazil. Brazil should ensure that all cases of domestic and sexual abuse and violence are investigated accordingly, and the perpetrators are prosecuted. Brazil should also raise awareness about the rights of women and girls. Brazil must protect women, girls, and children from domestic and sexual violence. In order to reduce maternal mortality and teen pregnancy, Brazil also should provide women with access to knowledge-based education about their bodies, healthy behaviours, and responsible decision-making. Brazil should redirect resources to improve maternal health and medical infrastructure to solve the problem of high maternal mortality rates.

### *Zika Virus Epidemic*

16. The Zika virus is a mosquito-borne virus that was first discovered in 1947 in Uganda.<sup>16</sup> The Zika virus causes symptoms of fever, arthralgia, and rash.<sup>17</sup> It can be

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<sup>12</sup> Elard Koch, Monique Chireau, and Fernando Pliego et. al., *Abortion Legislation, Maternal Healthcare, Fertility, Female Literacy, Sanitation, Violence Against Women and Maternal Deaths: A Natural Experiment in 32 Mexican States*, *BMJ OPEN* 2015:5 e006013, doi:10.1136/bmjopen-2014-006013, p. 1.

<sup>13</sup> *Ibid.*

<sup>14</sup> Gunnel Lindell and Folke Flam, *Management of Uterine Perforations in Connection with Legal Abortions*, *ACTA OBSTET GYNECOL SCAND.* (1995) May 74(5):373-5, available at <http://onlinelibrary.wiley.com/doi/10.3109/00016349509024431>.

<sup>15</sup> David C. Reardon, Philip G. Ney, Fritz Scheuren, Jesse R Cogle, Priscilla K Coleman, Thomas W. Strahan, *Deaths Associated with Pregnancy Outcome: A Record Linkage Study of Low Income Women*, *SOUTHERN MEDICAL JOURNAL*, (2002) August, 95(8):834-841.

<sup>16</sup> Tom Solomon, Matthew Baylis, and David Brown, *Zika virus and neurological disease- approach to the unknown*, available at: [http://www.thelancet.com/pdfs/journals/laninf/PIIS1473-3099\(16\)00125-0.pdf](http://www.thelancet.com/pdfs/journals/laninf/PIIS1473-3099(16)00125-0.pdf).

<sup>17</sup> *Ibid.*

transmitted through mosquito bites, through mother to child transmission<sup>18</sup> or through sexual intercourse.<sup>19</sup>

17. After Africa, the virus spread to Yap, Federated States of Micronesia and French Polynesia before reaching South America in early 2015. It was estimated that in 2015 over 1.6 million people became infected in Brazil alone, with 863 fatalities.<sup>20</sup>
18. Because the number of children born with microcephaly in Brazil rose around the time of the start of the Zika virus epidemic in 2015, a conclusion has been made that there must be a causal link between the Zika virus and the occurrence of microcephaly.
19. The WHO Director-General stated on 1 February 2016:

In assessing the level of threat, the 18 experts and advisers looked in particular at the strong association, in time and place, between infection with the Zika virus and a rise in detected cases of congenital malformations and neurological complications. The experts agreed that a causal relationship between Zika infection during pregnancy and microcephaly is strongly suspected, though not yet scientifically proven.
20. Some studies suggest that the Zika virus has been detected in amniotic fluid and placental and foetal tissue<sup>21</sup> in babies diagnosed with malformations of the nervous system.<sup>22</sup> However, the presence of the Zika virus in the amniotic fluid does not mean that the child would suffer from any neurological conditions<sup>23</sup>.
21. It is tragic that the response to the Zika virus epidemic has been to suggest that the abortion law should be liberalized. First, liberalization of the law does nothing to prevent the spread of the virus. Abortions cannot eliminate Zika. Second, liberalization does nothing to treat people who have been infected with Zika. Third, this will cause, and has caused already, many pregnant women infected with Zika to undergo abortions without any confirmation that their unborn children are negatively affected. One study suggests that the risk of microcephaly for infection in the first trimester is around 1%.<sup>24</sup> The recommendation of the High Commissioner for Human Rights opens the door to abuse and places women's health at risk; therefore, recommendations to relax the abortion law in response to the Zika virus are misguided.
22. One of the proposed methods of detecting Zika virus-related disorders, amniocentesis, is reported to be an inadequate method, leading to unnecessary

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<sup>18</sup> Centre for Disease Control and Prevention, Zika Virus, available at: <http://www.cdc.gov/zika/transmission/>.

<sup>19</sup> This was confirmed only in two cases. See: WHO, Zika virus, available at: <http://www.who.int/mediacentre/factsheets/zika/en/>.

<sup>20</sup> Lia Giraldo da Silva Augusto et al, *Aedes aegypti control in Brazil*, The Lancet, Vol.387, 12 March 2016.

<sup>21</sup> Schuler-Faccini L, Ribeiro EM, Feitosa IM, et al., *Possible association between Zika virus infection and microcephaly—Brazil*, 2015. MMWR Morb Mortal Wkly Rep 2016; 65: 59–62.

<sup>22</sup> (n 16)

<sup>23</sup> Manon Vouga, Didier Musso, Tim Van Mieghem, *CDC guidelines for pregnant women during the Zika virus outbreak*, available at: [www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(16\)00383-4.pdf](http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(16)00383-4.pdf).

<sup>24</sup> Laura C Rodrigues, *Microcephaly and Zika virus infection*, available at: [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)00742-X/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)00742-X/fulltext).

amniocenteses and associated risks of miscarriage.<sup>25</sup> This is because 'the virus is only shed in the amniotic fluid once the foetal kidneys produce sufficient urine (after 18-21 weeks' gestation) and once sufficient time has elapsed for the virus to breach the placental barrier (at the earliest 6-8 weeks after the infection).'<sup>26</sup>

23. The only effective intervention for the Zika virus epidemic is mosquito control<sup>27</sup>, including breeding site destruction and bite prevention. This is the only preventive intervention able to address all potential risks posed by the Zika virus, including flu-like symptoms, Guillain-Barre syndrome, and microcephaly. Improvements in urban infrastructure, environmental sanitation, and stable supply of potable water are needed. The development of reliable vaccinations and the provision of safe and effective treatment for the virus, including treatment for pregnant women, are also critical.

### **(b) Recommendations**

24. In view of the above, ADF International recommends the following:

- Take steps to recognize and follow national and international obligations to protect the right to life from conception to natural death;
- Work to end abortion in accordance with international obligations to protect the life of the unborn;
- Introduce additional safeguards on abortion services, e.g., mandatory counselling and waiting periods prior to undergoing abortion;
- At a minimum, maintain the requirements for obtaining an abortion;
- Take steps to protect women and girls from domestic and sexual violence;
- Focus on preventing the spread of the Zika virus through mosquito control, urban infrastructure improvement, and environmental sanitation.

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<sup>25</sup> (n 24)

<sup>26</sup> *Ibid.*

<sup>27</sup> (n 16)