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IMAIIS - Instituto Mulher pela Atenção Integral à Saúde e Direitos Humanos

Universal Periodic Review

Human Rights Council

Submission on Human Rights related to Reproductive Health Determination in Brazil by the Ipas¹ and ABIA/SPW², Rede Feminista de Saude Direitos Sexuais Direitos Reprodutivos³, CLADEM⁴, Grupo Curumim⁵, Conectas Direitos Humanos⁶, Comissão de Cidadania e

¹ **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)

² **Sexuality Policy Watch** - SPW is a global forum of researchers and activists devoted to research, analysis and support to advocacy work in the interlinked domains of sexuality and sexual rights broadly speaking. SPW Secretariat is base at ABIA, in Brazil.

³ **The Brazilian Feminist Health Network on Sexual and Reproductive Rights** (Rede Feminista de Saude Direitos Sexuais Direitos Reprodutivos) is a political articulation of the national women's movement, feminist and anti-racism, founded in 1991. It has national coverage and is composed of 12 regional organized in Pará Paraíba, Paraná, Pernambuco, Goiás, Bahia, Minas Gerais, Rio de Janeiro, Rio Grande do Sul, Sao Paulo, Santa Catarina and the Federal District. It is composed of non-governmental organizations, women's groups, researchers and academic research groups, advice and forums for women's rights, and women's movement activists and feminists, and other health professionals working in the field of women's health, sexual and reproductive rights. It is present in about 30 national bodies, governmental and non-governmental organizations that focus on public health policies.

⁴ **Latin American and Caribbean Committee for the Defense of Women's Rights (Comitê Latino-Americano e do Caribe para a Defesa dos Direitos da Mulher)** advocates the defense and promotes the enforceability of women's human rights throughout the region, with a feminist and critical vision of the law, by means of the international litigation, the monitoring of the States and the strengthening of its members' capabilities for the analysis and juridical/political argumentation, the harmonization of agendas and the design of strategies and courses of action for the local and regional political actions.
www.cladem.org

⁵ **The Group Curumim** (Grupo Curumim) works since 1989 to strengthen the citizenship of women in all stages of your life through the promotion of Human Rights, full health, sexual rights and reproductive rights, from the perspective of ethnic equality race and gender, social justice and democracy.works with informal community birth attendants and train them to inform women about local public health services, thus facilitating women's access to skilled health workers and enabling women to choose the type of health assistance they wanted.

⁶ **Conectas Direitos Humanos** is an international non-governmental, not-for-profit organization, founded in Sao Paulo/Brazil in October 2001. Its mission is to promote the realization of human rights and consolidation of the Rule of Law, especially in the Global South (Africa, Asia and Latin America). Conectas was accorded consultative status with the ECOSOC-UN in 2006, and observer status with the African Commission on Human and Peoples' Rights in 2009.

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⁷ **The Commission for Citizenship and Reproduction (CCR)** is a nationwide civil entity, nonprofit organization that aims to promote and defend reproductive rights according to the principles of the UN declarations, especially those of the Convention on the Elimination of All Forms of Discrimination Against Women. Its main goal is the defense of freedom and respect for the dignity of the population in the area of sexuality and reproduction.

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SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF BRAZIL

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UN Human Rights Council
Geneva
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Re: Brazil - 13th Universal Periodic Review session

Executive Summary

This submission has been prepared by civil society stakeholders Ipas and ABIA/Sexuality Policy Watch, in consultation with CLADEM Brasil, Rede Feminista de Saúde Direitos Sexuais e Reprodutivos, Comissão de Cidadania e Reprodução, Grupo Curumim, Plataforma DHESCA and CONECTAS Direitos Humanos are submitting the information below for the Universal Periodic Review (UPR) of Brazil during the second cycle of the Human Rights Council UPRs.

We first address the international conventions and human rights related to reproductive self-determination that the State of Brazil has ratified and then make note of Treaty Monitoring Body and

Special Rapporteur recommendations related to criminalization of abortion, the subject of our submission. We provide data on unsafe abortion in Brazil, the lack of access to safe abortion care and the discriminatory enforcement of the abortion law in Brazil showing the failure of the State to address this adequately and in terms of its commitments as a result of the first UPR. Then we make our recommendations for follow-up and implementation.

