

# Criminalization of abortion in Brazil and the implications for public health

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## Abstract

Discussions related to abortion in Brazil raise reflections related to social, cultural, moral, legal, economical, ideological, religious and bioethical issues. Abortion emerged as a public health issue, because of its high rate of maternal mortality and morbidity. The study aims to address the criminalization of abortion in Brazil and the implications for public health. This is a critical review, held in the database Lilacs and SciELO. It was evident that the deficit in quality of care, specifically reproductive health of women, as the actions of planned parenthood, as well as the illegality of abortion in Brazil cause implications for women's health, since several ones look for unsafe practices and clandestine abortions. It is considered that the prohibition doesn't prevent the abortion to be performed. From the ethical point of view, the woman, just like any other individual, regardless of race, ethnicity or social class, has the right upon their bodies.

**Key words:** Abortion induced. Maternal mortality. Sexual and reproductive rights. Freedom.

## Resumo

### Criminalização do aborto no Brasil e implicações à saúde pública

Discussões inerentes ao aborto no Brasil suscitam reflexões relacionadas a aspectos sociais, culturais, morais, legais, econômicos, bioéticos, religiosos e ideológicos. O aborto emergiu como questão de saúde pública, em razão do elevado índice de morbimortalidade materna. O estudo objetiva discutir a criminalização do aborto no Brasil e implicações à saúde pública. Trata-se de revisão crítica, realizada nas bases de dados Lilacs e SciELO. Evidenciou-se que o déficit na qualidade da assistência prestada, especificamente à saúde reprodutiva da mulher, como as ações do planejamento familiar, bem como a ilegalidade do aborto no Brasil, provocam implicações à saúde da mulher, vez que várias buscam práticas inseguras e clandestinas de abortamento. Considera-se que a proibição não impede que o aborto seja realizado. Do ponto de vista ético, a mulher, como qualquer outro indivíduo, independentemente de raça, etnia ou classe social, tem o direito sobre seu corpo.

**Palavras-chave:** Aborto induzido. Mortalidade materna. Direitos sexuais e reprodutivos. Liberdade.

## Resumen

### Criminalización del aborto en Brasil y sus consecuencias para la salud pública

Discusiones inherentes sobre el aborto en Brasil suscitan reflexiones relacionadas a aspectos culturales, morales, jurídicas, económicas, bioéticas, religiosas e ideológicas. El aborto emergió como cuestión de salud pública, en razón del elevado índice de morbilidad materna. El estudio pretende abordar la criminalización del aborto en Brasil y las implicaciones para la salud pública. Se trata de una revisión crítica, realizada en las bases de datos Lilacs y SciELO. Se evidenció que el déficit en la calidad de la asistencia prestada, específicamente a la salud reproductiva de la mujer, como las acciones de planificación familiar, así como la ilegalidad del aborto en Brasil, provocan consecuencias para la salud de la mujer, ya que varias buscan prácticas inseguras y clandestinas de abortos. Se considera que la prohibición no impide que el aborto se realice. Desde el punto de vista ético, la mujer, como cualquier otro individuo, sin importar la raza, etnia o clase social, tienen el derecho a su cuerpo.

**Palabras-clave:** Aborto inducido. La mortalidad materna. Los derechos sexuales y reproductivos. Libertad.

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Transformations in social gender relations have created an environment which enables the construction of specific national policies for women's health, historically directed to the attention to pregnancy and childbirth moments. According to the Ministry of Health (MH)<sup>1</sup>, women, as subjects of law, with needs that go beyond pregnancy and childbirth, require actions that give them improvement of health in all life cycles.

Thus, women's health-related actions, such as family planning, linked to primary care, are part of the minimum responsibilities of municipal management, as defined by the Healthcare Operational Standard of the Unified Health System (UHS – SUS, in Brazil)<sup>2</sup>. However, some municipalities have failed to deploy and either implement appropriate strategies for the provision of contraceptives to the population and also monitoring the customer<sup>3</sup>. It has also proved problematic to implement actions in order to introduce the educational approach and counseling in the view of free and informed choice.

The deficit quality in health care of women, specifically related to sexual and reproductive health care, plus the medicalization and hospitalocentric speech, made hospital and cesarean births, with a view to sterilization, become commonplace cultural practices. Failure to comply with the provision of access to sexual and reproductive health care, both in counseling and in the effective supply of contraceptive medication, also increases the number of unwanted pregnancies. This situation can be directly related to the high rate of induced abortions. This is due to the fact that many women are disadvantaged in their right to health and, as in Brazil abortion is illegal in most situations, some women turn to illegal or unsafe practices, especially the poorest, with low education and black women<sup>4</sup>.

In contemporary times, illegal and/or unsafe abortion is touted as a public health problem, being one of the most prominent themes in the related area of women's health discussions. Controversial issue, it articulates various moral positions and legal conflicts that unfold in the cultural and social perspectives, among many others<sup>5</sup>. Due to the fact that it goes through a tangle of economic, legal, religious and ideological aspects, the theme of abortion encourages passionateness and conflict. In order to understand its scope and (re) consider solutions to the theme, it demands investment both in education and information about the effective involvement of State, health professionals and society to the laws of Brazil and some of its basic principles, such as: democracy, secularism of the State, gender equality and human dignity<sup>6</sup>.

