TO THE HONORABLE JUSTICE OF THE FEDERAL SUPREME COURT - Rapporteur of Fundamental Precept Violation Petition No. 989

Case: Fundamental Precept Violation Petition No. 989

A **CONECTAS DIREITOS HUMANOS**, a non-profit association qualified as a Civil Society Organization of Public Interest (OSCIP), registered under CNPJ/MF No. 04.706.954/0001-75, with headquarters at Avenida Paulista, 575, 19th floor, São Paulo – SP, ZIP Code 01311-000, herein represented by its Executive Director and legal representative under its Bylaws, Ms. **CAMILA LISSA ASANO**; the **CENTER FOR LEGAL AND SOCIAL STUDIES (CELS)**, headquartered at Piedras 547, Buenos Aires, Argentina, represented by **Paula Litvachky** and **Lucia de La Vega**; the **CENTER FOR THE STUDY OF LAW, JUSTICE AND SOCIETY (Dejusticia)**, represented by **Diana Esther Guzmán Rodríguez** , located at Calle 35 No. 24-31, Bogotá D.C., Colombia; the **IRISH COUNCIL FOR CIVIL LIBERTIES (ICCL)**, represented by **Joe O'Brien**, located at First Floor, Castleriver House, 14/15 Parliament Street, Dublin 2, D02 FW60, Ireland; the **CANADIAN CIVIL LIBERTIES ASSOCIATION (CCLA)**, represented by **Harini Sivalingam** (Docs.), located at 400-124 Merton St., Toronto, Ontario, M4S 2Z2, Canada; the **LEGAL RESOURCES CENTRE**, represented by **Nersan Govender**, located at 2nd Floor West Wing, Women's Jail, Constitution Hill, 1 Kotze Street, Braamfontein, Johannesburg, 2000, South Africa; and the **KENYA HUMAN RIGHTS COMMISSION (KHRC)**, located at

849 Amboseli Road, Off Gitanga Road, Nairobi, Kenya, represented by **Nelius Njuguna**;

Respectfully come, through their undersigned attorneys (powers of attorney attached), pursuant to Article 138 of the Code of Civil Procedure, to request admission in the present case as:

AMICI CURIAE

in the records of the Arguição de Descumprimento de Preceito Fundamental No. 989 (Fundamental Precept Violation Petition), based on the facts and legal grounds set forth below:

I. SUMMARY OF THE COMPLAINT

This is a Fundamental Precept Violation Petition No. 989, filed by the Brazilian Society of Bioethics (SBB), the Brazilian Association of Collective Health, the Brazilian Center for Health Studies, and the Brazilian Network Association. The claim seeks recognition of an unconstitutional state of affairs in Brazil's public health system with respect to the provision of legal abortion services.

The petitioners argue that, even in the cases where abortion is legally permitted in Brazil, namely, in instances of pregnancy resulting from rape (Article 128, I of the Penal Code), risk to the pregnant person's life (Article 128, II of the Penal Code), or anencephalic fetus (as recognized in the judgment of ADPF 54 by this Honorable Court), there are institutional and administrative barriers that hinder the effective exercise of this right. They maintain that an unconstitutional state of affairs exists in the public health system, marked by systematic and repeated state actions and omissions that prevent or limit access to legal abortion services in the country, particularly for girls, women, and people capable of becoming pregnant who are victims of sexual violence.

Among the obstacles cited by the petitioners are: (a) a shortage of public health facilities (SUS units) authorized to perform abortions; (b) unlawful and extralegal requirements; (c) territorial and logistical barriers that complicate access

to services; and (d) institutional conscientious objection by public health professionals, among others.

In the initial petition, the plaintiffs requested, on a preliminary basis, the suspension of Technical Note No. 44/2022, titled “Technical Guidance for Prevention, Evaluation, and Conduct in Cases of Abortion,” issued by the Ministry of Health. This note imposed a 22-week limit on legal abortion procedures, a restriction legally unfounded.

On the merits, the plaintiffs requested the following: (i) a declaration of the unconstitutionality of any administrative act by the Ministry of Health that limits the provision of abortion to pregnancies up to 22 weeks in cases authorized by Article 128, I and II of the Penal Code and ADPF 54; (ii) a declaration of the Ministry of Health's omission in failing to provide adequate information through its official communication channels or public service outlets on how to access legally permitted abortion procedures; and (iii) a declaration of the unconstitutionality of any State action, particularly by the Ministry of Health and the Judiciary, that imposes bureaucracy or barriers, such as requirements not established by law—for accessing abortion in legally permitted cases.

On July 4, 2022, the plaintiffs amended the initial petition to include the Socialism and Liberty Party (PSOL) as a co-plaintiff in the case.

On August 4, 2022, the Office of the Attorney General of the Union (AGU) argued for the dismissal of the case, claiming the plaintiffs lacked standing as they do not constitute a nationally representative class and further, that the issue presented did not amount to a constitutional question", since the Ministry of Health's document does not qualify as a primary legal act subject to challenge in an ADPF. The AGU argued that the principle of subsidiarity should apply, suggesting other legal remedies such as a public civil action. It therefore requested the dismissal of the case without ruling on the merits.

On August 18, 2022, the Office of the Prosecutor General submitted a brief recognizing the constitutional relevance of the matter, especially in terms of protecting girls and women victims of sexual violence, based on the principles of human dignity, legality, and the right to health. However, it considered the petition

overly broad for failing to identify a specific public omission, and argued that public policy issues are not typically the subject of injunctive relief. While acknowledging the

legitimacy of the petition's purpose, the Prosecutor General found the legal challenge insufficiently substantiated and ultimately recommended denial of the requested injunction.

On August 28, 2023, the Ministry of Health informed the Court that the document titled "Technical Guidance for Prevention, Evaluation, and Conduct in Cases of Abortion" had been removed from its online platform.

In March 2024, the petitioners reiterated the requests from their original filing and sought interim relief, citing the continued violations to the right to health resulting from Technical Note No. 44/2022, despite its later withdrawal.

In April of the same year, the plaintiffs extended their request to include a precautionary measure *ad referendum* seeking suspension of Resolution No. 2,378 of the Federal Medical Council, which prohibits the use of fetal heart-stopping procedures (fetal assistolia) in legal abortions performed after 22 weeks of gestation. The petitioners noted that, within 48 hours of the resolution's publication, at least four girls who were victims of rape were denied the procedure because they had surpassed the 22-week gestational limit. In May 2024, the resolution was suspended through a preliminary injunction issued in a separate case before this Honorable Court.

In 2025, Justice Luís Roberto Barroso partially granted a preliminary injunction aimed at addressing the insufficient protection of access to lawful abortion in Brazil. At that stage, however, he declined to recognize the alleged unconstitutional state of affairs surrounding the issue, holding that the debate was not yet sufficiently mature to support such a declaration. The ruling was issued in the context of ADPF 1207 and ADPF 989 and sought to expand access to lawful abortion services by: allowing nursing professionals to assist in procedures within the scope of their professional training, particularly in early medical abortions; suspending proceedings grounded on interpretations contrary to Article 128 of the Brazilian Penal Code (ADPF 1207); and preventing public health authorities from imposing unlawful barriers, including

gestational age limits not established by law or the requirement of a police report as a condition for access to healthcare services (ADPF 989).

In his ruling, Justice Barroso acknowledged the partial loss of subject matter of the preliminary injunction sought in ADPF 989, in light of the revocation by the Ministry of Health of the Technical Note entitled “Technical Guidance for Prevention, Assessment, and Conduct in Cases of Abortion.” Nevertheless, he granted the requests described above.

However, during the plenary referendum held in October 2025, the Supreme Court, by a 10–1 majority, declined to uphold the interim measure. The prevailing opinion, authored by Justice Gilmar Mendes, held that the matter lacked the urgency required for provisional relief and should instead be examined after broader institutional and constitutional deliberation. As a result, the Court revoked the decision.

Subsequently, motions for clarification were filed against the referendum decision. The Court unanimously rejected them, following Justice Gilmar Mendes’s vote, thereby preserving the outcome of the referendum and maintaining the revocation of the interim relief. According to the ruling, the motions for clarification aimed only to modify the conclusion reached by the Court,without the presence, in this case, of any of the defects that would justify their admissibility.

Since the filing of the case, numerous civil society organizations, public bodies, and universities have been admitted as *amici curiae*, underscoring the complexity, technical depth, and significant social ramifications of the matter under adjudication.

II. ON THE POSSIBILITY OF INTERVENTION AS AMICI CURIAE

The institution of *amicus curiae*, previously provided for only in Laws No. 9,868/99 and 9,882/99, which regulate the procedures for Direct Actions of Unconstitutionality (*ADIs*) and Fundamental Precept Violation Petition (*ADPFs*), was formally regulated by the new Code of Civil Procedure, under Article 138:

> Article 138. The judge or reporting justice, considering the relevance of the matter, the specificity of the subject of the dispute, or the social impact of the controversy, may, by non-appealable decision, either ex officio or upon request by the parties or any person or entity wishing to express an opinion, invite or admit the participation of a natural person, legal entity, agency, or specialized entity with appropriate representativeness, within 15 (fifteen) days of notice.
>
> § 1. The intervention referred to in the main clause does not alter jurisdiction nor authorize the filing of appeals, except for motions for clarification and the situation outlined in § 3.
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> § 2. The judge or reporting justice shall determine the scope of the *amicus curiae*'s participation in the decision that invites or admits such intervention.
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> § 3. The *amicus curiae* may appeal a decision rendered in an incident involving the resolution of repetitive claims.

As is evident, the legislator has clearly chosen to bring the Judiciary closer to the lived experiences of society and the knowledge produced by various social actors on matters of public interest. This serves to democratize judicial decision-making by incorporating specific contributions and information into the deliberation process.

The Federal Supreme Court has already established firm precedent along these lines, affirming that the participation of civil society aims to democratize constitutional review by providing new elements to inform judgments, thereby undeniably enhancing the quality of judicial decisions. In this regard, the jurisprudence of this Honorable Court is particularly noteworthy:

> DIRECT ACTION OF UNCONSTITUTIONALITY. PROCEDURAL INTERVENTION BY AMICUS CURIAE. POSSIBILITY. LAW NO. 9,868/99 (ART. 7, § 2). POLITICAL AND LEGAL SIGNIFICANCE OF THE ADMISSION OF AMICUS CURIAE IN THE SYSTEM OF ABSTRACT CONSTITUTIONAL REVIEW. REQUEST FOR ADMISSION GRANTED.
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> [...]
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> – The admission of a third party as *amicus curiae* in abstract constitutional review proceedings qualifies as a factor for the social legitimation of the Supreme Court's decisions, in its role as Constitutional Court, as it enables, in line with

democratic principles, the opening of the concentrated constitutional review process to the formal participation of entities and institutions that truly represent the general interests of the public or embody the essential and relevant values of specific groups, classes, or social segments.

In summary: Article 7, § 2, of Law No. 9,868/99, serving as the normative basis for *amicus curiae* intervention, has as its main purpose the pluralization of constitutional debate. *(Emphasis added)*

(ADI 2130 MC, Rapporteur: Justice CELSO DE MELLO, adjudicated on 12/20/2000, published in the DJ on 02/02/2001, p. 145)

1.By engaging with a diversity of perspectives in continuous dialogue, the Federal Supreme Court benefits from technical expertise, political-legal implications, and economic considerations brought forth by the "friends of the Court." This institutional innovation not only enhances the quality of judicial service but also creates new avenues for legitimizing the Court's judgments in fulfilling its fundamental role as guardian of the Constitution. (ADI 3660, Rapporteur: Justice GILMAR MENDES, Full Bench, adjudicated on 03/13/2008, published in the DJ on 05/09/2008)

The *amicus curiae* is a collaborator of the Judiciary who, although possibly holding an interest in the outcome, is not procedurally bound by the result of the judgment. Their participation is justified not as a representative of their own interests, but as a qualified contributor offering insights that may inform the Court's decision. The presence of an *amicus curiae* benefits the jurisdictional process and does not constitute a subjective procedural right.(ADI 3.460 ED, Rapporteur: Justice TEORI ZAVASCKI, Full Bench, adjudicated on 02/12/2015, published in the DJ on 03/12/2015)

Legal scholarship also supports the admissibility of this request, advocating for civil society participation in proceedings that concern the public interest. Echoing the views of Cássio Scarpinella Bueno, scholars Fredie Didier Jr. and Hermes Zaneti Jr.[1] affirm the legitimacy of *amicus curiae* participation in any class action, provided certain conditions are met:

[1] DIDIER JR., Fredie. *Course on Civil Procedural Law. Vol. 4, Collective Process* (original title: Curso de Direito Processual Civil. Vol. 4., Processo Coletivo), 9th ed., 2014, Ed. Jus Podium, p. 231.

