

ARGUMENT MAP DEFENDING ABORTION RIGHTS IN BRAZIL



NEM
PRESA
NEM
MORTA

CONSTRUÇÃO



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Nem Presa Nem Morta campaign was created in 2018 as a communication strategy to dialogue with the public in general about abortion decriminalization issues in Brazil. At the time the topic was on the rise due to the public hearing sponsored by the Federal Supreme Court (STF) to discuss the ADPF 442 (Action for Non-Compliance with Fundamental Precept), a lawsuit that demands abortion decriminalization up to 12 weeks of pregnancy. On this occasion, we organized, together with several feminist institutions and movements, the Festival for Women's Lives, which was held in Brasilia and dozens of Brazilian cities.

Since then, those groups continued to act collectively, focusing on social networks and advocacy. In 2022, when ADPF 422 returned to STF's agenda, the campaign **Nem Presa Nem Morta** was restructured, gaining greater scope. In 2023 Minister Rosa Weber, then rapporteur of the action and president of STF, declared

her vote in favor of ADPF 442, on the eve of her retirement. Today, the case is on hold under a decision by the new president of the court, Justice Luís Roberto Barroso.

Going beyond ADPF 442, **Nem Presa Nem Morta** has been working towards a change in the discourse on abortion in Brazil, organizing pressure campaigns to stop setbacks, working with other organizations, the media, and public figures and producing content to hold a meaningful and qualified conversation on reproductive justice with society.

This booklet is part of the effort to communicate anti-racist and feminist arguments to increase favorability towards abortion decriminalization in Brazilian public debate. Enjoy the reading!

For more information we invite you to visit our webpage:

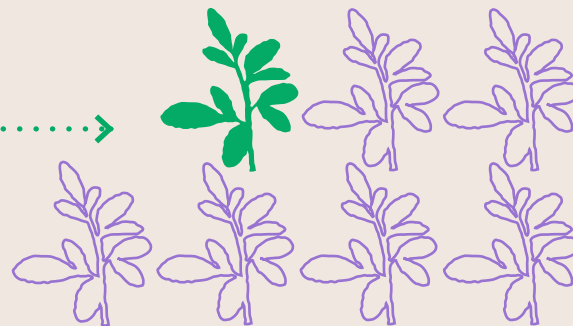
nempresanemmorta.org

CRIMINALIZATION DOES NOT PREVENT ABORTIONS

• Despite criminalization, **1 in 7** women has had an abortion by the age of 40, according to the 2021 Brazilian Abortion Survey. In total, they are around 500 thousand women per year.¹

ABORTION IS A COMMON REPRODUCTIVE PHENOMENON IN THE LIVES OF WOMEN AND OTHER PEOPLE WHO CAN GET PREGNANT

• Those who abort are ordinary people: mostly women who are already mothers, who are married and profess a religion. In other words, they know the meaning of motherhood and, for various reasons, understand that they cannot carry on with a new pregnancy.²



1 IN 7
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HAS HAD AN ABORTION
BY THE AGE OF 40.

THEY ARE AROUND **500.000**
WOMEN
PER YEAR

1 Diniz, D; Medeiros, Marcelo; Madeiro, A. National Abortion Survey - Brazil, 2021. Ciên. & Saúde Colet. [internet journal] (2023/Mar). Available at: <<http://cienciaesaudecoletiva.com.br/artigos/national-abortion-survey-brazil-2021/18689?id=18689>>.

2 Sources: Pesquisa Nacional do Aborto de 2021 e 2016 (2021 and 2016 Brazilian Abortion Survey).



THE CRIMINALIZATION OF ABORTION ONLY HARMS, KILLS, AND PUNISHES WOMEN AND PEOPLE WHO CAN GET PREGNANT

- Unsafe abortion is one of the main causes of maternal mortality in Brazil. Almost half of Brazilian women who had an abortion in 2021 (43%) needed to be hospitalized to complete the procedure.

EVERY 2 DAYS, A WOMAN DIES FROM UNSAFE ABORTION IN BRAZIL.³

³ Pesquisa Nacional do Aborto de 2021; DATASUS; (2021 Brazilian Abortion Survey; DATASUS); Memorial of the Ministry of Health, submitted to the Federal Supreme Court for the open court, on August 3rd, 2018.

THE MOST HARMED BY CRIMINALIZATION ARE BLACK, POOR AND INDIGENOUS WOMEN, WHICH MAKES THE CRIMINALIZATION OF ABORTION A FORM OF DISCRIMINATION

- The criminalization of abortion represents a form of institutionalization of racial discrimination.
- According to the Brazilian Abortion Survey, unsafe abortion rates are higher among women with less education, black women, indigenous women, and women living in poorer regions.⁴
- The number of deaths from abortion is higher among black women.⁵
- Black women are most likely to be arrested for illegal abortions: those charged for abortions are predominantly black and low-income women.⁶

4 Pesquisa Nacional do Aborto de 2021 e 2016 (2021 and 2016 Brazilian Abortion Survey).

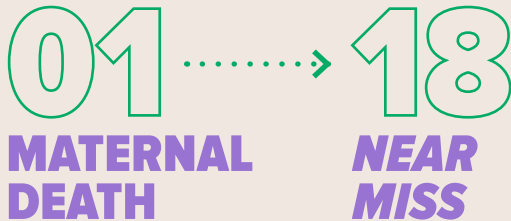
5 Study “Aborto no Brasil: o que dizem os dados oficiais?” (Abortion in Brazil: what do the official data say?), published in the Caderno de Saúde Pública.