If, on one hand, the crux of the argument revolves around the fact that illegal and/or unsafe abortion, held in poor conditions, is a major cause of maternal morbidity and mortality, relating thus to the defense of human rights, on the other hand, the morality that advocates maintaining its prohibition is justified by the principle of the sacredness of life, according to which the beginning of existence would occur from the conception and, therefore, whoever aborts would be taking a life. Reflection of the still prevailing religious morality, this perspective is imposed on society through a legislation that criminalizes abortion, preventing this procedure to be performed safely.

This clash of perspectives justifies this documentary research which aims to discuss the criminalization of abortion in Brazil and its implications for public health. Aiming to support and stimulate the discussion on this key aspect to ensuring the human rights – sexual and reproductive rights – of women and men in our country, this work concludes by advocating decriminalization of abortion in light of bioethical tools.

## Method

This work is a critical review, elaborated from the material published in printed and electronic media, whose search was undertaken between April and August 2012. Initially, there was a selection and pre-reading of articles, books and national journals, through the use of descriptors: *induced abortion; maternal mortality; sexual and reproductive rights; freedom*. Subsequently, through the Virtual Health Library (VHL) it was conducted a survey in the database of the Latin American and Caribbean Literature on Health Sciences (Lilacs). To a better basis, it was necessary to include additional references that were found in the Scientific Electronic Library Online database (SciELO), besides websites such as the Ministry of Health, Catholics for a Free Choice and Feminist Network for Health.

From the Lilacs database, the search resulted in 122 articles. In order to perform this search, we have used the word abortion in the advanced search, and the following subjects as filters: induced abortion, maternal mortality, abortion and bioethics. Still, with the objective of coordinating the descriptors, we adopted the Boolean expression "AND", which allowed the insertion of two or more words.

Faced with the great amount of articles, it was necessary to select among them. Accordingly, the

criteria for inclusion were: full text, Portuguese, title and purpose, work related to women's health, legal and illegal abortion, race/color, arguments for and against abortion and maternal mortality – beyond time frame 2002-2012. Exclusion criteria were: articles that were duplicated in the database, defined for a specific age group, depicting only the participants' knowledge about the theme; articles that addressed only spontaneous miscarriage and did not contained in its title the term abortion, besides articles not focusing on the health area.

The selection of broadly favorable to the decriminalization of abortion articles was motivated by the identification in studies that in Brazil, despite legal restrictions, abortion is carried out by several women, illegally and/or unsafely, making them exposed at risks, health problems and even death, especially the most vulnerable ones<sup>7</sup>. It is soon imposed that legality may save women's lives<sup>8</sup>, whether few, many, rich or poor. Besides, we have adopted the principle that in a democratic and secular State like Brazil, women shall have the full right to decide over their own lives, them including sexual and reproductive dimensions<sup>9</sup>.

It should be noted, in this respect, that by adopting the proposal now being advocated by public health that calls for decriminalization of abortion as a way of ensuring women's access to quality health services also for this purpose, the authors recognize that they are taking an ideological perspective on the procedure. However, it is considered that contrary positions, even hegemonic, do not cease to be ideological positions that guide the construction of legislation and public policies in force. In this sense, the adopted perspective turns to stimulate discussion through dialectic – that, in first and last instances, is essential to the production process of science.

Subsequent to establishing the study criteria we found twenty six articles, which have received an initial reading to review their abstracts, keywords and object of study in order to verify their contexts concerning abortion and legislation, maternal mortality, magnitude of abortion in Brazil, impact of abortion in public health, abortion and contraception and abortion decision. From this analysis, fourteen articles were selected and went through thorough reading to the writing of this study (Table 1 – Appendix); eight other articles, non-constant in the databases, were also included in this study.

Governmental and non-governmental organizations and other bodies' texts were selected and analyzed from aspects that were considered rele-

vant to contextualize this study. That search resulted in the reading and selection of eighteen articles, including a book that is considered to be an important reference on the subject<sup>10</sup>. The texts were published from 2002 and the reason for choosing this period of publication was the fact that MH has elaborated in this year a technical manual for family planning health care<sup>3</sup>, an instrument which also guided the discussion of the theme.

Upon completion of the initial reading of the papers found and selective reading of the references, the analytical phase began. Then, the selected articles were grouped into seven thematic categories, broken down as follows: 1) women and health, family planning and contraception, 2) characterization of abortion in Brazil, 3) public health issue; 4) complications of illegal and/or unsafe abortion; 5) moral character of the spontaneous miscarriage and induced abortion in Brazil; 6) legislation and legalization of abortion and, 7) women's rights over the body: expression of human rights.

## Results and discussion

### *Women and health, family planning and contraception*

The MH considers women's health a priority. The document *National Policy on Women's Comprehensive Health Care – Principles and guidelines*, developed from the dialogue with various social sectors, reflects the Ministry's commitment to the implementation of health activities that contribute to guarantee the human rights of women and reducing morbidity and mortality by preventable and avoidable causes<sup>1</sup>. From the point of view of women's organizations, gender inequalities in social relations are reflected in health problems that particularly affect the female population.