> "There is a doctrinal and jurisprudential trend toward permitting *amicus curiae* intervention in any collective action, provided that the case is relevant (which, in collective actions, is almost always presumed) and that the potential *amicus* is capable of assisting the judge by providing information and analyses to support better adjudication of the case. This would constitute an atypical form of *amicus curiae* intervention, a notion we find commendable, given that the role of this special assistant to the court is to further legitimize judicial decisions in cases of clear public interest." *(Emphasis added)*

Additionally, legal scholar Humberto Theodoro Júnior notes that the essential characteristic of an *amicus curiae* is possessing "specific knowledge about the subject matter of the dispute, so as to provide the judge with relevant elements and information to resolve the case properly." He concludes that the participation of *amici curiae* "is merely collaborative, i.e., it is not intended to prove facts but to provide opinions and interpretations thereof, according to their expertise, in order to assist the judge in deciding the case"[2].

It follows that, if legal doctrine now affirms that *amicus curiae* intervention is permissible,and even beneficial, in any type of collective action, such participation should all the more be accepted in complex and far-reaching proceedings such as the present case.

Moreover, regardless of the nature of the action, *amicus curiae* participation must be accepted as a means to ensure the effective realization of the right of access to justice. To that end, the petitioners also invoke the principle of procedural functionality, enshrined in Article 277 of the 2015 Code of Civil Procedure, as well as the constitutional principle of access to justice, set forth in Article 5, item XXXV of the Federal Constitution. Access to justice must be understood as access to a just legal order, achieved through the harmonious interplay of various principles and guarantees, including: (a) broad admission of individuals and claims to the judicial process (universalization of justice); (b) assurance of due process of law for all parties; and (c) the right of parties to participate in the formation of judicial conviction (principle of adversarial proceedings).

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[2] THEODORO JUNIOR, Humberto. *Annotated Code of Civil Procedure* (original title: Código de Processo Civil anotado), 20th ed., Rio de Janeiro: Forense, 2016, pp. 193-194.

As stated by Cintra, Grinover, and Dinamarco:

> "The guarantee of access to justice […] encompasses the right to judicial process, with the full guarantees of due process of law. The right to process must not be reduced to the mere sequencing of acts under any given procedure. Rather, the procedure must be conducted with full observance of adversarial principles, ensuring that the parties may present their arguments, produce evidence, and influence the judge's decision-making process."[3]

Having established the legal basis, its interpretation by the Federal Supreme Court, and the doctrinal support, the petitioners will now demonstrate that the two conditions for admission as *amicus curiae* are fully met: (i) the relevance, social impact, or specificity of the subject matter under discussion; and (ii) the adequate representativeness and thematic relevance of the petitioning organizations.

A) LEGITIMACY AND REPRESENTATIVENESS OF THE PETITIONERS

The undersigned organizations demonstrate their capacity to represent the interests of women and people capable of becoming pregnant, as well as their specific interest in the subject matter of this case, given their recognized history in promoting human rights, with particular focus on the protection of sexual and reproductive rights.

The applicant entities are members of the International Network of Civil Liberties Organizations (INCLO), which promotes four core areas: surveillence and digital rights, equality and equity (which includes sexual and reproductive health rights), climate and environmental justice, as well as the protection of civic space. As will be detailed below, the present case clearly falls within the scope of action of the signatory organizations.

1) Conectas Direitos Humanos

Conectas is a non-governmental organization which, since 2001, has positioned itself as part of the movement for equal rights and the advancement of

[3] CINTRA, A., GRINOVER, A. and DINAMARCO, C. *General Theory of the Process* (original title: Teoria Geral Do Processo), 27th ed., São Paulo: Malheiros, 2011, p. 90.

human rights from a Global South perspective. Since January 2006, Conectas has held consultative status with the United Nations (UN); since May 2009, observer status before the African Commission on Human and Peoples' Rights; and, since February 2022, observer status under the UN Framework Convention on Climate Change. Since April 2023, it has been registered with the Organization of American States (OAS).

Throughout its history, Conectas has developed key strategies for engagement with international human rights systems, strategic litigation, and public communication aimed at advancing human rights. In accordance with its institutional purpose, its bylaws state:

> "Article 3 - The ASSOCIATION shall be governed under Law No. 9.790/99 and shall aim to promote, support, monitor and evaluate human rights projects at the national and international levels, particularly:
> [...]
> VI - the promotion and defense of human rights in the judicial sphere."

The petitioner's legitimacy is further reinforced by its recognized activity before this Honorable Federal Supreme Court, where it has acted as *amicus curiae* in numerous landmark proceedings.[4]

Among its principal areas of activity are: the defense of socio-environmental rights, the strengthening of democratic space, and combating institutional violence.

Furthermore, Conectas has actively engaged in legal and political debates concerning the sexual and reproductive rights of girls, women, and people capable of becoming pregnant. Examples include its participation as *amicus curiae* in ADPF 442, which addresses the decriminalization of abortion, and in ADPF 737, which challenged a Ministry of Health regulation that restricted access to legal abortion.

Conectas also coordinates the Sur Journal (International Journal on Human Rights)[5], a widely respected, open-access publication that reaches more than 20,000

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[4] GAMA, P., MENDES, L. and BECO, D. *How the influencers of the Supreme Court relate* (original title: Como se relacionam os influenciadores do Supremo). Available at: https://www1.folha.uol.com.br/poder/2018/03/como-se-relacionam-os-influenciadores-do-supremo.shtml. Accessed on: 25 May 2025.

[5] *SUR – International Journal on Human Rights*. Available at: https://sur.conectas.org/en/.

people in over 100 countries. The journal has featured important articles on this subject, such as one on the legal recognition of sexual rights[6] (Issue 08); another analyzing abortion regulations to advance the Cairo Programme of Action[7] (Issue 19); and a piece on structural racism and the criminalization of abortion in Brazil[8] (Issue 28).

At the international level, Conectas has submitted information to treaty bodies such as the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Committe Against Torture and during Brazil's Universal Periodic Review[9], addressing the state of sexual and reproductive rights in the country. It has also delivered oral statements during the 54th and 56th sessions of the UN Human Rights Council, on racial and social inequality resulting from abortion criminalization[10] and on violations of the right to legal abortion[11].

Conectas and partners also submitted several urgent appeals on the violations of the right to legal abortion to the UN Working Group on Discrimination Against Women and Girls. Based on these appeals, the Group sent a communication to the Brazilian state, in 2025, sharing its concern over bills that aim to further criminalize abortion[12].

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[6] VITERBO, D. F. *The legal recognition of sexual rights*. Available at: https://sur.conectas.org/en/the-legal-recognition-of-sexual-rights/. Accessed on: 25 May 2025.

[7] DELEON, D. and FULO, G. *Abortion standards: to advance the agenda of the Cairo Programme of Action*. Available at: https://sur.conectas.org/en/abortion-standards-to-advance-the-agenda-of-the-cairo-programme-of-action/. Accessed on: 25 May 2025.

[8] VIEIRA, S. *Structural racism and the criminalization of abortion in Brazil*. Available at: https://sur.conectas.org/en/structural-racism-and-the-criminalization-of-abortion-in-brazil/. Accessed on: 25 May 2025.

[9] CONECTAS DIREITOS HUMANOS. *Report for the Universal Periodic Review on Gender, Race and Sexuality in Brazil* (original title: Relatório para a Revisão Periódica Universal sobre Gênero, Raça e Sexualidade no Brasil). Available at: https://www.conectas.org/wp-content/uploads/2022/04/Relatorio-RPU-genero-2022.docx.pdf. Accessed on: 25 May 2025.

[10] BERGAMO, M. *Organizations will take to the UN an appeal for the STF to decriminalize abortion in Brazil* (original title: Organizações levarão à ONU apelo para que STF descriminalize o aborto no Brasil). Available at: https://www1.folha.uol.com.br/colunas/monicabergamo/2023/09/organizacoes-levarao-a-onu-apelo-para-que-stf-descriminalize-o-aborto-no-brasil.shtml. Accessed on: 25 May 2025.

[11] CHADE, J. *Brazil is accused at the UN for violations of the right to legal abortion* (original title: Brasil é acusado na ONU por violações do direito ao aborto legal). Available at: https://noticias.uol.com.br/colunas/jamil-chade/2024/03/22/brasil-e-acusado-na-onu-por-violacoes-do-direito-ao-aborto-legal.htm. Accessed on: 25 May 2025.

[12] Available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=29751

In April 2025, Conectas co-organized two side events at the United Nations addressing sexual and reproductive rights. The first, titled "Building a Dignified Future for Girls: Confronting Sexual Violence and Forced Pregnancy in Brazil," took place during the 58th Session of the Commission on Population and Development. The second, "Afrodescendant Women and Reproductive Justice: Knowledge, Barriers, and Strategies for Health Equity," was held during the 4th Session of the Permanent Forum on People of African Descent.

Finally, Conectas is part of the campaign *Criança Não é Mãe* ("A Child is Not a Mother")[13], a coalition of civil society organizations dedicated to defending human rights, with special focus on guaranteeing that girls and women live free from violence and have access to health and dignity.

2) Center for Legal and Social Studies (CELS)

The Center for Legal and Social Studies (CELS) is a non-governmental organization established in 1979 dedicated to the promotion and protection of human rights, the strengthening of the democratic system, and the rule of law in Argentina. The organization carries out its activities with a particular focus on technical and legal aspects.

A central goal of the organization is to promote and facilitate the use of local courts for the full exercise of fundamental rights through the application of international human rights standards. CELS' main areas of work include: memory, truth, and justice for crimes committed during the State terrorism era; institutional violence and policies of incarceration as areas of human rights violation; social inclusion and economic, social, and cultural rights, especially regarding access to land and dignified housing; public policies related to mental health; justice system reforms; the rights of migrants; sexual and reproductive rights; and freedom of expression. Gender perspective is incorporated across our work agenda.

In this way, CELS has engaged in issues related to sexual and reproductive health, addressing the topic of abortion decriminalization in Argentina in numerous annual reports. CELS has produced evidence about the consequences of abortion

[13] *A Child is Not a Mother* (original title: Criança Não é Mãe). Available at: https://criancanaoemae.org.br/. Accessed on: 25 May 2025.

criminalization on women's health and have been involved since 2011 in processes of transformation related to this matter, making legal submissions both at the national and international levels in cases of utmost significance for our country and for the full enforcement of fundamental rights. CELS has intervened in various judicial cases to ensure access to legal abortions for women and people who can become pregnant, access to abortion medications such as misoprostol, and has acted as amicus curiae before the Inter-American Court of Human Rights and Argentine courts in cases where the rights of unjustly criminalized women were at stake.

3) Canadian Civil Liberties Association (CCLA)

The CCLA is an independent, national, non-partisan, non-profit organization with a nation-wide membership. Since its creation in 1964, CCLA has been Canada's national civil liberties organization, defending and promoting the rights and freedoms of people in Canada. The CCLA was constituted to promote respect for and observance of fundamental human rights and civil liberties and to defend and foster their recognition. The CCLA's work, which includes research, advocacy, public education and engagement, aims to defend and ensure the protection and full exercise of those rights and liberties. Since its founding, the CCLA has intervened in numerus courts across at all levels in cluding the Supreme Court of Canada, presented briefs to legislative committees, and delivered programs to publicize and promote fundamental rights and freedoms for persons in Canada.

The CCLA has had a long history of being involved in litigation in order to advance and protect the rights and autonomy of pregnant women and people, and in particular defending and promoting the right of access to abortion. In 1974, in the CCLA's first ever intervention, the CCLA intervened in the successful challenge striking down the criminalization of abortion at the Supreme Court of Canada in *R. v. Morgentaler*, [1976] 1 S.C.R. 616. CCLA has also been involved in several cases that raise issues around access to reproductive rights for women and girls including: *Tremblay v. Daigle*, [1989] 2 S.C.R. 530;*Winnipeg Child and Family Services (Northwest Area) v. D.F.G.*, [1997] 3 S.C.R. 925; *Christian Medical and Dental Society et al. v. College of Physicians and Surgeons of Ontario,* 2018 ONSC 579 and 2019 ONCA 393. Most recently the CCLA is was involved as the main party in a challenge of provincial regulations that restrict funding and access to surgical

abortions in New Brunswick, which was sucessfully discontinued after the regulation was ammended, *Canadian Civil Liberties Association v. Province of New Brunswick* (Court File No. FC-9-21).

4) CENTER FOR THE STUDY OF LAW, JUSTICE AND SOCIETY (Dejusticia)

Dejusticia es un centro de estudios jurídicos y sociales que se dedica al fortalecimiento del Estado de Derecho y a la promoción de la justicia social y los derechos humanos en Colombia y el Sur Global. Como centro de investigación-acción, promovemos un cambio social positivo a través del desarrollo de estudios y propuestas de políticas públicas basadas en la evidencia, el litigio estratégico, campañas de comunicaciones y desarrollando capacidades con organizaciones sociales, la academia, las instituciones, periodistas, activistas y personas defensoras de derechos humanos. A través de nuestra metodología "anfibia" de investigación-acción nos sumergimos profundamente en la investigación académica y de diseño de políticas con un claro sentido de cómo este trabajo puede impactar nuestra acción directa e incidencia. Del mismo modo, nuestra estrategia de incidencia informa las investigaciones que realizamos y nos ayuda a impulsar debates académicos con una comprensión firme de nuestro impacto en el terreno. Este enfoque nos ayuda a cumplir nuestro objetivo de empoderar a las comunidades y los individuos; alentar una cultura de inclusión y respeto por el Estado de Derecho; y promover la participación, así como el fortalecimiento y la reforma de las instituciones.

