

ABORTION IN BRAZIL

Reproductive Rights as Human Rights: can the Brazilian State be held accountable?¹

ABORTO NO BRASIL

Direitos Reprodutivos como Direitos Humanos: o estado brasileiro pode ser responsabilizado?

ABORTO EN BRASIL

Derechos Reproductivos como Derechos Humanos: ¿puede el estado brasileño ser responsabilizado?

Danilo Augusto de Athayde Fraga²

Abstract

This academic paper examines the field of human rights and its impact on women's reproductive rights, particularly the issue of abortion in contemporary Brazilian society. Despite international legislation advocating for women's reproductive rights, Brazil has failed to fulfill legal provisions, resulting in the prevention and punishment of women's sexual and reproductive freedom. The criminalization of abortion, combined with moral, political, and religious factors, has led to high rates of illegal and unsafe abortions, resulting in the loss of numerous lives. This article explores the implications of abortion illegality in Brazil society under the penal code, emphasizing its infringement on fundamental human rights, including human dignity, freedom, personal self-determination, and the right to privacy and family life.

Keywords: human rights; reproductivity rights; abortion; Brazil.

Resumo

O presente artigo examina o campo dos direitos humanos e seu impacto nos direitos reprodutivos, particularmente sobre a questão do aborto na sociedade brasileira contemporânea. Apesar da legislação internacional defender os direitos reprodutivos, o Brasil falhou em cumprir as disposições legais, resultando no tolhimento e punição da liberdade sexual e reprodutiva das mulheres. A criminalização do aborto, combinada com fatores morais, políticos e religiosos, tem levado a altas taxas de abortos ilegais e inseguros, resultando na perda de inúmeras vidas. Este artigo explora as implicações da ilegalidade do aborto na sociedade brasileira, sob o código penal, enfatizando sua violação dos direitos humanos fundamentais, incluindo a dignidade humana, liberdade, autodeterminação pessoal e o direito à vida privada e familiar.

Palavras-chave: direitos humanos; direitos reprodutivos; aborto; Brasil.

Resumen

El presente artículo examina el campo de los derechos humanos y su impacto en los derechos reproductivos, particularmente en la cuestión del aborto en la sociedad brasileña contemporánea. A pesar de la legislación internacional defender los derechos reproductivos, Brasil ha fallado en cumplir con las disposiciones legales, resultando en represión y penalización de la libertad sexual y reproductiva de las mujeres. La criminalización del aborto, combinada con factores morales, políticos y religiosos, ha llevado a altas tasas de abortos ilegales e inseguros, resultando en la pérdida de inúmeras vidas. Este artículo explora las implicaciones de la ilegalidad del

¹ This work was the result of a two-month research conducted as a scholarship recipient at the Faculty of Law of the University of Oslo, during the summer program of the master's degree course in Human Rights.

² PhD researcher at the Faculty of Letters of the University of Porto. Specialist in Public Policies and in Teaching in Higher Education, has specialized training in Human Rights at the University of Oslo and in Human Rights and conflict mediation by the Secretary of Human Rights of the Presidency of the Republic of Brazil. Bachelor of Arts in Humanities and in Languages and Literature. ORCID: 0000-0003-2356-6085. E-mail: danilodeathayde@gmail.com

aborto en la sociedad brasileña, bajo el código penal, enfatizando la violación de los derechos humanos fundamentales, incluso la dignidad humana, libertad, autodeterminación personal y el derecho a la vida privada y familiar.

Palabras clave: derechos humanos; derechos reproductivos; aborto; Brasil.

1 Introduction

The field of human rights in contemporary society has, for some time, been promoting debates and producing norms on women's reproductive rights, especially on the issue of abortion. However, in Brazil, the legal provisions established in universal and international legislation have not been fulfilled and Brazilian women are prevented and reprimanded from exercising their sexual and reproductive freedom by a retrograde criminal legislation, in combination with moral, political and religious issues. In this way, hundreds of women die every day in this country due to illegal abortions and lack of medical care because they are prevented from fully exercising their sexual, reproductive and human rights.