According to this document<sup>1</sup>, the State<sup>11</sup> shall ensure the right to quality information about sexual and reproductive health for women and men, as well as accessibility to contraceptives, considering emergency contraception. These actions must be carried out under the UHS, from the perspective of comprehensive care, as recommended by the Program for Women's Comprehensive Health Care (PWCHC, PAISM in Brazil) for over two decades and reiterated more recently by the National Policy on Women's Comprehensive Health Care. With the trend in Brazil to reduce the age of sexual debut of women, increased access to education is a tool for young people to manage the most appropriate

form of contraception, including avoiding unwanted pregnancies – which may also consequently result in reducing abortion rates.

In contemporary times, the use of contraceptive methods still reflects the conditions of their supply in Brazil, since 1960 when it was discovered the pill and its use was introduced in private health institutions for birth control. At the time, the pill and tubal ligation were almost unique methods, reality which prevails still today. It is worth noting that through its actions family planning shall provide its users the knowledge of methods and free choice, as this is one of the actions of the policy on women's comprehensive health care advocated by the MH since 1984. Therefore, according to the principles which govern this policy, health services need to ensure people's access to all means to prevent unwanted pregnancy<sup>3</sup>.

Quality family planning health care promotes positive impacts on women's health, since it is possible to prevent unwanted pregnancies and therefore the practice of unsafe and illegal abortion, thus enabling the reduction of maternal mortality from this practice, considering that maternal mortality is considered an indicator of quality of care and its high levels in Brazil portray the urgent need for improvements in women's reproductive health<sup>5</sup>.

The practice of abortion in our country occurs, most often, is due to unwanted pregnancy. Therefore, assistance to women in this situation requires completeness in health care in order to encompass women and men since their first sexual experiences, informing about contraceptive methods and providing those methods as regularly as required for effective protection. Health services must be able to provide information about sexual and reproductive lives, in order to encourage users in the exercise of personal autonomy, leading them to reflect and seek both for protection against sexually transmitted diseases and family planning, also providing, when necessary, counseling and psychological and social care regarding the issue of having or not that son or daughter, including safe abortion<sup>12</sup>.

#### Characterization of abortion in Brazil

Abortion is the termination of pregnancy up to 20 or 22 weeks, with the product of conception weighing less than 500g. Abortion is also the product of conception that is expelled during the abortion process. There are several causes that trigger abortion, however, in most cases, the cause remains undetermined. However, many pregnancies are interrupted by the woman's personal decision<sup>6</sup>.

The proportion of women, who have performed abortions, as well as other cumulative facts related to reproductive life, grows with age. This ratio varies from 6% considering women aged 18 to 19 years to 22% among women aged 35 to 39 years, showing how abortion is a common phenomenon in the reproductive life of women. From the analysis of this ratio it can be inferred that at the end of their reproductive life, more than a fifth of women in urban Brazil would have already aborted<sup>13</sup>.

The practice of abortion is more pronounced among women with very low education, given that among those who underwent an abortion, 23% are in the fourth year of elementary school and about 12% have completed high school<sup>13</sup>. The spontaneous abortion, as well as the induced, occurs more frequently in non-white women, who have more than one child born alive and stable union<sup>14</sup>. Thus, it is possible to consider that, despite the existence of policies targeting current reality of women's health, health services have not achieved success in health actions to modify this critical situation in the field of public health.

#### Public health issue

Subject to strong social repercussions, abortion in Brazil implies difficulties in obtaining information and reports from women. Situations of illegality require specific methodological steps, with ethical implications, resulting in greater difficulty in obtaining information. Abortion is considered a sensitive, delicate or even embarrassing question, of difficult statement<sup>11</sup>.

Abortion is represented as a serious public health problem. Considering only nationwide, it is estimated to annually occur over a million induced abortions – a major cause of maternal death in the country. This type of abortion is an issue that incites passionateness and dissension, besides going through a tangle of legal, social, cultural, moral, economic and ideological aspects<sup>6</sup>.

Despite the legal ban on abortion in Brazil, there is evidence that the termination of pregnancy exists and it is a large scale social fact, and it has been performed, in most cases, in poor conditions, which endangers the lives of women. Thus, not paying attention to this implicit abortion issue is to continue to reprise tragedies experienced by women alone, which sometimes result in the death of thousands of black, poor and young women, many of whom still felt threatened by denunciation and judicial punishment<sup>9</sup>. With the ability to reduce

these impacts, the legalization of abortion has been in constant discussion among social movements, politicians, professionals and other sectors of Brazilian society<sup>15</sup>.

The problem of abortion in Brazil reveals strong social and regional inequalities. In some states in the North and Northeast regions, abortion rates are higher and the rates of reduction lower. Nationwide, about 240,000 hospitalizations per year in the UHS are performed to treat women with complications of abortion, which generates annual spending on average \$45 million reais<sup>6</sup>.

Study by Galli, Sydow and Adesse<sup>16</sup> on reproductive autonomy raises reports of women on abortion, for example, Clarissa<sup>17</sup> (not her real name), who opined about health in Brazil and its relationship with abortion: *"I think they should invest in prevention. We often, with so hasty attitudes, end up forgetting what is really important and think it will not happen to us, and when you see, it happens even with adults, not only with teenagers, which is the most common. And a child is a decision that affects your whole life, child is for life. People criticize, judge, it is very easy. There are realities and realities. I think that is something that nobody wants, go there as you will do a liposuction. It is a very delicate decision, very difficult and painful"*.

