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(de)criminalization

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ABSTRACT

Questo lavoro si pone l'obiettivo di analizzare il percorso di leggi e proposte di legge sull'aborto in Brasile dalla metà del Novecento ad oggi. Gli Artt.124-128 del Codice Penale Brasiliano del 1940 regolano l'accesso all'aborto in modo restrittivo, considerandolo legale solamente in due casi: qualora la vita della gestante sia in estremo pericolo di vita, e quindi la pratica abortiva rappresenti l'unico mezzo per salvarla; e qualora la gravidanza sia risultato di una violenza sessuale. Tale legislazione è rimasta pressoché intatta nel corso dei decenni, nonostante l'urgenza di modificarla, poiché gli aborti illegali sono una delle piaghe che più affliggono il Paese. Infatti, la criminalizzazione di tali pratiche ha indotto sempre più donne a ricorrere a cliniche e metodi illegali, abortendo in condizioni igienico-sanitarie e psico-emotive non adeguate. Le statistiche nazionali sull'aborto del 2016 riportano che più una donna su cinque si è sottoposta ad almeno un aborto entro il quarantesimo anno d'età; nel 2015, circa 416 mila donne hanno dichiarato di essere ricorse ai servizi abortivi legali messi a disposizione di strutture sanitarie pubbliche e private. Tuttavia, si stima che gli aborti illegali superino il milione.

Già dalla metà degli anni '70, in concomitanza col processo di democratizzazione del Paese, il dibattito sul tema si è infuocato, coinvolgendo da un lato forze politiche e sociali a favore di legalizzazione e decriminalizzazione, e dall'altro gruppi favorevoli al mantenimento dello *status quo* restrittivo della legge. Nonostante decenni di confronto dentro e fuori il Congresso Nazionale brasiliano, la legge sull'aborto vigente è rimasta quella del 1940. Solo nel 2012, una sentenza del Supremo Tribunale Federale ha introdotto la possibilità di abortire legalmente nel caso in cui il

feto sia affetto da anencefalia; tuttavia, tale disposizione non è da considerarsi come una modifica del Codice Penale.

Lo scopo di questa tesi, pertanto, è di individuare quali forze hanno partecipato al dibattito sull'aborto in Brasile e i motivi per cui il risultato della loro interazione ha impedito importanti modifiche alla legislazione. Qualsiasi Stato che si dichiari civile e democratico dovrebbe garantire ai propri cittadini l'esercizio pieno dei propri diritti, anche di quelli sessuali e riproduttivi; la criminalizzazione dell'aborto espressa dalle leggi brasiliane, perciò, può essere intesa come una violazione dei diritti umani e, più nello specifico, delle donne. La rigidità delle norme e il conservatorismo che pervade il Congresso Nazionale rendono il Brasile responsabile di non rispettare gli impegni sottoscritti a livello internazionale, e di non garantire ai propri cittadini libertà di scelta e accesso facilitato ai servizi sanitari relativi alla contraccezione, alla riproduzione e all'interruzione volontaria di gravidanza.

Nello specifico, questo lavoro si articola in tre capitoli, così da approcciarsi sempre più dettagliatamente al dibattito sull'aborto in Brasile.

Il primo capitolo introduce la questione dell'aborto in Brasile nel contesto del diritto internazionale. I diritti sessuali e riproduttivi sono stati introdotti nello scenario istituzionale internazionale a partire dagli anni '80 del Novecento: oggetto di trattati e convenzioni - come quelle stipulate durante le conferenze di Beijing (1994) e de Il Cairo (1995) - sono entrati a far parte dei diritti umani. Le Nazioni Unite e le loro agenzie specializzate da allora raccomandano agli Stati di garantire l'accesso facilitato ai servizi sanitari a tutti i cittadini, senza operare alcuna discriminazione, e promuovono la revisione delle legislazioni penali degli Stati sui diritti sessuali e riproduttivi in senso meno restrittivo. Tra questi, il ricorso alle pratiche abortive

dovrebbe essere depenalizzato e legalizzato, nel totale rispetto dei diritti delle donne e della scelta di come disporre liberamente del proprio corpo.

Nonostante tale clima internazionale favorevole alla legalizzazione, il Brasile ha continuato a stigmatizzare l'aborto e a non modificare la legislazione nazionale esistente. Vi sono stati alcuni tentativi di garantire alle donne il rispetto dei loro diritti, come la creazione nel 1983 di un programma di assistenza alla salute femminile, tuttora vigente; tuttavia, nell'anno successivo, in occasione della riforma del Codice Penale brasiliano, la legge sull'aborto non ha subito alcuna modifica, rimanendo fortemente severa e restrittiva. Anche negli anni '90 i progressi sono stati esigui nel garantire diritti sessuali e riproduttivi: un chiaro esempio di ciò è stato il rifiuto da parte del Congresso Nazionale della proposta di legge n. 20/1991, che proponeva l'istituzione sul territorio nazionale di servizi abortivi all'interno del sistema sanitario pubblico. Negli anni 2000, come già riportato, solo la sentenza del Supremo Tribunale Federale sui feti anencefali è da considerarsi come un piccolo passo verso la garanzia del diritto all'aborto.

Ciò che si può dedurre, è una forte discrepanza tra le convenzioni internazionali pro-legalizzazione, a cui il Brasile ha aderito, e la legislazione interna del Paese. Lo Stato brasiliano chiude gli occhi di fronte ad una realtà nazionale in cui i diritti sessuali e riproduttivi sono negati ma la questione dell'aborto è particolarmente urgente. Infatti, il ricorso ad aborti illegali non solo mette le donne nella condizione forzata di violare la legge, ma ha anche un forte impatto economico sul sistema sanitario. Molte gestanti, dopo essersi sottoposte ad aborto illegale, sono costrette a ricorrere a cure ospedaliere a causa di complicazioni post-abortive, generando una spesa di 40 milioni di *reais* all'anno; qualora abortire fosse legale, l'impatto sulla spesa pubblica sarebbe di entità ben minore. Inoltre, la criminalizzazione di questa

pratica crea uno stigma morale verso le donne che decidano di ricorrervi, donne che spesso vengono maltrattate e umiliate a causa delle loro scelte dal personale medico. Possiamo concludere che tali abusi all'interno del sistema sanitario rappresentano una violazione dei diritti umani fondamentali, a tal punto che le Nazioni Unite hanno più volte invitato il governo brasiliano a rivedere la propria legislazione penale sull'aborto. Tuttavia, la situazione di illegalità e criminalizzazione è rimasta intatta fino ad oggi. Ciò è dovuto soprattutto alle forze politiche che hanno dibattuto il tema all'interno del Congresso Nazionale.

Il secondo capitolo, infatti, presenta tali attori e mostra le ragioni e le premesse sulle quali si basa il loro supporto - o meno - alla tutela di diritti sessuali e riproduttivi. Da un lato, vi è il movimento pro-vita, che si è opposto strenuamente all'aborto in quanto attribuisce al feto lo stesso diritto alla vita che dovrebbe essere garantito anche agli individui nati; questo approccio nasce dall'idea che la vita inizi nel momento esatto del concepimento, attribuendo perciò personalità giuridica al feto fin da tale istante. A sostegno di tali idee si schierano le Chiese Neo-pentecostali e i settori più conservatori della Chiesa Cattolica, tra cui la Conferenza Nazionale dei Vescovi Brasiliani. La loro posizione anti-abortista e conservatrice ha a lungo dominato il Congresso Nazionale grazie alla creazione di fronti parlamentari quali il *Frente Parlamentar em Defesa da Vida – Contra o Aborto* e il *Movimento Nacional da Cidadania pela Vida – Brasil Sem Aborto*. L'entità e la forza di tali gruppi, che raccolgono le istanze anti-abortive di vari soggetti - non solo religiosi - hanno impedito qualsiasi modifica della legislazione penale sull'aborto, esercitando forti pressioni all'interno del Congresso.

Dall'altro lato, vi è il movimento a favore della libertà di scelta, che difende l'autonomia femminile per quanto riguarda la sessualità e la riproduzione. I sostenitori

di tale approccio in Brasile vanno identificati soprattutto con il movimento femminista e i settori progressisti della Chiesa Cattolica - ad es., il gruppo *Católicas Pelo Direito de Decidir* -. La loro posizione favorevole alla decriminalizzazione e alla legalizzazione dell'aborto nasce dal presupposto che il diritto alla vita, alla libertà e alla dignità vadano garantiti in primis alle donne e alle gestanti, in conformità con le disposizioni delle convenzioni internazionali sui diritti sessuali e riproduttivi. Al feto, quindi, non viene attribuita alcuna personalità giuridica, poiché non si ritiene che la vita inizi col concepimento, bensì con la nascita. Femministe e Cattoliche progressiste hanno condotto la battaglia per la decriminalizzazione dell'aborto in Brasile con maggiore forza dalla fine degli anni '80, non riuscendo tuttavia ad imporre la loro visione all'interno del Congresso Nazionale, a causa della forte azione di *lobbying* del fronte anti-abortista. Ciò nonostante, all'esterno del Congresso Nazionale, le istanze a favore della decriminalizzazione sono state avanzate dal Supremo Tribunale Federale, che nel 2012 ha emesso una storica sentenza sui casi di anencefalia fetale, e che si sta tuttora consultando circa la possibilità di emettere un'altra sentenza che legalizzi l'aborto entro la dodicesima settimana di gestazione. Il secondo capitolo, perciò, traccia i profili ideologici degli attori religiosi, sociali ed istituzionali che hanno esercitato le più forti influenze durante il percorso legislativo di leggi e proposte di legge sull'aborto.

Partendo da tali presupposti, il terzo capitolo analizza più dettagliatamente alcune delle proposte di legge più rilevanti sul tema dell'aborto che sono state presentate al Congresso Nazionale, e che mostrano come i due fronti sopracitati abbiano cercato di modificare in modo più o meno restrittivo la legislazione esistente sull'aborto. Da un lato, il movimento anti-abortista ha cercato di inasprire le misure punitive per chi commette o si sottopone a trattamenti abortivi. Inoltre, ha avanzato

l'idea negli anni '90 di creare un registro pubblico della gravidanza, così da poter controllare l'accesso delle gestanti ai servizi ospedalieri e individuare eventuali casi di aborti illegali o complicazioni derivanti da essi; tale proposta non è ancora stata adottata, sebbene sia tuttora in discussione. A ciò si aggiunge la proposta di siglare l'*Estatuto do Nascituro*, un documento che salvaguardi e protegga il feto, attribuendogli personalità giuridica e introducendo severe misure punitive in caso vengano lesi i suoi diritti. Infine, il fronte anti-abortista ha richiesto la creazione di Comitati parlamentari di inchiesta che riportino informazioni sulla situazione dell'aborto in Brasile, così da poter elaborare strategie sempre più adeguate di opposizione alla sua legalizzazione.

Dall'altro lato, il fronte a favore della libertà delle donne ha sottoposto al Congresso numerose proposte di legge per la salvaguardia dei diritti sessuali e riproduttivi e per la legalizzazione delle pratiche abortive. Inoltre, ha chiesto l'organizzazione di conferenze e dibattiti pubblici, soprattutto durante il governo Lula, così da sensibilizzare la cittadinanza sul tema. Nonostante gli sforzi compiuti a favore della legalizzazione, che si sono concentrati negli anni '80 e '90, le forze conservatrici all'interno del Congresso Nazionale, trascinate dai rappresentanti delle Chiese Neopentecostali e della Chiesa Cattolica tradizionale, hanno impedito qualsiasi passo verso una legislazione meno severa. Come già ribadito, l'unico passo avanti è rappresentato dalla sentenza del Supremo Tribunale Federale sui feti anencefali - *Arguição de Descumprimento de Preceito Fundamental No. 54* -, sebbene tale documento non rappresenti una modifica delle disposizioni del Codice Penale. Si può perciò concludere che il conservatorismo e l'ortodossia religiosa abbiano prevalso nel Congresso Nazionale fin dalla metà del secolo scorso.