6 Study “Entre a morte e a prisão: quem são as mulheres criminalizadas pela prática do aborto no Rio de Janeiro” (Between death and prison: who are the women criminalized for aborting in Rio de Janeiro), by DPE-RJ. Study “Aborto no Brasil: falhas substantivas e processuais na criminalização de mulheres” (Abortion in Brazil: substantive and procedural flaws in the criminalization of women”, of 2022.



COMPLICATIONS FROM UNSAFE ABORTIONS CAUSE SERIOUS CONSEQUENCES FOR THE HEALTH OF WOMEN AND PEOPLE WHO CAN GET PREGNANT, AND CAN CAUSE LIFELONG SEQUELAE

• Unsafe abortions cause serious complications that result in women almost dying (cases called near miss) or having lifelong sequelae. In 2015, there was a ratio of 18 cases of near miss for every maternal death, without counting women who never sought care due to fear of criminalization.⁷




⁷ Memorial of the Ministry of Health, submitted to the Federal Supreme Court for the open court, on August 3rd, 2018.

THE CRIMINALIZATION OF ABORTION CAN BE UNDERSTANDED AS GENDER TORTURE

- Forcing pregnant women and other people who can get pregnant to carry out an unwanted pregnancy can be considered as a form of gender torture. This is because the threat of criminal punishment forces them to experience the physical, psychological, and social impacts associated with unintended pregnancy, simply because they are able to conceive, that is, for reasons based on gender.
- In the consideration of ADPF 54, the Federal Supreme Court recognized that, when pregnancy causes serious psychological impact on women, preventing the termination of pregnancy amounts to a situation of torture, prohibited by the Constitution.

**DUE TO THE COMPLICATIONS
RESULTING FROM UNSAFE ABORTIONS,
THE CRIMINALIZATION OF ABORTION
GENERATES HIGH COSTS FOR THE
HEALTH SYSTEM**

• According to calculations by the Ministry of Health, the cost of hospitalizations due to abortion complications was R\$ 486 million between 2008 and 2017. In 2017 alone, this cost was R\$ 50,762,324.38.

**DURING THE
PERIOD
ANALYZED** 
**(2008 TO 2017),
TOTAL SPENDING WAS
R\$ 486 MILLION⁸.**

⁸ Memorial of the Ministry of Health, submitted to the Federal Supreme Court for the open court, on August 3rd, 2018.

**THE CRIMINALIZATION OF ABORTION
PREVENTS WOMEN AND OTHER
PEOPLE WHO CAN GET PREGNANT
FROM ACCESSING LEGAL ABORTION.
HOWEVER, AUTHORIZING ABORTION
ONLY IN SOME CIRCUMSTANCES
FAVORS RESTRICTIVE INTERPRETATIONS
OF LEGAL HYPOTHESES, IMPOSING
BARRIERS THAT DELEGITIMIZE THE
DECISION TO TERMINATE PREGNANCY IN
SUCH HYPOTHESES**

• Even with the authorization of abortion since 1940 in cases of sexual violence and risk to the pregnant person's life and, since 2012, in cases of anencephaly, barriers not addressed by law are still imposed to those who need to access the procedure. An example is the gestational age limit, the requirement for a police report in cases of sexual violence, and the requirement for judicial authorization.

• **Criminalization favors the restrictive interpretation of legal abortion hypotheses, potentially transforming legal abortion into a crime.** In cases such as stealthing (removing a condom without the partner's consent), many women and girls still have their right to a legal abortion hindered. In cases of sexual relations between children incapable of consenting (under 14 years old), attempts are also made to force them to continue the pregnancy, as the case of the girl from Santa Catarina, in which anti-rights actors opposed abortion based on an idea that it is possible to have a consensual relation between vulnerable persons⁹.

• **Women are deprived of assessing the risks that they are willing to take,** as those who have high-risk pregnancies die because the possibility of terminating the pregnancy was not offered. Brazil has a high number of deaths of women due to indirect obstetric causes, which occurs when a previous illness, or one acquired during pregnancy, aggravates the risks of pregnancy. These deaths are considered completely preventable. **Black women are more likely to need abortions to save their lives,** as

⁹ News "Conselho Tutelar denunciou médica por aborto legal em menina de 14 anos". (Child Protective Council denounced physician for legal abortion in a 14-year-old girl).

rates of serious pregnancy complications are higher among them.