It appears that the problem that characterizes abortion as a public health issue is not only restricted to physical complications and deaths resulting. These indicators should be considered, however, from a bioethical perspective, it is essential to analyze the broader context since the paradigms involving abortion morality pervades Brazilian society, heavily influenced by patriarchal values, which are the basis of the determination of men and women's socio-sexual roles in the country, always with clear disadvantages for women<sup>18</sup>. In this context, we realize that although the issue of abortion is an important public health problem, there are restrictions from distinct natures which hinder their coping in Brazil.

With regard specifically to the magnitude of abortion as a public health issue, it should be considered the first analyzes produced in Uruguay after the legalization of the procedure that occurred in that country in December 2012. In the first six months after the approval, the country did not register any case of death of women for abortion, although 2,550 abortion cases<sup>19</sup> have been recorded. And if the number of recorded cases can arouse resistance from those who oppose the decriminalization of the procedure in Brazil, it is critical to remember that if these procedures had been performed in unsafe

conditions, some women would have suffered serious consequences – or died.

### Complications of illegal and/or unsafe abortion

Several women, regardless of their social class, creed and age, perform abortion. Those who have good financial conditions make use of medical clinics, with more hygiene and care. The poorest, who comprise the largest portion of the population, are urged to seek more dangerous methods, which results in a high rate of damage to health and high mortality. Measures to prevent unwanted pregnancies in Brazil are insufficient. As a result, many women are involved in situations of unsafe abortions, which, many times, result in serious complications such as bleeding, infection, perforation of the uterus, sterility – often leading them to death as a result of those practices<sup>15</sup>.

When they arrive at health services in the process of abortion, women go through an experience of physical, emotional and social character. They usually report physical complaints, demanding solution, and are silent about their experiences and feelings of loneliness, distress, anxiety, guilt, self-censorship, full of fear to verbalize, to be punished or even humiliated by feelings of disability<sup>6</sup>. One can assume that, in fact, in many circumstances and institutions induced abortion is criticized by professionals who receive the users in miscarriage.

This inference can be admitted from conscientious objection<sup>20</sup> that in Brazil is a legitimate ethical appeal especially among physicians. This is an instrument capable of ensuring the moral integrity of health professionals in situations of confrontation with opposing beliefs and practices to their personal convictions. In a plural and secular state like Brazil, conscientious objection is considered a victory for human rights.

A hallmark of conscientious objection cases related to the public sphere is that, generally, these are situations that involve women and reproductive decisions. In this context, the most recurrent situation is the abortion, manifested especially in health services for abortion cases allowed by law – Legal Abortion Program. However, even though the abortion from rape is legally permitted, many professionals are reluctant to perform the procedure<sup>21</sup>.

The post-rape pregnant woman who seeks a legal abortion service depends on the welcome health team to receive medical, social and psychological care. Therefore, conscientious objection should not represent subordination to private morality of

health professionals. This woman needs to have institutional guarantees that her demand for abortion will not be subject to moral negotiations with the technical staff responsible for the service <sup>22</sup>.

Whereas the female death represents only a fraction of the problems related to abortion, the data regarding hospitalization arising from abortion confirm its magnitude, and the post-abortion curettage is the third most performed obstetric procedure in public health services' inpatient units <sup>6</sup>. The problem arising from post-abortion complications or morbidity related to abortion unfolds in several other relevant issues related either to the women's health or to the possibility of health care performed by health services, and even to hospital overwork and especially the cost of admissions <sup>23</sup>.

### **Moral character of the spontaneous and induced abortion in Brazil**

In the case of abortion, the major changes and continuities in Brazilian social and political context of the last decades were not enough to provide the flexibility of punitive legalization in force. It endures the action of groups opposed to the decriminalization of the practice, with growing influence in state and federal legislative entities, though it is remarkable the increasing social visibility of the theme, including feminist and women groups and alliances which fight for decriminalization and legalization of abortion <sup>24</sup>.

In Brazil, the investigation of deaths from abortion has allowed realizing that it is still high the number of women who have abortions in illegal and unsafe conditions. The absolute number of effectively recorded events is able to demonstrate the perverse effect of legislation, taking into account the underreporting of mortality and not the fully consolidated situation of implanting the monitoring of maternal death <sup>24</sup>.

The practice of abortion in unsafe conditions is considered the cause of institutional discrimination and violence against women in health services. This kind of behavior identified in many health care professionals and is specially manifested in delays in care, little interest in listening to and guiding women or even in explicit verbal discrimination or prejudiced and condemnatory attitudes. <sup>1</sup> These situations of abuse largely arise from the symbolic representation of motherhood, still considered the feminine sacred essence.

The illegality of abortion in Brazil causes several negative consequences for women's health, ei-

ther because it little inhibits the practice or because it perpetuates social inequality. The discussion on abortion in the country needs to be faced responsibly, understood as a situation that requires health care with respect for human rights, and not as an act of moral offense committed by reckless women <sup>25</sup>.