In this article we will briefly address how the illegality of abortion in Brazil, a matter under the jurisdiction of the penal code, as well as its consequences and neglect of the state to the reality of thousands of women, is an evident affront to the most basic human rights, namely: the principle of the dignity of human person, the right to freedom and personal self-determination, along with the guarantee of privacy and family life.

2 The right to abortion as a sexual, reproductive and human right

With the turn of the century and the threshold of the new millennium, the issue of Sexual and Reproductive Rights emerges and solidifies itself as an inescapable subject to the debates of Human Rights in contemporary society. One recent example of progress in this struggle was the Conference on Population and Development (ICPD), held in Cairo in 1994³, at which nations concluded that reproductive rights are human rights and a fundamental element for the promotion of gender equality. Brazil took a prominent place in the formulation of the Cairo Action Program, aiming at the application of decisions made during the event.

We also had the Declaration of Sexual Rights issued in 1999 by the World Association for Sexual Health, in conjunction with the World Health Organization (WHO), with the aim of

³ The 1994 Cairo World Conference on Population and Development was a milestone in women's human rights. It dealt, for the first time, with demographic policies focusing on human rights, highlighting women's reproductive and sexual rights. Among the changes proposed by the conference is the importance of empowering men and women to make their own decisions about their body, sexuality, and reproductive health.

assuring to all human beings the right to a healthy development of sexuality, given that WHO considers sexuality as a fundamental right, inherent to the human condition.

The regulation of sexual rights in the world came to assert that the exercise of sexuality is part of human nature itself and, consequently, comprises the rights to health and those inherent to the human person, which means that human beings are free to experience and manage their sexual and reproductive lives as well as expressing their sexual identity.

According to the Declaration of Sexual Rights, from the International Planned Parenthood Federation (IPPF), “Sexual rights are understood as a set of rights related to sexuality that emanate from the rights to liberty, equality, privacy, autonomy, integrity and dignity of all persons” (IPPF, 2008, p. 4). The declaration also admits that:

The Sexual Rights offer an approach that includes but goes beyond the protection of particular identities. Sexual rights ensure that everyone has access to conditions that allow the fullness and expression of sexuality, free from any form of coercion, discrimination or violence and within a context of respect for dignity (IPPF, 2008, p. 10).

In the group of sexual rights, we also have the so-called reproductive rights, which allow all human beings to freely choose how, with whom, where and when they will marry or not, as well as the choice to have children or not. According to the report of the International Conference on Population and Development, “reproductive health includes the ability to enjoy a satisfying and risk-free sex life and the freedom to choose to do so when and with what frequency” (United Nations, 1994, p. 40).

We can also cite the so-called “Millennium Goals”, which were created by the United Nations (UN) in the Millennium Declaration in 2000 setting goals to all member nations, aiming to promote human development. Among these goals is the goal of gender equality and women's autonomy. Finally, it is worth mentioning the Panel on Sexual Rights, which resulted in the IPPF Declaration on Sexual Rights, prepared in 2008, with the mission of guiding and supporting the development of sexual rights and their integration into human rights.

In these documents, parameters were defined regarding sexual and reproductive rights, understood as the ramification of human rights. Brazil is an active member of these meetings and signed all statements resulting from them. Thus, it is incomprehensible that, in the 21st century, the national legal system has not yet regulated the legalization of abortion in Brazil. This omission is evidence of the country's non-compliance with legal provisions, it also corroborates the sky-high rates of female mortality due to the high number of clandestine

abortions that are performed every day. Meaning that the reproductive rights of Brazilian women are still being refuted.

3 The reality of abortions in Brazil

In 2004, the National Plan of Policies for Women (Plano Nacional de Políticas para as Mulheres - PNPM) of the Special Secretariat of Public Policy for Women, of the Presidency of the Republic of Brazil, established the sexual rights and human rights as one of the priorities concerning women's health, sexual and reproductive rights.