Dejusticia cuenta con una larga trayectoria en la investigación, incidencia y litigio estratégico en temas de género y en particular en relación con la interrupción voluntaria del embarazo.

Dejusticia ha participado con intervenciones ante la Corte Constitucional Colombiana en los dos casos que han permitido la despenalización parcial del aborto en Colombia en 2006 y 2022 y ha trabajado por evidenciar ante este mismo tribunal las barreras que enfrentan las mujeres y personas gestantes para acceder a la interrupción voluntaria del embarazo. Adicionalmente, hemos realizado múltiples investigaciones sobre el impacto de la criminalización en los derechos

fundamentales de las mujeres y personas gestantes, así como de las barreras que enfrentan para acceder a la interrupción voluntaria del embarazo. Finalmente, hemos intervenido ante instancias internacionales de derechos humanos como la Corte Interamericana de Derechos Humanos y el Comité de las Naciones Unidas de los Derechos Humanos para abogar por la protección de las mujeres y personas gestantes que desean interrumpir voluntariamente su embarazo.

5) Irish Council for Civil Liberties (ICCL)

ICCL is Ireland's leading independent human rights campaigning organisation. ICCL monitors, educates and campaigns to secure human rights for everyone in Ireland. ICCL acts as an essential defender of human rights and civil liberties and as an effective champion for the advancement of justice and freedom in Irish society. ICCL has been at the forefront of key human rights campaigns in Irish society, making a significant impact on law, policy and public opinion. These have included campaigns for legal divorce, decriminalisation of homosexuality and for marriage equality; working for equality legislation and institutions; resistance to emergency legislation and the removal of constitutional due process protections; and consistent advocacy for women's rights, including reproductive rights.

With many others, ICCL campaigned to remove the 8th amendment to the Irish Constitution and allow for legal and safe access to reproductive health services in Ireland, including abortion, on the basis that the prohibition on abortion meant women and pregnant people in Ireland suffered disproportionate and discriminatory restrictions to a wide range of rights, including their rights to privacy, dignity, bodily integrity and mental and physical health. ICCL welcomed the introduction of the Termination of Pregnancy Act 2018 and campaigned successfully for the introduction in 2024 of legislation providing for safe access zones around abortion providers in Ireland. As part of Ireland's Abortion Working Group ICCL continues to campaign on removing outstanding legal and procedural barriers to abortion access.

6) The Legal Resources Centre (LRC)

The Legal Resources Centre (LRC) was established in 1979 to use the law as an instrument of justice, challenging the legal structures of apartheid. Apartheid is

abolished in South Africa but is replaced with structures and forces that aggravate inequality gaps and frustrate the realization of human rights for all.

At the LRC, over the past 40 years in South Africa, we have, inter alia, played a significant role in dismantling apartheid, abolishing the death penalty and corporal punishment, advancing and protecting the constitutional rights of women, girls, and people with disabilities, and made important breakthroughs in healthcare and environmental justice, as well as established significant precedents in land and education rights.

In May 2018, the LRC represented the Women's Legal Centre Trust and WISH as the amici in the High Court of South Africa. The matter considered the constitutionality of certain sections of the Births and Deaths Registration Act in relation to the treatment of foetuses which died before the age of viability (26 weeks). The LRC intervened in this matter to safeguard the right to access safe and legal abortions.

Preceding and after the court case, the LRC has undertaken numerous advocacy efforts to support access to reproductive rights in South Africa. These efforts involve roundtable discussions with stakeholders, community radio interviews, advocating for comprehensive sexual and reproductive education in the South African public school system. Lastly, the LRC has also made submissions to the Committee of Economic, Social and Cultural Rights which, inter alia, called for the government to "enhance access to safe and legal abortion as a way to promote women's access to sexual and reproductive health rights."

7) Kenya Human Rights Commission (KHRC)

The KHRC is a prominent independent non-governmental organization, founded in 1992 to promote and protect human rights in Kenya. It holds observer status before the African Commission on Human and Peoples' Rights and is a member of the International Federation for Human Rights (FIDH). Over the course of three decades, KHRC has built a strong reputation for advancing governance and the rule of law grounded in human rights, with a particular emphasis on women's rights.

In line with its mission to promote dignity and equality, KHRC explicitly prioritizes sexual and reproductive health rights as a central focus of its work.

KHRC possesses extensive experience and recognized legitimacy in the field of reproductive rights. It has carried out pioneering advocacy efforts to reform Kenya's restrictive abortion regime, including convening a widely publicized "Mock Abortion Tribunal" in 2007, which spurred public debate on the consequences of unsafe abortion. In the years that followed, KHRC led campaigns to document and expose the human rights costs of criminalizing abortion, commissioning studies that linked high rates of unsafe abortion and maternal mortality to Kenya's restrictive laws.

KHRC has also advocated for legal and policy reforms to align Kenyan legislation with both constitutional and international human rights standards. In a joint shadow report submitted to the United Nations CEDAW Committee, KHRC urged the Kenyan government to enact laws consistent with constitutional provisions on abortion in order to reduce preventable maternal deaths resulting from unsafe and illegal procedures. At the regional level, KHRC leverages its observer status before the African Commission to advance women's rights and continues to lead national initiatives in favor of reproductive justice. For example, in 2023, KHRC convened civil society partners to resist legislative proposals that would further criminalize sexual and reproductive health rights.

In light of its statutory duties, institutional legitimacy, and the experiences and actions described above—along with its demonstrated expertise in international human rights law as it relates to sexual and reproductive health—Conectas Human Rights possesses the requisite standing to submit supporting information to contribute to the sound adjudication of the present case.

III. ON THE RELEVANCE AND GENERAL REPERCUSSION OF THE MATTER (A BRIEF HISTORY OF THE CRIMINALIZATION OF ABORTION IN BRAZIL: FROM THE COLONIAL PERIOD TO THE 21ST CENTURY)

The present Fundamental Precept Violation Petition No. 989 concerns a matter of undeniable legal and social relevance: the omission and institutional barriers imposed by the State on the exercise of the right to legal abortion by girls,

women, and other persons with the capacity to become pregnant. The issue under scrutiny transcends the isolated assessment of administrative or normative actions and calls upon this Honorable Supreme Court to recognize the existence of an unconstitutional state of affairs (estado de coisas constitucional), sustained by a historical structure of inequality, gender-based and racial violence, and governmental inaction.

At this moment in Brazil, abortion is legally permitted in instances of pregnancy resulting from rape (Article 128, I of the Penal Code), risk to the pregnant person's life (Article 128, II of the Penal Code), or anencephalic fetus (as recognized in the judgment of ADPF 54 by this Honorable Court).

Brazil is a country founded through a colonial process marked by the extermination of Indigenous peoples and by being the largest destination of the transatlantic European slave trade. The enslavement of African people and their descendants endured for approximately 400 years, until 1888; however, the perpetuation of control over bodies, particularly Black and Indigenous bodies, continues to this day.

The criminalization of abortion in Brazil has deep historical roots in the colonial and patriarchal context. The Imperial Criminal Code of 1830, heavily influenced by the religious and moral values of its time, laid the first foundations for State control over the bodies of persons who gestate. At that stage, abortion was not directly criminalized when practiced by the pregnant person herself, but rather when performed by a third party.

With the enactment of the 1890 Penal Code, a turning point occurred in Brazilian legislation: for the first time, self-induced abortion was criminalized, alongside the penalties already imposed on third parties who performed the procedure.

The criminalisation which started in the colonial era was consolidated with the 1940 Penal Code. This statute, which remains in force in its general structure, maintained the prohibition of abortion and established criminal penalties both for the pregnant person and for those who perform the procedure. The statutory exceptions are extremely narrow: abortion necessary to save the life of the pregnant person and

abortion in cases of pregnancy resulting from rape. Subsequently, the jurisprudence of this Honorable Court recognized fetal anencephaly as a third exception.

This legislative trajectory reveals a historical pattern of bodily control that persists beyond subsequent normative amendments. The current legal framework dates back to periods in which women were deprived of basic civil and political rights and in which the Black population remained formally subjected to enslavement. Even after more than eighty years of legislation providing for abortion in specific circumstances, and more than three decades of constitutional re-democratization, criminalization persists and, more gravely, the guarantees of lawful abortion formally in force are, in practice, ineffective. Cases such as that of the 11-year-old girl in the State of Santa Catarina, a rape victim who was prevented from accessing a lawful abortion[14], expose structural failures within the public health system and within the Judiciary itself that obstruct the realization of rights already established by law. This scenario starkly reveals not only the gap between law on the books and law in action, but also underscores the urgency and relevance of the present claim, the granting of which is indispensable to ensure that fundamental rights already recognized cease to be systematically denied.

Indeed, other more recent emblematic cases, such as the state-level requirement in Goiás that pregnant persons listen to the fetal heartbeat as a prerequisite for abortion[15], as well as the removal of abortion services from public hospitals[16], further demonstrate the existence of an institutionalized pattern of negligence and coercion, incompatible with constitutional principles and with the international commitments undertaken by Brazil.

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[14] Available at: https://g1.globo.com/sc/santa-catarina/noticia/2022/06/21/o-que-se-sabe-sobre-caso-da-menina-de-11-anos-impedida-de-fazer-aborto-em-sc-apos-estupro.ghtml. Accessed on: September 29, 2025.

[15] *New anti-abortion law in Goiás forces pregnant woman to listen to the fetus's heartbeat* (original title: Nova lei antiaborto em Goiás obriga gestante a ouvir o batimento do feto). Available at: https://www.cartacapital.com.br/cartaexpressa/nova-lei-antiaborto-em-goias-obriga-gestante-a-ouvir-o-batimento-do-feto/. Accessed on: 25 May 2025.

[16] VELEDA, L. *Nunes administration refuses to inform which hospitals perform late-term abortions in São Paulo* (original title: Gestão Nunes se recusa a informar quais hospitais fazem aborto de gestações tardias em São Paulo). Available at: https://www1.folha.uol.com.br/equilibrioesaude/2024/08/gestao-nunes-se-recusa-a-informar-quais-hospitais-fazem-aborto-de-gestacoes-tardias-em-sao-paulo.shtml. Accessed on: 25 May 2025.

In the judgment of this Fundamental Precept Violation Petition, what is at issue is the ability of the 1988 Constitution to effectively fulfill its promise of equality and dignity. The rights violations denounced in this claim directly contravene numerous provisions of the Federal Constitution, including: a) Article 1, item III (human dignity); b) Article 3 (fundamental objectives of the Republic); c) Article 5 (fundamental rights and guarantees); d) Article 6 (social rights); f) Article 196 (right to health); g) Article 226, §7 (family planning).

Moreover, the Brazilian State is a signatory to several international treaties that establish binding obligations regarding sexual and reproductive health, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Regionally, the Inter-American Convention on Human Rights and the jurisprudence of the Inter-American Court of Human Rights also reinforce Brazil's international commitment to ensuring effective access to reproductive health services, including legal abortion.

From a social standpoint, the impacts of the State's institutionalized omission are profound and significantly aggravate the deeply rooted historical inequalities in the country. Data from the 18th Brazilian Yearbook of Public Security[17], published in 2024, illustrate the gravity of the crisis: one woman is raped every six minutes in Brazil. Girls, especially Black girls and those living in impoverished communities, are the main victims of sexual violence. According to figures released by the campaign "Criança Não é Mãe" ("A Child Is Not a Mother")[18], at least 20,000 girls aged 14 or younger give birth each year in Brazil, of whom 70% are Black. A recent study by the AzMina Institute also revealed that from 2014 to 2023, the highest fertility rates among girls aged 10 to 14 were in Indigenous territories[19].

[17] FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. *Brazilian Yearbook of Public Security* (original title: Anuário Brasileiro de Segurança Pública). Available at: https://forumseguranca.org.br/publicacoes/anuario-brasileiro-de-seguranca-publica/. Accessed on: 25 May 2025.
[18] *Manifesto* in *A Child is Not a Mother* (original title: Manifesto em Criança Não é Mãe). Available at: https://criancanaoemae.org.br/#block-43193. Accessed on: 25 May 2025.
[19] LOURENÇO, Juliana. *Highest Fertility Rates Are Found in Indigenous Territories.* Available at: https://azmina.com.br/reportagens/maiores-taxas-de-gestacoes-entre-meninas-de-10-a-14-anos-estao-em-territorios-indigenas/.

It is crucial to emphasize that, pursuant to Article 217-A of the Brazilian Penal Code, any sexual act involving children under the age of 14 constitutes *rape of a vulnerable person* (*estupro de vulnerável*). Accordingly, the annual statistics on childbirth among girls in this age group are, in themselves, sufficient to demonstrate the systematic failure to ensure access to lawful abortion as a rule rather than as an exception, thereby underscoring the urgency of adjudicating the present ADPF.