• **There is evidence that the increase in maternal mortality during the Covid-19 pandemic is associated with the criminalization of abortion.** Firstly, because public health emergencies caused by infectious diseases tend to have greater effect on women and other pregnant and postpartum people, who represent a risk group for these diseases. These are times when it is even more important that access to legal and safe abortion be available to preserve the health of pregnant women and other pregnant people. Secondly, because there is evidence that interventions necessary to save lives, such as intubation and induction of premature labor, have been postponed under the pretext of saving the life of the fetus, as revealed in the study by Debora Diniz, Luciana Brito and Gabriela Rondon published in 2022¹⁰.

¹⁰ Study "Maternal mortality and the lack of women-centered care in Brazil during COVID-19: Preliminary findings of a qualitative study".

• **The criminalization of abortion undermines the protection of children, as children who are victims of sexual violence are more likely to face obstacles arising from such criminalization.**

Brazil has around 19 thousand births per year from children between 10 and 14 years old¹¹. In 2020, only 75 legal abortions were registered among children within this age group. Children face greater difficulties in recognizing the signs of pregnancy and reporting violence. They are often discredited by their guardians and family members, who should nevertheless provide the necessary support to report the violence. Therefore, when they seek assistance, it is common for them to be at later gestational ages, suffering more intensely from the barrier associated with gestational age¹².

¹¹ Ministry of Health, DATASUS.

¹² BLAKE, M. de T. et al. Factors associated with the delay in seeking legal abortion for pregnancy resulting from rape. *International Archives of Medicine*, v. 8, 2015; SAAVEDRA-AVENDANO, B. et al. Who presents past the gestational age limit for first trimester abortion in the public sector in Mexico City? *PLOS ONE*, vol. 13, n. 2, p. e0192547, 2018.

• The criminalization of abortion favors the persecution of professionals such as human rights defenders, when they work to guarantee access to legal abortion. Consequently, it makes access to the procedure difficult. An example of this persecution occurred in the case of the girl from Santa Catarina, in which anti-rights actors undertook various strategies to hold professionals who acted in favor of the child who had the right to an abortion administratively and criminally responsible¹³.

¹³ News "Conselho Tutelar denunciou médica por aborto legal em menina de 14 anos". (Child Protective Council denounced physician for legal abortion in a 14-year-old girl).



THE CRIMINALIZATION OF ABORTION IS A FORM OF DISCRIMINATION, NOT ONLY BETWEEN WOMEN AND MEN, BUT ALSO BETWEEN WOMEN THEMSELVES OR PEOPLE WHO CAN GET PREGNANT, BASED ON THEIR DIFFERENCES IN CLASS, RACE, EDUCATION, AND REGION

• **The criminalization of abortion turns a procedure that only women and other people who can get pregnant need into criminal matters.** Furthermore, it restricts these people's capacity to control their own bodies, a basic prerequisite for the enjoyment of rights guaranteed in the Constitution such as freedom, autonomy, dignity, and health. Thus, it keeps them as second-class citizens in terms of access to rights. Discrimination is even greater against the most vulnerable women, since, while white women and those from higher social classes can access less unsafe procedures, the former face highly unsafe procedures or are eventually unable to terminate their pregnancy. They are also the most likely to have their freedom threatened by the criminalization of abortion, as they are the most reported and punished for abortion.

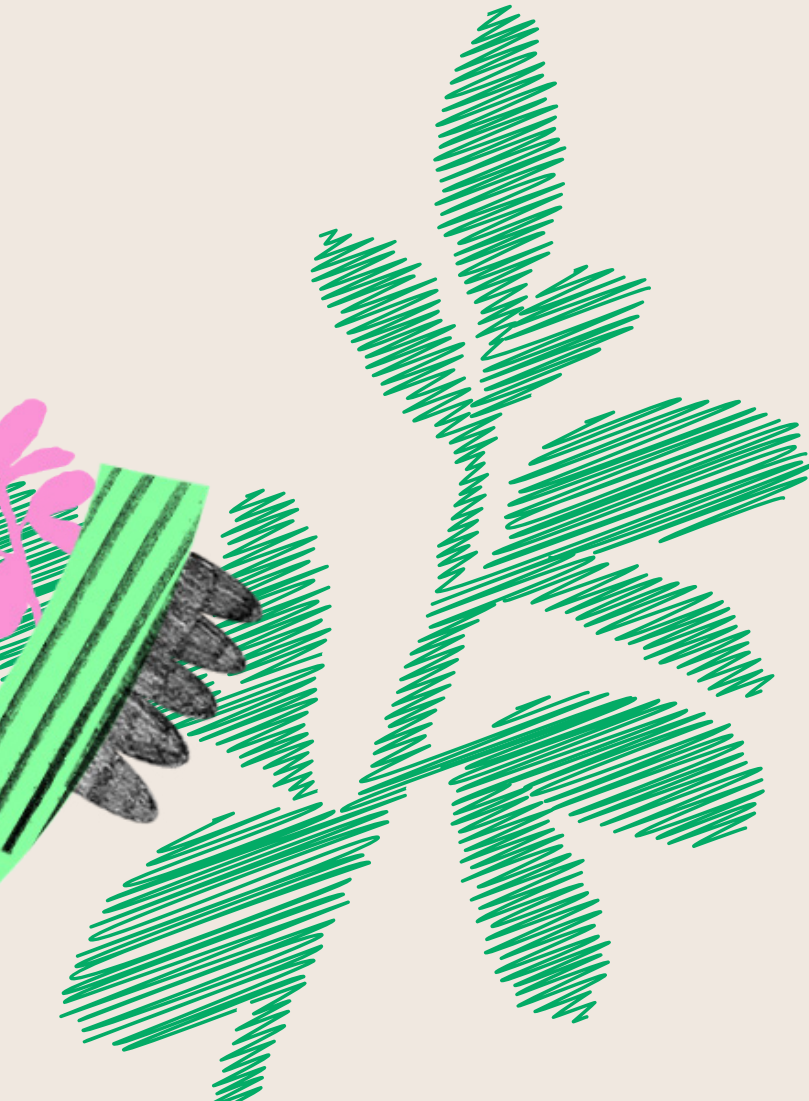
• **The decriminalization of abortion, therefore, is a debt of democracy in relation to women and people who can get pregnant.** We cannot talk about democracy when there are still people who cannot access basic democratic rights, such as the right to health and autonomy over their own bodies. The criminalization of abortion reinforces historical and cultural debts, as it is a political decision taken with little or no participation from women and other people who can get pregnant, and which imposes barriers to full access to their rights. A careful reading of the Constitution guarantees women the right to decide about their own bodies and lives.