Tale immobilità è stata causata da congiunture politiche specifiche. Il tema dell'aborto ha iniziato ad essere dibattuto già negli anni '60 e '70 ma non è diventato una priorità nell'agenda politica brasiliana fino alla metà degli anni '80. Infatti, la dittatura militare in Brasile (1964-1985) ha catalizzato l'attenzione su altri diritti, quali quello democratici, costituzionali e del lavoro. Solo con il processo di re-democratizzazione del Paese, il dibattito sull'aborto ha preso piede nel Congresso Nazionale, come dimostra l'ingente quantità di proposte di legge sul tema create in quegli anni. Lo scontro tra sostenitori della criminalizzazione, da un lato, e della legalizzazione, dall'altro, è sempre culminato con la prevalenza delle idee conservatrici, di cui soprattutto i rappresentanti religiosi si fanno portavoce. Non casualmente ciò dimostra quanto la religione influisca in modo determinante sul lavoro delle istituzioni brasiliane, andando contro il principio di laicità dello Stato. La riluttanza a cambiare una legislazione ferma nel tempo al 1940 allontana il Brasile dall'essere al passo col cambiamento sociale e con gli standard dei diritti umani promossi a livello internazionale. Piccoli passi in avanti sono stati fatti solamente dal Supremo Tribunale Federale, organo però indipendente dal Congresso Nazionale, e che non ha alcun potere di modificare direttamente il Codice Penale brasiliano. Tuttavia, all'interno del Congresso, la strada verso la legalizzazione dell'aborto sembra essere ancora costellata di moltissimi ostacoli, poiché il conservatorismo è sembrato addirittura intensificarsi negli ultimi anni. Lo status di criminalizzazione e illegalità dell'aborto, oltretutto, rende difficoltosi anche gli studi e le ricerche sul tema, impedendo di cogliere con esattezza e precisione le dimensioni e i contorni di quella che è una delle più urgenti questioni di salute pubblica che il Paese si trova ad affrontare. La sessualità e la riproduzione rappresentano ancora un tabù per la società brasiliana e, in particolare, la criminalizzazione dell'aborto è causa di

violazione di diritti e di libertà. La società e le istituzioni dovrebbero operarsi per garantire e salvaguardare i diritti di tutti, nel rispetto della libertà di ognuno e del principio di laicità, l'unico che può permettere la coesistenza e la tutela di qualsivoglia scelta sull'aborto; è perciò desiderabile che il Congresso Nazionale adotti un'attitudine più orientata al rispetto dei diritti e alla legalizzazione delle pratiche abortive.

INTRODUCTION

“Abortion in Brazil: the legislative path towards its (de)criminalization”: this work addresses the issue of abortion from several perspectives - politics, economy, religion, law, biology -; from those, extended and often controversial debates have been born.

This issue has been widely debated in Brazil since the first half of the 20th century, and its performance was clearly regulated for the first time in 1940. As a matter of fact, the Brazilian Penal Code first allowed abortive practices just in two cases: if the life of the pregnant woman was in danger, so abortion was valued as the only means to save her; or if the pregnancy was the result of sexual violence, and the pregnant women, or her legal representatives, consented to abortion¹. Few changes in the legislation have occurred since that time, despite the topic of abortion acquiring more and more social relevance.

In the last decades, the Brazilian society has undergone a process of development and democratization and new social claims have arisen. Among them, the feminist movement, after the years of the military dictatorship, has started asking for the implementation of all women’s rights and civil society overall is still fighting for it. The Supreme Federal Court too has played a great role in the defense of women’s rights: the third case of legal abortion is represented by the anencephalic condition of the fetus, and this option was added only in 2012².

¹ Presidência da República - Casa Civil - Subchefia para Assuntos Jurídicos, *Decreto-Lei No 2.848, de 7 de dezembro de 1940*. <http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm>. Accessed June 6th, 2017.

² Supremo Tribunal Federal, *Arguição de Descumprimento de Preceito Fundamental - ADPF 54*. <<http://www.stf.jus.br/portal/peticaoInicial/verPeticaoInicial.asp?base=ADPF&s1=54&processo=54>>. Accessed May, 5th 2017.

However, the path towards the *tout court* decriminalization of abortion is still punctuated by obstacles. The analysis of such obstacles is the reason why this work exists; as a matter of fact, it addresses the following questions: which are the most controversial aspects of abortion in Brazil? Whose power and which political conjunctures are involved in the criminalization of abortive practices? Why are these actors against decriminalization? What may we expect from the future? These are the fundamental questions that are being addressed in this thesis.

The aim of this work, thus, is raising awareness on the violation of female rights that result from the current legislation on abortion in Brazil. It is the Brazilian National Congress and the Supreme Court - where abortion is debated - who have the power to rule and regulate society. In doing this, they must (or should) be guided by democratic principles and must guarantee the idea of reasonable pluralism³, especially when the topic of the political debate is either abortion or reproductive rights. As we will see, the current political conjunctures have tried to make abortion laws even stricter, threatening also the freedom of all those women who can resort to legal abortion.

There are many reasons why a country, which claims to be democratic, must guarantee the right to safe and legal abortion to everyone and in any circumstance: no woman should be prevented from exerting her rights; no woman should be forced into pregnancy; no woman should resort to illegal abortion, putting at risk her own health and life. Thus, decriminalizing abortion means respecting everyone's freedom of choice; on the contrary, prohibiting abortion *tout court* or allowing it just in few cases

³ Reasonable pluralism is a term coined by John Rawls in his later works on political liberalism. Rawls uses the term to denote the "fact of a plurality of reasonable, though irreconcilable, moral, religious, or philosophical doctrines". See CANE, Peter, and CONAGHAN, Joanne, *The New Oxford Companion to Law*, Oxford University Press, 2008.

may be considered an obstacle to female freedom, an attempt of the State - and/or the Church – to take control over the female body. Moreover, the criminalization of abortion generates social inequalities because it mainly affects poor citizens. As a matter of fact, affluent people may decide to opt for legal abortive performances abroad, while poor people are forced to resort to illegal clinics in Brazil, where hygienical and professional conditions are not adequate; thus, the incidence of complications and maternal death is much higher for those who do not have enough financial resources to find an alternative solution to illegal abortion.

In addition, a State that grants rights to its citizens may be thought to be socially advanced. May we say that this is the case of Brazil? The Chilean Latin-American School of Social Sciences⁴ has recently developed the Gender and Equality Program: the research has analyzed the political dynamics involving abortion in Brazil, Chile, Mexico and Nicaragua, showing that not only in Brazil do some actors support the criminalization of abortion; this tendency is quite a common feature in Latin America, being the actors, the interests and the controversies almost the same everywhere. Thus, it may be argued that social advancement is far from being reality in most Latin-American countries and is not a distinctive feature of their cultures yet.

To develop the analysis, some basic concepts need to be clarified. First of all, we may be aware that the criminalization of abortion represents a violation of women's sexual and reproductive rights; these are strictly related to human rights, such as right to life, right to health, right to privacy, the prohibition of any form of discrimination etc. Two international institutions, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women (CEDAW) are

⁴ See Facultad Latinoamericana de Ciencias Sociales or FLACSO. <<http://www.flacsochile.org/acerca-de-flacso/>> Accessed May, 5th 2017.

accountable for declaring that sexual and reproductive health is a fundamental part of women's right to health. In particular:

- Sexual rights are “the right of women freely and without coercion, violence or discrimination, to have control over and make decisions concerning their own sexuality, including their own sexual and reproductive health”, as established at the 1995 Beijing Conference on Women⁵. Four years later, the 14th World Congress of Sexology, held in Hong Kong, adopted the Universal Declaration of Sexual Rights, which includes rights to: sexual freedom and autonomy, sexual privacy and equity, right to make free and responsible reproductive choices, right to sexual healthcare⁶.
- Reproductive rights are legal rights related to reproduction. According to the definition of the World Health Organization, they

rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence⁷.

For this reason, States must necessarily guarantee, protect and respect all these rights⁸ and must grant that women can easily access the related healthcare services. Despite the fact that such dispositions are compulsory, many countries still violate them, and Brazil stands among them: for example, the status of criminalization

⁵ United Nations. *Beijing Platform for Action*. Parr. 92, 93-96. <<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>>. Accessed June 18th, 2017.

⁶ World Association for Sexual Health. *Universal Declaration of Sexual Rights*. <http://www.worldsexology.org/wp-content/uploads/2013/08/declaration_of_sexual_rights_sep03_2014.pdf>. Accessed June 18th, 2017.

⁷ World Health Organization, *Reproductive rights and health*. <<http://who.int/reproductivehealth/en/>>. Accessed June 18th, 2017.

⁸ United Nations Human Rights - Office of the High Commissioner. *Sexual and reproductive health and rights*. <<http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/HealthRights.aspx>>. Accessed June 18th, 2017.

of abortion is a large obstacle to the fulfillment of international norms. The main reason for this rigidity in the Brazilian legislation lies in the conservatism and the reluctance of many social, political and religious actors to give women freedom of choice. As we will see in detail in the next chapters, the debate on abortion within and without Brazilian institutions has been characterized by the confrontation among pro-life and pro-choice groups.

On the one hand, the pro-life movement supports anti-abortive laws and struggles for the right to life of the fetus, which is believed to have a juridical personality since the moment of conception. Traditionally, this group has been constituted by Churches: in particular, Evangelical and Neo-Pentecostal Churches are cohesive in the condemnation of abortion; the Catholic Church, instead has no single approach to the issue, because part of it is still pro-life, while some groups within it are pro-choice (e.g. *Católicas pelo Direito de Decidir*).

On the other hand, pro-choice supporters believe that women must be free to make their sexual and reproductive choices and get rid of any patriarchal or institutional pressure. They believe the rights of the pregnant woman are more valuable than those of the fetus, since the latter is not believed to have personal rights from the very moment of conception. In Brazil, the pro-choice front is formed mainly by feminist associations and some sectors of the Catholic Church; however, also some Brazilian institutions - e.g. the Supreme Federal Court and the National Council of Health - have shown their support to pro-choice attitudes.

To sum up, this work will analyze which actors take part into the debate on abortion in Brazil and aims at showing how their beliefs have influenced the legislative path of abortion laws and legislative proposals since 1940. As far as the sources of

information are concerned, the search was mainly based on the website of the Federal Chamber of the National Congress⁹, in particular on the sections “*Atividades Legislativa*” (Legislative Activity) and “*Projetos de Lei e outras proposições*” (Draft Laws and others)¹⁰. Of all legislative tools about abortion, it is worth mentioning:

- *Projeto de Lei* (PL): Bill, legislative proposal under consideration by the legislature, and it does not become law until it is passed by the legislature.
- *Projeto de Decreto Legislativo* (PDC): draft of a Legislative Decree that must be voted by the National Congress and its promulgation does not involve the President of the State, just the decision of the President of the Senate.
- *Requerimento*: Requirement, authoritative or formal demand for something to be done, given, supplied; it may be submitted to the National Congress, which may decide whether to take into consideration the suggestion or not.
- *Indicações* (INC): recommendations; it has no mandatory feature.
- *Sugestão* (SUG): suggestions; it has no mandatory feature.

It is important to highlight that the legislative proposals which date back to the 1980s and until 1996 are not always available in detail on the website of the Federal Chamber; what one can find is: basic information, author, political party, State, notes, submission date, current state of the proposal.

Other legislative documents that have proved fundamental to this search have been: the 1940 Brazilian Penal Code, which contains the main norms on the criminalization of abortion in Art. 124 to Art. 128¹¹; the 1988 Brazilian Constitution;

⁹ See Câmara dos Deputados. <<http://www2.camara.leg.br/>>. Accessed August 2nd, 2017.