It is important to note that, even in cases of pregnancies resulting from sexual violence, these girls are frequently subjected to re-victimization by State agents, judicial decisions, and administrative practices that impose illegal and inhumane obstacles rather than garantee their rights. The recent decision by the Conselho Nacional de Justiça (Brazilian National Council of Justice) which ordered the provisional suspension of a judge and initiated disciplinary proceedings against a judge of Appellate Court, both accused of refusing access to legal abortion to a 13-year-old rape survivor's[20], further confirms the existence of State-sponsored re-victimization.

Access to abortion in Brazil is tightly restricted and inequitably distributed, contributing directly to preventable maternal deaths, especially among Black and Indigenous women. Although legal in limited cases, systemic barriers—such as institutional resistance, regional disparities in service provision, and the misuse of conscientious objection—frequently deny timely access to care. These obstacles increase reliance on unsafe abortions, a major contributor to Brazil's maternal mortality rate.[21] According to research by Criola, unsafe procedures are more common among poor and Black women, especially in the North and Northeast, where health system access is weakest.[22] Cases like that of Miriam Bandeira, a 35-year-old Indigenous woman who died during childbirth after being denied an abortion, highlight the fatal consequences of systemic neglect and discrimination.[23] International bodies

[20] Available at: https://catarinas.info/cnj-abre-processo-contra-juiza-e-desembargadora-que-negaram-aborto-legal-a-menina-em-goias/. Accessed on: January 28, 2026.
[21] Criola, Black Women and Reproductive Justice Dossier, 2020–2021.
[22] Brasil de Fato, 'A criminalização do aborto mata mulheres negras todos os dias', 2019.
[23] Catarinas, 'Caso Mirian Bandeira e crianças forçadas a serem mães', 2022.

including CEDAW and the CRC have urged Brazil to address these risks by ensuring equitable abortion access and addressing maternal health disparities.[24]

This scenario not only reflects the normalization of gender-based violence but also highlights the structural omission of the State in providing adequate responses and guaranteeing access to fundamental rights, such as legal abortion, even when expressly authorized. The perpetuation of exclusionary practices and policies actively contributes to the maintenance of an unconstitutional state of affairs, the overcoming of which requires the intervention of this Supreme Court.

The development of a plan to confront the unconstitutional state of affairs surrounding lawful abortion is therefore urgent and requires that its design incorporate intersectionality as an integral element of this political project, so that entrenched matrices of domination (namely racism, patriarchy, cisheteronormativity, and colonialism) may be effectively dismantled.

In this context, we seek to submit a set of relevant legal provisions and factual arguments concerning the voluntary interruption of pregnancy in cases permitted under Brazilian law, grounded in international human rights law and in the recommendations issued by international bodies to the Brazilian State on this subject. In our view, such contributions may substantially assist this constitutional controversy.

Our submissions will be formulated from an intersectional perspective, with particular attention to the vulnerabilities faced by historically oppressed social groups, such as Black and Indigenous women, and economically impoverished persons, who are disproportionately affected by the structural and systemic failures of the State in ensuring access to legal abortion.

IV. DEMOCRACY AND REPRODUCTIVE JUSTICE

[24] Committee on the Elimination of Discrimination against Women.Concluding observations on the combined eighth and ninth periodic reports of Brazil. Available at: https://docs.un.org/en/CEDAW/C/BRA/CO/8-9; Committee on the Rights of the Child. Concluding observations on the combined fifth to seventh periodic reports of Brazil. Available at: https://docs.un.org/en/CRC/C/BRA/CO/5-7.

Reproductive justice is inseparable from the health of a democracy.[25] At its core, democracy requires that all persons be able to exercise their rights on an equal footing and participate fully in public life. Reproductive rights are integral to this guarantee because they enable individuals to make decisions about their own bodies and futures free from coercion[26]. The ability to decide whether, when, and how to have children directly shapes an individual's capacity to engage in education, employment, political participation, and community life.[27] Laws that restrict access to reproductive health care, including abortion, constitute a form of institutional discrimination that disproportionately harms individuals based on intersecting factors such as race, socio-economic status, and geographic location.[28]

In Brazil, reproductive justice is also intertwined with the democratic principles of equality and non-discrimination enshrined in the Constitution. Historically marginalized communities, including Black, Indigenous, rural, and low-income women, bear the burden of systemic barriers, rendering the denial of reproductive rights a form of structural exclusion[29]. Protecting these rights is therefore not merely a matter of complying with constitutional guarantees, but of safeguarding the participatory foundations of democracy itself. The Honorable Federal Supreme Court, as the guardian of the constitutional order, plays a pivotal role in ensuring that the democratic promise of equal dignity and freedom extends to all, by recognizing that reproductive autonomy constitutes both a private liberty and a public democratic necessity.

The relationship between reproductive rights and democracy is not unique to Brazil. During South Africa's transition to constitutional democracy, religious groups argued that the proposed Constitution was invalid because it failed to recognize fetal

[25] Luis Felipe Miguel "Abortion and Democracy" (2012) 20(3) *Revista Estudos Feministas* 657.
[26] Ibid at 661.
[27] See United Nations Population Fund (UNFPA), State of World Population 2022: Seeing the Unseen, at 4 and 93 (2022).
[28] World Health Organization Abortion Care Guideline (2022) 8.
[29] D Diniz & A P Vélez 'Abortion and Health in Brazil: The Role of the Supreme Court' (2024) 22 International Journal of Gynaecology & Obstetrics 142; see also Center for Reproductive Rights: Reproductive Justice and Structural Exclusion in Latin America (2023) 15-18; UN Committee on the Elimination of Racial Discrimination 'Concluding Observations on the Combined Eighteenth to Twentieth Periodic Reports of Brazil' (2022) CERD/C/BRA/CO/18-20 para 24 (noting that intersectional discrimination exacerbates barriers to reproductive healthcare for Afro-Brazilian and Indigenous women).

rights and would permit abortion. Rejecting this challenge, the Constitutional Court stated that “democracy is not equivalent to majoritarianism and that a democracy committed to fundamental rights must protect the interests of minorities and disadvantaged groups”.[30] This reasoning reflects a broader democratic principle that extends beyond South Africa: reproductive autonomy cannot be subordinated solely to prevailing moral or religious views, particularly where doing so would undermine the equality and dignity of women and others who may become pregnant.

V. ON THE RECOGNITION OF THE UNCONSTITUTIONAL STATE OF AFFAIRS REGARDING LEGAL ABORTION

The recognition of an unconstitutional state of affairs in access to lawful abortion, within the scope of the present Fundamental Precept Violation Petition (*Arguição de Descumprimento de Preceito Fundamental* – ADPF), does not constitute an innovation detached from the existing legal order. On the contrary, it is a measure fully aligned with Brazilian constitutional jurisprudence, both with regard to the Court’s structural role in addressing systemic State failures, as materialized in ADPF 347, and with regard to this Honorable Court’s settled orientation recognizing reproductive rights as fundamental human rights, an essential pillar for safeguarding the dignity and autonomy of women and persons who gestate, as consolidated in precedents such as ADPF 54 and *Habeas Corpus* no. 124,306.

The requested judicial intervention is necessary given the factual situation of the case. The arguments presente in this amicus brief demonstrate not merely isolated or episodic failures, but a broader pattern of institutional dysfunction marked by the continued inability of State authorities to ensure effective access to legal abortion services already guaranteed under Brazilian. Indeed, it is consistent with the model of dialogical structural litigation already endorsed by this Honorable Court, in which the participation of multiple institutional and social actors not only confers democratic legitimacy upon the decision, but also ensures that its implementation is compatible with the distinct institutional capacities involved.

[30] The Application to Certify a New Constitutional Text in Terms of Section 71 of the Constitution of the Republic of South Africa, 1993 [1996] ZAConAsmRes 3 (1 January 1996) para. 9

What is at issue, therefore, is the acknowledgment of a chronic structural failure of the Brazilian State: the persistent ineffectiveness of the public health system and of the Judiciary itself, in ensuring access to safe abortion in the circumstances expressly provided for under Article 128 of the Penal Code and in ADPF No. 54.

The initiation of such a structural and dialogical process is duly authorized, as it falls within the Court's constitutional mandate to safeguard the observance of fundamental rights enshrined in the Constitution, particularly where highly vulnerable, deeply stigmatized groups with extremely low levels of political representation are concerned (Article 5, items XLVII, XLVIII, and XLIX, Federal Constitution). In Brazil, the political underrepresentation of women is both evident and structural: women hold only 17.7% of the seats in the Chamber of Deputies, and merely 19.8% in the Federal Senate[31]. Even more alarming are the overall representation figures for Black and Indigenous populations, social groups that include the women who face the greatest barriers to accessing lawful abortion. In general terms, without gender distinction, although Black persons constitute 56% of the Brazilian population, they occupy only 26% of the seats in the Chamber of Deputies[32] and 22% in the Senate.[33] As for Indigenous peoples, in 2022, when the largest Indigenous caucus in Brazilian history was formed, the number of seats held by self-declared Indigenous parliamentarians reached only seven.[34]

This scenario evidences a democratic deficit within the Brazilian political system that directly undermines the advancement of legislation on sexual and reproductive rights, which ultimately bears directly upon the full realization of the human dignity of women, girls, and persons who gestate.

The Legislative Branch has acted in the opposite direction, seeking to reverse the circumstances permitted by law and criminalize pregnant people who have had the right to legal abortion since 1940. In 2024, the Chamber of Deputies approved the urgent consideration of Bill No. 1904/2024, which aims to equate abortion

[31] Available at: https://www.poder360.com.br/poder-congresso/maior-da-historia-bancada-feminina-ainda-e-so-18-do-congresso/. Accessed on: 01 Oct. 2025.
[32] Available at: https://www.brasildefato.com.br/2022/10/04/pretos-e-pardos-na-camara-dos-deputados-negros-ocuparao-apenas-das-26-cadeiras/. Accessed on: 01 Oct. 2025.
[33] Available at: https://g1.globo.com/politica/noticia/2024/03/26/200-anos-do-senado-22percent-das-cadeiras-foram-ocupadas-por-negros-na-ultima-decada.ghtml. Accessed on: 01 Oct. 2025.
[34] Available at: https://www.socioambiental.org/noticias-socioambientais/maior-bancada-indigena-da-historia-enfrentara-oposicao-ferrenha-em-novo. Accessed on: 01 Oct. 2025.

performed after 22 weeks of pregnancy with the crime of simple homicide, establishing penalties of up to 20 years in prison, including for victims of sexual violence. In the same year, the Constitution and Justice Committee of that House also approved PEC (Proposed Constitutional Amendment) No. 164/2012, which establishes the inviolability of the right to life from conception, potentially promoting the total criminalization of abortion. In addition to these, it is estimated that there are another 98 anti-abortion legislative proposals pending in the National Congress.[35]

State and municipal legislative bodies have followed the same trajectory. A survey conducted by the AzMina Institute revealed that between 2017 and 2024, 69 bills aimed at restricting access to abortion were introduced in the legislative chambers of Brazil's capital cities[36]. Some of these initiatives have been enacted into law, such as Municipal Law No. 8,936/2025 of Rio de Janeiro, which mandates the display of posters on abortion in health care facilities containing statements such as "abortion may lead to consequences such as infertility, psychological harm, infections, and even death" and "did you know that the fetus is discarded as hospital waste?"[37]. At the end of 2025, in João Pessoa, Municipal Law No. 15,707/2025 was enacted with provisions mirroring those of the Rio de Janeiro statute[38]. Meanwhile, the São Paulo City Council approved Bill No. 69/2025 in September 2025 (later enacted as Law 18,459/2026), establishing a municipal awareness week on so-called 'post-abortion syndrome' and mandating the distribution of informational materials on the alleged psychological risks and consequences of abortion, claims that constitute scientifically unfounded misinformation not recognized by the World Health Organization.[39]

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[35] Available at: https://www.nexojornal.com.br/externo/2024/07/02/as-dezenas-de-projetos-contra-o-aborto-no-congresso-nacional. Accessed on: 27 Oct. 2025.

[36] Available at: https://azmina.com.br/reportagens/vereadores-pelo-pais-tentam-barrar-o-acesso-ao-aborto-legal/. Accessed on: 27 Oct. 2025.

[37] Available at: https://aplicnt.camara.rj.gov.br/APL/Legislativos/contlei.nsf/c5e78996b82f9e0303257960005fdc93/911c6fb81d9b186f03258ca800472d02?OpenDocument&Start=1&Count=100&Expand=1. Accessed on: 27 Oct. 2025.

[38] Available at: https://www.legisweb.com.br/legislacao/?id=487211. Accessed on: 27 Oct. 2025.

[39] LISBOA, Luana. *Learn more about the bill that creates a 'post-abortion syndrome awareness week' in São Paulo.* F. São Paulo, 2025. Available at: https://www1.folha.uol.com.br/equilibrioesaude/2025/09/saiba-mais-sobre-projeto-que-cria-a-semana-de-conscientizacao-da-sindrome-pos-aborto-em-sp.shtml.