• **The criminalization of abortion prevents women and other people who can get pregnant from fully carrying out their life plans, as they still are the main caregivers of children.** With decriminalization, it is possible to guarantee that women, girls, and other people who can get pregnant have access to equal opportunities to participate in political, economic and social life.

CRIMINALIZATION PREVENTS THE RECOGNITION OF THE MORAL CAPACITY OF WOMEN AND OTHER PEOPLE WHO CAN GET PREGNANT TO MAKE AUTONOMOUS AND RESPONSIBLE REPRODUCTIVE CHOICES BASED ON THEIR OWN BELIEFS, IN OTHER WORDS, IT HARMS THEIR HUMAN DIGNITY

• When women and other people who can get pregnant have an abortion, they do so for the most diverse reasons that concern the intimate sphere. **They do not abort because they consider abortion something banal, but because they understand the responsibility involved in parenthood and that a future child deserves a level of care that they would not be able to provide,** or because they want to take better care of the children they already have. Therefore, it is necessary to trust the decisions of women and other people who can get pregnant, and recognize them as having full capacity to make autonomous and responsible decisions.





THE CRIMINALIZATION OF ABORTION MEANS IMPOSING PARENTHOOD AS A DUTY, INSTEAD OF RECOGNIZING IT AS A RIGHT PROVIDED IN OUR CONSTITUTION, AND IGNORES THE DETERMINANT ROLE OF PROTECTING THE INTEGRITY OF THE WOMAN OR PREGNANT PERSON DURING PREGNANCY

• Pregnancy is a process that occurs in the body of the woman or the person carrying the baby, so it is up to them to decide whether or not to continue the pregnancy, based on their personal convictions. Decriminalizing means recognizing parenthood as a right, moving away from the social imposition of parenthood, which no longer has a place in a society guided by gender equality. It also means that it is not possible to guarantee the healthy development of a pregnancy by attacking the person who is pregnant. **The healthy development of pregnancy depends on respect for the physical, psychological and social integrity of the woman or other person who can get pregnant, threatened by criminalization.**

COUNTRIES THAT HAVE OPTED TO DECRIMINALIZE ABORTION HAVE SHOWN, OVER TIME, A REDUCTION IN THE NUMBER OF ABORTIONS AND MATERNAL DEATHS

- There is evidence of a drop in abortion rates in the years following decriminalization in several countries such as Romania, Portugal, and France.
- The World Health Organization has found that **maternal mortality increases in countries where abortion is criminalized**¹⁴. It is estimated that between 8 and 18% of maternal deaths worldwide result from unsafe abortions. These deaths are concentrated in poor countries¹⁵. In Brazil, abortion is the fourth cause of

¹⁴ World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems*, second edition (Geneva: WHO, 2012).

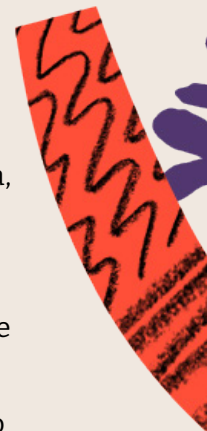
¹⁵ SINGH, Susheela et al. Adding it up: the costs and benefits of investing in sexual and reproductive health 2014. Guttmacher Institute, 2014. / KASSEBAUM, Nicholas et al. Global, regional, and national levels and causes of maternal mortality during 1990–2013: a systematic analysis for the Global Burden of Disease Study 2013. *The Lancet*, 2014. / SAY, Lale et al. Global causes of maternal death: a WHO systematic analysis. *The Lancet Global Health*, 2014.

maternal death¹⁶. There is reliable evidence of a drop in the maternal mortality rate after the decriminalization of abortion, in several contexts. Examples include different countries, such as the United States, Ethiopia, Uruguay, Romania and, South Africa¹⁷.