1. Human rights ratified by the State of Brazil in the context of sexual and reproductive rights

1.As a signatory to the following international conventions, the State of Brazil has assumed obligations to respect, promote and fulfill the human rights to health, the benefits of scientific progress, self-determination and autonomy, privacy and confidentiality, to decide whether and when to have children, and to freedom from discrimination and from cruel, inhuman and degrading treatment:

- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- International Covenant on Economic, Social and Cultural Rights (CESCR)
- International Covenant on Civil and Political Rights (CCPR)
- Convention on the Rights of the Child (CRC)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

2.We would in particular like to highlight how the criminalization in Brazil of a medical procedure that only women need – abortion – contravenes the commitments on human rights that the State has assumed. Furthermore, the State has direct responsibility for discriminatory law enforcement and legal institutions that are investigating and prosecuting women and health-care providers in relation to abortion care, thereby neglecting its international obligations to fulfill women’s health-related human rights and all recommendations made in this regard by Treaty Monitoring Bodies.

2. Treaty Monitoring Body and Special Rapporteur recommendations related to reproductive self-determination

3.The criminalization of abortion often drives women to seek unsafe clandestine procedures to terminate their unwanted pregnancies, resulting in risks to their health and violating their right to life in cases of severe complications of unsafe abortions. **Studies have long demonstrated the correlation between a country’s restrictive abortion law and high rates of maternal mortality and morbidity.**⁸

4.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 of discrimination in the provision of goods and services; this implies a need to review abortion laws to prevent rights violations (see CCPR/C/21/Rev.1/Add.10, paragraphs 20, 28 and 31).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.

5.Article 12(2) of 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.” The CEDAW Committee has noted that “other barriers to women’s access to adequate health care service include the laws which

⁸ Jewkes, Rachel, Heather Brown, Kim Dickson-Tetteh, Jonathan Levin and Helen Rees. 2002. Prevalence of morbidity associated with abortion before and after legalization in South Africa. *British Medical Journal*, 234(1252).

criminalize procedures only women need and which punish the women who seek such services.”⁹ The Committee has strongly disapproved of restrictive abortion laws, especially those that prohibit and criminalize abortion in all circumstances;¹⁰ the Committee has framed such laws as violating the rights to life, health and information.

6. The Committee on the Rights of the Child is also concerned about the impact of highly restrictive abortion laws on the right to health of adolescent girls,¹¹ while the Committee against Torture has stated that punitive abortion laws should be reassessed so that they conform to the requirements of the Convention.¹²

7. In 2009, the CESCR Committee expressed its concerns to the State of Brazil regarding maternal health, saying that *“maternal mortality rates remain extremely high and that the risk of maternal death disproportionately affects marginalized communities [sic], particularly Afro-Brazilians, indigenous women and women from rural areas.”* The Committee further noted *“with concern that clandestine abortions remain a major cause of death among women.”* The Committee reiterated a recommendation made in its Concluding Observations on the State Party’s initial report, *“namely that the Committee requests the State party to undertake legislative and other measures, including a review of its present legislation, to protect women from the effects of clandestine and unsafe abortion and to ensure that women do not resort to such harmful procedures.”*¹³

8. In Brazil, abortion is only permitted in cases of rape or to save the life of a pregnant woman. In all other circumstances, Brazil’s Penal Code penalizes women who undergo self-induced abortions with 1-3 years of imprisonment. In many states of Brazil, women still do not have access to safe, legal abortion care. The State’s failure to provide access to safe abortion in cases permitted by law directly contradicts the CEDAW and CESCR Committees recommendations. In this context, it is clear that the State of Brazil is not taking the necessary measures to protect women’s human rights.

9. The impact of police raids and investigations of abortion clinics and providers in different states has actually contributed to increased criminalization of women and providers for abortion, rather than ensuring that women are provided with the care required to meet their reproductive health needs. These investigations and prosecutions of women and health-care providers constitute clear examples of the type of barriers to the fulfillment of women’s health highlighted by the UN Special Rapporteur on the Right to Health in his report of 3 August 2011, which states that:¹⁴

“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. These laws infringe women’s dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health. Moreover, such laws consistently generate poor physical health outcomes resulting in deaths that could have been prevented, morbidity and ill-health, as well as negative mental health outcomes, not least because affected

⁹ CEDAW Committee, General Recommendation 24, paragraph 14.