As for State Legislative Assemblies, half of them maintain formal anti-abortion parliamentary caucuses[40]. Moreover, the most recent edition of the *Legal Abortion Map*, released in 2025, identified 102 state-level bills on abortion currently under consideration, of which 41.1% obstruct access to lawful abortion and 59.8% obstruct access to information about this right[41]. One of the most emblematic state statutes is Law No. 22,537/2024 of Goiás, which establishes a state-wide anti-abortion awareness campaign.

In this context, the Federal Supreme Court's role in exercising its counter-majoritarian and dialogical function is legitimate in order to ensure that fundamental rights are not systematically denied.

The state of constitutional non-compliance regarding legal abortion can be identified along three main axes: Axis 1: Structural and territorial; Axis 2: Institutional and informational; Axis 3: Judicialization and institutional violence.

With regard to the structural and territorial axis, it is important to note that the provision of accredited services is marked by extreme regional inequality and chronic insufficiency. In 2019, only 3.6% of Brazilian municipalities had health facilities offering legal abortion services, most of them located in the Southeast region with high or very high MHDI[42]. The North region had the fewest hospitals performing legal abortions[43]. Monitoring carried out in 2025 by the Legal Abortion Map found 416 hospitals potentially capable of performing legal abortion services, based on records in the National Registry of Health Facilities (CNES), the Hospital Information System (SIH/Datasus), and information provided by State Health Secretariats. Most are still

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[40] Available at: https://www.estadao.com.br/politica/alem-da-camara-dos-deputados-metade-das-assembleias-legislativas-do-pais-possui-frente-parlamentares-anti-aborto-nprp/?srsltid=AfmBOorZLkP47qES6P9KvpX-Icl7FUPZ47VXa_OtLytZn4bYSI8P7LxO. Accessed on: 27 Oct. 2025.

[41] Article 19 and AzMina Institute. *Map of Legal Abortion: Reproductive Rights at the Crossroads of Information*. 2025, p. 50. Available at: https://artigo19.org/wp-content/blogs.dir/24/files/2025/12/Mapa_Pesquisa_DIGITAL-1.pdf.

[42] JACOBS, Marina Gasino. *Provision and Performance of Legal Abortion in Brazil: An Analysis of Data from the Outpatient and Hospital Information Systems and the National Registry of Health Establishments.* 2022, p. 112. Available at: https://repositorio.ufsc.br/bitstream/handle/123456789/235606/PGSC0322-T.pdf?sequence=-1&isAllowed=y

[43] Article 19. *Seventy Hospitals Provide Legal Abortion Services, and the Southeast Region Concentrates a Significant Share of Care, According to the Updated 2022 Edition of the Legal Abortion Map.* September 28, 2022. Available at: https://artigo19.org/2022/09/28/setenta-e-tres-hospitais-realizam-aborto-legal-e-regiao-sudeste-e-a-que-concentra-parcela-expressiva-do-atendimento-atualiza-a-edicao-2022-do-mapa/

located in the Southeast (172), and the region with the fewest hospitals is the Midwest (29), followed by the North (40). Most are located in capitals and metropolitan areas[44]. It is worth noting that most of the Black and Indigenous population lives in the North and Northeast regions of Brazil, which demonstrates that regional inequality also contributes to greater racial inequalities.[45]

In addition, the 2025 Map revealed that, after telephone consultations with registered hospitals, some of these establishments stated that they do not perform the procedure[46]. This pattern was repeated in previous surveys. In 2021, Brazil had 102 referral services for the termination of pregnancy in cases provided for by law, but only 88 establishments had sufficient structure and staff. These 88 services were concentrated in 55 municipalities, which account for only 26.7% of the population of reproductive age in the country[47]. This creates insurmountable territorial barriers, especially for poor girls, women, and people who become pregnant in regions far from large urban centers.

Evidence of the magnitude of these obstacles is found in the fact that, in 2023, one in every three women who accessed lawful abortion services was required to travel to another city in order to exercise this right[48], a cost that is unfeasible for the most vulnerable populations.

With regard to Axis 2, institutional and informational, the State fails to provide clear, accessible, accurate, and up-to-date information regarding lawful abortion.

One of the main problems in this area is the requirement of documents not provided for by law or any other regulatory norm as a condition for performing the procedure. A study conducted in 2016 found that police reports, forensic medical

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[44] Article 19 and AzMina Institute. *Map of Legal Abortion: Reproductive Rights at the Crossroads of Information.* 2025, p. 30. Available at: https://artigo19.org/wp-content/blogs.dir/24/files/2025/12/Mapa_Pesquisa_DIGITAL-1.pdf.

[45] G1. IBGE Census: Amazonas and Bahia are the states with the largest Indigenous populations; see ranking. 2023. Available at: https://g1.globo.com/economia/censo/noticia/2023/08/07/censo-do-ibge-amazonas-e-bahia-sao-estados-com-mais-indigenas-veja-ranking.ghtml.
DIAS, Guilherme Soares. What is the percentage of Black people in the Brazilian states? 2024. Available at: https://guianegro.com.br/qual-o-percentual-de-pessoas-negras-nos-estados-brasileiros/

[46] Ibid. p. 40.

[47] Ibid. p. 113.

[48] Available at: https://oglobo.globo.com/saude/noticia/2024/06/15/aborto-legal-1-a-cada-3-mulheres-precisou-sair-de-sua-cidade-para-realizar-o-procedimento-em-2023.ghtml. Accessed on: 19 Nov. 2025.

reports, and judicial authorizations were required from victims of sexual violence seeking lawful termination of pregnancy by 14%, 8%, and 8% of the services in operation at the time, respectively[49]. However, in such cases, the only element that must be taken into account is the victim's statement, which must be received with a presumption of veracity[50].

The legislation also does not establish a gestational limit for legal abortion. However, few hospitals agree to perform the procedure after 22 weeks of pregnancy, especially with resistance to the fetal asystole procedure. In 2023, only four hospitals terminated pregnancies after 20 weeks in Brazil[51]. The World Health Organization (WHO) states that the technique is recommended for advanced pregnancies and is part of standard quality abortion care[52]. In addition, in a preliminary decision in ADPF 1141, Minister Alexandre de Moraes suspended Resolution 2378/2024 of the Federal Council of Medicine (CFM), which prohibited fetal asystole. In the decision, His Excellency recognized that "the criminal code does not expressly establish any circumstantial, procedural, or temporal limitations for the performance of so-called legal abortion, whose legality, given such assumptions, and in principle, will be fully sanctioned"[53].

It should further be emphasized that children and adolescents, who are victims of sexual violence, constitute a significant part of those who seek access to abortion services at this gestational stage. Although there are no systematized data showing the number of pregnancy terminations carried out beyond 22 weeks in Brazil, nor on

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[49] MADEIRO, Alberto Pereira; DINIZ, Debora. *Legal Abortion Services in Brazil: A National Study. Ciência & Saúde Coletiva*, vol. 21, no. 2, pp. 563–572, 2016. Available at: https://www.scielo.br/j/csc/a/L6XSyzXN7n4FgSmLPpvcJfB/

[50] BRAZIL. Ministry of Health. Secretariat of Health Care. Department of Strategic Programmatic Actions. *Prevention and Treatment of Harms Resulting from Sexual Violence against Women and Adolescents: Technical Guideline.* 3rd ed., revised and expanded, 1st reprint. Brasília: Ministry of Health, 2012. Available at: https://bvsms.saude.gov.br/bvs/publicacoes/prevencao_agravo_violencia_sexual_mulheres_3ed.pdf

[51] Available at: https://catarinas.info/apenas-quatro-hospitais-interrompem-gestacoes-acima-de-20-semanas-no-brasil/#:~:text=Apenas%20quatro%20hospitais%20interrompem%20gesta%C3%A7%C3%B5es,semanas%20no%20Brasil%20%2D%20Portal%20Catarinas.
Accessed on: Jan. 28, 2026.

[52] FIGO – International Federation of Gynecology and Obstetrics. *FIGO Position Statement on the Recent Prohibition of the Induction of Fetal Asystole for Legal Abortions in Brazil.* 2024. Available at: https://www.figo.org/figo-position-statement-recent-prohibition-induction-fetal-asystole-legal-abortions-brazil. Accessed on: Jan. 28, 2026.

[53] BRAZIL. Supreme Federal Court (STF). *Interim Measure in the Claim of Non-Compliance with a Fundamental Precept (ADPF) No. 1,141.* 2024.

their association with the age of pregnant individuals, available evidence suggests that children and adolescents constitute a significant share of those seeking care at more advanced gestational ages. A study that analyzed more than 1 million pregnancies among Brazilian adolescents identified inequities associated with the start of prenatal care. Between 2020 and 2022, it was found that 28.3% of pregnant children aged 12 or younger had their first prenatal visit at 22 weeks of gestation, whereas this figure was 12.2% for those aged 19. The study also identified disparities based on ethnic-racial factors: Across all groups analyzed, an increase in timely initiation of prenatal care (by the 12th week of gestation) was observed with advancing age. However, the highest rates were recorded among white adolescents (63.6% among those aged 12 or younger and 83.1% at age 19), while the rate is 53.8% among Black girls aged 12 or younger, rising to 75.7% at age 19, and it is even lower among Indigenous girls, reaching only 46.3% for those aged 12 or younger and 61.7% for those aged 19.[54]

The delay in seeking help among children and adolescents occurs due to delays in the identification of pregnancy, as in most cases the victims reside with their abusers and the symptoms of pregnancy are not among the first to be recognized. Moreover, the lack of comprehensive sexuality education in schools further impedes the recognition and reporting of sexual violence.

With regard to judicialization and institutional violence, the difficulty of accessing the service means that countless cases reach the courts, exposing women, girls and people who become pregnant to revictimization and violation of their dignity. The emblematic case of an 11-year-old girl in Santa Catarina, a victim of rape, who was prevented from having a legal abortion in 2022 and was even admitted to a shelter, illustrates the seriousness of the problem. Instead of guaranteeing the effectiveness of the right provided for by law, the judiciary has become yet another instrument for denying this fundamental right. In this case, the

[54] SILVA, Luiza Eunice Sá et al. Timely initiation of antenatal care in adolescent victims of sexual violence: implications for legal abortion in Brazil. Ciência e Saúde Coletiva, v. 30, n. 1. 2025, p. 5. Available at: https://www.scielo.br/j/csc/a/6n8r3HxCGFBFZZWLPzY9Qqc/?lang=pt&format=pdf.

judge asked the child “if she could endure a little longer” to “finish carrying the baby” and “if the father would agree” to the abortion[55].

In the case of children and adolescents who are victims of sexual violence, access to justice is particularly difficult. In many cases, parental consent is required, often involving the perpetrator in the decision, but not the child. National Council for the Rights of Children and Adolescents (CONANDA) Resolution No. 258/2024 represented a significant step toward addressing this barrier by recognizing the right of children and adolescents to participate in decisions related to their reproductive health, in accordance with the principle of progressive autonomy, as enshrined in the United Nations Convention on the Rights of the Child. Nevertheless, the National Congress has moved to overturn this regulatory framework through Legislative Decree Bill (PDL) No. 3/2025.

A study conducted by the Feminist Collective on Sexuality and Health, the Campaign “Nem Presa Nem Morta” (Neither Imprisoned Nor Dead), and Ipas – Partners for Reproductive Justice shows that Public Defenders’ Offices are also not fully equipped to provide adequate legal support to individuals who need access to legal abortion. The findings revealed a lack of standardized protocols, data collection systems, and internal coordination for these cases, further exacerbating territorial inequalities. In practice, access to assistance depends more on the individual initiative of public defenders and on specialized units for the promotion and defense of women’s rights than on the institution itself.[56]

As can be seen, the ineffectiveness of legal abortion directly affects the consolidation of the democratic rule of law, as it deepens and perpetuates regional, gender, race, and class inequalities, preventing the full exercise of the right to health and human dignity.

VI. RELEVANT INTERNATIONAL STANDARDS

[55] Available at: https://g1.globo.com/sc/santa-catarina/noticia/2022/06/21/suportaria-ficar-mais-um-pouquinho-queres-escolher-um-nome-para-o-bebe-as-frases-da-juiza-joana-ribeiro-zimmer-para-menina-de-11-anos-estuprada.ghtml. Accessed on: 27 Oct. 2025.

[56] Alma Preta. Public Defenders’ Offices are key to accessing legal abortion, but barriers still persist. 2026. Available at: https://almapreta.com.br/sessao/cotidiano/defensorias-publicas-sao-chave-para-acesso-ao-aborto-legal-mas-barreiras-persistem/

The right to life is recognized under international law as a fundamental right and is enshrined in numerous international and regional treaties. In this regard, Article 4(1) of the American Convention on Human Rights, ratified by Brazil on July 9, 1992, 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.” Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Brazil on January 24, 1992, establishes that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” Furthermore, Article 6(1) of the Convention on the Rights of the Child (CRC), ratified by Brazil on September 24, 1990, provides that “States Parties recognize that every child has the inherent right to life.”

The UN Human Rights Committee (HRC), whose function is to ensure compliance with the ICCPR, has observed that the expression “every human being has the inherent right to life” cannot be interpreted narrowly[57], and has concluded that the protection of this right requires States to adopt positive measures to safeguard the rights of all persons, including the right of pregnant women and girls to live with dignity.