- The use of criminal law is only justified in the absence of other effective means to guarantee the protection of rights. In the case of abortion, the option for criminalization is disproportionate, considering that it violates women's fundamental rights and is unable to reduce the number of abortions.

¹⁶ BRASIL. Ministério da Saúde. Secretaria de Vigilância em Saúde. *Mortalidade materna no Brasil. Boletim Epidemiológico* (Ministry of Health. Health Surveillance Secretariat. Maternal mortality in Brazil. *Epidemiological Bulletin*), v. 51, Nr. 20, p. 21–27, 2020.

¹⁷ STARRS, Ann et al. Accelerate progress—sexual and reproductive health and rights for all: report of the Guttmacher–Lancet Commission. *The Lancet*, 2018. / BERHAN, Yifru et al. Causes of Maternal Mortality in Ethiopia: A Significant Decline in Abortion Related Death. *Ethiopian Journal of Health Sciences*, 2014. / BRIOZZO, Leonel et al. Overall and abortion-related maternal mortality rates in Uruguay over the past 25 years and their association with policies and actions aimed at protecting women's rights. *International Journal of Gynecology & Obstetrics*, 2016. / HORGHA, Mihai et al. The remarkable story of Romanian women's struggle to manage their fertility. *Journal of Family Planning and Reproductive Health Care*, 2013. / JEWKES, R. The impact of age on the epidemiology of incomplete abortions in South Africa after legislative change. *BJOG: An International Journal of Obstetrics & Gynaecology*, 2005.





• **When abortion is no longer a criminal matter, it is possible to embrace women and people who can get pregnant in healthcare centers and listen to them, preventing further abortions.** As a result, it is possible to identify flaws in preventing pregnancy and improve it; to offer information and contraceptive methods to prevent new abortions, and find out whether the woman or the person who can get pregnant suffers violence, offering guidance to remove them from this situation.

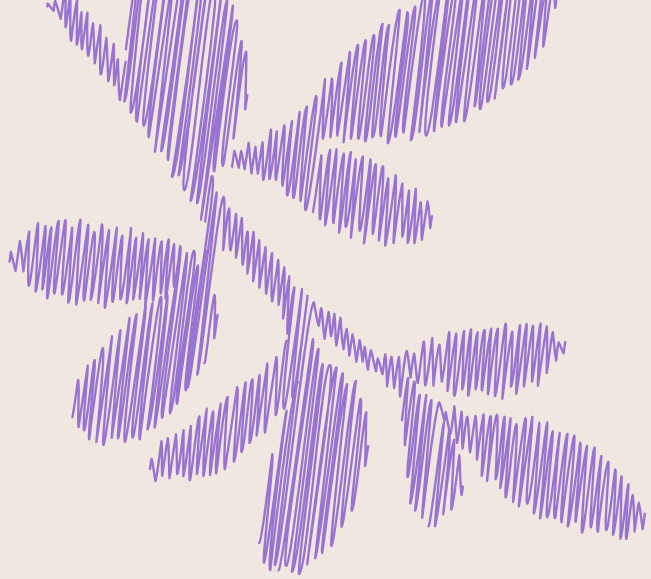
• The criminalization of abortion keeps women away from healthcare centers and reinforces the belief that professionals are prevented from guiding and welcoming them in the pre- and post-abortion context. Thus, women and girls are not included in care routines that involve attention to their health, such as offering information and access to contraception and prevention of new unwanted pregnancies.

DECRIMINALIZING ABORTION IS A WAY OF PROMOTING REPRODUCTIVE JUSTICE

- With the criminalization of abortion, the reproductive life of women and other people who can get pregnant is affected by social injustices (gender, race, class, among others), making decriminalization a demand for reproductive justice. Reproductive justice means ensuring that people can choose whether, when, and how they will become parents, while ensuring the freedom to raise their children in safe and environments and with support.

- Criminalizing abortion means determining which people, depending on their socioeconomic conditions, will have access to less unsafe abortion methods and adequate health care to reduce harm, treat abortion complications without the fear of being charged, and have access to safe and adequate contraceptive methods that allow effective control over reproductive life.

- The criminalization also ignores the lack of social support for healthy pregnancies, births, and development through support for parenthood, families, and children's rights. Instead of adopting these measures, the State chooses to criminalize the decision of women and people who can get pregnant to resort to abortion to obtain greater control over their reproductive life. They are deprived of this control due to the absence of public policies addressing sexual education, contraceptive methods, healthy pregnancy and birth.