¹⁰ See Câmara dos Deputados. <<http://www.camara.leg.br/buscaProposicoesWeb/pesquisaSimplificada>>. Accessed August 2nd, 2017.

¹¹ Presidência da República - Casa Civil - Subchefia para Assuntos Jurídicos, *Decreto-Lei No 2.848, de 7 de dezembro de 1940*. <http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm>.

several surveys and reports of Brazilian Ministries, agencies and institutions. It is worth mentioning the most important:

- *Norma Técnica - Atenção Humanizada ao Abortamento*¹²: it is a document which dates back to 2005, written by the Ministry of Health, which contains the guiding principles that doctors, surgeons and medical personnel should refer to when dealing with abortions.
- *Arguição de Descumprimento de Preceito Fundamental No. 54 (ADPF-54)*¹³: this is a 2012 sentence of the Supreme Federal Court that normatize legal abortion in case of fetal anencephaly.
- *Pesquisa Nacional de Aborto (PNA 2016)*¹⁴: 2016 national abortion survey, conducted by the Institute of Bioethics ANIS (*Instituto de Bioética, Direitos Humanos e Gênero*) and by the University of Brasília.

Clearly, also international treaties and convention have been part of the sources used in this research. In particular, we should mention the dispositions of the 1994 Cairo Conference and of the 1995 Beijing Conference, whose purpose was the promotion of women's rights and the repudiation of any form of violence against women. Furthermore, another relevant document may be found in the 1994 Convention of Belém do Pará, signed by the Organization of American States, that recommends that its Members - among which Brazil stands - prevent discriminative and violent conducts against women.

Accessed June 6th, 2017. The criminalization of abortion appears also in the 1984 revision of the Brazilian Penal Code. Accessed June 6th, 2017.

¹² Ministério da Saúde. *Norma Técnica - Atenção Humanizada ao Abortamento*. Brasília, 2005.

¹³ MELLO, Marco Aurélio, *Arguição de Descumprimento de Preceito Fundamental No. 54 (ADPF-54)*. Available at <<http://www.stf.jus.br/arquivo/cms/noticianoticiastf/anexo/adpf54.pdf>>. Accessed September 24th, 2017.

¹⁴ The results of the survey are available in: MADEIRO, Alberto Pereira; DINIZ, Debora. *Serviços de aborto legal no Brasil – um estudo nacional*. In: *Ciência & Saúde Coletiva*, 21(2), 2016, pp. 563-572.

Despite the relevance of the topic of abortion in Brazil, the available literature is quite recent and does not fully cover every aspect of the matter. This is due to the fact that abortion has been a taboo subject for a long time, and the status of illegality of abortive practice certainly does not encourage experts to make research. Nonetheless, some important works must be reminded. Some of them, though, report the difficulty in accessing or providing information on the topic. Many articles about the magnitude of abortion in Brazil have been written by Debora Diniz, who is an anthropologist, co-founder of the Institute of Bioethics, Human Rights and Gender (Anis) and law professor at the University of Brasília¹⁵. Among her numerous publications, it is necessary to put light on her national abortion surveys (*Pesquisa Nacional de Aborto, PNA*)¹⁶: they are surveys led at macrolevel in order to grasp the reality of abortion in Brazil and their aim is to collect information so as to orient public health strategies. The 2016 Brazilian Abortion Survey showed that in 2016, almost 1 in every 5 women had undergone at least one abortion by the age of 40. In 2015, approximately 416,000 women declared to have had an abortion. Despite being of paramount importance because they contain the most detailed data ever collected, the PNAs have some limits too: they investigate just the urban context and focus on women aged 18-39, at least with a minimum degree of literacy. As concerns the magnitude of abortion, we must remind several works by professor Alberto Pereira Madeiro, Greice Menezes, Estrela Aquino, Maria Isabel Baltasar da Rocha: their articles have been used as a reference for this thesis¹⁷.

¹⁵ More details on Debora Diniz available at <<https://iwhc.org/boards/debora-diniz/>>. Accessed May 27th, 2017.

¹⁶ The results of the survey are available in: MADEIRO, Alberto Pereira; DINIZ, Debora. *Serviços de aborto legal no Brasil – um estudo nacional*. In: *Ciência & Saúde Coletiva*, 21(2), 2016, pp. 563-572.

¹⁷ MADEIRO, Alberto Pereira; DINIZ, Debora. *Serviços de aborto legal no Brasil – um estudo nacional*. In: *Ciência & Saúde Coletiva*, 21(2), 2016, pp. 563-572. MENEZES, Greice; AQUINO, Estrela. *Pesquisa sobre o aborto no Brasil: avanços e desafios para o campo da saúde coletiva*. In: *Caderno Saúde Pública*, 25(2 Suppl), 2009, pp. 193-204. ROCHA, Maria Isabel Baltasar da. *A discussão política sobre*

As concerns the social and moral implications of abortion, the most known authors are researchers Leila de Andrade Linhares Barsted, Luc Boltanski, Cynthia Sarti and Lucila Scavone. Most the articles have been published in specific journals on healthcare, bioethics, or political sciences, e.g. *Revista Brasileira de Ciência Política*, *Revista de Bioética*, *Cadernos de Saúde Pública*. However, it is undeniable that the main source of information comes from articles published either on feminist journals (e.g. *Jornal Opinião*, *Jornal Mulherio*) or in the context of religious conferences (e.g. *Congresso Eucarístico Nacional*).

Chapter One provided an outlook on the right to abortion within the framework of international law. Abortion in Brazil is a major issue of public health and human rights: the 2016 National Abortion Survey estimates that almost 1 in every 5 women had undergone at least one abortion by the age of 40. In 2015, approximately 416,000 women declared to have had an abortion, but the number of illegal abortions may account to 1 million; moreover, it is estimated that 13% of illegal abortions end up in maternal deaths. The country must guarantee the access to high-quality healthcare services, so as to ensure the respect of women's dignity and fundamental rights, as stated by many international conventions. The current status of laws on abortion in Brazil has negative outcomes both on society and economy. On the one hand, the public healthcare system fails in providing adequate assistance to pregnant women, thus, many of them resort to illegal methods; this generates high rates of post-abortive hospitalizations, making public expenditures increase sharply. On the other hand, institutions attach a moral stigma to patients (who are mainly poor), disrespecting their

aborto no Brasil: uma síntese. In: *Revista Brasileira de Estudos Populacionais*, São Paulo, No. 23, 2006, pp. 369-374. ROCHA, Maria Isabel Baltar da; ANDALAF NETO, Jorge, *A Questão do Aborto: Aspectos Clínicos, Legislativos e Políticos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. Campinas: Unicamp, 2003. pp. 257-296.

rights. The illegality of abortion prevents women from disposing freely of their sexual and reproductive rights and goes in countertrend with the international commitments of Brazil.

Chapter Two introduced the actors that are accountable for the paralysis of abortive laws in Brazil and provided the theoretical background of their claims. On the one hand, pro-life supporters are represented by the Protestant-Pentecostal Churches and by the conservative sectors of the Catholic Church. They believe life is the most valuable right and it is thought to begin at the moment of conception; for this reason, the fetus is attributed juridical personality and it cannot be deprived of its right to life by abortion. To support their anti-abortive position within the National Congress, pro-life supporters have created parliamentary fronts such as *Bancada Evangélica* and *Frente Parlamentar em Defesa da Vida – Contra o Aborto*. On the other hand, pro-choice groups hold dear women's rights to free sexuality and reproduction; moreover, they do not consider fetuses as proper human beings. Their main representatives are feminists and progressive Catholic groups, e.g. *Católicas Pelo Direito de Decidir*. The Supreme Federal Court has also shown its support to the decriminalization and legalization of abortion in Brazil, expressing favorable opinions on legal abortion in case of anencephaly.

Finally, Chapter Three focused on the debate between pro-life and pro-choice instances within the Brazilian National Congress, since their power has shaped situation of sexual and reproductive rights in Brazil. Pro-life supporters have praised a further criminalization of abortion through a rise in the harshness of punitive measures, a closer control on public hospitals (*Registro Público da Gravidez*) and through the recognition of the rights of the fetus (*Estatuto do Nascituro*). In addition, they asked for the creation of Parliamentary Inquiry Committees on the magnitude of abortion, and

lobbied the Congress so as to prevent changes to abortive laws. On the contrary, pro-life representatives have supported the decriminalization and legalization of abortion, also through the organization of plebiscites. Despite the immobility of abortive laws, the Supreme Federal Court has provided authorization to the performance of legal abortion in case of anencephaly.

CHAPTER ONE

THE MULTI-FACETED DIMENSIONS OF ABORTION

From an anthropological perspective¹⁸, abortion is a reality common to all societies, since it is a possibility that may occur during pregnancy: the so-called spontaneous abortion (or miscarriage or pregnancy loss)¹⁹ constitutes 10% up to 15% of all gestations. Estimates show that in developing countries, among which Latin-American and Caribbean countries stand, miscarriage has been registered in 182 pregnancies per year: 36% of them were undesired and 20% of them ended up in abortion²⁰. Several cultures practice terminations of pregnancy to guarantee maternal health or to stick to the values according to which women must have control over family planning, gestation, their own body, etc. What statistics highlight is the fact that the worldwide incidence of abortion is very high but most of those pregnancies could have been evitable. According to Rocha and Andalaft Neto, in 1995 some 45.5 million induced abortion occurred all over the world; 56% of those resulted from legal practices, while 44% from illegal ones²¹. The Guttmacher Institute estimated that during 2010-2014 the number of induced abortions worldwide rose to 56 million²². At this point, it is necessary to highlight that countries aim at reducing high rates of abortion especially due to social phenomena which depend on the political, cultural,

¹⁸ BOLTANSKI, Luc, *As dimensões antropológicas do aborto*, Revista Brasileira de Ciência Política, n^o7. Brasília, January- April 2012, pp. 205-245.

¹⁹ "Natural death of an embryo or fetus before it is able to survive independently". See HURT, Joseph, et al., *The Johns Hopkins Manual of Gynecology and Obstetrics*, Lippincott Williams & Wilkins, Philadelphia, 2011, pp. 438-439.

²⁰ SORRENTINO, Sara Romera, *Dossiê Aborto Inseguro - Direito de decidir sobre o aborto: uma questão de cidadania e democracia*, Rede Feminista de Saúde, Direitos Sexuais e Reprodutivos, 2001.

²¹ ROCHA, Maria Isabel Baltar da; ANDALAFT NETO, Jorge, *A Questão do Aborto: Aspectos Clínicos, Legislativos e Políticos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. Campinas: Unicamp, 2003. pp. 257-296.

²² Guttmacher Institute, *Induced abortion Worldwide – Global incidence and trends*. <<https://www.guttmacher.org/fact-sheet/induced-abortion-worldwide>>. Accessed June 4th, 2017.

economic and religious contexts. What is certain is that every society must cope with the reality of abortion²³ among women in their fertile years. The difference resides in the way each culture deals with, controls, regulate reproductive policies on abortion. In 2005 the Brazilian Ministry of Health described abortion as the “interruption of a pregnancy within the 20th or 22th week of gestation, with the fetus or embryo weighing less than 500 g. Abortion is the outcome of the removal of the fetus resulting from abortive procedures²⁴”.