The Inter-American Court held that the phrase “in general” in Article 4(1) of the Inter-American Convention on Human Rights indicates that protection of prenatal life is not absolute, but rather gradual and incremental according to developmental stage, and must be balanced against the rights of women, including reproductive autonomy, privacy, and family life.[58]

This right is violated by regulations that restrict access to abortion, which have devastating effects on the right to life itself. Furthermore, in terms of Article 6 of the International Covenant on Civil and Political Rights, States are prohibited from regulating abortion in a way that forces women and girls to resort to unsafe abortions or that puts their lives at risk[59]. The imposition of legal restrictions on abortion does

[57] General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights (Right to Life), UN Doc. CCPR/C/GC/36 (2019), para 3.
[58] INTER-AMERICAN COURT OF HUMAN RIGHTS (IACtHR). *Case of Artavia Murillo et al. v. Costa Rica,* para 264.
[59] Human Rights Committee, General Comment No. 36, para. 8, interpreting Article 6 of the International Covenant on Civil and Political Rights.

not reduce the likelihood that women will seek this essential health service. Empirical evidence confirms that the criminalization of abortion and the existence of unreasonable restrictions compel women to resort to clandestine abortions, thereby placing their lives and health at serious risk. Latin America has, proportionally, the highest number of maternal deaths resulting from unsafe abortions worldwide. In Latin America and the Caribbean, the vast majority of abortions are performed under unsafe conditions, resulting in at least 10% of all regional maternal deaths and forcing approximately 760,000 women to seek hospital treatment annually for severe complications.[60]

However, the right to life is not the only right implicated in the context of unsafe abortion. The criminalization of abortion threatens the entire life project of persons with the capacity to become pregnant, adversely affecting rights such as health, autonomy, and privacy, which are determinative of the dignity of their existence. Both the United Nations Human Rights Committee and the Committee on the Elimination of Discrimination against Women have repeatedly expressed concern regarding the relationship between laws that criminalize abortion, the prevalence of clandestine abortion, and the risks posed to women's lives[61]. Both Committees have recommended the review, amendment, or repeal of laws that impose sanctions on or unduly restrict access to abortion.

The United Nations Committee on Economic, Social and Cultural Rights, in General Comment No. 22, affirmed that States must remove legal, procedural, and practical barriers that impede access to sexual and reproductive health services, including safe abortion services and post-abortion care, as part of the right to sexual and reproductive health under article 12 of the Covenant.[62].

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[60] *See* Guttmacher Institute, *Aborto en América Latina y el Caribe* (Mar. 2018), https://www.guttmacher.org/sites/default/files/factsheet/ib_aww-latin-america.pdf; *see also* World Health Organization, *Abortion Fact Sheet* (2025) (documenting that approximately 3 out of 4 abortions in Latin America are unsafe, driving preventable maternal mortality and morbidity).

[61] See, for example, UNITED NATIONS. Human Rights Committee. *Concluding Observations on Bolivia.* May 5, 1997. (CCPR/C/79/Add.74, p. 22); and UNITED NATIONS. Committee on the Elimination of Discrimination against Women (CEDAW). *Concluding Comments on Nicaragua.* February 2, 2007. (UN Doc. CEDAW/C/NIC/CO/6, paras. 17–18).

[62] UNITED NATIONS. Committee on Economic, Social and Cultural Rights (CESCR). *General Comment No. 22: On the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights).* May 2, 2016. (E/C.12/GC/22). para 28.

Finally, it is important to note that, during Brazil's last periodic review, the CESCR expressed its concern about the "persistent substantive inequality between women and men, which predominantly affects disadvantaged women, hindering the enjoyment of their economic, social, and cultural rights (art. 3)"[63].

In particular, CESCR expressed concern about the obstacles faced by women in obtaining access to safe abortion, even in cases where it is legally permitted, particularly by women facing intersectional forms of discrimination.[64] It is also concerned about the high rates of maternal mortality and the lack of access to adequate sexual and reproductive health services and information in rural and peripheral areas (art. 12).[65]

In addition, other UN treaty bodies have issued recommendations to Brazil on this matter. The Committee on the Elimination of Racial Discrimination (CERD) urged the State to ensure that "all Afro-Brazilian, Indigenous and Quilombola women can access legal voluntary termination of pregnancy under safe and dignified conditions without harassment or efforts to criminalize them or their medical providers"[66]. The Committee against Torture issued a recommendation to the same effect, while also expressing concern over reports that "women and girls seeking access to contraceptives and legal abortions are reportedly subjected to harassment, violence and criminalization, as are the doctors and other medical staff providing those services"[67].

For its part, the Human Rights Committee (HRC) expressed concern over reports indicating that the right to lawful abortion is not consistently implemented due to fear of prosecution, denial of access to hospitals, and hostile environments.[68] Lastly, the Committee on the Rights of the Child was unequivocal in identifying the alarmingly high rate of child pregnancy in the country and recommended the repeal

[63] UNITED NATIONS. Committee on Economic, Social and Cultural Rights (CESCR). *Concluding Observations on the Third Periodic Report of Brazil.* October 13, 2023. (E/C.12/BRA/CO/3, para. 25).
[64] Ibid., para. 61.
[65] Ibid., para. 61.
[66] UNITED NATIONS. Committee on the Elimination of Racial Discrimination (CERD). *Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Brazil.* December 19, 2022. (CERD/C/BRA/CO/18–20, p. 17).
[67] UNITED NATIONS. Committee against Torture (CAT). *Concluding Observations on the Second Periodic Report of Brazil.* June 12, 2023. (CAT/C/BRA/CO/2, para. 49)
[68] UNITED NATIONS. Human Rights Committee (HRC). *Concluding Observations on the Third Periodic Report of Brazil.* September 6, 2023. (CCPR/C/BRA/CO/3, para. 25).

of laws and the rejection of bills that restrict and criminalize access to lawful abortion, as well as the removal of barriers to accessing such services, including discrimination based on gender and race and the invocation of conscientious objection[69].

Accordingly, it is concluded that, from an administrative standpoint, in order to ensure respect for the rights to life, privacy, bodily autonomy, health, and dignity of women and other persons who gestate, States must remove all institutional and other barriers that prevent effective access to lawful abortion services.

VII. SOCIO-ECONOMIC CONSEQUENCES OF RESTRICTIONS TO ABORTION

There are strong socio-economic justifications for increasing access to abortion. This section will highlight how the removal of administrative and institutional barriers to abortion can yield measurable improvements in health outcomes, gender, race equality, and economic development. The analysis below therefore links reproductive rights directly to broader questions of social justice and public policy effectiveness.

a) MATERNAL MORTALITY

Maternal mortality remains a critical human rights crisis in Brazil, where the ratio of approximately 60 deaths per 100,000 live births highlights deep systemic failures and regional inequalities.[70] This crisis is inextricably linked to the country's restrictive laws, as complications from unsafe abortions, such as hemorrhage and infection, are among the top five causes of maternal death.[71] Experts believe that the true number of maternal deaths is significantly higher due to the stigma and fear of criminalization, which often leads families to hide the true cause of death.[72]

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[69] UNITED NATIONS. Committee on the Rights of the Child (CRC). *Concluding Observations on the Fifth to Seventh Periodic Reports of Brazil.* July 25, 2025. (CRC/C/BRA/CO/5–7, para. 40).

[70] World Health Organization *Trends in Maternal Mortality 2000 to 2023* (2025) 12; see also Brazilian Ministry of Health 'Painel de Monitoramento da Mortalidade Materna' (2026) available at *https://svs.aids.gov.br/* (accessed 30 March 2026).

[71] Federação Brasileira das Associações de Ginecologia e Obstetrícia (FEBRASGO), Relatório sobre Causas de Morte Materna no Brasil 22 (2025).

[72] C L Szwarcwald, J J C Escalante, D de Lyra Rabello Neto, P R B de Souza Junior & C G Victora, "Estimation of maternal mortality rates in Brazil, 2008–2011" (2014) 30(Suppl 1) Cadernos de Saúde Pública S71–S83.

Studies have found that restrictive laws fail to achieve their stated goal of protecting prenatal life, as they do not deter abortions but rather push them underground.[73] Prior to the enactment of Ireland's Health (Regulation of Termination of Pregnancy) Act 2018, an estimated 10–12 women travelled daily from Ireland to England and Wales to access abortion services.[74] In other cases, that looks like the 2600 maternal deaths from unsafe abortions that happen annually in Kenya due to lack of clarity on abortion legality.[75] By failing to provide access to safe abortion, governments inadvertently limit abortion access to those with the resources to travel for their reproductive rights and encourage unsafe abortion, which results in more lives lost than safe abortion would. Indeed, in South Africa, maternal deaths linked to abortion in general have decreased sharply since the promulgation of the Choice on Termination of Pregnancy Act (CTPA). A study published in the *South African Medical Journal* found that, due to the CTPA, abortion-related mortality decreased by 91% in South Africa between 1994 and 1998-2001.[76]

b) SOCIOECONOMIC BENEFITS

Restricted access to abortion in Brazil has severe socio-economic consequences, especially for adolescents, low-income women, and marginalized racial groups. Adolescent pregnancy—often a result of sexual abuse—derails educational attainment. Girls forced into motherhood frequently drop out of school, diminishing their long-term employment prospects and contributing to intergenerational cycles of poverty.[77] The 2023 "Girls Who Are Mothers" study reveals that many adolescent mothers never return to formal education, limiting their access to skilled labor markets and perpetuating economic exclusion.[78] Labor market participation among women who are denied abortions is also negatively affected.

[73] Veronica Undurraga, "Criminalization under Scrutiny: How Constitutional Courts Are Changing Their Narrative by Using Public Health Evidence in Abortion Cases," Sexual and Reproductive Health Matters 27 (2019): 41-51.
[74] United Kingdom Department of Health and Social Care Abortion Statistics, England and Wales: 2017 (2018) Table 12a.
[75] Jane Mangwana, Kenneth Juma & Ramatou Ouedraogo *Unintended Pregnancies, Unsafe Abortion and Maternal Mortality in Kenya* (African Population and Health Research Center 2023) 1–2.
[76] Jewkes, R., & Rees, H. (2005). Dramatic decline in abortion mortality due to the Choice on Termination of Pregnancy Act: scientific letter. South African Medical Journal, 95(4), 250.
[77] Conectas et al., CRC Shadow Report on Childhood Pregnancy in Brazil, 2025.
[78] Rede Feminista de Saúde, Girls Who Are Mothers Study, 2023.

These women are more likely to experience interrupted careers, be forced into precarious or informal work, and struggle with poverty.[79]

Black and Indigenous women, who are more likely to be denied access to safe abortion, face compounded discrimination and economic vulnerability.[80] Restricted abortion access also correlates with increased exposure to intimate partner violence and abuse.[81] In regions where legal abortion services are scarce or obstructed—especially the North, Midwest and Northeast—access to reproductive healthcare is a predictor of women's social mobility.[82] The absence of support services, including post-abortion care, results in deteriorating health outcomes and loss of income due to disability or long-term illness.

Argentina's Plan Nacional de Prevención del Embarazo no Intencional en la Adolescencia (Plan ENIA), an intersectoral initiative involving the health, education and social development sectors, has been associated with substantial social and economic returns. Estimates produced with the support of the United Nations Population Fund Regional Office for Latin America and the Caribbean suggest that every US$1 invested in the programme generated approximately US$4.30 in social return.[83] Public health policies that systematically remove barriers to adolescent reproductive care, such as Argentina's National Plan for the Prevention of Unintended Pregnancy in Adolescence (Plan ENIA), protect the long-term economic autonomy of women by preventing early school dropout, thereby mitigating the intergenerational transmission of poverty and enhancing future formal labor market access.[84] Similalrly, a 2017 Canadian study found that unplanned births significantly hindered women's ability to maintain employment, earn income, and pursue life goals, while also negatively impacting their physical and mental health.[85] Recent American research

[79] Conectas et al., UPR Submission on Gender and SRHR in Brazil, 2022.
[80] Criola, Black Women and Reproductive Justice Dossier, 2020–2021.
[81] CEDAW Shadow Report by Conectas et al., 2024; CRC Concluding Observations on Brazil, 2025.
[82] Impulsa, 'Barreiras de acesso ao aborto legal', 2025.
[83] Silvina Ramos et al *Plan ENIA 2017–2023: Oportunidades de vida para adolescentes en la Argentina* (Buenos Aires: Centro de Estudios de Estado y Sociedad & United Nations Population Fund, 2024), discussed in "Plan ENIA, una política pública que amplió oportunidades en la vida de adolescentes de Argentina" CTA (15 July 2025).
[84] *See* United Nations Population Fund (UNFPA) & Centro de Estudios de Estado y Sociedad (CEDES), *Consecuencias Socioeconómicas del Embarazo en la Adolescencia en Argentina* [Socioeconomic Consequences of Adolescent Pregnancy in Argentina] (2020) (utilizing the MILENA methodology to demonstrate that adolescent pregnancy costs the Argentine economy billions in lost educational, employment, and tax revenue due to suppressed female labor market integration).
[85] Jordana Borzellino, "Fighting for Abortion Access in Canada: A Constitutional Analysis," 87.