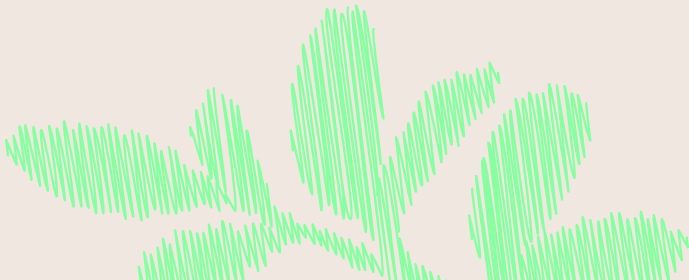
DECRIMINALIZATION DOES NOT MEAN CEASING TO PROTECT THE POTENTIAL LIFE, BUT RATHER ADOPTING MORE APPROPRIATE WAYS OF PROTECTING DIGNIFIED LIFE AND LIFE POTENTIAL

- **Decriminalizing abortion allows the protection of potential life without harming the rights of women, girls, and people who can get pregnant.** The decriminalization simply means eliminating criminal law when dealing with the abortion issue, giving way to public policies that better protect the potential life and the rights of women and other people who can get pregnant, such as sexual education, access to contraceptive methods and support for parenthood and childhood.
- **The decriminalization allows the protection of lives of women** and other people who can get pregnant, as it reduces their mortality.

- **Decriminalizing creates a more favorable environment for protecting potential life**, as it brings women closer to healthcare centers. Life can only be protected when we work together with the people who can get pregnant, not against them.

- **The protection ensured to the right to life cannot violate the rights of women and other people who can get pregnant, who are true holders of all the rights provided for in the Constitution, as acknowledged by the Federal Supreme Court. The right to life must be interpreted as the right to a dignified life, which is violated by the criminalization of abortion.** In Brazilian law, there is no protection for an idea of abstract life or the biological life of fetuses and embryos in the same way that people are protected. When judging the constitutionality of research with embryonic stem cells, the Court understood that life is protected gradually, proportional to each stage of development.

- **The absolute right to life from conception is a religious view of the beginning of life**, which is possible and valid, but which cannot be assumed by the Brazilian state, since it is laic.





THE CRIMINALIZATION MAKES ABORTION A TRAUMATIC EVENT FOR THE LIVES OF WOMEN AND OTHER PEOPLE WHO CAN GET PREGNANT

- The criminalization feeds the social stigma of abortion, in addition to making the abortion experience an event subject to damage and serious health consequences.
- The criminalization causes women who have abortions to be judged and feel guilty for terminating a pregnancy, even in cases where abortion is legal.
- There is evidence that denial of access to abortion leads to suffering for women and other people who can get pregnant, and that those who access abortion may report feelings of relief.



ABORTION ITSELF IS AN EXTREMELY SAFE PROCEDURE, WITH INSIGNIFICANT DEATH RATES, WHEN PERFORMED BY SKILLED PROFESSIONALS, WHEN NECESSARY, IN SUITABLE ENVIRONMENTS AND WITH MODERN AND SAFE TECHNIQUES

- According to the WHO, abortions carried out legally and safely present almost negligible risks. This organization states that only 2 to 5% of women who undergo an abortion using reliable medications may need subsequent medical intervention¹⁸. The WHO considers that the drug abortion procedure can be controlled by the woman, and can even be carried out at home until the 12th week of pregnancy. This recommendation can contribute to improving women's privacy and to reducing the burden on healthcare centers, while at the same time not jeopardizing the safety of the procedure¹⁹.

18 WORLD HEALTH ORGANIZATION. Abortamento seguro: orientação técnica e de políticas para sistemas de saúde. 2ª edição, 2013 (Safe abortion: technical and policy guidance for health systems. 2nd edition, 2013). Available at: <https://apps.who.int/iris/bitstream/handle/10665/70914/9789248548437_por.pdf?sequence=7>. Accessed on: June 09th, 2022.

19 WORLD HEALTH ORGANIZATION. Clinical practice handbook for safe abortion. 2014. Available at: <https://apps.who.int/iris/bitstream/handle/10665/97415/9789241548717_eng.pdf>

- It is the criminal law that makes the abortion procedure risky. The criminalization and consequent barriers to access to abortion prevent safe, low-risk procedures from being carried out so people have to opt for unsafe procedures, thus increasing the risk of consequences for their health and mortality of women and other people who can get pregnant.

CRIMINALIZING ABORTION VIOLATES THE LAICITY OF THE STATE, BECAUSE IT MEANS IMPOSING A MORAL AND RELIGIOUS CONCEPTION IN PARTICULAR ON WOMEN AND PEOPLE WHO CAN GET PREGNANT, SINCE NOT EVEN AMONG RELIGIONS THERE IS A CONSENSUS ON HOW TO DEAL WITH THE ABORTION ISSUE AND, ADDITIONALLY, THERE ARE BIBLICAL INTERPRETATIONS THAT ARE COMPATIBLE WITH THE DECRIMINALIZATION OF ABORTION

• The influence of Catholic religious morals in the construction of social values in Brazil has a direct correlation with the criminalization, maintaining political control of the female body and reinforcing the Christian ethics of family protection and maternal responsibility. The idea about the beginning of life is something strictly individual and emotional, and cannot be used to justify the prohibition of pregnancy termination.