3.3. Promote skilled, humanized, obstetric care, including abortion care in unsafe situations, for women and adolescents to reduce maternal mortality, especially among black women.

(...)

3.6. Review the punitive legislation dealing with voluntary termination of pregnancy (Brazil, 2004, p. 63).

Therefore, we can confirm that the impediment to the legalization of abortion in the Brazilian legal system is not justified legally, it persists merely due to political orientation. The government itself has already established as a rule the assistance to abortion and the revision of the legislation that criminalizes the interruption of pregnancy because of the pregnant woman's will. Although the illegality of abortion is not justified, the fact that it is held under a severe penal code contributes to the sad numbers regarding abortions in Brazil.

Data from Brazil's National Abortion Survey (Diniz; Medeiros; Madeiro, 2017) shows that in 2016 about 503,000 women had an abortion in the country. This very high figure shows that, on a proportional scale, about one woman every minute performs an abortion. In this perspective, we can extrapolate that abortion is a fact of the Brazilian women's reproductive life and, therefore, an inescapable matter when it comes to human rights.

Additionally, the same study indicates a notable racial disparity in abortion rates, with around 15% of black and indigenous women and 9% of white women having undergone abortions (Diniz; Medeiros; Madeiro, 2017). Significantly, among the women who had abortions, over 3 million were already mothers at the time of their abortion. This means that, according to the current criminalization of abortion in the Brazilian legal system, these families are faced with the dire prospect of potentially having the mothers — who already had children before the abortion — incarcerated, and our already bankrupt and dehumanizing prison system

should be quadrupled to imprison all these mothers. With that, women would become the bulk of the prison population (IBGE, 2016)⁴.

4 International responsibility and previous cases

Faced with this alarming scenario, Brazil bears evident international responsibility to many international agreements and signed resolutions, as already shown. It bears especial responsibility towards the Inter American Court of Human Rights for non-compliance with the Inter American Convention. Specifically, the Brazilian penal code in its articles 124⁵ and 126⁶ that, in addition to criminalizing abortion, prevents the provision of public health services to thousands of women.

Therefore, the criminalization of abortion under Brazilian law is clearly incompatible with the rights guaranteed by the American Convention on Human Rights⁷, from the Organization of American States (OAS), especially those related to: freedom and dignity, as in “No one shall be subjected to torture or to cruel, inhuman or degrading treatment. Every person deprived of liberty must be treated with respect due to the human beings inherent dignity” (OAS, 1969, p. 2); private life, as in “No one shall be subjected to arbitrary or abusive interference with their privacy, family, home or correspondence, nor to unlawful offenses against their honor or reputation” (OAS, 1969, p. 5); protection of women and family: “To give special attention and care to the mother for a reasonable period before and after childbirth”⁸ (OAS, 1988, p. 21).

4.1 Artavia Murillo and others vs Costa Rica

To illustrate how the criminalization of abortion by the Brazilian Penal Code is in clear violation of the Inter-American Convention on Human Rights, we can refer to the “Artavia Murillo and others vs Costa Rica” case (OAS, 2012), since the Court's pronouncement in this

⁴ It is noteworthy that, although the arrest rate for abortion in Brazil is very small when compared to the total population that performs it, its criminalization and prohibition constitutes a clear violation of these women's fundamental human rights. In addition to the resulting discriminatory problem, the impossibility of assisted abortions greatly increases mortality rates among these women.

⁵ The Brazilian Penal Code, in its article 124, establishes 1 to 3 years of imprisonment penalty to those who “Provoke abortion to themselves or consent to others to cause it” (Brazil, 1940).

⁶ Article 126 establishes a penalty of 1 to 4 years of imprisonment for those who “cause an abortion with the consent of the pregnant woman” (Brazil, 1940).

⁷ The text refers to the 1969 American Convention on Human Rights (ratified by Brazil in 1992), known as the “San Jose Pact of Costa Rica”.