The above mentioned study of Galli, Sydow and Adesse <sup>16</sup>, which discusses the reproductive autonomy, presents the situation of women who had abortions, like the example of a woman who got pregnant taking pills, indicating that abortion is always a difficult decision <sup>26</sup>: *"I knew she was pregnant when looking for a clinic to start using an IUD. The man who got her pregnant did not influence her decision. The relationship ended soon as the pregnancy was announced. None of his family or friends knows there was an abortion. She was very tense to be subpoenaed and testify. She feels punished twice: the trauma of an abortion and the criminalization of the fact."* Testimonials from this same study reinforce the claim showing that abortion does not manifest itself as an option, but as the absence of alternatives faced with an adverse reality <sup>27</sup>: *"It was a case where I had no way out (...). It was an extreme situation for me. I had a daughter already, took care of my mother and I am alone, I have no one to help me. I did that in a moment of despair, and then I really would like people to place themselves in my place before judging."*

The statements above lead to the need of reflection on women's autonomy from bioethical tools such as protection <sup>28</sup>, which cannot be reduced to some kind of charity or paternalism, but offers the possibility of an ethical assessment of actions to meet the delayed health needs effectively felt by the individual. When assessing the document VI Brazilian National Report – from the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) – Freire <sup>7</sup> emphasizes the recommendation that the country must revise its legislation aimed at decriminalizing abortion as unsafe abortion <sup>29</sup> is the fourth leading cause of maternal death.

The author <sup>7</sup> informs that in that same report it was also recommended that the government must continue with its efforts to increase women's access to health care, particularly to sexual and reproductive health services. It is highlighted that, among these, it shall be included the assistance to the cases and complications arising from unsafe abortions. This recommendation is based on data on maternal death occurred as a result of abortions performed unsafely.

Countries that criminalize abortion, such as Brazil, make use of perversity towards women, especially to those from less privileged social classes<sup>30</sup>. Illegality leads many women to resort to unsafe methods of abortion, which generates high number of admissions in the UHS. Official data for 2004 show that about 240 thousand hospitalizations carried out in the UHS were referred to the post-abortion curettage<sup>31</sup>. It follows that the illegality of abortion does not stop the practice, but involves health risks inherent to underground<sup>7</sup>.

### Legislation and legalization of abortion

To confront society with topics considered untouchable, as the beginning of human life and property that exists on female bodies, discussions about abortion in Brazil and the women's choice on the decision regarding its implementation lining the debate full of high political, ethical, legal, religious, social and cultural symbolisms<sup>7</sup>.

When discussing the legalization of abortion in Brazil, different conceptions are confronted. For example, when dealing with a spontaneous miscarriage, it is not the main issue to discuss about the fetus being human or not, whether or not they had soul. However, when it comes to abortion, the views change dramatically and it starts a deep debate on fertilization, formation or not formation of a human being, existence of the soul, when the embryo becomes a fetus – and when the fetus is already a baby in formation, there is the right to recognition of life<sup>9</sup>.

There is great controversy about when, in fact, begins what is called human life. Those opposed to abortion consider the moment of conception as the starting point life. For them, the morning after pill or the intrauterine device (IUD) are abortifacients for interfering in this “sacred” moment.

Recognize the beginning of human life has, among its purposes, to assign rights such as life. However, once it is defined the right to life's boundary, it also establishes the right to death and therefore the right to destroy cells in development. Thus, some questions arise, such as: Why shouldn't you have an abortion as you are not dealing with human beings? As it is not a human being, why should you blame those who had an abortion? What is the term for an abortion to allow the pregnant woman to act legally or morally?<sup>32</sup>

Brazilian Federal Constitution (FC) affirms the right to life as fundamental<sup>33</sup>. From the constitutional command, the Brazilian Penal Code, in its Chapter I, which deals with crimes against life, criminali-

zes abortion induced by pregnant women or with her consent and the abortion caused by a third party<sup>34</sup>. The FC does not establish the starting point life<sup>33</sup>, but the *American Convention on Human Rights*<sup>35</sup>, internalized in Brazil through the Decree 678/92, provides that *every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.*

The principle of the sacredness of human life is based on the premise that life is good and always worth living, therefore, it must be protected and cannot be ceased even by the will of the very person<sup>18</sup>. From this perspective, any restriction or impairment of the right to life will lead to their elimination.

With this argument, certain biopolitical forces strongly oppose to abortion, not caring about the motives that guide the woman's will to interrupt pregnancy<sup>36</sup>. They argue that it is inadmissible to legalize abortion in Brazil, because there would be a supra-legal standard defining that life begins from conception and such a provision cannot be affronted by infraconstitucional standards or amendments to the Constitution<sup>37</sup>.

On the other hand, those who advocate the legalization of induced abortion differ in the concepts of embryo and the notion of the human person. Up to twelve weeks of gestation medicine considers “fetus” or “embryo.” The human person is conceived from the beginning of the formation of the central nervous system and the brain<sup>31</sup>. Accordingly, in some countries abortion has been legalized, as in France, which enacted the Veil Law, in January 1975, with significant changes since 1982 – ensuring that the procedure for voluntary interruption of pregnancy was repaid by the public health system of the country. Concerning the legal deadline to abort, since 2001 it has been increased from 10 to 12 weeks of gestation<sup>38</sup>.