These data are meant to be useful to this work for two reasons. First of all, Brazil belongs to the countries that criminalize abortive procedures and that have high rates of abortion: the Guttmacher Institute estimated that in 1998 in Brazil 940,660 illegal abortions occurred, which means 23 out of 100 gestations ended up in abortive procedures²⁵. The 2016 Brazilian Abortion Survey (*PNA, Pesquisa Nacional de Aborto*) showed that in 2016, almost 1 in every 5 women had undergone at least one abortion by the age of 40. In 2015, approximately 416,000 women declared to have had an abortion²⁶. The number of illegal abortions in 2016 is believed to be much greater – approximately 1 million – but the PNA research was focused just on urban big cities, women aged 18-39 and whose degree of literacy was enough to understand and reply to the questions of the interviewers²⁷. Second, these data are meant to debunk the myth according to which the legalization of abortion would increase the number of

²³ Abortion is the most used term in the scientific field which refers to the process that endangers pregnancy and that may end in the loss of the fetus. ROCHA, Maria Isabel Baltar da; ANDALAF NETO, Jorge, *A Questão do Aborto: Aspectos Clínicos, Legislativos e Políticos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. Campinas: Unicamp, 2003. p. 258.

²⁴ Ministério da Saúde, *Norma técnica - Atenção humanizada ao abortamento*, Série A. Normas e Manuais Técnicos Série Direitos Sexuais e Direitos Reprodutivos - Caderno nº 4, Brasília, 2005, p.45.

²⁵ ANDALAF NETO, Jorge, *A Questão do Aborto: Aspectos Clínicos, Legislativos e Políticos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. Campinas: Unicamp, 2003. p. 263.

²⁶ DINIZ, Deborah; MEDEIROS, Marcelo; MADEIRO, Alberto, *National Abortion Survey 2016*. In: *Ciência & Saúde Coletiva*, 22(2), Brasília, 2016, pp.653-660.

²⁷ DINIZ, Debora; MEDEIROS, Marcelo, *Abortion in Brazil: a household survey using the ballot box technique*. In: *Ciência & Saúde Coletiva*, 15 (Supl. 1), Brasília, 2010, pp. 959-966.

abortive procedures and, thus, trivialize life. As an example, Uruguay decriminalized abortion in 2012 and the following year governmental statistics proved that the number of abortion had decreased and no woman had died due to illegal abortive practices²⁸.

Abortion is considered unsafe when practiced in inadequate and precarious conditions, by non-qualified personnel, or in both cases. As a consequence, such dangerous procedures often result in high rates of mortality: it is estimated that 13% of illegal abortions end up in maternal deaths. Moreover, they may also cause permanent damage to female reproductive health. On the contrary, where abortion adequately practiced by professionals, it may be considered safe and may be less risky compared to other medical procedures²⁹.

In Brazil, the legislation regulating abortion is the 1940s Penal Code, which is still in place, and that qualifies abortion as a crime in all circumstances if practiced by the pregnant woman herself. Nonetheless, there are two legal exceptions³⁰:

- Art. 128 (I): if there is no other way to save the pregnant woman's life;
- Art. 128 (II): when the pregnancy has been the result of rape and the pregnant woman, or her legal representative if she is incapacitated, consents to the procedure of abortion.

On the one hand, this law provision has not changed according to the developing process of re-democratization of the State, which has constitutionalized fundamental human rights; on the other hand, the law on abortion does not represent the social reality of Brazil, since abortive practices are seldom punished by the law itself, but are more frequently condemned in hospitals or by the moral judgment of other people. In addition, the criminalization of abortion keeps in place an illegal market

²⁸ Presidencia de la República de Uruguay, *En los primeros seis meses de aprobada la ley se practicaron* 2.550 abortos legales. <<https://www.presidencia.gub.uy/Comunicacion/comunicacionNoticias/cifras-ley-aborto-msp-seis-primeros-meses>> Accessed May 28th, 2017.

²⁹ Ministério da Saúde, *Norma técnica - Atenção humanizada ao abortamento*, Série A. Normas e Manuais Técnicos Série Direitos Sexuais e Direitos Reprodutivos - Caderno nº 4, Brasília, 2005, p.45.

³⁰ Presidência da República - Casa Civil - Subchefia para Assuntos Jurídicos, *Decreto-Lei No 2.848, de 7 de dezembro de 1940*, art. 128. <http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm>. The criminalization of abortion appears also in the 1984 revision of the Brazilian Penal Code. Accessed June 6th, 2017.

whose victims are mainly less affluent and/or black women. As Corrêa and Avila state, “laws on abortion more often play a symbolic disciplinary role than a prescriptive one; despite not being effective, they set up a normative background that penalizes the woman willing to abort both psychologically and socially³¹”.

Unsafe abortion constitutes a major issue of public health and human rights, due to its implications with social justice, inequalities and female submission. Moreover, it is related with the unsuitability of professionals and health services that do not match with the protocols issued by the Ministry of Health³².

The criminalization of abortion in Brazil, as we have seen, is detrimental especially to poor citizens, who are mainly black people. According to the IPEA³³ demographic data of 1995-2009, Brazil has seen an increase in black population, which means that more and more people declare themselves as black or *pardo*³⁴. As far as gender is concerned, female population accounted for 51,3% of the Brazilian population, being 49,9% of them black women and 49,3% white. It was estimated that 21,7 million Brazilian families were led by female breadwinners, but this figure suffered a 10% increase among 1995 and 2007. In 1995, 68,5% of those families were single-parent households constituted by women and their children, while 2,8% of them were formed by couples with or without children. In 2009, though, single-parent households decreased to 49,4%, and 26,1% of the female breadwinners were part of a couple. We must mention also the fact that 69% of the households led by black women earned a minimum salary (R\$ 491,00 on average), while those led by white men earned twice

³¹ CORRÊA, Sonia; ÁVILA, Maria Betânia, *Direitos Sexuais e Reprodutivos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 38.

³² DIDES, Claudia et. al. *Estudio de opinión pública sobre aborto y derechos sexuales y reproductivos em Brasil, Chile, México y Nicaragua*. Flacso-Chile, 2011, p.55.

³³ See IPEA - Instituto Econômico de Pesquisa Aplicada, <<http://www.ipea.gov.br/portal/>>. Accessed June 2nd, 2017.

³⁴ *Pardo* is an ethnic/skin color category used by the Brazilian Institute of Geography and Statistics (IBGE) in the Brazilian censuses. It is more commonly used to refer to Brazilians of mixed ethnic ancestries, including a wide range of skin colors and backgrounds, such as white Brazilian, Afro-Brazilian and Native Brazilian.

(R\$ 997,00 on average). Last, 41% of women taking care of their families were unemployed; the percentage about men was around 16%³⁵.

The IPEA statistics allow us to understand that the magnitude of abortion in Brazil involves inequalities in social classes, gender, race, and that in any case it is women who carry the burden of reproduction; this depends on the fact that in most Brazilian families they are the breadwinners, despite earning far less than men and by being much more vulnerable. Considering that on average, black women earn the lower wages, we may say that poverty in Brazil has a color, and this color is black; in addition, black women cannot cope with the costs of private health, so they resort to public infrastructures and services (the so-called *SUS*, *Sistema Único de Saúde*) and, thus, suffer more from the implications of the criminalization of abortion.

Mortality rates are only the tip of the iceberg, so the statistics about the hospitalization resulting from the complications of miscarriage confirm the entity of the problem. For example, post-abortion curettage is a very common medical procedure to which *SUS* public services resort, second only to natural birthing³⁶.

Nonetheless, it must be said that gender inequalities go well beyond economic aspects, because also white women who can afford to pay for private health services suffer from discrimination and from moral judgement. Moreover, they often face this situation alone, without the participation or the support of men. In any case, who is more penalized are poor and black women, since they have almost no access to health services and they risk also being jailed.

³⁵ IPEA - Instituto Econômico de Pesquisa Aplicada et al., *Retrato das desigualdades de gênero e raça*, IPEA 4th ed. , Brasília, 2011.

³⁶ Ministério da Saúde, *Norma técnica - Atenção humanizada ao abortamento*, Série A. Normas e Manuais Técnicos Série Direitos Sexuais e Direitos Reprodutivos - Caderno nº 4, Brasília, 2005, p.8.

1.1 Abortion: an international perspective on human rights

The voluntary interruption of pregnancy is part of the reproductive rights, and these belong to the human rights that correspond to dynamic processes of negotiation among individuals, groups and States. Such rights had been incorporated in the idea of citizenship after the 20th century, during the so-called third generation of human rights, which added social rights and the value of solidarity to the pre-existent rights of freedom and equality.

Human rights take place among social rights and were born as a reaction to the atrocities perpetrated by the Nazis during World War II. The assumption of their existence is the fact that they are universal rights, inherent to the individual and not related to the social and cultural peculiarities of each society³⁷.

The concept of reproductive health³⁸ is recent and was introduced only in the mid-1980s by the World Health Organization (WHO) with the aim of overcoming the idea of demographic control. Until the mid-1970s, in Brazil and several other Western countries the term “reproductive health” was used to refer to reproductive rights and citizenship. However, the current idea of women’s health is much wider and its definition was created by North-American feminists: as a matter of fact, they argued that those rights transcended the perspective of health and involved also the reproductive self-determination of women. To a certain extent, the First International Women and Health Meeting (IWHM) that took place in 1984 in Amsterdam opened the

³⁷ VILLELA, Wilza Vieira; ARILHA, Margareth, *Sexualidade, Gênero e Direitos Sexuais e Reprodutivos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 136.

³⁸ “Reproductive health is a state of complete physical, mental and social well-being, and not merely the absence of reproductive disease or infirmity. Reproductive health deals with the reproductive processes, functions and system at all stages of life”. See United Nations Population Information Network, *Guidelines on reproductive health*. <<http://www.un.org/popin/unfpa/taskforce/guide/iatfrehp.gdl.html>>. Accessed May 16th, 2017.

pathway to the creation of the legal frameworks of human rights³⁹. Later, in 1985 the Third World Conference on Women held in Nairobi marked a significant step towards reproductive rights and the fight against gender violence⁴⁰.

The nature of reproductive rights entails several other rights: to life and survival; to reproductive sexual health and to the benefits to scientific progress; to freedom and security; to non-discrimination and to the respect of one's choices; to self-determination and freedom of choice as concerns motherhood and fatherhood; to marriage, to have children and family; to social protection and to work⁴¹.

There is no doubt that facilitating the access to universal free public healthcare would promote equality and ensure the full exercise of reproductive and sexual life. Nevertheless, from a feminist perspective, the inclusion of reproductive rights into those to healthcare reduces the right to autonomy and individual freedom in the sphere of sexuality and reproduction: in other words, feminists claim that this incorporation makes reproductive rights less flexible and unties them from relevant issues such as sexuality, identity and corporality.

The 1990s marked an important stage in the legitimization of reproductive rights as human rights. This was sanctioned in the 1994 International Conference on Population and Development held in Cairo, where also the interruption of pregnancy emerged as a severe issue of public health. Another important step was the 1995 Beijing Conference, whose members were urged to revise penal legislation in those countries that criminalized abortion⁴².

³⁹ CORRÊA, Sonia; ÁVILA, Maria Betânia, *Direitos Sexuais e Reprodutivos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 20.

⁴⁰ BARSTED, Leila, *O Campo Político-Legislativo dos Direitos Sexuais e Reprodutivos no Brasil*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003, p.82.

⁴¹ VENTURA, Miriam, *Direitos Reprodutivos no Brasil*, 3rd ed., Unfpa, Brasília, 2009, p.19.

⁴² CORRÊA, Sonia; ÁVILA, Maria Betânia, *Direitos Sexuais e Reprodutivos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 22.

The 1994 International Conference on Population and Development and the 1995 World Conference on Women state that reproductive rights are fundamental human rights. They include the right of every couple and individual to control and decide on matters concerning sexuality and reproduction, and not to suffer coercion, discrimination and violence⁴³.

Unlike treaties and conventions, conferences are not binding documents, so Member States are obliged neither to respect international suggestions nor to introduce those principles into their national legislative systems. Conferences are moral commitments for the Member States: for example, the main challenge that Brazil must face is to guarantee that human rights are protected as the 1988 Federal Constitution's fundamental rights are.