⁸ It is important to stress that the Inter-American Convention on Human Rights establishes the obligation of the Signatory State to ensure respect for human rights and to guarantee the exercise of these rights to all those under its jurisdiction. There is, therefore, an obligation imposed on the Brazilian State to not interfere with the rights of individuals.

judgment brings several direct contributions to the subject matter. In this case, the general prohibition on *in vitro* fertilization was brought before the Inter-American Court of Human Rights, arguing that this absolute prohibition constituted an arbitrary interference with the right to private and family life and the right to plan a family.⁹

The Court condemned the State of Costa Rica, among other obligations, to render ineffective the prohibition of *in vitro* fertilization so that everyone subject to its jurisdiction could use this assisted reproduction method. In addition to the compensation for material and moral damages to the victims listed in the process, it was also determined that the Costa Rican State should make *in vitro* fertilization available in its infertility treatment programs.

This case is of great importance for the abortion consideration in the light of human rights, from the perspective of this work, since it confronts precisely the eventual right to life of the embryo¹⁰ — a central point raised by groups that oppose the abortion legalization — as opposed to the right of liberty¹¹, under the Convention, and to the protection of women, under the Protocol of San Salvador. In addition, the decision gives us excerpts of great importance for the argumentative and theoretical construction regarding the incompatibility of the Brazilian Penal Code in relation to the rights provided in the Inter-American Convention on Human Rights. Such as the decision given by the court regarding the impossibility of giving the status of person to an embryo:

It can be concluded in relation to Article 4.1 of the Convention that the direct object of protection is, fundamentally, the pregnant woman, since the unborns protection is essentially made through the protection of the women, as noted in Article 15.3.a) of the San Salvador Protocol which obliges the States to “provide special care and assistance to the mother before and for a reasonable period after childbirth,” and Article VII of the American Declaration, which enshrines the right of a pregnant woman to protection, care and special assistance (OAS, 2012, p. 68).

Regarding the scope of the rights of personal liberty, personal integrity and family privacy, another important point highlighted by the Commission was that “the decision to have biological children belongs to the family's live most private scope, and the part in which this decision is built belongs to the person's autonomy and identity” (OAS, 2012, p. 43).

According to the court, the convention's Article 11 invokes the state protection of individuals to the arbitrary actions of institutions that affect private and family life. For this reason, in an expansive interpretation of the Convention's Article 7, it has been noted that the

⁹ In particular, the State of Costa Rica was denounced for violating Articles 11,2; 17.2; and 24 of the Convention (OAS, 1969).

¹⁰ Art. 4.1 (OAS, 1969), which reads: “Everyone has the right for their life to be respected. This right must be protected by law in general from the moment of conception. No one can be arbitrarily deprived of life.”

¹¹ Art. 7 (OAS, 1969).

concept of freedom must be understood, in a broad sense, as the right of every human being to “self-determine and freely choose the options and circumstances that give meaning to their existence, in accordance with their own choices and beliefs” (OAS, 2012, p. 44).

Another important point to be emphasized in the ruling is related to the extent of privacy protection, which includes several factors related to the individual’s dignity, including the possibility of determining one’s identity and defining one’s personal relationships. In short, the Court has ruled that motherhood is an essential part of the free development of a woman’s personality, thus “the decision whether or not to be a mother or a father is part of the right to privacy” (OAS, 2012, p. 44-45).

On the protection of women’s autonomy, the following paragraph should be quoted:

The right to reproductive autonomy is also recognized in Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), according to which women enjoy the right to “Freely and responsibly decide on the number of children, the interval between births and have access to information, education and the means to exercise these rights”. This right is violated by hindering the means by which a woman can exercise her right to control her own fertility. Thus, protection of privacy includes respect for the decision to become a parent, including the couple’s decision to become genetic parents”¹² (OAS, 2012, p. 46).

