

**Mandates of the Working Group on discrimination against women and girls; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on violence against women, its causes and consequences**

REFERENCE:  
OL BRA 9/2020

16 September 2020

Excellency,

We have the honour to address you in our capacities as Working Group on discrimination against women and girls; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 41/6, 42/16 and 41/17.

In this connection, we would like to bring to the urgent attention of your Excellency's authorities, including the relevant federal, legislative and executive authorities, information we have received concerning **retrogressions with regard to women's and girl's legal access to termination of pregnancy**.

According to the information received:

On 27 August, the Ministry of Health of Brazil adopted Ordinance 2.282/2020 establishing, inter alia, as mandatory for doctors to notify the police whenever victims of rape decide to terminate a pregnancy (Article 1), and that victims should describe the circumstances of rape and their aggressors to health professionals (Article 3). This new regulatory framework also establishes that the victims should sign an affidavit according to which they are criminally liable for the crimes of misrepresentation and abortion if they lied about being victims of rape (Article 5) and that the medical team should encourage the victim of rape to visualize the embryo via ultrasound (Article 8). This latest normative retrogression takes place in a context of increasing push backs against women's sexual and reproductive rights.

Brazil's legal framework regarding access to abortion is already very stringent and criminalizes the procedure. Termination of a pregnancy is only allowed in three circumstances: in cases of rape, when the woman's or girl's life is at risk or when the fetus suffers from anencephaly – a rare condition that prevents part of the brain and skull from developing.

We wish to express our serious concerns about the non-compliance of this ordinance with internationally agreed standards relating to women's and girls' rights to equality, dignity, autonomy, information and bodily integrity and respect for their private life and the highest attainable standard of health, including sexual and reproductive health, without discrimination; as well as the right to freedom from torture and cruel, inhuman and degrading treatment, as stipulated by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) both ratified by Brazil in 1992 as well as the Convention on the Elimination of all forms of discrimination against women (CEDAW), ratified by Brazil in 1984.

Indeed, a number of international human rights mechanisms have repeatedly affirmed that criminalization of abortion and the failure to provide adequate access to services for the termination of an unwanted pregnancy constitute discrimination on the basis of sex, in contravention of ICCPR article 2. Article 12 of ICESCR obliges States to realize the right of everyone, including women and girls, to the highest attainable standard of health, including an obligation on the part of all States Parties to ensure that measures are taken to ensure that access to health services is available to all, especially the most vulnerable or marginalized sections of the population, without discrimination. In its General Comment 3, the CESCR clarified that any retrogressive measure would contravene the principles of the Covenant. The CEDAW Convention obliges States to eliminate all forms of discrimination against women and girls (art.2) and requires the modification of social and cultural patterns of conduct in order to eliminate discrimination against women and girls (art.5).

In addition we believe that this ordinance is not compliant with a victim centred approach nor with the principle of safeguarding children's and adolescent's best interest which include the prohibition of interference by law enforcement agents in children's rights and the need to avoid re-victimizing victims of rape by asking them to recount traumatic events.

The international human rights mechanisms already affirmed that restrictive legislation on termination of pregnancy, such as ordinances of this type, have a chilling effect on women's right to access abortion and more generally sexual and reproductive health services.

United Nations human rights mechanisms have already set a number of standards concerning women's and girls' sexual and reproductive rights, including access to safe and legal access to abortion.

Indeed, General Comment 22 of the Committee on Economic, Social and Cultural Rights stipulates that States parties should aim to ensure universal access without discrimination for all individuals to a full range of quality sexual and reproductive health care, including maternal health care, contraceptive information and services and safe abortion care (para.45). States parties also have a core obligation to repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine an individual's or particular group's access to sexual and reproductive health facilities, services, goods and information and are required to take measures to prevent unsafe abortions and to provide post-abortion care and counselling for those in need (para. 49 a) & e)).

In its General Recommendation 35 on gender-based violence against women, the CEDAW Committee provides that violations of women's sexual and reproductive health and rights, such as criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, forced continuation of pregnancy, and abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.

In its concluding observations on Brazil (CEDAW/C/BRA/CO/7), the CEDAW Committee recommended the State expedite the review of its legislation criminalizing abortion in order to remove punitive provisions imposed on women, as previously recommended by the Committee (CEDAW/C/BRA/CO/6, para. 3).

In its concluding observations on Brazil (CRC/C/BRA/CO/2-4), the Committee on the rights of the child expressed concern that the 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. The Committee recommended to decriminalize abortions in all circumstances and review its legislation with a view to ensuring access to safe abortion and post-abortion care services and ensure that the views of the child are heard and respected in abortion decisions.

We are concerned that the additional limitations imposed by the Ministry of Health through Ordinance 2.282/2020 may contribute to an increase in unsafe abortions, which particularly affects women in precarious socio-economic conditions, in contravention of the State's obligations under international human rights law.