The tools used to protect and monitor international human rights, which are considered sources of international law, are the UN Committees to which Member States must send a documentation on the situation of rights and may also report violations of some of them. The UN Committee on the Elimination of Discrimination against Women⁴⁴ (CEDAW) is the most important tool to control and protect female rights in the sphere of human rights, since it recommends the elimination of every kind of legislative barrier that prevent women from accessing medical procedures; in addition, CEDAW encourages Member States to revise their legislation on abortion, so as to make it less strict. Another example of the intervention of the Committee was the promulgation of the Law 11.340/2006⁴⁵, best known as *Lei Maria da Penha*, which was

⁴³ Ministério da Saúde, *Norma técnica - Atenção humanizada ao abortamento*, Série A. Normas e Manuais Técnicos Série Direitos Sexuais e Direitos Reprodutivos - Caderno nº 4, Brasília, 2005, p.41.

⁴⁴ See UN Committee on the Elimination of Discrimination against Women <<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>>. Accessed May 16th, 2017.

⁴⁵ See Biblioteca Digital da Câmara dos Deputados <<http://adcon.rn.gov.br/ACERVO/spmrrn/DOC/DOC000000000076385.PDF>>. Accessed May 23rd, 2017.

the result of the report on the domestic violence that Maria da Penha had suffered⁴⁶. The necessity of signing such law revealed the dramatic situation of Brazilian women and the inefficiencies of public policies and normative tools that should have prevented domestic violence.

Another tool within the UN we must mention is the Committee on Economic, Social and Cultural Rights⁴⁷ (CESCR): it aims at guaranteeing that every individual has the easiest access to healthcare, and that Member States prevent women from suffering discrimination; moreover, States are asked to enforce all kinds of health policies, to adopt measures to reduce risky situations - such as maternal death – and to revise laws that deny reproductive rights⁴⁸.

As concerns reproductive rights and especially abortion, the 1948 Universal Declaration of Human Rights⁴⁹ states that the right to life is a prerogative of “all human beings [, who] are born free and equal in dignity and rights”⁵⁰. It also refers to the protection of the right to privacy and to found a family. The 1988 Brazilian Federal Constitution was inspired by those principles, because it does not consider conception as the beginning of human existence. In addition, it highlights that the international treaties, conventions and protocols on fundamental rights ratified by Brazil will be

⁴⁶ After her husband had tried to kill her twice in 1983, Maria da Penha began a legal process against him. In 2001 the episode came to the Inter-American Commission of Human Rights of the Organization of American States, which declared the case to be a crime of domestic violence for the first time in history. The Commission, then, published a report condemning the Brazilian government for negligence and omission regarding domestic violence. Thus, on August 7th, 2001 the Brazilian government sanctioned Law 11.340/2006 against domestic violence toward women.

⁴⁷ See UN Committee on Economic, Social and Cultural Rights < <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>>. Accessed June 7th, 2017.

⁴⁸ CORRÊA, Sonia; ÁVILA, Maria Betânia, *Direitos Sexuais e Reprodutivos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 24.

⁴⁹ See UN Universal Declaration of Human Rights < <http://www.un.org/en/universal-declaration-human-rights/>>. Accessed May 5th, 2017.

⁵⁰ UN Universal Declaration of Human Rights, art. 1 < <http://www.un.org/en/universal-declaration-human-rights/>>. Accessed May 5th, 2017

immediately applied⁵¹. Reproductive rights are negative to the extent that they establish limits to State intervention, while they are positive when they entail the participation of the State in guaranteeing and protecting rights and social policies⁵².

The principles set in international conferences were also the basis for the reform of the Brazilian Penal Code that, inspired by the 1993 Vienna World Conference on Human Rights, relocated rape among the offences against the person – before that, rape was considered a crime against public morality -. The Vienna Conference declared that “the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights⁵³” and that “gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person⁵⁴”.

To summarize, during the 20th century, the rights to freedom, equality, healthcare, marriage, family, life, privacy, motherhood were restated in several tools concerning human rights. For example, the International Labor Organization was a forerunner of rights related to maternity⁵⁵, as was also the 1968 Tehran First International Conference on Human Rights, which established the right to freedom of choosing how many children one may have. As far as abortion is concerned, the right to determine when and if to become a parent is also an issue of both human rights and

⁵¹ Senado Federal, *Constituição da República Federativa do Brasil*, Diário Oficial da União, Brasília, 1988.

⁵² CORRÊA, Sonia; ÁVILA, Maria Betânia, *Direitos Sexuais e Reprodutivos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 59.

⁵³ See Vienna Declaration and Program Action, art. 18

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>>. Accessed May 23rd, 2017.

⁵⁴ Ibid

⁵⁵ See International Labor Organization, *Convention No 183 – Convention concerning the Revision of the Maternity Protection Convention*. <

http://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/genericdocument/wcms_14195.pdf> . Accessed May 11th, 2017.

of social justice. Every State must ensure that women can choose freely and, thus, exert their own rights. In other words, access to legal abortion would mean that women's right to life is ensured: they would not undergo life-threatening clandestine abortions, which are, instead, quite common in all those States where abortion is still stigmatized. Thus, we may conclude that Brazil will continue violating fundamental and human rights - e.g. to choose, to legal abortion, to life, etc. - until it does enable its citizens to resort to legal abortive practices.

1.2. Abortion and reproductive rights in Brazil

As we have seen, the concession and the protection of reproductive rights is a fundamental feature of a democratic and advanced country; historically, many groups and social movements have claimed them. In Brazil, the feminist fight for reproductive rights began at the end of the 1960s, during the so-called second-wave feminism, when feminists belonged to the Brazilian Movement for Amnesty. In that period, contraception had made a step forward thanks to the introduction of the contraceptive pill. During the 1970s' military dictatorship, two health programs were drafted: the 1977 Program of Prevention from High-Risk Pregnancy (*PPGAR, Programa de Prevenção da Gravidez de Alto Risco*) and the 1980 National Program of Basic Healthcare (*PREVSAÚDE, Programa Nacional de Serviços Básicos de Saúde*). Those documents represented the first attempt to guarantee minimum reproductive rights to pregnant women, to foster assistance to them in case of high-risk pregnancy and to normalize family planning. However, those programs were never applied and the criticism towards their flaws inspired the creation in 1983 of the Program of Assistance to

Woman's Health (*PAISM, Programa de Assistência Integral à Saúde da Mulher*), which is still in place⁵⁶.

On the one hand, the feminist perspective supported women's self-determination as far as sexual reproduction was concerned, and on the other hand, claimed that the State should have been in charge of addressing their necessities: the obstacles that women faced in accessing healthcare service were caused by gender and economic inequalities and by poverty⁵⁷.

Particularly significant is the fact that in the fields of study about sexuality and reproduction, there have been several criticisms about the use of the term "sexual and reproductive rights", because sexuality appears to be an exclusive feature of reproduction and limited to it. As we already saw, the definition of reproductive rights was born with the 1960s-feminist movement and entered much later the institutional scenario of human rights. In Brazil, though, sexuality has been a priority on the feminist agenda since the 1970s. The Brazilian feminist movement, whose motto was "*Nosso corpo nos pertence*" ("Our body belongs to us"), assumed that the body was the core, the birthplace of human existence, and its control should be left to women.

According to women, the revindication of their rights is strictly related to their reproductive rights, given that the safe and free exercise of their sexuality may be possible only if sexual practices are not bonded to reproduction⁵⁸.

Notwithstanding the yoke of authoritarian governments, the feminist movement in Brazil invited society and social actors to discuss the conditions of inequality that women suffered, to question the existent rights concerning reproduction and sexuality, and to denounce the control that international agencies illegally wielded on Brazilian

⁵⁶ BARSTED, Leila, *O Campo Político-Legislativo dos Direitos Sexuais e Reprodutivos no Brasil*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003, p.80.

⁵⁷ CORRÊA, Sonia; ÁVILA, Maria Betânia, *Direitos Sexuais e Reprodutivos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 26.

⁵⁸ VILLELA, Wilza Vieira; ARILHA, Margareth, *Sexualidade, Gênero e Direitos Sexuais e Reprodutivos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 137.

population. Even though feminism had already understood that sexuality was a pillar to gender inequalities, it was the European and North-American LGBT movements who first led the struggle for free sexuality since the 1980s⁵⁹. The legitimization of both sexual and reproductive rights formerly occurred in the institutional field, and the Cairo Conference gave birth to the term “sexual and reproductive rights”⁶⁰.

On the wake of the above-mentioned feminist claims, the 1980s saw the intensification of the debate on abortion both in the Parliament and in society, and precisely in that period, Brazil started adopting the concept of reproductive rights since it was on the path towards the reform of its healthcare system and the promulgation of the new Federal Constitution.

The main law on abortion in Brazil dates back to the 1940 Penal Code, and its content is still into force until these days⁶¹. Originally, artt. 124 to 128 stated that abortion was illegal, except in case of risk for the life of the pregnant woman or in case of rape. The renewal of the Penal Code, occurred in 1984⁶², reaffirmed this status: abortion was still considered as a severe crime against life and punitive measures were implemented:

- from one- to three-year imprisonment to the pregnant woman who provoked or allowed anyone else to practice abortion;

⁵⁹ CORRÊA, Sonia; ÁVILA, Maria Betânia, *Direitos Sexuais e Reprodutivos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 21.

⁶⁰ VILLELA, Wilza Vieira; ARILHA, Margareth, *Sexualidade, Gênero e Direitos Sexuais e Reprodutivos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 137.

⁶¹ Presidência da República - Casa Civil - Subchefia para Assuntos Jurídicos, *Decreto-Lei No 2.848, de 7 de dezembro de 1940*, art. 128. <http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm>. The criminalization of abortion appears also in the 1984 revision of the Brazilian Penal Code. Accessed June 6th, 2017.

⁶² Ibid.

- from one- to four-year imprisonment to whomever provoked or allow women to undergo abortion with their consent;
- from three- to ten-year imprisonment to whomever practiced abortion without the consent of the woman.

The legislation on abortion did not change in four decades and almost no initiative on the protection and guarantee of reproductive rights in general was taken. In other words, despite the Brazilian Penal Code dealing with the cases of legal abortion since the 1940s, it was only during the 1980s that initiatives for treating women in the public healthcare system were taken. At national level, few was done at the beginning. Who first dealt with the necessity of offering treatment to women willing to abort were Federal States and municipalities.

As a matter of fact, Rio de Janeiro was the pioneer city: in 1985 the State Assembly passed a law on this issue but then it was vetoed by the governor⁶³ of the time. Two years later, the first service of assistance to legal abortion was put in place but did not last long due to fundamentalist pressures and institutional limitations. In this sense, the first healthcare service to be effective was created in 1989 in São Paulo thanks to a municipal decree.

We may observe that the process that granted legal-abortion services in Brazil has begun quite late, and still nowadays it is the focus of many controversies among the actors involved with the debate on abortion – even within the National Congress -. As a matter of fact, it was just in the early 1990s that the National Congress tackled

⁶³ The law proposal was made by State Deputy Lúcia Arruda, while it was vetoed by Governor Leonel Brizola. See Assembléia Legislativa do Estado do Rio de Janeiro, *Lei 832/85 | Lei nº 832, de 07 de janeiro de 1985*. < <https://gov-rj.jusbrasil.com.br/legislacao/149851/lei-832-85>>. Accessed June 7th, 2017.

the question in the law proposal PL 20/1991⁶⁴, whose basis was the universal principle of right to healthcare. This legislative proposal was the first document that sought to guarantee abortion services within the public health system - at national level - just in the two cases permitted by Brazilian law. Its relevance laid in the fact that before that time, only nine public structures had offered legal abortion services in Brazil and they had stumbled upon the lack of rules and regulation. Therefore, PL 20/1991 did not aim at modifying the dispositions on abortion contained in the 1940 Penal Code; its purpose was just to guarantee that women could exert their rights according to the existent law, those same rights that they have not been guaranteed for 50 years due to the lack of a legislation on legal abortion within public structures. We may say that between 1940 and 1991 Brazil had failed to address the need of its population and of women, in particular. However, the project had never come to an approval due to the several controversies that arose within the Federal Chamber. As we will see in detail in the next chapters, conservative forces - e.g. religious representatives within the National Congress - fought tenaciously to oppose any kind of legal abortion service, since they stated that life began in the moment of conception and, thus, the unborn child had personality rights as any other person.