• The State must be neutral in relation to religions, preventing religious dogmas from guiding its decisions. Therefore, the criminalization of abortion on the grounds of a particular religious dogma cannot be maintained by the State. The slogan behind the criminalization that says that the State is not atheist is a fallacy that aspires to create confusion, because there is no way that the State can be atheist since faith is a private matter, and the State has a duty to remain neutral.

• The fact that the population is Christian/religious does not legitimize the defense of criminalization, as the abortion issue is not treated consensually by religions, not even within the same religion. There are biblical-theological references compatible with the foundations of equality between men and women and, particularly, with the decriminalization of abortion.

• Women and other people who can get pregnant who are Christians also have abortions, and their health must be protected. Surveys show that women who have abortions also profess some type of religion.²⁰

²⁰ Sources: Pesquisa Nacional do Aborto de 2021 e 2016 (2021 and 2016 Brazilian Abortion Survey).

THE DECISION ON ABORTION CANNOT BE UNDER THE NATIONAL CONGRESS' EXCLUSIVE DISCRETION, AND THE FEDERAL SUPREME COURT CAN ALSO ACT TO MAKE THE LAWS COMPATIBLE WITH THE CONSTITUTION, ESPECIALLY WHEN THERE IS A CONTINUOUS LEGISLATIVE OMISSION TO ADDRESS THE ISSUE FROM THE PERSPECTIVE OF WOMEN'S FUNDAMENTAL RIGHTS

• One of the Federal Supreme Court's main responsibilities is to analyze whether laws and their interpretations are compatible with the Constitution, in this case, to evaluate the criminalization of abortion based on the rights of women and other people who can get pregnant. This is what the Court did when it understood that interrupting an abortion in cases of anencephaly could not be classified as a crime.

• When the court decides on this issue, it is not interfering with the Legislative Power, as this power is also limited to what is provided for in the Constitution. When the Legislative Branch

abuses its power, the Federal Supreme Court, if provoked, must act to preserve constitutional rights.

• Most of the bills being pending at the National Congress aim to further restrict women's access to legal abortion, even in cases of sexual violence and risk to life. There is a continued omission by the Legislative Branch to address the issue from the perspective of gender equality. Since the beginning of the 2000s, any reasonable discussion, in the Congress, about the right to abortion, even discussions about how to implement what is already provided for by law, has been practically impossible.

• The Federal Supreme Court, as a Constitutional Court, has a role against the majority in order to guarantee compliance with the Federal Constitution, fundamental rights, and the protection of minorities. The decriminalization of abortion is a means of preventing the perpetuation of a form of gender discrimination and violence.²¹

²¹ Memorial of the Federal Office of the Public Defender, submitted to the Federal Supreme Court for the open court on August 6th, 2018.

THE DECRIMINALIZATION OF ABORTION IS COMPATIBLE WITH THE RIGHTS OF PEOPLE WITH DISABILITIES AND CANNOT BE CALLED EUGENIC

- **There are multiple reasons that lead a person to choose to terminate a pregnancy in the event of the possible birth of a child with a disability.**

This decision may not be associated with the disability itself: the person may already have other children with or without disabilities or may not have the material conditions to deal with the demands, among several other reasons.

- **Eugenics is promoted by the State when it neglects the rights of children and adults with disabilities. Individual reproductive decisions are not capable of promoting eugenic policies.**

Science allows a person with a disability to live with well-being similar to that of a person without a disability. Furthermore, there are several policies to promote the rights of people with disabilities by ensuring care, assistance, and inclusion, and also promoting a positive way of dealing with disability. However, in the absence of these conditions, it cannot be assumed that women's decisions are a factor in discrimination against people with disabilities.



- **Women with disabilities also have abortions and should have the right to make reproductive choices.** Women with disabilities are even less seen as holders of sexual and reproductive rights so that, for example, the health system does not have equipment suited to their bodily needs, and they are not adequately instructed on the use of contraceptive methods.

THE CRIMINALIZATION OF ABORTION VIOLATES THE RIGHTS OF HEALTHCARE PROFESSIONALS AND LEADS THEM TO A POOR EXERCISE OF THEIR PROFESSION

- **The criminalization makes professionals afraid to advise women and other people who have unwanted pregnancies on how to avoid the risks of clandestine abortions, that is, to fulfill their duty to promote harm reduction.**
- The criminalization of abortion prevents access by women, girls, and people who can get pregnant to general information about abortion options and procedures and post-abortion contraception, given the fear of healthcare professionals in providing adequate information about the termination of pregnancy.
- **Treating a public health issue as politics makes professionals believe that they must report pregnant women and other people when they arrive at healthcare centers with abortion complications.** This means that even people who suffer miscarriages and other obstetric emergencies become suspects, being questioned, neglected or mistreated in those centers. Surveys indicate that there are

frequent cases in which women criminalized for abortion are reported by physicians and nurses who are taking care of them²². Therefore, recently, the Superior Court of Justice reiterated its understanding that physicians cannot report patients for clandestine abortions and the breach of confidentiality must lead to the suspension of criminal proceedings.