¹⁰ CEDAW Committee, CEDAW/C/CH/CO/4, paragraph 19.

¹¹ CRC Committee, General Comment 4, paragraph 31.

¹² CAT Committee. Concluding Observations to Ireland, 2011, paragraph 26.

¹³ CESCR Committee. 2009. Concluding Observations to Brazil. Paragraphs 28 and 29.

¹⁴ United Nations. August 2011. A/66/254, paragraph 21. The report focuses on the interaction between criminal laws and other legal restrictions relating to sexual and reproductive health and the right to health. The Special Rapporteur makes 14 recommendations for a right-to-health approach in the domain of reproductive health, including encouraging States to: decriminalize abortion; decriminalize the use and supply of all forms of contraception; remove barriers for spousal and/or parent consent; and ensure access to evidenced-based information and education on sexual and reproductive health.

women risk being thrust into the criminal justice system. Creation or maintenance of criminal laws with respect to abortion may amount to violations of the obligations of States to respect, protect and fulfill the right to health.”

10. The Special Rapporteur further states that criminal prohibition of abortion is a clear expression of State interference with a woman’s sexual and reproductive health, because it restricts a woman’s control over her body, possibly subjecting her to unnecessary health risks.

3. The 2008 Brazil Universal Periodical Review

11. In responding to its first UPR in 2008, the State of Brazil expressed its commitment to eliminating injustice and discrimination. The State also committed to accelerating reductions in gender inequality and improving the criminal justice system, through its acceptance of recommendations presented by other Member States during the first review.¹⁵ **Despite this formal commitment, a recently intensified discriminatory application of the criminal law on abortion has been detrimental to women’s full enjoyment of the right to health and rights related to reproductive self-determination such as the rights to privacy, liberty and security of the person, equality and freedom from discrimination in health care. This has led to increased stigmatization of women who have had abortions, some of whom are facing prosecution.**

12. As many as 250,000 women are hospitalized every year in Brazil for complications of unsafe abortion.¹⁶ This is considered just the tip of the iceberg; for every woman who is admitted to a hospital for post-abortion care, there are five who are not.

13. Studies have demonstrated that laws that criminalize abortion do not make abortion less frequent. Despite the Penal Code’s criminalization of abortion, more than one million abortions are estimated to occur annually in Brazil, most of which are illegal and unsafe.¹⁷ Women of low economic status are especially greatly affected. Low-income women of Afro descent with little education and poor access to family-planning services are most likely to die or suffer from complications due to unsafe abortions,¹⁸ which are a major cause of maternal mortality in Brazil.

14. **Dehumanized abortion care is a result of the clandestine nature of most procedures. Increased investigations of women who have had abortions have resulted in more imprisonment of women, partly due to the involvement of health-care facilities.** For example, in one case at a Rio de Janeiro hospital, “the head of obstetrics called the police, because a woman had helped another woman induce an abortion; the ‘abortionist’ had fainted when she saw the fetus. That woman was imprisoned, and the physician was a prosecution witness.”¹⁹ **Such reporting to law enforcement by health-care providers occurs more often in public Brazilian facilities, constituting disrespect for women’s rights to privacy and confidentiality; it also runs counter to the policy established by the country’s Technical Guidelines for Humane Abortion Care.**

¹⁵ UPR Report Working Group May 22 2008 Human Rights Council.

¹⁶ Ministério da Saúde. 2005. *Norma Técnica para Atenção Humanizada ao Abortamento*. Ministério da Saúde. Brasília, Ministério da Saúde.

¹⁷ Galli, Beatriz. 2009. *Submission to the High Commissioner of Human Rights. November 20, 2009. Effects of Abortion Criminalization in Brazil: lack of access, lack of good quality of health care, and increased risk of morbidity and maternal mortality*. citing Adesse, Leila e Monteiro, Mario. 2007. Magnitude do aborto no Brasil: aspectos epidemiológicos e sócio-culturais. IPAS Brasil/IMS/UERJ.