The harshest controversies on this proposal occurred in 1997 and coincided with the visit of Pope John Paul II in Brazil. On the one hand, many religious representatives at the National Congress reasserted their opposition to legal abortion because the Pope himself had declared that life had to be preserved since its very

⁶⁴ The PL 20/1991 by Federal Deputy Eduardo Jorge states that the public healthcare system (*SUS*) is obliged to assist women willing to have an abortion, in the cases provided by the Penal Code. See Câmara dos Deputados, *PL 20/1991*, Brasília, 1991. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=14943>>. Accessed June 8th, 2017

beginning⁶⁵. On the other hand, the feminist movement *Rede Feminista de Saúde* and the Catholic pro-choice group *Católicas pelo Direito de Decidir* delivered a document signed by 20,000 people to the National Congress during their campaign “*Pela Vida das Mulheres em favor do PL 20/91*”⁶⁶, to the life of women in favor of PL 20/91. Feminists and tolerant Catholics challenged the wave of conservatism by reminding that women should be free to choose either to abort or not, and that the State should guarantee them access to legal abortive practices so as not to violate women’s fundamental rights. Notwithstanding those pressures in favor of PL 20/1991, the document was never approved and is still stuck within the bureaucratic mechanisms of the Federal Chamber.

Nonetheless, another attempt to regulate legal abortion was made during the following year. This time, it was the Brazilian National Council of Health (*Conselho Nacional de Saúde*)⁶⁷ that decided to fill the existing legislative gap on legal and safe abortion by approving a technical norm on the assistance to women who had suffered violence, the reknown “*Norma Técnica de Atendimento à Mulher Vítima de Violência*”, which entered into force in 1998. This norm stated that the operators had to provide the services of legal abortion, meaning that skilled teams were responsible for offering women professional performances. High qualitative standards of abortive procedures should be guaranteed to those women whose pregnancy had resulted from sexual violence. Thus, this technical norm too was meant not to challenge the existent

⁶⁵ Read all the speeches of Pope John Paul II held in Brazil in 1997, available at <<http://www.clerus.org/bibliaclerusonline/pt/ikp.htm>>. Accessed August 3rd, 2017.

⁶⁶ CORRÊA, Sonia; ÁVILA, Maria Betânia, *Direitos Sexuais e Reprodutivos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 68.

⁶⁷ The National Council of Health is an institutional body that provides norms and regulations in the field of healthcare and ensures that the work of medical professionals is carried out in full observance of the law. For more details, see <https://portal.cfm.org.br/index.php?option=com_content&view=article&id=20671&Itemid=23>. Accessed September 24th, 2017.

legislation; on the contrary, it aimed at reminding that the cases of legal abortion allowed by the 1940 Penal Code had to be safeguarded and guaranteed. The document was revised twice, in 2005 and 2015⁶⁸, but still nowadays it is subject to many controversies within the National Congress, since there is a considerable number of deputies who aims at withdrawing it. Nevertheless, we should positively consider the positive outcomes of such norm: as a matter of fact, the number of facilities that aid women willing to abort increased from 3 to 17 among 1990-2000. In 2001 it boosted to 55 units, and in 2016 even further to 71⁶⁹.

After publishing another specific norm against sexual violence, the “*Norma Técnica de Prevenção e Tratamento dos Agravos Resultantes da Violência Sexual contra Mulheres e Adolescentes*”, whose third edition dates back to 2012⁷⁰, the Public Ministry developed also another important document: the “*Norma Técnica Atenção Humanizada ao Abortamento*”⁷¹ is a technical guide helping professional to deal with women who have been sexually harassed and to give them proper assistance. Again, there was not a proper change in the law, but just a reiteration of the already existent right to abortion in case of sexual violence.

At this point, we should mention another step in the path of abortive legislation in Brazil, which refers to the case of anencephalic fetuses. In 2004, Public Minister, Marco Aurélio Mello, and Brazilian lawyer, Luis Roberto Barroso, proposed that the

⁶⁸ See Presidência da República - Secretaria de Políticas Para as Mulheres, *Norma Técnica – Atenção humanizada às pessoas em situação de violência sexual com registro de informações e coleta de vestígios*. Brasília, 2015.

⁶⁹ GRAGNANI, Juliana, *Procuradoria apura omissão do Estado nos serviços de aborto legal no Brasil*, Folha de São Paulo, July 29th, 2016. <<http://www1.folha.uol.com.br/cotidiano/2016/07/1796717-procuradoria-apura-omissao-do-estado-nos-servicos-de-aborto-legal-no-brasil.shtml>> . Accessed May 30th, 2017.

⁷⁰ Ministério da Saúde, *Norma Técnica de Prevenção e Tratamento dos Agravos Resultantes da Violência Sexual contra Mulheres e Adolescentes*, Série A. Normas e Manuais Técnicos Série Direitos Sexuais e Direitos Reprodutivos – Caderno nº 6, Brasília, 2012.

⁷¹ Ministério da Saúde, *Norma técnica - Atenção humanizada ao abortamento*, Série A. Normas e Manuais Técnicos Série Direitos Sexuais e Direitos Reprodutivos - Caderno nº 4, Brasília, 2005.

national healthcare system guaranteed the right to medical treatment to pregnant women whose fetus was suffering from anencephaly⁷². This proposal was long discussed and was voted by the Supreme Federal Court (Supremo Tribunal Federal, STF) only in April 2012. Notwithstanding the length of the wait, the judges of the court approved it, under the name of *Arguição de Descumprimento de Preceito Fundamental No. 54 (ADPF-54)*⁷³. This document claims that women are guaranteed the right to the voluntary interruption of pregnancy if the anencephaly of the fetus has been diagnosed. It is necessary to highlight two aspects concerning this decision.

First of all, the decision of the Federal Supreme Court did neither decriminalize abortion, nor it did introduce a new exception to the dispositions of the Brazilian Penal Code. What ADPF-54 really did was to provide clear norms on the anencephalic case to all Brazilian tribunals. Before ADPF-54's approval, Brazilian judges had no coherent approach to the issue, since there were not homogeneous norms on it. Statistics pointed out that before 2012, several Brazilian tribunals had allowed more than 350 abortions in case of fetal anencephaly; however, the authorizations would be signed only if two conditions were complied: first, doctors had to provide medical proof of the irreversible and irreparable damaged cephalic condition of the fetus⁷⁴; second, authorities needed to previously verify if abortion had eugenic purposes.

In recent judicial sentences, several judges had authorized the performance of abortion in case of fetal anencephaly. In one of those same sentences, it is declared that [abortion] “has no eugenic purpose and is not willing to refine human race; neither is it precluding the birth of a blind, maimed or mentally weak child. [The present disposition] aims at preventing the birth of a fetus which is scientifically lifeless, which has no brain and which would be unable

⁷² Anencephaly is a cephalic disorder that causes the absence of a major portion of the brain, skull, and scalp during embryonic development. According to medical research, there is no possibility at all to survive anencephaly; if the fetus survives until childbirth, it will die within minutes or days.

⁷³ MELLO, Marco Aurélio, *Arguição de Descumprimento de Preceito Fundamental No. 54 (ADPF-54)*. Available at <<http://www.stf.jus.br/arquivo/cms/noticianoticiastf/anexo/adpf54.pdf>>. Accessed September 24th, 2017.

⁷⁴ GOLDIM, José Roberto, *Aborto no Brasil*. <<https://www.ufrgs.br/bioetica/abortobr.htm>>. Accessed June 29th, 2017.

to exist on its own". Despite these documents do not provide enough evidence to start a specific case-law, they will certainly influence the existent law when other judges would decide on similar cases⁷⁵.

To sum up, despite not implying the revision of the existent law on abortion, ADPF-54 has been valued as a relevant step within the debate on abortion in Brazil. As Minister Carlos Ayres Britto declared before the proposal was voted by the Supreme Court, this project "represents a watershed to the public opinion"⁷⁶. As a matter of fact, the decision was widely debated by Brazilian society; it also generated criticism among pro-life religious groups, who declared that the right to life of the fetus must be protected, notwithstanding its cerebral defect. On the contrary, feminist groups and most healthcare professionals welcomed the decision, which was believed to guarantee the right to choose and to life of pregnant women.

This far, we have observed that the legislation on abortion has changed slightly between 1940 and the 2010s. Brazilian women have been allowed to undergo abortion in two cases, as stated by Artt. 124-128 of the Penal Code; moreover, they have acquired the right to abort in case of fetal anencephaly since 2012. The National Congress has done almost nothing to revise the existing norms, due to the strong pressures of some anti-abortion groups within its structure. In other words, abortion in Brazil continues to be strongly criminalized. This form of institutional criminalization has negative outcomes not only on women's life but also on Brazilian society on the whole, as we will see in the next paragraph.

⁷⁵ VELOSO, Genival de França, *Aborto eugênico - considerações ético-legais*. In: *Direito Médico*, 7ª edição, Fundo Editorial Byk, São Paulo, 2001, p. 122.

⁷⁶ Agência Brasil, *Julgamento sobre anencéfalos será divisor de águas, diz Ayres Britto*. <<https://oglobo.globo.com/brasil/julgamento-sobre-anencefalos-sera-divisor-de-aguas-diz-ayres-britto-4607983#ixzz4tbXH3jqm>>. Accessed September 24th, 2017.

1.3 Impacts of the criminalization of abortion

As we have seen, abortion is one of the most urgent public health issues in Brazil, and its criminalization is to be considered a stigma for both women and society, due to its clearly negative outcomes.

Norms and specific policies on women's health have been few and have often proved not to be completely adequate, despite the fact that women, as subjects of law, must be guaranteed the right to healthcare services: the guiding principles of the national healthcare system (*Sistema Único de Saúde*, SUS) remark that access to health-related actions is part of the minimum responsibilities of municipal infrastructures⁷⁷. However, many public hospitals fail to provide cures or counseling to the population. Restrictive laws do not favor health assistance and some women, especially low-educated and poor, resort to illegal and unsafe practices.

The criminalization of abortion involves various perspectives, from the moral to the legislative, from the cultural to the economic ones. It is well-known that unsafe abortion, held in precarious conditions, is the fourth cause of maternal death in Brazil, and this attitude clearly violates human rights. Nonetheless, this prohibition is justified by the principle according to which life is sacred and begins from the very moment of conception. In the following chapters, we will examine which forces have played a great role in the preservation of the *status quo*, preventing the decriminalization of abortive practices for decades, and thus, prohibiting women to choose on their own body. In this paragraph, otherwise, we will see what the outcomes of criminalization are and how they affect society and economy.

⁷⁷ Ministério da Saúde. *Política nacional de atenção integral à saúde da mulher: princípios e diretrizes*. <http://conselho.saude.gov.br/ultimas_noticias/2007/politica_mulher.pdf>. Accessed June 13th, 2017.

1.3.1 The outcomes on the public healthcare system and economy

In compliance with international treaties and the guiding principles given by the Brazilian Ministry of Health⁷⁸, female health is a priority and must guarantee the respect of human rights and the reduction of mortality - especially when resulting from preventable and avoidable causes -. Brazil should ensure the right to information about reproductive and sexual issues, such as to access both contraceptive and medical or surgical treatment in case of abortion. In theory, women would be allowed to raise awareness on their sexual health and to choose freely how to tackle reproductive issues. Such awareness would reduce the practice of unsafe abortion and, consequently, reduce maternal mortality⁷⁹.