In Brazil, in April 2012 the Federal Supreme Court (STF in Brazil) did more than allowing the interruption of pregnancy of anencephalic fetuses. The initial step was taken by the Court to recognize that women own their reproductive rights. Attorney Luis Roberto Barroso, who represented the National Confederation of Workers in Health and was a plaintiff, stated the following pronouncement: *the right not to be a uterus at the disposal of society, but being a complete person, with freedom to be, think and choose.* This statement has grounded and guided the decision of the Supreme Court to consider the termination of pregnancy of an anencephalic

as no crime. From the tribune, Barroso emphasized mainly the foundations of the dignity of women<sup>39</sup>.

In March 2013, expressing the desire of most participants of an internal conference, the Federal Council of Medicine pointed out the need for a reform of the Brazilian Penal Code – which still awaits vote – with a view to avoid the illegality of termination of pregnancy resulting of the pregnant women's willingness, up to twelve weeks of pregnancy. This reform is based on the ethical point of view in which it is considered women's autonomy, and social, legal, epidemiological and public health aspects<sup>40</sup>.

Also in 2013 the Bill of Law 478/07 was approved by the Committee on Finance and Taxation in the House of Representatives, concerning the Statute of the Unborn, which provides for the protection of the unborn child, a human being conceived but not yet born. As such, they will have secured rights to life, health and public policies that guarantee their development<sup>41</sup>. With this imposition, it is intended to convert to crime any type of abortion in Brazil, even the legal ones, as those resulting from rape. Beyond reprehensible and intolerant attitude regarding women's autonomy, if it is finally approved such law may provide serious public health implications, given that it will require new and immeasurable obligations to the State.

Reproductive rights are integrated into human rights and the right to decide over their own bodies needs to be accepted and respected. Therefore, once the State denies protection to reproductive rights, also including access to safe abortion, it contributes deliberately so that the impact on women's mental health as well as the impacts of morbidity and mortality from abortion, are magnified<sup>8</sup>.

Brazil could designate obstetric beds for safe abortion, thus fulfilling the motto of the Brazilian Conference for the Right to Legal and Safe Abortion: *Abortion, a woman decides, the society respects and the State guarantees*. Data contained in the dossier Abortion, Preventable and Avoidable Deaths show that the UHS is now carrying out major investments in attention to women going through spontaneous miscarriage or unsafe abortion process. The legalization of safe abortion can save more lives every time that enables the reduction of morbidity and mortality of women who abort<sup>8</sup>.

The Brazilian state is secular. So, that secularism can be restated with the review of the current abortion legislation that may favor the implementation of actions to ensure greater autonomy of women and men in reproductive issues and, thus,

allow them to experience their choices and decision making without risks at health<sup>11</sup>.

### *Women's rights over the body: Expression of human rights*

The oppression, subordination and submission of women are intended of taking control over their life, and especially the control over their sexuality<sup>9</sup>. Referring to the women's right on the body, under the bioethical standpoint, motherhood by choice is certainly more valuable than that held by the social imposition. The recognition of the beginning of a human life for acceptance and commitment, as proposed by the relational view, is a morally praiseworthy attitude and superior to passive acceptance of pregnancy as an accomplished and irreversible event<sup>10</sup>.

From the point of view of women's sexual and reproductive rights, the analysis of unsafe abortion implies to reflect on the deficiency of ensuring those rights, beyond ownership and/or medicalization of their bodies, as the focus of health care in accordance with the limits and social impositions. In society, women experiencing induced abortion run a silent and secretive way, often supported by friends, abortifacient herbal medicines vendors and individuals who perform abortions clandestinely<sup>42</sup>.

Reported causes of abortion are different according to gender, race and social group, this way reflecting the multiplicity of meanings that can be assigned to each pregnancy and to abortion itself, associated factors of different orders. This analysis would reveal social inequalities in women and men due to the risk of an unexpected pregnancy, entering the discussion of the topic within the framework of sexual and reproductive rights<sup>24</sup>.

Considering that women have a right to her own body, the option to abort may mean that there is a free will and the State, rather than punishing or criminalizing it, could offer support. Considering that family planning does not work properly in Brazil, as recommended by MH, you must not charge for something that is not offered with quality<sup>29</sup>.

The issues of abortion in Brazil are seen as controversy and, in most cases, are treated as moral disagreements. Generally, when discussing the issue of abortion in the country, which is highlighted is the perspective of the vitality of the embryo, with little view to the concern of health professionals regarding the pregnant women<sup>43</sup>.

The rights that women should have regarding the abortion decision are binding on the granting of citizenship rights, which shall be equal to any indivi-



duals. Therefore, the abortion ban denies access to something that is the basis for the enjoyment of any right. The “right to the body” is a theme discussed by various feminist currents and the right to abortion is an integral part of it<sup>43</sup>. In some representations of human life, the mother’s body is only lent to the fetus and this loan gives it no priority in relation to the body that belongs to the woman, who is not limited to being a mother<sup>44</sup>.