¹⁸ IPAS, citing, Ministério da Saúde. 2005. *Norma Técnica para Atenção Humanizada ao Abortamento*, Ministério da Saúde. Brasília, Ministério da Saúde

¹⁹ Galli, M.B., Viana, P. Shiraiwa, T. 2010. Dossiê sobre aborto inseguro para advocacy: O impacto da ilegalidade do abortamento na saúde das mulheres e na qualidade da atenção à saúde reprodutiva no estado do Rio de Janeiro. Rio de Janeiro, Ipas; http://www.ipas.org/Publications/asset_upload_file16_5186.pdf

15. Moreover, Article 154 of the Penal Code punishes illegal disclosure of professional secrets with detention for up to a year. In addition to providers reporting abortion cases, women who have undergone abortions suffer ill treatment, prejudiced attitudes and moral judgments on the part of their health-care providers.²⁰

4. Discriminatory enforcement of the abortion law

16. The Penal Code, which has been in force since 1940, mandates one to three years of imprisonment for women who obtain abortions, although Article 2 of CEDAW states that countries must derogate the penal provisions which entail discrimination and criminalization of women. On the contrary, as already stated above, legal institutions are investigating and prosecuting women and have convicted health-care providers who worked in raided clinics as they were surmised to have performed abortions.

17. In the most publicized case, on 13 April 2007, police in the central-western Brazilian state of Mato Grosso do Sul raided a family-planning clinic and confiscated the medical records of nearly 10,000 women. Ultimately, a total of 2,092 records remained under criminal investigation and according to the Police Chief, 1800-2000 women were to be called to the police station.

18. The police investigation in Mato Grosso do Sul following the clinic raid was marked by procedural irregularities that violated both Brazilian law and international human rights standards. Abortion prosecutions in Brazil generally require physical or material evidence. Testimonial evidence, such as women's "confessions" obtained from the police after seizure of their medical records or any other questionable evidence should not be considered valid or sufficient for further prosecution. The police failed to observe procedural safeguards to protect the privacy of the medical files. The records were seized from the clinic without a proper judicial warrant.

19. Furthermore, Brazilian law establishes a specific procedure for investigating patients' medical records, requiring judicial authorities to appoint an expert to handle medical files to preserve their secrecy. Ignoring that procedure, the police used the unlawfully seized medical records to criminally investigate thousands of women suspected of obtaining illegal abortions. Based on positive pregnancy tests and medical consent forms found in the files, women were called into the police station and subjected to interrogations – at first without being informed of their right to counsel or their right to remain silent. The judicial actors further violated the women's privacy when they published on a court website the names, addresses and nature of charges against women under investigation.

20. National and international organizations denounced these human rights violations in an effort to halt the investigations and prosecutions of women and health-care providers.²¹ In this regard, Human Rights Watch stated that:

“Safeguarding these and other human rights is the way to ensure that women get access to the healthcare services they need to enjoy the highest possible standard of health and

²⁰ Soares Gilberta S., Galli, Maria Beatriz and de A.L. Viana, Ana Paula. 2011. Advocacy for access to safe legal abortion: Similarities in the impact of abortion's illegality on women's health and health care in Pernambuco, Bahia, Paraíba, Mato Grosso do Sul e Rio de Janeiro, Ipas; http://www.ipas.org/Publications/Advocacy_for_access_to_safe_legal_abortion.aspx

²¹ Ipas Brasil. 2008. Processos Judiciais envolvendo abortamento: Negação dos direitos reprodutivos das mulheres em Mato Grosso do Sul; http://www.aads.org.br/arquivos/RelatorioMS_FINAL.pdf

well-being. Seizing medical records illegally, intimidating patients, and threatening women with punishment for having sought medical services is not only a violation of the basic human rights of those women of Mato Grosso do Sul, but an affront to the basic dignity and humanity of women everywhere.”²²

21.To date, despite advocacy by the Brazilian feminist movement, the Brazilian Bar Association, Federal Medical Council, and Human Rights and Minorities Commission in Congress have taken no action to protect women’s human rights in *Mato Grosso do Sul*. A collective constitutional remedy (*Habeas Corpus*) aiming to extinguish all women’s prosecutions based on human rights, national and international norms has been pending a decision at the Superior Court of Justice since 2009.

22.In April 2010, a Tribunal issued judgments and penalties for four health-care providers who worked at the family-planning clinic in Mato Grosso do Sul. On 27 September 2010, the Justice Tribunal agreed to hear an appeal requesting a reduction of the penalties imposed on the four health-care providers who had been sentenced (one psychologist and three nursing auxiliaries).