In practice, though, the situation of illegality that characterizes abortion in Brazil implies many difficulties in accessing healthcare services⁸⁰. This is the reason why many women undergo abortive procedures illegally, and the lack of appropriate hygienical conditions often endangers their lives. In most cases, unsafe abortions result in post-surgical complications, forcing women to resort to public hospitals. As we already saw at the beginning of this chapter, maternal death⁸¹ is one of the worst outcomes of the criminalization of abortion, and higher rates have been registered in those countries in which abortion is still illegal; on the contrary, where *tout court* abortion is legal, almost no woman risks her life. Many women pay with their own lives the attempt to get rid of an unwanted pregnancy. However, deaths caused by abortion are just the tip of the iceberg: unsafe abortive processes frequently cause immediate

⁷⁸ Ibid.

⁷⁹ DOMINGOS, Selisvane Ribeiro da Fronteira; MERIGHI, Miriam Aparecida Barbosa. *O aborto como causa de mortalidade materna: um pensar para o cuidado de enfermagem*. In: Revista de Enfermagem, 14(1), 2010, Rio de Janeiro.

⁸⁰ MENEZES, Greice; AQUINO, Estrela. *Pesquisa sobre o aborto no Brasil: avanços e desafios para o campo da saúde coletiva*. In: Caderno Saúde Pública, 25(2 Suppl), 2009, pp. 193-204.

⁸¹ Maternal death is "the death of a woman during pregnancy or within the 42nd day after the delivery". See FAÚNDES, Aníbal; BARZELATTO, José, *O Drama do Aborto: em busca de um consenso*. Campinas: Komedi, 2004, p. 75.

complications and long-term consequences. Immediate outcomes may be hemorrhage, infections, traumatic and chemical injuries to genitals or pelvic organs, toxic reactions, swallowed medical tools or drugs etc.⁸². All the above-mentioned factors put the economic resources of the Brazilian healthcare system under a severe strain.

Research has shown that the costs of post-abortive hospitalizations generate an annual spending of more than 40 million *reais* for the Brazilian healthcare system. According to the 2005 data of the Brazilian Ministry of Health, public hospitals realized on average 238,000 medical procedures related to abortion yearly; the cost of each procedure was R\$ 125,00. In other words, Brazil spent approximately 29,7 million *reais* per year for hospitalizations caused by abortion. These figures did not take into consideration cases of infected abortions, which can cause septicemia and require long-term hospitalization and use of antibiotics. 2016 data show an increase in public expenditures up to 40,4 million *reais* per year⁸³. As we can see, the criminalization of abortion is responsible for very high public expenditures in the medical field⁸⁴.

Moreover, if abortion were not banned, the costs for the performance of legal abortions would be much lower. In a 2009 article, Menezes and Aquino showed that in 1991 the same amount of money the State of Rio de Janeiro had spent for hospitalizations linked to the consequences of attempted (illegal) abortions would have paid 62,000 legal and safe ones⁸⁵. Official statistics have shown that in 2015, the public health system realized 181,000 hospitalizations of women whose life was put in danger

⁸² SANTOS, Vanessa, *Criminalização do aborto no Brasil e implicações à saúde pública*. In: Revista de Bioética, 21(3), 2013, p. 494-508.

⁸³ GONÇALVES, Juliana; BORGES, Helena, *Qual o preço que o Brasil paga pela criminalização do aborto?*. <<https://theintercept.com/2017/03/16/qual-o-preco-que-o-brasil-paga-pela-criminalizacao-do-aborto/>>. Accessed August 8th, 2017.

⁸⁴ Ministério da Saúde, *Norma técnica - Atenção humanizada ao abortamento*, Série A. Normas e Manuais Técnicos Série Direitos Sexuais e Direitos Reprodutivos - Caderno nº 4, Brasília, 2005, p.20.

⁸⁵ MENEZES, Greice; AQUINO, Estela, *Pesquisa sobre o aborto no Brasil: avanços e desafios para o campo da saúde coletiva*, Caderno de Saúde Pública, 25 Sup 2, Rio de Janeiro, 2009, pp.193-204.

by illegal post-abortion complications: 59 of them died. The number of legal abortive procedures within the *SUS* was 1,600 – ten times less - and no woman lost her life⁸⁶. Compared to the costs of illegal abortions, the difference is impressive: according to NGO *Plataforma de Direitos Humanos – Dhesca Brasil*, an unsafe abortion costs between 1,500 and 3, 500 Brazilian *reais*⁸⁷. To sum up, the legalization of abortion would cause a sharp decrease in public expenditures for healthcare services (which are extremely high especially due to post-abortive surgeries and treatments). Legal abortive performances would be practiced in adequate conditions and respect qualitative standards; as a consequence, this would dramatically reduce the need of medical actions related to post-abortion complications.

Moreover, not only does the criminal feature of abortion in Brazil entail economy, but also affects fundamental rights, human dignity and social equality.

The 2016 National Survey on Abortion (*Pesquisa Nacional de Aborto, PNA*) highlighted that abortion is performed by many women, regardless of their age, religious beliefs and social class⁸⁸. The feature that really creates a difference and, thus, a discrimination is the financial-economic condition. Affluent people make use of private medical clinics, where hygiene and care standards are assured. On the contrary, women coming from the poorest economic backgrounds - which account for most of the Brazilian population - are forced to seek unsafe methods; they often incur into severe complications, such as perforation of the uterus, sterility, bleeding and infection, and put their lives in great danger⁸⁹. In other words, the economic status is

⁸⁶ Rede Brasil Atual, *Legalizar aborto evitaria mortes e traria economia ao SUS*. < <http://www.redebrasilatual.com.br/cidadania/2016/03/legalizar-aborto-evita-mortes-e-danos-e-traria-economia-ao-sus-5268.html>>. Accessed June 30th, 2017.

⁸⁷ Plataforma de Direitos Humanos – Dhesca Brasil, *Questões de Gênero: Desafios para a efetivação dos direitos das Mulheres*, Série Debates em Direitos Humanos, Curitiba, 2013.

⁸⁸ DINIZ, Deborah; MEDEIROS, Marcelo; MADEIRO, Alberto, National Abortion Survey 2016. In: *Ciência & Saúde Coletiva*, 22(2), Brasília, 2016, pp.653-660.

⁸⁹ Ministério da Saúde - Secretaria de Gestão Estratégica e Participativa. *Saúde da mulher: um*

the first source of social inequality in Brazil, since the criminalization of abortion discriminates even further poor women, who cannot afford to pay for better hygienical and medical conditions. We may say that the ban on abortion deprives all women of some fundamental rights but who suffer the most the outcomes of it are the poorest segments of society.

1.3.2 The moral stigma and the outcomes on women's rights

The criminalization of abortion has also negative outcomes on women's rights and attaches a moral stigma on them. After arriving at healthcare infrastructures, patients have often reported to have suffered psychological and also physical abuse from medical personnel⁹⁰. Moreover, patients have not always benefitted from psychological support, which should have been guaranteed by hospitals; thus, they have remained silent about their experiences and disguised their sense of anxiety, guilt and loneliness due to the fear of being either punished or humiliated. In short, we may assume that in many circumstances induced abortion is stigmatized by doctors and medical personnel who should, on the contrary, fully support their patients in miscarriage. What researchers such as Debora Diniz highlighted is the lack of ethical appeal among professionals in the healthcare field⁹¹. This means that Brazil has no tools to ensure the ethical integrity of medical personnel in those situations in which the beliefs of their patients is opposed to their own's. So, it is the State itself that first stigmatized abortion and does not guarantee any respect for freedom of choosing.

A recurrent example of conscientious objection occurs in case the patient is willing to abort after being raped. Despite the fact that this possibility is allowed by

diálogo aberto e participativo. Brasília, 2010. <<http://portalsaude.saude.gov.br/dicas-de-saude>>. Accessed September 23th, 2017.

⁹⁰ Ministério da Saúde, *Norma técnica - Atenção humanizada ao abortamento*, Série A. Normas e Manuais Técnicos Série Direitos Sexuais e Direitos Reprodutivos - Caderno nº 4, Brasília, 2005, p.20.

⁹¹ DINIZ, Debora. *Bioética e gênero*. In: Revista Bioética, 16(2), 2008, pp. 207-216.

Brazilian law, many surgeons are reluctant to perform this procedure⁹². The pregnant woman must be guaranteed her right to abortion and the moral opposition of the professionals should not be an obstacle to the exercise of such right.

Apart from the reluctance of the staff within hospitals to perform abortions or to provide adequate post-abortive treatment, politics and some of the major Brazilian institutions contribute to attach a moral stigma to abortion. As we have pointed out, the legislation on abortion has continued almost unspoilt up to our days. This was mainly due to the strong opposition of pro-life groups within the National Congress, though it is undeniable that in recent times pro-choice associations and alliances have fought to increase the social visibility of this issue⁹³. Considering abortion as a criminal act is a cause of institutional violence and discrimination against women who resort to public services. Abuses within the public healthcare system, e.g. condemnatory attitudes, are a violation of international human rights, because Brazil fails to address the needs of its population and does not respect the dispositions contained in international treaties it has subscribed. In addition, the condition of illegality of abortion fosters social inequality, since it mainly damages poor women, as we saw. Thus, the debate on abortion must be faced with responsibility by governmental representatives because the respect for human rights is at a stake⁹⁴. It is necessary to remind that Brazil has been warned by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) that it must revise the legislation on abortion, in the sense

⁹² OLIVEIRA, Eleonora Menicucci. *Fórum: violência sexual e saúde - Introdução*. In: Caderno de Saúde Pública, 23 (2), 2007, pp.455-8.

⁹³ ROCHA, Maria Isabel Baltasar da; BARBOSA, RM. *Aborto no Brasil e países do Cone Sul: panorama da situação e dos estudos acadêmicos*. In: Núcleo de Estudos de População, 2009.

⁹⁴ Ministério da Saúde. *Aborto e saúde pública 20 anos de pesquisas no Brasil*. 2008 <http://portal.saude.gov.br/portal/arquivos/pdf/aborto_e_saude_publica_vs_preliminar.pdf>. Accessed June 27th, 2017.

of decriminalizing its practice⁹⁵. Furthermore, the government was recommended to promote an easier access to healthcare services and to provide high medical standards when it comes to cases of unsafe abortion. This need arose by the high rates of maternal mortality as a result of unsafe abortive processes. Discrimination and stigma towards pregnant women who undergo abortion - especially less affluent ones - is a common feature among those countries which criminalize abortion⁹⁶. Resorting to illegal methods brings more risks to women, and frequent post-abortive complications, thus, force them to resort to authorized legal structures. As a consequence, the criminalization of abortion does not reduce the practices; on the contrary, it involves more risks, more costs for the healthcare system - as we saw in the previous paragraph - and violates basic rights.

We should not forget another aspect of this issue: women's rights over their body are an expression of human rights in general. Traditionally, patriarchal societies try to oppress, dominate and take control over all aspects of women's lives, especially as far as sexuality and reproduction are concerned⁹⁷. However, women must be left free to choose on their own, to experience motherhood by choice and not because of social imposition. In some way, resorting to illegal abortion is a sign that women hold dear the respect and warranty of their rights, as it is a way to get rid of patriarchal ownership and the objectification of their bodies. In other words, whoever undergo abortive procedures claims their right over life and body and exert autonomy of thought; the State should support this claims for freedom and rights, instead of criminalizing and

⁹⁵ FREIRE, Nilcéa. *Aborto seguro: um direito das mulheres?* In: Revista Ciência e Cultura, 2012. <http://cienciaecultura.bvs.br/scielo.php?pid=S0009-67252012000200013&script=sci_arttext>. Accessed June 27th, 2017.