- **The threat of punishment (for professionals and women and other people who can get pregnant) creates, even in legal cases, some kind of criminal control exercised over the procedure.** This can occur through restrictive judgments regarding the filling out of the causes, the requirement for judicial authorization, or the drawing up of a police report and the questioning of women about the violence suffered, aggravating psychological suffering and leading to a situation of revictimization.

²² Study "Entre a morte e a prisão: quem são as mulheres criminalizadas pela prática do aborto no Rio de Janeiro" (Between death and prison: who are the women criminalized for the practice of abortion in Rio de Janeiro", by DPE-RJ. Study "Aborto no Brasil: falhas substantivas e processuais na criminalização de mulheres", (Abortion in Brazil: substantive and procedural flaws in the criminalization of women", 2022.

DECRIMINALIZING ABORTION MEANS COMPLYING WITH THE INTERNATIONAL COMMITMENTS MADE BY BRAZIL

• Brazil is a signatory to international human rights commitments that require the promotion of the sexual and reproductive health of women and girls, including the right to legal abortion. Agencies responsible for applying and monitoring human rights treaties, such as the Inter-American Court of Human Rights and United Nations committees, which prioritize the rights of girls and women, require the guaranty of safe abortion and the revision of laws that restrict abortion. Examples are General Comments Nr. 6 and Nr. 28 of the Human Rights Committee; General Comments Nr. 5 and Nr. 26 of the Committee on the Rights of the Child; General Comment Nr. 22 of the Committee on Economic, Social and Cultural Rights; and General Recommendation Nr. 24 of the CEDAW Committee.



• The Brazilian Constitution establishes the protection of international human rights treaties with the same force as the fundamental rights established in the Constitution itself, in compliance with Art. 5, paragraph 2. Furthermore, the IACHR determines that States carry out control of conventionality in all their spheres and scopes of action, by applying not only the treaties but also the jurisprudence of the Court itself.

INTERNATIONAL LAW DOES NOT GIVE ABSOLUTE PROTECTION TO POTENTIAL LIFE

• In Resolution 23/81, of March 6th, 1981, the IACHR, when considering case 2141, “Baby Boy vs. United States” ruled that the right to abortion does not violate Art. 4, item I of the Pact of San Jose, nor the American Declaration of the Rights of Man. According to the IACHR, International Law does not determine that the embryo be treated equally to a person, nor that it has the right to life, and it is not possible for the embryo to hold and exercise the rights enshrined in the Pact of San José of Costa Rica. In other words, the protection of the embryo cannot prevent the enforcement of other rights. This understanding arises from a systematic interpretation, which considers, in addition to the wording of the provision, the other human rights treaties and the preparatory work for the Convention, in which there was a rejection of the inclusion of the right to life from conception.



DECRIMINALIZING ABORTION MEANS ALIGNING BRAZIL WITH THE LATIN AMERICAN TREND TO RECOGNIZE ABORTION AS A PUBLIC HEALTH ISSUE

• The growing number of Latin American constitutional courts that have decided to loosen laws that criminalize abortion — such as, recently, those in Colombia and Mexico — shows a trend towards recognizing women's rights in the region. Latin America is, historically, one of the regions with the most restrictive abortion laws, and the local courts' option for decriminalization must be understood as a reflection of countries that have documented, for decades, the serious consequences of a harsh criminal regime for fundamental rights of girls, women, and other people who can get pregnant. In the same sense, the cases of Manuela, decided in 2021, and of Beatriz, recently presented before the Inter-American Court of Human Rights (IACHR), show that the region is improving the recognition of these rights, including in the international field.



SOCIETY DOES NOT AGREE THAT WOMEN SHOULD BE CRIMINALIZED FOR ABORTION

• It is necessary to question the dichotomy “for or against abortion” that, for decades, has guided public opinion surveys on the topic. There is a significant number of people who, although not in favor of the broad permission of abortion, do not agree with women being criminalized for abortion, and agree with the right to legal abortion in specific situations, whether those already guaranteed by law or in other situations not yet covered by the Brazilian Criminal Code. The question “for or against” consists of a starting error, common to other opinion polls on controversial topics. As abortion is a crime and an object of stigma, the question about being for or against carries a moral expectation surrounding the answer. A woman may have already had an abortion and respond that she is against abortion, just as other people may claim that they are against the imprisonment of women for abortions, although they may respond that they are “against abortion”²³.

23 Debra Diniz at the Federal Supreme Court hearing.



• The Opinion Poll on Religion, Abortion, Politics, and Sexuality in Brazil 2021, carried out by Catholics for the Right to Decide, showed that ¾ of the people interviewed do not agree that a woman should be arrested for abortion; 85% agree that if abortion were no longer a crime, fewer women would die from clandestine abortions; 67% support legal abortion in specific situations; 51% believe that healthcare professionals who have religious faith should perform an abortion regardless of their beliefs; 85% agree with abortion if there is a health risk; 87% when the woman’s life is at risk; and 83% when the pregnancy is the result of rape.

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