In its report to the United Nations Human Rights Council on women's health and safety (A/HRC/32/44) and in its paper on Women's Autonomy, Equality and Reproductive Health (<http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx>), the Working Group on discrimination against women and girls stressed that abortion is a health care matter and access to safe and legal abortion is intrinsically linked to women and girls' right to life, health, equality, dignity and privacy. States have the obligation to respect, protect and fulfill women's right to equal access to health-care services and eliminate all forms of discrimination against women in relation to their health and safety. This obligation entails providing women with autonomous, effective and affordable access to health and ensuring that barriers to women's enjoyment of the right to the highest attainable standard of physical and mental health are dismantled, including by exercising due diligence. Denying women and girls access to information and services which only they require and failing to address their specific health and safety, including their reproductive and sexual health needs, is inherently discriminatory and prevents women from exercising control over their own bodies and lives. Furthermore, women may be denied such services through the reduction of availability and accessibility, deterrence from health care professionals and deprivation of women's autonomous decision-making capacity. WHO data has clearly demonstrated that criminalizing termination of pregnancy does not reduce women's resort to abortion procedures. Rather, it is likely to increase the number of women seeking clandestine and unsafe solutions. Countries where women gained the right to termination of pregnancy in the 1970s or 1980s and are provided with access to information and to all methods of contraception, have the lowest rates of termination of pregnancy. Ultimately, criminalization does grave harm to women's health and human rights by stigmatizing a safe and needed medical procedure.

Furthermore, the requirement of grounds must not result in creating a barrier to termination of the pregnancy in situations in which the woman or girl will seek an unsafe termination rather than continuing the pregnancy and that in any case, where objective grounds are required, they should be expansive. Grounds proposed by various international human rights mechanisms have included rape, risk to the health

and life of the woman or girl, and impairment of the fetus. Criminalizing termination of pregnancy is one of the most damaging ways of instrumentalizing and politicizing women's bodies and lives, subjecting them to risks to their lives or health and depriving them of autonomy in decision-making. The Working Group on discrimination against women and girls has observed with concern that throughout their life cycle, women's and girls' bodies are instrumentalized and their biological functions and needs are stigmatized. The instrumentalization on women's bodies is often reflected on practices such as the withholding or delay in treatment, curtailment of women's autonomy and denial of respect for privacy and obstructing their access to reproductive and sexual health care. Furthermore, the legal restrictions to regulate women's control over their own bodies has been identified by the Working Group as a severe and unjustified form of State control. This can include regulations governing the provision of information related to sexual and reproductive health and termination of pregnancy. The enforcement of such provisions generates stigma and discrimination and violates women's human rights, by particularly infringing their dignity and bodily integrity and restricting their autonomy to make decisions about their own lives and health. (See (A/HRC/32/44) and <http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx> ).

In this context, we would also like to refer to the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/ 66/254), which reiterates that the criminalization of sexual and reproductive health services for women generates and perpetuates stigma; restricts their ability to make full use of the products available for their sexual and reproductive health services and information; denies their full participation in society; hinders their access to health services; and it affects women's empowerment (para. 17). Penalizing and restricting induced abortion 'infringe women's dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health; (para. 21), Furthermore, the criminalization of abortion has a negative impact on the physical and mental health of women and girls, and can increase the likelihood that they resort to unsafe and clandestine abortions (para 35).

As the Special Rapporteur on the right to health noted in a report to the United Nations Human Rights Council (A/HRC/32/32), adolescents around the world face discrimination and barriers in accessing the information, services and commodities needed to protect their sexual and reproductive health, resulting in violations of their right to health. Adolescents should be guaranteed access to confidential and non-discriminatory sexual and reproductive health information, services and commodities that respond to their needs, including family planning, modern methods of contraception, counselling, pre-conception care, maternal care, sexually transmitted infections, diagnosis and treatment, and safe abortion. Adolescent sexual and reproductive health services should be welcoming and open to adolescents, without prejudice, and ensure privacy and confidentiality.

In a report to the United Nations General Assembly (A/74/137), the Special Rapporteur on violence against women recommended states to repeal laws which criminalize abortion in all circumstances, remove punitive measures for women who undergo abortion, and at the very minimum, legalize abortion in cases of sexual assault, rape, incest, and when the continued pregnancy endangers the mental and

physical health of the woman or the life of the woman, and provide access to safe, quality post-abortion care.

We would also like to refer to the thematic report of the Special Rapporteur on torture (A/HRC/31/57) in which he highlighted that laws denying access to abortion to women victims of rape were a violation of their right not to be subjected to torture or ill-treatment. Denying access to safe abortion and subjecting women and girls to humiliating and judgmental attitudes in such situations of extreme vulnerability would also amount to torture and ill-treatment. As stated in this thematic report, as a consequence of their international obligations to prohibit torture, States have an affirmative obligation to reform restrictive abortion laws that perpetuate torture and ill-treatment by denying women access to safe abortion and care.

Finally, we would like to take this opportunity to draw your Excellency's Government attention to the following Amicus Brief to the Supreme Court of Brazil prepared by a group of Special Procedures' mandate holders: <https://www.ohchr.org/Documents/Issues/Women/WG/AmicusBrazil.pdf> and [https://www.ohchr.org/Documents/Issues/Women/WG/AmicusBrazil\\_Annex.pdf](https://www.ohchr.org/Documents/Issues/Women/WG/AmicusBrazil_Annex.pdf) )

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to guarantee women and girls' equal rights to health, including reproductive health, and to physical integrity.

Please accept, Excellency, the assurances of our highest consideration.

Elizabeth Broderick  
Chair-Rapporteur of the Working Group on discrimination against women and girls

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Dubravka Šimonovic  
Special Rapporteur on violence against women, its causes and consequences