shows that the legalization of abortion is associated with a decline in birth rates, particularly among teenagers, unwed women, and other vulnerable groups, which in turn improves economic outcomes including higher educational attainment and better employment prospects.[86]

North American research shows that the disruption of education and limited employment opportunities spurred by teenage pregnancy also tend to have the long-term effect of perpetuating cycles of poverty.[87] Children born after abortion reform are less likely to grow up in poverty or rely on public assistance, and more likely to achieve higher education and economic stability—shattering intergenerational cycles of disadvantage.[88] The economic ripple effects of abortion access are long-term and intergenerational, improving not only immediate financial conditions, but also shaping future opportunities and reducing reliance on social support systems.[89]

The legalization of abortion has its greatest impact on marginalized groups. In 2014, more than 60% of those seeking abortions in the US were women of colour and about half lived at less than the federal poverty level.[90] These communities experienced the ripple effects of *Roe* at higher rates and disproportionately benefited from increased access to abortion care. In addition, researchers have found that people who are forced to carry their pregnancies to term are more likely to stay with their abusive partners and experience domestic violence.[91]

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[86] Anna Bernstein & Kelly M. Jones, The Economic Effects of Abortion Access: A Review of the Evidence, (Washington, DC: Institute for Women's Policy Research, 2019), https://iwpr.org/wp-content/uploads/2020/07/B379_Abortion-Access_rfinal.pdf, 2.
[87] Dorothy Shaw & Wendy V. Norman, "When There are no Abortion Laws: A Case Study of Canada," Best Practice & Research Clinical Obstetrics and Gynaecology 62 (2020), 5.
[88] Anna Bernstein & Kelly M. Jones, The Economic Effects of Abortion Access: A Review of the Evidence, 10.
[89] Ibid at 19.
[90] Jenna Jerman, Rachel K Jones & Tsuyoshi Onda, "Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008" (2016) 48(4) Perspectives on Sexual and Reproductive Health 191.
[91] See Sarah C.M. Roberts, et al., Risk of violence from the man involved in the pregnancy before and after abortion or denial of abortion, 14(1) BMC Medicine 144 (2014)

Generally, people who have a child with their violent partners are also tied to their abusers in more enduring ways. For example, they are more likely to experience economic and legal codependency as they embark on parenthood.[92]

VIII. DECRIMINALISING ABORTION

Whilst the focus of the current intervention is not the issue of decriminalisation, it is important to highlight court decisions in which abortion was decriminalised, in order to indicate which rights were relied upon by courts. It is these same rights that are relevant in the context of eliminating administartive, institutional and other barriers in accessing safe and legal abortion.

In 1988, in the case of *R v. Morgentaler*[93], the Supreme Court of Canada (SCC) struck down the criminalization of abortion, ruling that procedural barriers restricting legal access to abortion violated the rights to life, liberty, and security of the person.

In 2006, the case C-355[94] resulted in a ruling from the Colombian Constitutional Court (CCC) that revolutionized abortion access, despite previous cases and law that upheld its criminalization. The CCC utilized international instruments such as the United Nations Convention on the Elimination of All Forms of Discrimination Against Women to establish legal precedent that would allow voluntary interruption of pregnancy when the woman's life/health is at risk, when fetal malformation renders extrauterine life unviable, and when pregnancy is the result of rape. This ruling asserted that the complete criminalization of abortion disproportionately protected fetal rights and infringed on the dignity of women by forcing them "into the role of mere reproductive instruments."[95]

[92] Pallitto, C.C. et al., 'Intimate Partner Violence, Abortion, and Unintended Pregnancy: Results from the WHO Multi-country Study on Women's Health and Domestic Violence', International Journal of Gynaecology and Obstetrics, 2013.
[93] CANADÁ. Suprema Corte. R. vs. Morgentaler. [1988] 1 SCR 30
[94] Sentencia C-355/06.
[95] Bergallo, Paola, and Agustina Ramon Michel. 2016. "Abortion." In The Latin American Casebook: Courts, Constitutions and Rights, edited by Juan González Bertomeu and Roberto Gargarella, 36–59. London: Routledge.

In 2022, the CCC revisited the constitutionality of abortion through the C-055[96] decision, where it shifted from a ground-based model of abortion regulation to a mixed model. It ruled that women and health practitioners may only be prosecuted when an abortion happens after week 24 of gestation and is not motivated on the grounds of health, rape, incest, forced insemination, or malformations. This ruling cited the right to health, to equality, and to freedom of conscience as to why criminal law is not the most appropriate tool to protect prenatal life. In addition, the CCC urged the state to remove any barriers to exercising the sexual and reproductive rights which were identified in the ruling.[97] It is important to note that there are both territorial and intersectional barriers to abortion access – these barriers significantly impact the most historically vulnerable social groups, including migrants, Afro-descendant, and indigenous populations.

IX. ADDRESSING BARRIERS TO ACCESSING ABORTION

Below, we present cases from the European human rights system, Brazil, Argentina, Canada, Colombia, Ireland, Kenya, and South Africa to illustrate the different contexts in which the courts of these selected countries have protected the rights of women and other pregnant persons in the context of administrative, institutional, and other barriers to accessing abortion services.

a) CONSCIENTOUS OBJECTION

Conscientious objection presents a real obstacle to accessing abortion in Brazil, even though the procedure is legally allowed in specific cases such as rape, risk to the pregnant person's life, and fetal anencephaly.[98] Healthcare professionals are permitted to refuse involvement in abortions on moral or religious grounds, but this right is often exercised so broadly that it limits patients' ability to obtain care in

[96] Sentencia C-055/2022.
[97] Barriers include the penal prohibition of abortion and lack of access to information about available options (adoption, abortion) for pregnant people and to contraception and pregnancy prevention tools.
[98] Debora Diniz & Alberto Madeiro "Conscientious objection and abortion in Brazil" (2012) 36(1) Reproductive Health Matters 37.

practice.[99] It is not uncommon for doctors, nurses, or even entire teams within a facility to refuse to perform abortions, leaving patients with no available provider. Although professional guidelines say that those who object should refer patients to someone who will assist, this does not always happen.[100] Even when referrals are made, finding another provider can be difficult, particularly in public hospitals or in rural and more conservative areas.

For patients, this often means delays, being redirected between facilities, and having to repeatedly recount personal and sometimes traumatic experiences. In some cases, these delays result in the prolongation of gestational age, effectively hindering the right in practice.[101] Stigma around abortion also contributes to the problem, as providers may worry about social or professional consequences.[102] In the absence of strong oversight and enforcement, conscientious objection moves beyond an individual moral choice and becomes a wider systemic issue, tipping the balance away from patient access and toward provider preference.

In Brazil in 2020[103], a 10-year-old girl who became pregnant after being raped by her uncle in Espírito Santo was initially denied access to legal abortion due to the hospital's refusal based on “conscientious objection.” More than 70% of hospitals in the state reportedly refused to provide the service.The judge of the Court of Childhood and Youth of São Mateus (ES) authorized the procedure, arguing that the child's will is sovereign. However, the child had to travel to another state to carry out the decision, since the hospital where she was admitted in Espírito Santo refused to perform the legal abortion because the girl's pregnancy had passed 22 weeks.[104] The remainder of this section will consider how courts in Canada and Colombia have safeguarded the rights of pregnant people seeking abortions in the context of conscientous objection.

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[99] Alberto Madeiro & Debora Diniz “Abortion in Brazil: what is known about the magnitude, trends and characteristics?” (2016) 24(48) Reproductive Health Matters 68.

[100] Ibid.

[101] https://www.hrw.org/news/2025/10/15/conscientious-objection

[102] Ibid.

[103] BRAZIL. Supreme Federal Court (Supremo Tribunal Federal – STF). *Claim of Non-Compliance with a Fundamental Precept (ADPF) No. 737.*

[104] Available at: https://g1.globo.com/es/espirito-santo/noticia/2020/08/16/menina-que-engravidou-apos-ser-estuprada-deixa-o-es-para-interromper-gravidez-em-outro-estado.ghtml. Accessed on: January 26, 2026.

Canada

In a unanimous 2019 decision, the Ontario Court of Appeal held that requiring physicians who conscientiously object to performing abortions to provide an effective referral to other abortion providers is a violation of religious freedom[105]. However, the Court insisted that this violation is justified because the absence of such a policy would shift the burden to patients and could delay access to urgent health care. The Court concluded that the effective referral requirement strikes a proportionate balance between the rights of physicians and the rights of patients, stating that personal beliefs should not obstruct access to legal medical services.

Colombia

In landmark rulings such as Sentence C-355 of 2006 and SU-096 of 2018, the CCC determined that conscientious objection is a strictly individual right; therefore, institutions such as hospitals or clinics cannot claim it to refuse services. Furthermore, only medical personnel directly involved in the procedure may object, excluding administrative staff or those providing pre- or post-operative care. To prevent conscientous objection from becoming a barrier to access, objecting doctors must provide a written justification and fulfill an immediate duty to refer the patient to a non-objecting provider. This right is waived entirely in emergency cases where a woman's life or health is at risk and no alternative provider is available. Following the 2022 decriminalization of abortion up to 24 weeks, these standards remain critical to ensuring timely and equitable access to reproductive services across the country.

b) OBTAINING CONSENT/AUTHORISATION

In practice, a personal decision alone is insufficient to secure access to abortion in Brazil, even in cases expressly permitted by law. Access to legal abortion is highly medicalized and institutionally mediated, typically depending on the authorization and assessment of physicians and multidisciplinary hospital teams, including psychologists and social workers. In many cases, particularly where the

[105] CANADÁ. Tribunal de Apelação de Ontário. Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario. 2019 ONCA 393 (CanLII).

pregnancy results from rape, survivors are subjected to additional layers of scrutiny, bureaucratic hurdles, and credibility assessments regarding the circumstances of the sexual violence. Although Brazilian law does not require prior judicial authorization or criminal investigation for access to abortion in rape cases, institutional practices frequently impose informal verification mechanisms that operate as barriers to care. It is because these structural barries routinely prevent effective access to rights already recognized under Brazilian law that courts have been called upon to intervene. For example, in October 2024[106], the Rio Grande do Sul Court of Justice ruled that the victim's testimony alone is sufficient to authorize legal abortion in cases of sexual violence. This section considers instances in which courts in Argentina, Canada, Colombia, South Africa and the United States of America have considered the barrier of obtaining another party's consent as a requirment for obtaining an abortion.

Argentina

In 2012, the Supreme Court of Justice of Argentina (CSJN) authorized abortion for a 15-year-old girl who had been raped by her stepfather.[107] It clarified that abortion is not punishable when there is danger to the woman's life or health and when the pregnancy results from non-consensual sexual intercourse. It further specified that prior judicial authorization or police reporting is not necessary to access abortion in such cases. The CSJN also urged national and provincial authorities to implement and operationalize hospital protocols for the specific care of non-punishable abortions in order to remove all administrative or factual barriers to access to medical services. The CSJN's insistence led to the publication by the Ministry of Health of the "Protocol for Comprehensive Care for Persons Entitled to Legal Termination of Pregnancy," which became crucial in guiding health teams toward standardized access to abortion.

Canada

[106] RIO GRANDE DO SUL (State). Court of Justice of the State of Rio Grande do Sul. *Criminal Appeal No. 5004511-71.2020.8.21.0060.*
[107] ARGENTINA. Supreme Court of Justice of the Nation. *F., A. L. s/ self-satisfying measure.* Case no. 335:197. Judgment of 13 March 2012.

In *Daigle v. Tremblay*[108], the SCC concluded that the father of a fetus/child does not have legal standing to interfere with the reproductive choices of pregnant persons. In this ruling, the SCC removed a substantial barrier on those who seek abortion because allowing the father of the fetus to be a decision maker in the abortion proceedings add unnecessary burden on obtaining an abortion by allowing actors other than the mother of the fetus to impede te process.

Colombia

In Ruling SU-297 of 2025, Colombia's Constitutional Court determined that health entities (EPS) and the Indigenous Intercultural Health System (SISPI) cannot require permits or authorizations from indigenous leaders for abortion services. The Court established that voluntary interruption of pregnancy is an individual fundamental right that cannot be subjected to collective vetoes or internal sanctions. This decision overrides traditional restrictions to protect women's reproductive autonomy.

South Africa

In 2004, the Christian Lawyers Association brought a case[109] to the High Court, objecting to the Choice on Termination of Pregnancy Act on the grounds that pregnant people under the age of 18 should not be able to receive abortive care without their parents' consent. The High Court sided with the Minister of Health who insisted that since the statute already requires doctors to obtain informed consent, the decision of who is eligible to give informed consent should be left to the medical professionals on an individual-by-individual basis.

c) *RESTRICTIONS ON PROVIDERS*

[108] CANADÁ. Suprema Corte. Tremblay vs. Daigle. [1989] 2 SCR 530, 1989 CanLII 33, 62 DLR (4th) 634.
[109] *Christian Lawyers Association v Minister of Health and Others* 2005 (1) SA 509 (T); 2004 (10) BCLR 1086 (T).