Considering the present case and the decision of the Inter-American Court of Human Rights, it is possible to draw valuable conclusions for the purpose of this article. First, it is noteworthy that, according to the Court’s construction, the Inter-American Convention on Human Rights does not grant the human embryo a person status. On the contrary, it provides for a gradual evolution of protection according to the evolution of the embryonic organism itself. Moreover, and most importantly, the direct object of protection is the protection of the pregnant woman, since the protection of the unborn happens through the protection of the woman. In addition, the court also pointed out that the decision whether or not to have children belongs to the most intimate sphere of private and family life and is an integral part of one’s own autonomy.

Therefore, under this interpretation, any law that violates fundamental rights, such as the dignity of the human person, the right to life and self-determination, and the protection of women’s right to choose, as provided for by the Inter-American Convention on Human Rights, should be considered as null.

¹² CEDAW is the first major international treaty on the protection of women’s rights (Bantekas; Oeete, 2016, p. 494), but it is important to note that many criticisms have been directed against CEDAW, especially regarding omissions of important issues, such: “One of CEDAW’s major flaws is that it contains no explicit provision in relation to violence against women. This is a conspicuous omission for a treaty which in other regards has made a concerted effort to address comprehensively several key areas of violations of women’s rights” (Bantekas; Oeete, 2016, p. 498).

It is worth mentioning the lesson of the Brazilian Federal Supreme Court minister Luiz Roberto Barroso, regarding the habeas corpus nº 124.306:

Human dignity is part of the essential core of fundamental rights, such as equality, liberty or privacy. As such, it will necessarily inform the interpretation of such constitutional rights, helping define their meaning in specific cases. In addition, cases involving gaps in the legal system, law ambiguities, collisions between fundamental rights and tensions between rights and collective goals, human dignity can be a good compass in finding the best solution. Moreover, any law that violates dignity, whether in abstract or concrete, will be null (Brazil, 2016, p. 156).

4.2 The habeas corpus nº 124.306/2016

Regarding the Brazilian law, the recent habeas corpus nº 124.306, issued by the Supreme Court, has in the last two years caused a great public debate about the legalization/illegality of abortion in Brazil. Mainly, based on the vote of minister Luís Roberto Barroso, the substantive unconstitutionality of criminalizing abortions carried out until the third trimester of pregnancy, in violation of numerous fundamental human and women's rights inherent to such typification.

The habeas corpus nº 124,306 concerns an abortion case that resulted in the deaths of Jandira Magdalena dos Santos Cruz and Cinthia Alves da Silva. The accused, the doctor, nurse, and others involved, were tried for abortion with the consent of the pregnant woman (Brazil, 2014). The accused had a clandestine abortion clinic in the municipality of Duque de Caxias, Rio de Janeiro, where they performed clandestine abortions with the acquiescence of the women who sought them. The clinic in question was discovered by the police in 2013 due to the death of Cinthia Alves da Silva, caused by complications after the procedure. The prosecution filed a criminal case against the accused, but the lower court granted provisional release on the grounds that the crimes they responded to did not result in pre-trial detention.

The Public Prosecution Service appealed (Brazil, 2014) the decision of the lower court, requesting the pre-trial detention of the accused, so the case reached the Rio de Janeiro Court. The aforementioned court granted the Public Prosecutor's request and decided to maintain the defendants' remand. Among the arguments brought by the court was that the defendants were charged with the practice of various crimes besides abortion, including gang formation and qualified homicide, due to the death of Cinthia Alves da Silva in the clandestine clinic. However, for this paper, to illustrate the arguments raised by the contrary opinion, the following stands out:

Similarly, the *periculum libertatis* is striking. The crimes perpetrated are extremely serious and vehemently repudiated by society. Their agents also represent great danger, since they have extensive means to attract women from various regions,

including other states of the Federation, and precautionary segregation is the only way to ensure the safety of public order¹³ (Brazil, 2014, p. 776).