23.Also in April 2010, the police started an investigation of clandestine clinics in Fortaleza, in the state of Ceará. The judge issued six judicial authorizations for the police to confiscate equipment and documents from two clinics and a doctor’s home. Thus far, the investigators have confiscated medical records dating back to 1995 as well as surgical equipment. One person has been arrested.

24.Since the case in Mato Grosso do Sul, we have observed an increase in police raids on clinics, investigations, arrests and criminal prosecutions, even though national research has highlighted the magnitude of clandestine abortions and State authorities have repeatedly expressed their opinion that abortion should be treated as a public health issue in Brazil.

25.Since 2008, in Manaus state, eleven women have been prosecuted after a clinic raid and confiscation of medical records by police officers. They have been accused in the same legal proceedings of the health provider who performed the abortion. He was arrested and then release.²³

26.These events represent a step backwards, a backlash against gains in reproductive rights and a threat to women’s human rights in Brazil. The raids demonstrate a pattern of human rights violations and denial of women’s right to self-determination, contravening principles and norms established in both the Brazilian Constitution and international human rights conventions ratified

²² Human Rights Watch. 18 June 2008. *Media Advisory, Brazil: Abortion is a Human Rights Issue*. http://www.aads.org.br/arquivos/RelatorioMS_FINAL.pdf.

²³ See *Without evidence Judiciary prosecutes eleven women for abortion*. <http://www.pco.org.br/con33936>

by the State of Brazil.²⁴ Such policies are of significant concern as they can increase women's vulnerability to abuse, violence, health risks and disempowerment.²⁵

Recommendations

27. Criminalization of women's access to all sexual and reproductive health services raises significant public health and human rights concerns. **We therefore recommend to the member states to request the State of Brazil to strengthen its efforts to address the high prevalence of unsafe abortion and related morbidity and mortality in the country, to improve women's access to safe abortion care, and to take measures to protect women's human rights to health and reproductive self-determination by providing access to information and services instead of increasing investigations and prosecutions of women's and providers for abortion.**

28. Brazil now has an opportunity to comply with its international human rights obligations by removing the criminalization of abortion from the Penal Code. A Commission on the Penal Code was recently established by the President of the National Senate. This group of legal experts has been charged with reviewing the Code, particularly with regard to controversial issues, in order to adjust the norms dating back to 1940 so that the Code will comply with the constitutional principles and norms that were established in 1988 to meet the demands of a modern society. **We recommend to member states to request to the Brazilian state to address gender equality and discrimination and take the opportunity of the Penal Code revision process to amend its abortion law.**

29. In order to follow the recommendations of the Treaty Monitoring Bodies and the UN Special Rapporteur on the right to health, **we recommend to the member states to request to enact legislation protecting gender equality and women's rights to privacy and confidentiality during police investigations of clandestine abortion clinics, guaranteeing human rights principles of presumption of innocence, due process of law, and proper legal defense, especially for vulnerable groups of women.**

30. **We also recommend that the Member States of the Human Rights Council reiterate and strengthen the recommendations of the CEDAW and CESCRC Committees regarding reform of the current abortion law to protect women's human rights related to reproductive self-determination.**

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.

²⁴ Providers' arrest in Rio de Janeiro clinic in Vila Isabel;
<http://oglobo.globo.com/rio/agentes-da-inteligencia-da-secretaria-prendem-dois-medicos-em-clinica-de-aborto-em-vila-isabel-2760889>

State Public Ministry asks the prison of the doctor that performs abortions in Manaus;
http://acritica.uol.com.br/manaus/MPE-medico-realiza-aborto-Manaus_0_584941550.html

Woman is arrested in Nova Andradina for abortion: Nova Andradina officers arrested, last Thursday, G. C. A.S. (19 y-old), on the act, for practicing an abortion;

<http://www.acritica.net/index.php?conteudo=Noticias&id=28664>

²⁵ UNDP, 2010. *Effects of Laws Criminalizing Women's Sexuality*.

<http://content.undp.org/go/newsroom/2010/march/outlawing-women--effects-of-laws-criminalizing-womens-sexuality.en>

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