Under Brazilian law and health regulations, only medical doctors are permitted to perform abortions. Mid-level providers such as nurses or midwives are not authorised to perform the procedure.[110] The narrow class of authorised providers is widely recognised as a structural barrier for pregnant people who seek to obtain an abortion.[111] The number of proffesionals who perform abortions can also be reduced in contexts where access to abortion is frustrated by criminalisation or unclear legal frameworks, as was the case in Colombia before the legalisation of abortion in 2022, doctors may refrain from performing abortions or adopt positions opposed to it, out of fear of being sanctioned by the state bodies.[112] This fear results in a shortage of practitioners willing to provide abortion procedures, leading women to seek unsafe and clandestine options.[113] This section will oultine court decisions from that focused on the ability of healthcare professioanls to perform abortions.

Kenya

In 2014, the Kenyan Court of Appeal acquitted a nurse who had been sentenced to death for allegedly trying to help a young woman get an abortion in 2014. The Court of Appeal found that the trial court referred to an abortion theory that is unreasonable and unproven in Court to warrant Mr. Tali's conviction and death sentence. The decisive ruling of *Jackson Namunya Tali v. The Republic of Kenya*[114] helped reduce the fear of health care workers around providing medical services to women seeking reproductive health services. The findings in this case were reaffirmed in *PAK and Salim Mohammed v. Attorney General et al.*,[115] where the High Court of Kenya explicitly found that abortion is a fundamental right under the Constitution, thus making arbitrary arrests and prosecution of patients seeking abortion care or health care providers offering abortion services illegal. The Court insisted that using the penal code to criminalize abortion without regard for the

[110] Alberto Madeiro & Debora Diniz "Abortion in Brazil: what is known about the magnitude, trends and characteristics?" (2016) 24(48) Reproductive Health Matters 68.
[111] Alberto Madeiro & Debora Diniz "Abortion in Brazil: what is known about the magnitude, trends and characteristics?" (2016) 24(48) Reproductive Health Matters 68.
[112] Bautista Revelo, A. J., Joseph, A., y Martínez Osorio, M. (2017). Cárcel y muerte: El secreto profesional como garantía fundamental en casos de aborto. Dejusticia at 26.
[113] Ibid.
[114] [2014] KEHC 2813 (KLR).
[115] [2022] KEHC 262 (KLR).

Constitution's framework undermines women's reproductive rights. The Court directed the Kenyan parliament to enact an abortion law and public policy framework that aligns with the Constitution.

d) *TRAVEL TO PROVIDERS*

As stated above, in Brazil, in 2023, one in every three women who accessed lawful abortion services was required to travel to another city in order to exercise this right[116], given that fewer than 4% of Brazilian cities provide this service.[117] This section highlights court decisions from Colombia and Ireland that indicate how distance from clinics can constitute a barrier that frustrates access to abortion.

Colombia

In ruling C-055 of 2022, the Constitutional Court of Colombia moved beyond a formalistic view of rights to address the 'insurmountable obstacles' of access for women in marginalized territories. The Court noted that for those living in more remote areas of the country, the then-existing legal framework was ineffective. By analyzing data on the concentration of health services in urban centers, the Court recognized that the immense travel times, the lack of regional providers, and the prohibitive costs of transportation and lodging created an insurmountable barrier. Consequently, the Court determined that maintaining abortion as a criminal offense in the Penal Code did not just regulate a practice; it effectively imposed a geographic denial of fundamental rights, ensuring that a woman's ability to exercise her reproductive autonomy was determined more by her geographic coordinates and financial status than by the law itself.

Ireland

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116 Available at: https://oglobo.globo.com/saude/noticia/2024/06/15/aborto-legal-1-a-cada-3-mulheres-precisou-sair-de-sua-cidade-para-realizar-o-procedimento-em-2023.ghtml. Accessed on: 19 Nov. 2025.

117 JACOBS, Marina Gasino. *Provision and Performance of Legal Abortion in Brazil: An Analysis of Data from the Outpatient and Hospital Information Systems and the National Registry of Health Establishments.* 2022, p. 112. Available at: https://repositorio.ufsc.br/bitstream/handle/123456789/235606/PGSC0322-T.pdf?sequence=-1&isAllowed=y

In the *X Case* in 1992,[118] a 14-year-old girl who became pregnant as a result of rape was prevented by the High Court from traveling to the United Kingdom for an abortion. The Supreme Court overturned this ruling, holding that although there was no right to travel for a risk to health, because X was suicidal, this instance fell under the right to travel when there is a substantial risk to one's life.

e) *INTIMIDATION AROUND CLINICS*

Intimidation against abortion clinics in Brazil is a real and ongoing issue that affects both patients and healthcare providers, even though abortion is legal in limited circumstances.[119] A widely reported example took place in 2020, when a 10-year-old rape survivor sought a legal abortion. Protesters gathered outside the hospital, shouting abuse and attempting to block access, forcing staff to take extra measures to ensure she could enter safely and receive care.[120]

In June 2025[121], a lower court in the Rio de Janeiro Court of Justice granted an injunction suspending the effects of Municipal Law No. 8,936/2025, which required hospitals and health clinics to display posters discouraging abortion, even in legally permitted cases. The judge considered that the law violated federal jurisdiction over criminal and health matters, infringed on fundamental rights, and constituted obstetric violence. The court ordered the removal of the posters. The case is still awaiting a final ruling on its merits. The remainder of this section considers rulings from Australia and Canada that ruled that pregnant individuals have the right to access healthcare free from intimidation.

Australia

[118] *Attorney General v X* [1992] 1 IR 1.
[119] https://pmc.ncbi.nlm.nih.gov/articles/PMC3253672/
[120] https://www.hrw.org/news/2020/08/20/10-year-old-girls-ordeal-have-legal-abortion-brazil
[121] RIO DE JANEIRO (State). Court of Justice of the State of Rio de Janeiro. Public Civil Action No. 3008320-09.2025.8.19.0001. 4th Public Treasury Court of the Capital District.

Clubb v Edwards and *Preston v Avery*[122] is a landmark High Court of Australia 2019 decision that upheld the constitutional validity of "safe access zones" (buffer zones) around abortion clinics in Victoria and Tasmania. The court ruled safe access zone laws, which prohibit certain communications – including harassment, intimidation and filming without consent - near clinics, do not invalidly burden the freedom of political communication, which is implied in the Australian Constitution. The High Court rejected challenges by anti-choice activists, confirming that protecting the safety, dignity, privacy, and well-being of patients and staff justifies these restrictions.While the majority acknowledged that the laws burden the implied freedom, the Court determined the laws were appropriate, adapted, and proportionate to achieving their legitimate purpose. This decision reinforced the authority of states to create protected access zones around medical facilities, prioritizing patient privacy and safety over freedom of speech to prevent harm to people seeking access to reproductive health care services.

Canada

In the 1996 case of *R v. Lewis*[123], the British Columbia Supreme Court ruled that certain sections of the the provincial Access to Abortion Services Act[124] (AASA) limiting sidewalk interference (s 2(1)(a) and protest (s 2(1)(b)) was justified to protect access to abortion and ensure the safety, dignity, and privacy of patients and providers. Although the AASA infringed on the defendant's Charter rights to freedom of expression and religion by creating “bubble zones” around the homes and clinics of abortion providers, these limits were found to be proportionate and necessary.

f) *MEDICAL RESTRICTIONS*

This section of the intervention considers the medical restrictions that have been considered by courts in Brazil and the European human rights system.

[122] (2019) HCA 11.
[123] CANADÁ. Tribunal de Apelação da Colúmbia Britânica. R. vs. Lewis. (1997), 98 B.C.A.C 96 (CA).
[124] COLÚMBIA BRITÂNICA (Canadá). Access to Abortion Services Act. Revised Statutes of British Columbia, 1996.

Brazil

In May 2024[125], this Supreme Court granted an injunction suspending the effects of CFM Resolution 2.378/2024, which prohibited the use of fetal asystole in legal abortions after 22 weeks in cases of rape. The resolution was challenged as an unconstitutional restriction on legal abortion procedures, with no basis in the Penal Code or Law 12.845/2013. The case is still awaiting a final judgment on its merits.

In addition, Brazilian courts have also considered the need to recognise further justifications for access to abortion. In March 2025[126], the São Paulo State Court of Justice granted an injunction determining that stealthing (non-consensual removal of a condom) is analogous to rape and therefore guarantees access to legal abortion. The court ordered the Women's Health Reference Center to perform abortions in such cases, highlighting the illegal barriers imposed by health professionals. The case is still awaiting a final judgment on its merits.

European human rights system

The *Tysiąc v. Poland*[127] judgment of the European Court of Human Rights addressed the need for effective procedures to determine whether the legal conditions for obtaining an abortion had been met. The applicant, who suffered from severe myopia, was denied a lawful therapeutic abortion despite medical warnings that continuing the pregnancy could seriously endanger her eyesight. Following the birth of her child, she experienced a retinal haemorrhage and was registered as severely disabled. The Court held that the absence of an effective and accessible mechanism to resolve disputes between the applicant and medical professionals amounted to a violation of Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private and family life.

g) *OTHER ADMINISTARTIVE BARRIERS*

[125] BRAZIL. Supreme Federal Court (Supremo Tribunal Federal – STF). Fundamental Precept Violation Petition *(ADPF) No. 1141.*
[126] SÃO PAULO (State). Court of Justice of the State of São Paulo. Case No. 1015025-03.2025.8.26.0053. 13th Public Treasury Court, Central Forum – Public Treasury/Accidents Division.
[127] EUROPEAN COURT OF HUMAN RIGHTS (ECtHR). *Case of Tysiąc v. Poland.* Application No. 5410/03. Judgment of March 20, 2007.

This section of the intervention considers other administartive barriers that do not fall into the aforementioned categories. The court decisions in this section come from Kenya and South Africa.

Kenya

In Kenya, the Ministry of Health withdrew an important policy document that guided health care providers on when and how they could provide safe and legal abortion and post-abortion services in 2014. The case *FIDA Kenya and Others v. Attorney General and Others*[128] was sparked by the death of a 14-year-old girl who died from complications that resulted from an unsafe abortion. In 2019, the Kenyan High Court ruled that, by arbitrarily withdrawing the policy document, the Ministry of Health had created uncertainty as to the status of legal abortion and discouraged medical providers from performing abortions for fear of criminal prosecution, which ultimately forced women to rely on unsafe, clandestine abortions. It was thus decided that the act by the Ministry of Health "disabled the efficacy"[129] of the right to abortion as outlined in the Constitution, which was not only unjustifiable but also a violation of women's and girl's right to health care, right to non-discrimination, and right to information.

South Africa

In 2022, the South African Constitutional Court ruled on the constitutionality of the Births and Deaths Registration Act[130] (BADRA) based on the objection that it does not provide for the burial of fetal remains of a pregnancy loss by miscarriage or abortion.[131] The Constitutional Court ultimately decided that BADRA is not unconstitutional because it does not contain any limitations regarding these burials. As for whether there was a right to burial in such cases, the Constitutional Court conceded that it did not have the necessary evidence to evaluate how hospitals would

[128] [2019] KEHC 6928 (KLR).
[129] Ibid para 402.
[130] ÁFRICA DO SUL. Births and Deaths Registration Act. Lei nº 51 de 1992.
[131] [2022] ZACC 20; 2024 (6) BCLR 827 (CC) (15 June 2022)

manage the burial or cremation of pre-viable fetuses. This detail cited in the ruling was first mentioned in an amicus curiae that expressed concern that the right to such burial would create an administrative burden beyond the state's capacity and potentially limit access to abortion services due to additional infrastructure needed to separate and keep fetal matter for burial.

X. FINAL CONSIDERATIONS AND REQUESTS

Considering the relevance of the matter, the broad social impact of the controversy, and the Petitioners' demonstrated adequate representativeness through their longstanding institutional engagement, the signatory organizations respectfully request that Your Excellency:

A) Admit us in these proceedings in the capacity of *amici curiae*, pursuant to Article 138 of the Brazilian Code of Civil Procedure, thereby enabling to fully exercise the rights inherent to such role, including the submission of legal arguments, briefs (*memoriais*), and the opportunity to present oral arguments before the Plenary;

B) Order that they be duly notified, through their legal representatives, of all procedural acts.

C) That the present ADPF be adjudicated fully in favor of the Petitioner, with the recognition of an Unconstitutional State of Affairs within the Brazilian public health system as it pertains to the effective implementation of access to legal abortion.

D) That the unconstitutionality be declared of any administrative, regulatory, or interpretative acts that restrict the legally established grounds for abortion, as well as of any undue barriers imposed on access to legal abortion by any branch of government — Executive, Legislative, or Judiciary.

E) That a public consultation be initiated to gather contributions from technical, scientific, and civil society organizations, with a view to the development of a National Plan for the Implementation of Legal Abortion, including specific measures to address structural inequalities and institutional discrimination related to gender, race, social class, and region.

Respectfully submitted for Your Excellency's consideration.

São Paulo, May , 2026.

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