Moreover, even though the majority of the Brazilian society would allegedly repudiate abortion, it does not legitimize its criminalization either. First, because we cannot infer that society repudiates it, when women from different social classes, religions and ages perform abortion in Brazil. Second, the society is not homogeneous, it is made up of several social groups, which often have opposing values and agendas. Third, it is very important to separate, in part, morality from law, mainly because morality is relative among the groups that form society. Concerning abortion, it is a topic that raises discussions in various sectors of society, with groups that are favorable and others unfavorable to this practice, and it is not for a judge, who sometimes exercises the impersonal State, to take one position over the other. The right position is to decide based on fundamental principles, not moral concepts with strong religious influences.

On morality in this case, the minister Luiz Roberto Barroso explains:

Let it be clear: the moral disapproval of abortion by religious groups or anyone else is perfectly legitimate. Everyone has the right to express themselves and to defend dogma, values and beliefs. What is beyond public reason is the possibility that one side, on an ethically controversial issue, criminalizes the other's position. In morally divisive matters, the proper role of the state is not to take sides and impose a vision, but to allow women to make their choice autonomously. The state must be on the side of those who wish to have the child. The state needs to be on the side of those who do not want — usually because they cannot — have the child. In short: because it has a duty to be on both sides, the state cannot choose one (Brazil, 2016, p. 14).

To the minister of the Federal Supreme Court, based on the vote given on the habeas corpus nº 124,306, the criminalization of abortion, performed before the completion of the first trimester of pregnancy, violates several fundamental rights of women, namely: violation of women's autonomy; violation of physical and mental integrity; violation of women's sexual and reproductive rights; violation of gender equality, and breach of the principle of proportionality. The minister also says that the penalty has serious consequences for the poorest sections of the population, such as poor, black and peripheral women. In his words:

Criminalization is incompatible with the following fundamental rights: the sexual and reproductive rights of women, who cannot be compelled by the state to maintain an unwanted pregnancy; women's autonomy, which must retain the right to make their existential choices; the physical and mental integrity of the pregnant woman, who

¹³ It is important to note how the first argument brought by the court does not justify pre-trial detention and brings a moralizing conception of law. By stating that abortion is a very serious crime, the judges consider women to be victims of the practice in the background, as they are victims only because of criminalization, which leads them to resort to unsafe means to perform abortion.

suffers, in her body and her psyche, the effects of pregnancy; and women's equality, since men do not become pregnant and therefore full gender equalization depends on respecting women's will in this regard. Added to this is the impact of criminalization on poor women. It is the typification as a crime, by the Brazilian criminal law, that prevents these women, who do not have access to private doctors and clinics, of using the public health system to seek the appropriate procedures. Consequently, the number of self-mutilations, serious injuries and deaths is multiplied (Brazil, 2016, p. 1-2).

5 Conclusion

Human rights should be inherent to the human condition itself, the rights that promote freedom, equality, and dignity of the human person and which are independent of factors such as race, creed, or sexual orientation. Thus, it has been agreed worldwide that sexual and reproductive rights are an integral part of such rights. Therefore, we conclude that, since sexual and reproductive rights are also human rights, these rights generate obligations for all signatory countries of the Universal Declaration of Human Rights and many other human rights declarations and conventions, as it is the case with Brazil.

Amid these obligations, the country must include in its legal framework the requirements established in the universal law and other conventions that they sign, or take part of, that deal with this matter. As such, Brazil has included in its homeland legislation, with force of constitutional amendment, all decrees, treaties, conventions and international agreements that they are part of, and created regional systems of protection to the human rights with the objective of expanding and strengthen their application throughout the national territory.

One of these measures is the National Human Rights Program (Programa Nacional de Direitos Humanos – PNDH II), instituted by the Decree nº 4,229, of May 13, 2002, that in its second chapter, among other topics, specifically addressed the issue of human and reproductive rights. It includes actions for the implementation and enforcement of international laws to which Brazil has associated itself with. It is worth highlighting the item 179, which proposes “the extension of permissions for the practice of legal abortion, in accordance with the commitments assumed internationally by the Brazilian State, to promote the equality of women” (Brazil, 2002).