Abortion is illegal in Brazil, but it is inhumane to abort in unsafe conditions because the woman did not legally have the right over their own bodies and she is not being assured her human rights<sup>4</sup>. The legality of abortion should be discussed from a premise that considers women as subjects of law. Even with assistance and access to information and contraceptive methods, if the woman intends and decides to have an abortion, she shall have the right to abortion granted and assisted by a quality health system<sup>9</sup>.

Before the various reflections regarding abortion, it is necessary that Brazilian society recognizes and reflects on the adversely reality that women who have abortions face, and understand, in actuality, that it is immoral to allow women to be mutilated or to sacrifice their own lives when they decide to stop a unwanted pregnancy through clandestine and unsafe abortion, since there are other reliable means that could be used to prevent such damages from happening<sup>8</sup>.

### Final Considerations

Deficit in the quality of sexual and reproductive health care for women, lack of access to health care, low education, low income and ethnic discrimination are services associated with unwanted pregnancy factors that cause many women to seek illegal and/or unsafe practices to have an abortion in unfavorable health conditions. The outcome proves to be an important public health issue, considering that in Brazil the number of cases pertaining to this type of abortion is considered high. In this context<sup>16</sup>, it is necessary to make further investments in the investigation of deaths resulting from illegal

abortion, as well as in the identification of severe morbidity cases and associated factors.

When referring to the woman’s right on the body as an expression of human rights, several barriers are witnessed in Brazil. After all, despite being a secular country, while addressing induced abortion issues, morality stands to bioethical issues and the woman is seen as the one who has the obligation to accept the pregnancy, even if unwanted – a condition imposed by society and its value judgment.

To prevent and criminalize abortion implies in women’s vulneration and violates the bioethical principles of beneficence, non-maleficence, autonomy and justice. It also opposes to the bioethics of protection because deprotects women practicing illegal abortion and under unsafe conditions, as they become susceptible to health problems. Thus, based on the reflection from the bioethics of protection, it is essential to understand that ethical conflicts such as those involving the abortion issue need to be treated in a more rational and non-passionate way.

Under this perspective, it is emphasized that the morale of public health should not refrain from the abortion issue. Additionally, it is necessary, in the context of the UHS, that any woman may have their sexual and reproductive rights ensured, as well as their plurality, as well as the respect for their fundamental ethical principles, which shall not be different to those that have gone through abortion. Medical boards have recently<sup>40</sup> positioned in favor of the empowerment of women in the event of termination of pregnancy, understanding that the current exclusionary boundaries of illegality of abortion provided in the Penal Code of 1940 are inconsistent with the humanistic and humanitarian commitments, since the individual protection cannot be defined without the aid of the principles of autonomy, beneficence, non-maleficence and justice or impartiality.

It is expected that Brazilian society and the legislature can reflect on the decriminalization of abortion in Brazil, and understand that the prohibition does not prevent it to be performed. From an ethical point of view, the woman, like any other individual, regardless of race, ethnicity or social class, has the right over their own bodies.

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#### Participation of the authors

Vanessa Cruz Santos and Karla Ferraz dos Anjos performed the literature review, analysis, data interpretation and contextualization of the manuscript. Raquel Souzas and Benedito Gonçalves Eugênio participated in the study orientation and performed its final editing.

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## Appendix

**Table 1.** Presentation of selected articles summary used in the review, according to its author, year, title, journal, database and objective. Vitória da Conquista, Bahia, Brazil, 2013.

Author/Year	Title	Journal/ Database	Objective	Selection
Pilecco FB, Knauth DR, Vigo A / 2011	Abortion and sexual coercion: the context of vulnerability among young women	Register of Public Health; Lilacs	To investigate the relationship between abortion and the declaration of sexual coercion	Selected
Diniz D, Castro R / 2011	Generic medicine trade in Brazilian media: misoprostol and women	Register of Public Health; Lilacs	To analyze how the Brazilian media reports the illegal trade of misoprostol, the main drug for abortion	Selected
Nomura RMY, Benute GRG, Azevedo GD, Dutra SEM, Borsari CG, Rebouças MS S, Lucia MCS, Zugaib M / 2011	Depression, emotional and social aspects in the experience of abortion: a comparison between two Brazilian capitals	Register of Public Health; Lilacs	Assessing emotional and social aspects in the experience of abortion and the diagnosis of major depression comparing women from two Brazilian capitals (São Paulo and Natal)	Selected
Diniz NMF, Gesteira SMA, Lopes RLM, Mota RS, Pérez BAG, Gomes NP / 2011	Induced abortion and domestic violence among women treated in a public maternity hospital in Salvador-BA	Brazilian Journal of Nursing; Lilacs	Studying domestic violence in women having an induced abortion	Selected
Chaves JHB, Pessini L, Bezerra AFS, Rego G, Nunes R / 2010	Induced abortion in adolescence under the bioethical perspective	Brazilian Journal of Maternal and Child Health; Lilacs	To describe sociodemographic, behavioral and clinical features, histopathological analysis, and the type of abortion in adolescents, in order to discuss them bioethically	Selected
Diniz D, Penalva J, Faúndes Aníbal, Rosas C / 2009	The magnitude of abortion for anencephaly: a study with doctors	Science and Public Health Magazine Lilacs	To describe the magnitude of medical health care in pregnancy cases of fetus with anencephaly, through an empirical research with doctors	Selected
Barbosa RM, Pinho AA, Villela W, Aidar T / 2009	Induced abortion among women of reproductive age living or not living with HIV/AIDS in Brazil	Science and Public Health Magazine Lilacs	To identify and compare the characteristics of women living and not living with HIV/AIDS who reported having had an abortion at least once in life	Selected