Sexual rights, reproductive rights, and human rights indirectly implies the right to sexual equality. This equality means that there is no distinction between the sexes, promoting women's self-sufficiency. Thus, it is understood that women have the intrinsic right to freely control their bodies and their sexuality. Thinking this way — and with the fact that women, by their very nature, are the only ones capable of generating another life and have the right, established by

law, to do so when and as they see fit —, they should also have the right, even if pregnant, to voluntarily decide to terminate the pregnancy due to their conditions or beliefs.

A woman should be able to choose not to have children at that time, since she has the “Right to choose to marry or not to marry; raise a family; deciding whether or not to have children, and how and when to have them” (IFFP, 2008, p. 7), as provided in Article 9 of the IPPF Declaration of Sexual Rights. Similarly, the World Association for Sexual Health and the World Health Organization argue that women have the right to a free and responsible reproductive choice and the decision to have or not to have children. As required by the Declaration of Sexual Rights, the woman has the right to decide about having children, the number of children and the length of time between them, having information and means to do so. Exercising this right requires access to conditions that influence and affect their health and well-being, including sexual and reproductive health services related to pregnancy, contraception, fertility, termination of pregnancy and adoption (IFFP, 2008).

Despite all this, in Brazil voluntary abortion practice is still typified in the Penal Code as a criminal practice (Brazil, 1940).¹⁴ This criminalization of voluntary abortion harms women, leaving them vulnerable, and making them a victim of prejudice, due to internal social morals. But it also strikes her physically, since a woman must resort to clandestine clinics or unfit people in improper, unstructured, places rather than receiving proper medical care from the state to have an abortion.

In addition, this situation places on women all the weight and responsibility for the act, placing them in an unequal situation compared to the man. Therefore, by combining all these factors, it is clear that the non-regulation of abortion has only caused harm to Brazilian women.

Considering all that was discussed, we reach the obvious conclusion that by criminalizing abortion Brazil is restraining not only the autonomy and freedom of women, but also their free and full enjoyment of human, sexual and reproductive rights. This means that the criminalization violates not only the Inter-American Convention on Human Rights, but also the Protocol of San Salvador and the Convention on the Elimination of All Forms of Discrimination Against Women. Therefore, the Brazilian State should be held accountable on the Inter-American Court of Human Rights.

References

¹⁴ It is worth noting that our criminal legislation is outdated, since it dates from 1940, and that the article dealing with the crime of abortion, article 124, was last amended in 2004.

BANTEKAS, I.; OETTE, L. **International human rights law and practice**. London: Cambridge University Press, 2016.

BRAZIL. **Decree-Law n. 2.848, of December 7, 1940**. Código Penal. Diário Oficial da União, Rio de Janeiro, December 31, 1940. Available at http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848.htm. Accessed on: October 23, 2023.

BRAZIL. Presidência da República. Secretaria Especial de Políticas para as Mulheres. **Plano Nacional de Políticas para as Mulheres**. Brasília: Secretaria Especial de Políticas para as Mulheres, 2004. 104 p. Available at: <https://www.eletronuclear.gov.br/Sociedade-e-Meio-Ambiente/Documents/plano1.pdf>. Accessed on: October 23, 2023.

BRAZIL. **Decree nº 4.229, of May 13, 2002**. Regarding the Programa Nacional de Direitos Humanos (PNDH), established by decree nº 1.904, of May 13, 1996, and provides other measures. Brasília, DF: Presidência da República, 2002. Available at: <https://legis.senado.leg.br/norma/403950/publicacao/15685302>. Accessed on: October 23, 2023.

BRAZIL. Supremo Tribunal Federal. **Habeas Corpus nº 124.306**. Rio de Janeiro. First Class. Defendants: Edilson dos Santos, Rosemere Aparecida Ferreira. Rapporteur: Min. Marco Aurélio. Brasília, August 9, 2016. Available at: <https://portal.stf.jus.br/processos/downloadPeca.asp?id=307143202&ext=.pdf>. Accessed on: September 27, 2018.

BRAZIL. Tribunal de Justiça. 4th criminal court of Duque de Caxias. Rio de Janeiro. **Strict Appeal nº 0065502-27.2013.8.19.0000**. Applicant: Prosecutor. Defendants: Carlos Eduardo de Souza Pinto, Rosemere Aparecida Ferreira, Edilson dos Santos. Rapporteur: des. Antonio Eduardo F. Duarte. Rio de Janeiro, February 25, 2014. Available in: <https://tj-rj.jusbrasil.com.br/jurisprudencia/116603262/resource-sense-strict-rse-655022720138190000-rj-0065502-2720138190000/inteiro-teor-143987284?ref=amp>. Accessed on: July 5, 2023.

BRAZIL. Presidência da República. Secretaria de Políticas para as Mulheres. **Plano Nacional de Políticas para as Mulheres**. Brasília: Secretaria de Políticas para as Mulheres, 2013. Available at: <https://bvsmms.saude.gov.br/bvs/publicacoes/PNPM.pdf>.

DINIZ, D.; MEDEIROS, M.; MADEIRO, A. National Abortion Survey – Brazil, 2021. **Cien. Saude Colet.**, v. 22, n. 2, p. 653-660, 2017. Available at: <http://cienciaesaudecoletiva.com.br/artigos/national-abortion-survey-brazil-2021/18689?id=18689>. Accessed on: October 23, 2023.

IBGE. Pesquisa Nacional por Amostra de Domicílios, 2015. **Síntese de indicadores sociais: uma análise das condições de vida da população brasileira**. Rio de Janeiro: IBGE, 2016. Available at: <https://biblioteca.ibge.gov.br/visualizacao/livros/liv98887.pdf>. Accessed on: October 23, 2023.

INTERNATIONAL PLANNED PARENTHOOD FEDERATION (IPPF). **Sexual Rights: An IPPF Declaration**. London: IPPF, 2008. Available at: https://www.ippf.org/sites/default/files/sexualrightsippfdeclaration_1.pdf. Accessed on: October 23, 2023.

ORGANIZATION OF AMERICAN STATES. Inter-American Commission on Human Rights. **American Convention on Human Rights**, San José, Costa Rica, November 22, 1969. Available at: https://www.oas.org/dil/access_to_information_American_Convention_on_Human_Rights.pdf. Accessed on: October 23, 2023.

ORGANIZATION OF AMERICAN STATES. Inter-American Court of Human Rights. Artavia Murillo et al. (“Fecundação In Vitro”) vs. Costa Rica. **Sentence**, November 28, 2012. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_257_por.pdf Accessed on: August 15, 2021.

ORGANIZATION OF AMERICAN STATES. **Protocol of San Salvador**. November 17, 1988. Available at: <https://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/protocol-san-salvador-en.pdf>. Accessed on: October 23, 2023.

UNITED NATIONS. **Report of the International Conference on Population and Development**, Cairo, September 5-13, 1994. New York: United Nations, 1994. Available at: https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/a_conf.171_13_rev.1.pdf. Accessed on: October 23, 2023.

UNITED NATIONS. United Nations General Assembly. **Convention on the Elimination of All Forms of Discrimination Against Women**, December 18, 1979. Available at: <https://plataformamulheres.org.pt/docs/PPDM-CEDAW-pt.pdf>. Accessed on: October 23, 2023.

UNITED NATIONS. **The Millennium Development Goals**. Millennium Summit, New York, September 6, 2000. Available from: <http://www.pnud.org.br/odm.aspx>. Accessed on: July 09, 2023.

WORLD ASSOCIATION FOR SEXUAL HEALTH. **Declaration of Sex Rights**. WAS General Assembly, Hong Kong, 1999. Available at: <https://worldsexualhealth.net/wp-content/uploads/2013/08/Declaration-of-Sexual-Rights-2014-plain-text.pdf>. Accessed on: October 23, 2023.