Author/Year	Title	Journal/Database	Objective	Selection
Benute GRG, Nomura RMY, Pereira PP, Lucia MCS, Zugaib Marcelo / 2009	Spontaneous and induced abortion: anxiety, depression and guilt	Journal of the Brazilian Medical Association; Lilacs	To characterize the population that have gone through abortion; investigate the existence of anxiety and depression; verify whether there is guilty after abortion and to compare outcomes between women who had experienced spontaneous miscarriage and those who have had induced abortion	Selected
Domingos SRF, Merighi MAB <sup>5</sup> / 2010	Abortion as a cause of maternal mortality: A thought for the nursing care	Anna Nery School of Nursing Magazine; Lilacs	To conduct a discussion about abortion as a cause of maternal mortality	Selected and utilized
Menezes G, Aquino EML <sup>11</sup> / 2009	Research on abortion in Brazil: progress and challenges for public health	Register of Public Health; Lilacs	To present an overview of studies on abortion in the country regarding public health, pointing out gaps and challenges for research	Selected and utilized
Bertolani GBM, Oliveira EM <sup>12</sup> / 2010	Women having an abortion: a case study	Health and Society Magazine; Lilacs	To analyze narratives of 19 women having an abortion, who were taken care at the University Hospital of the Federal University of Espírito Santo (HUCAM) in the city of Vitória, ES.	Selected and utilized
Diniz D, Medeiros M <sup>13</sup> / 2010	Abortion in Brazil: A household survey using the ballot box technique	Science and Public Health Magazine Lilacs	To present the first results of the National Survey on Abortion (PNA in Brazil)	Selected and utilized
Cecatti JG, Guerra GVQL, Sousa MH, Menezes GMS <sup>14</sup> / 2008	Abortion in Brazil: a demographic approach	Brazilian Journal of Gynecology and Obstetrics; Lilacs	To assess the reported prevalence of spontaneous and induced abortion in a sample of Brazilian women interviewed in the National Demographic and Health Survey (DHS), 1996	Selected and utilized
Sandi SF, Braz M <sup>18</sup> / 2010	Brazilian women and abortion: a bioethical approach to public health	Bioethics Journal (printed version); Lilacs	To critically reflect on the criminalization of abortion in Brazil	Selected and utilized
Diniz D <sup>20</sup> / 2008	Bioethics and gender	Bioethics Journal (printed version); Lilacs	To explore three relevant themes concerning women, which have been raised and discussed: conscientious objection, clinical research with women and aging	Selected and utilized

Author/Year	Title	Journal/ Database	Objective	Selection
Fusco CLB, Andreoni S, Silva RS <sup>23</sup> / 2008	Epidemiology of unsafe abortion in a population in poverty – Favela Inajar de Souza, São Paulo	Brazilian Journal of Epidemiology; Lilacs	To compare the results of a recent survey held in the city of São Paulo, Brazil, a country where abortion is illegal in almost all circumstances, with data from Cuba, a country where abortion is legal and safe, offering reliable records	Selected and utilized
Schramm FR, Kottow M <sup>28</sup> / 2001	Bioethical principles in public health: limitations and proposals	Register of Public Health; Lilacs	To characterize the specificity of moral issues in public health and analyze the applicability of the principalist model as a standard to resolve their conflicts *  * Based on the authors' translation	Selected and utilized
Gesteira SMA, Diniz NMF, Oliveira EM <sup>30</sup> / 2008	Assistance to women in process of induced abortion: the speech of nurses	Acta Paulista Nursing; Lilacs	To analyze the speech of nurses regarding health care provided to women in process of induced abortion	Selected and utilized
Spiandorello WP <sup>32</sup> / 2012	Development scenario of human life and reflections on abortion	Bioethics Journal (printed version); Lilacs	To logically classify and analyze the creation process of the human being without, however, deepening into the ethical discussions inherent in each stage	Selected and utilized
Santos BC <sup>38</sup> / 2012	Abortion, reproductive rights and feminism in Nicolas Sarkozy's France	Brazilian Journal of Political Science SciELO	Reflecting on the recent history of the association and how it illustrates the way that the abortion issue is thought by the French young feminists today – many of them who were born after the enactment of the law that made it legal in France	Selected and utilized
Souza ZCSN, Diniz NMF, Couto TM, Gesteira SMA <sup>42</sup> / 2010	Trajectory of women in situations of induced abortion within the discourse on secrecy	Acta Paulista Nursing; Lilacs	To analyze the trajectory of women in situations of induced abortion with respect to the underground	Selected and utilized
Thomson JJ <sup>44</sup> / 2012	A defense of abortion	Brazilian Journal of Political Science SciELO	To analyze the arguments against women's right to voluntary termination of pregnancy, stating a position in defense of the right to abortion	Selected and utilized