⁹⁶ GESTEIRA, Solange Maria dos Anjos et al. *Assistência à mulher em processo de abortamento provocado: discurso de profissionais de enfermagem*. In: Acta paul enfermagem, 21(3), 2008, pp. 449-453.

⁹⁷ Fundação Friedrich Ebert. *O feminismo é uma prática: reflexões com mulheres jovens do PT*. São Paulo: Fundação Friedrich Ebert, 20012. <<http://library.fes.de/pdf-files/bueros/brasilien/05931.pdf>>. Accessed September 20th, 2017.

punishing them. When sexual and reproductive rights are discussed in Brazil, the focus lies on the embryo, on its brain functioning, on its right to life; concerns about the rights of the pregnant woman are very little⁹⁸. Abortion-related rights should be guaranteed because they are firmly linked to citizenship rights, which shall be equal to all individuals. So, the ban on abortion prevent the exercise of any subsequent right. The feminist movement revendicates the right to dispose of one's body, and the right to abortion is considered as a part of this⁹⁹. The theoretical basis for this assumption is that it is the fetus that is temporarily lent its mother's body, thus the rights of the fetus cannot prevail on the woman's - in particular because a woman's life is not limited only to motherhood-¹⁰⁰.

The illegality of abortion in Brazil is unacceptable because it remarks that, in practice, women are not considered as subjects of law, do not have any right over their bodies and may be deprived of their human rights¹⁰¹. One may argue that the Brazilian healthcare system do provide access to contraceptive methods, assistance and medical information to its citizens: this cannot be denied, but women must have the right to resort also to abortion in any case and at any cost, so that all their choices are respected¹⁰².

There are two cases worth mentioning, since it clearly shows the outcomes of the criminalization of abortion on women. The first one involves Marlene da Silva Alves,

⁹⁸ SANTOS, Vanessa Cruz; FERRAZ, Karla dos Anjos. *Apresentação*. In: Revista brasileira de ciências políticas, 7, 2012, pp.145-164. <<http://seer.bce.unb.br/index.php/rbcp/article/view/6607/5332>>. Accessed September 21st, 2017.

⁹⁹ Ibid.

¹⁰⁰ THOMSON, JJ. *Uma defesa do aborto*. In: Revista brasileira de ciências políticas, 7, 2012, pp. 145-164. <<http://seer.bce.unb.br/index.php/rbcp/article/view/6614/5338>>. Accessed September 21st, 2017.

¹⁰¹ SANTOS, Vanessa Cruz; FERRAZ, Karla dos Anjos et al. *Aborto no Brasil: a busca por direitos*. In: Revista Saúde e Pesquisa, 6(1), 2013, pp. 141-152. <<http://www.cesumar.br/pesquisa/periodicos/index.php/saudpesq/article/view/2698>>. Accessed September 21st, 2017.

¹⁰² Fundação Friedrich Ebert. *O feminismo é uma prática: reflexões com mulheres jovens do PT*. São Paulo: Fundação Friedrich Ebert, 20012. <<http://library.fes.de/pdf-files/bueros/brasilien/05931.pdf>>. Accessed September 20th, 2017.

aged 75, who stood accused of being responsible of Josineide Gomes de Souza's death due to abortion-related complications. Ms. Da Silva Alves had spent almost her entire life as nurse in a hospital in the city of João Pessoa (State of Paraíba). Thanks to her professional skills in basic medical assistance, the old lady had been attending the necessities of the people of her community. However, on July 15th, 2014, accused of practicing illegal abortions at home she was seized by policemen and her medical tools sequestered. Moreover, she could not resort to any legal assistance before being led to jail¹⁰³. The second victim was Ms. Gomes de Souza, who paid with her life the choice of interrupting an unwanted pregnancy. She had already had two children, had already undergone an abortion and her last pregnancy had been the result of an unstable relationship. Both are victims of the criminalization of abortion because the former lost her freedom, while the latter lost her life. Feminist organizations, the National Council for the Elderly (*Conselho do Idoso*) and the Council of Healthcare (*Conselho de Saúde*) published a leaflet on September 28th¹⁰⁴, 2014, showing their dismay over the imprisonment of Ms. Marlene da Silva Alves, who stood accused with no certain proof of the crime.

The other case was the death of Jandira Magdalena dos Santos, aged 27, who sought for an illegal clinic in Campo Grande (State of Rio de Janeiro) on August 26th, 2014, so as to end an unwanted pregnancy. She disappeared and her body was found charred on the following day¹⁰⁵.

¹⁰³ See JPB, *Idosa foi presa acusada de fazer abortos clandestinos na Capital* <<http://g1.globo.com/pb/paraiba/jpb-2edicao/videos/v/jpb2jp-idosa-foi-presa-acusada-de-fazer-abortos-clandestinos-na-capital/3499643/>>. Accessed May 27th, 2017.

¹⁰⁴ September 28th is the Latin-American and Caribbean Day of Action for Access to Safe and Legal Abortion. This campaign was launched in 1993 by feminist groups in favor of the decriminalization of abortion. See < <http://www.september28.org/>>. Accessed July 3rd, 2017.

¹⁰⁵ See G1, *Corpo de jovem que sumiu após sair para fazer aborto é velado no Rio*. <<http://g1.globo.com/rio-de-janeiro/noticia/2014/09/corpo-de-jovem-que-sumiu-apos-sair-para-fazer-aborto-e-velado-no-rio.html>>. Accessed June 24th, 2017.

Many more cases have been recently reported by the media, as the one occurred to Caroline de Souza Carneiro, who was found dead in an illegal clinic in Duque de Caxias (State of Rio de Janeiro) in 2016 due to complications after an abortive process¹⁰⁶. According to the 2016 data of the World Health Organization, in Brazil a woman loses her life due to unsafe abortion every two days, and it has been esteemed that more than 1 million women resort to illegal abortion every year¹⁰⁷. Decriminalizing abortion means avoiding that more Josineides, Jandiras and Carolines put their lives at high risk, and it is a duty of the State to provide women with the warranty and the respect of their rights.

To sum up, in this chapter we described the background and the features of abortion in Brazil, inscribing it in the framework of international law. The Guttmacher Institute estimated that during 2010-2014 the number of induced abortions worldwide reached 56 million¹⁰⁸, showing that abortive procedures are common to all societies. Nonetheless, many countries still criminalize and stigmatize its performance, and Brazil stands among them since the 1940s. This topic has raised great interests because it is a major public health issue. As a matter of fact, the 2016 Brazilian Abortion Survey showed that in 2016, almost 1 in every 5 women had undergone at least one abortion by the age of 40. In 2015, approximately 416,000 women declared to have had an abortion¹⁰⁹. The number of illegal abortions in 2016 is believed to achieve approximately 1 million, but the research could not grasp the whole dimension

¹⁰⁶ SOARES, Rafael, *Jovem é encontrada morta após fazer aborto em clínica clandestina em Benfica*. <<https://extra.globo.com/casos-de-policia/jovem-encontrada-morta-apos-fazer-aborto-em-clinica-clandestina-em-benfica-19981158.html>>. Accessed June 8th, 2017.

¹⁰⁷ BERTH, Joice, *Mortes por aborto no Brasil: a legitimação da nossa ignorância*. <<http://justificando.cartacapital.com.br/2016/09/28/mortes-por-aborto-no-brasil-legitimacao-da-nossa-ignorancia/>>. Accessed May 26th, 2017.

¹⁰⁸ Guttmacher Institute, *Induced abortion Worldwide – Global incidence and trends*. <<https://www.guttmacher.org/fact-sheet/induced-abortion-worldwide>>. Accessed June 4th, 2017.

¹⁰⁹ DINIZ, Deborah; MEDEIROS, Marcelo; MADEIRO, Alberto, *National Abortion Survey 2016*. In: *Ciência & Saúde Coletiva*, 22(2), Brasília, 2016, pp.653-660.

of the problem. Such figures reveal that the Brazilian governments have not tackled this issue properly in the last decades. The legislation on abortion dates back to 1940 and, at the beginning, the Penal Code established that legal abortive services may be provided only in two cases: if the woman's life was severely endangered, and if the pregnancy was the result of sexual violence.

The Brazilian legislation on abortion was developed within the environment of international law but, while international treaties and conventions pushed for the decriminalization of abortion, Brazilian law continued strict. Sexual and reproductive rights were introduced in the international institutional scene during the 1980s and they had started being considered a consistent part of human rights. However, their proper legitimation began in the 1990s in occasion of two conferences: the 1994 International Conference on Population and Development held in Cairo, where also the interruption of pregnancy emerged as a severe issue of public health; and the 1995 Beijing Conference, whose members were urged to revise penal legislation in those countries that criminalized abortion¹¹⁰. Moreover, international tools to monitor sexual and reproductive rights were funded. First, the UN Committee on the Elimination of Discrimination against Women¹¹¹ (CEDAW), the most important tool to control and protect female right, recommended the elimination of every kind of legislative barrier that prevent women from accessing medical procedures, and encourages Member States to revise their legislation on abortion. Second, the Committee on Economic, Social and Cultural Rights¹¹² (CESCR), whose purpose is to guarantee that every individual has the easiest access to healthcare, that Member States prevent women

¹¹⁰ CORRÊA, Sonia; ÁVILA, Maria Betânia, *Direitos Sexuais e Reprodutivos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 22.

¹¹¹ See UN Committee on the Elimination of Discrimination against Women <<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>>. Accessed May 16th, 2017.

¹¹² See UN Committee on Economic, Social and Cultural Rights <<http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>>. Accessed June 7th, 2017.

from suffering discrimination and revise laws that deny reproductive rights¹¹³. In other words, during the 20th century the rights to freedom, equality, healthcare, marriage, family, life, privacy, motherhood were restated within several international tools: consequently, international institutions favored the decriminalization of abortion and the respect of women's rights. Nonetheless, countries such as Brazil still stigmatized abortion and did not succeed in changing the existent laws on it.

However, it is undeniable that some attempts to pace up with international trend were made, especially due to the pressures of feminist movements. During the 1970s' military dictatorship, two health programs were drafted as a first attempt to guarantee minimum reproductive rights to pregnant women, to foster assistance to them in case of high-risk pregnancy and to normatize family planning. However, those programs were never applied and the criticism towards their flaws inspired the creation in 1983 of the Program of Assistance to Woman's Health which is still applied¹¹⁴. Moreover, by the 1980s the debate on abortion intensified and Brazil started adopting the concept of reproductive rights since it was on the path towards the reform of its healthcare system. But have social claims changed dramatically the legislative path of abortion in the last decades?

We must remind that the main law on abortion in Brazil dates back to the 1940 Penal Code, and its content is still into force until these days¹¹⁵. Originally, artt. 124 to 128 stated that abortion was illegal, except in case of risk for the life of the pregnant

¹¹³ CORRÊA, Sonia; ÁVILA, Maria Betânia, *Direitos Sexuais e Reprodutivos*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 24.

¹¹⁴ BARSTED, Leila, *O Campo Político-Legislativo dos Direitos Sexuais e Reprodutivos no Brasil*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003, p.80.

¹¹⁵ Presidência da República - Casa Civil - Subchefia para Assuntos Jurídicos, *Decreto-Lei No 2.848, de 7 de dezembro de 1940*, art. 128. <http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm>. The criminalization of abortion appears also in the 1984 revision of the Brazilian Penal Code. Accessed June 6th, 2017.

woman or in case of rape. The renewal of the Penal Code, occurred in 1984¹¹⁶, reaffirmed this status. Apart from typifying the criminalization of abortive practices, among the 1940s and 1980s few was done to ensure women's reproductive and sexual rights at national level. As a matter of fact, it was just in the early 1990s that the National Congress tackled the question in the law proposal PL 20/1991¹¹⁷, with the purpose of guaranteeing abortion services within the public health system - at national level - just in the two cases permitted by Brazilian law. However, the project had never come to an approval due to the several controversies that arose within the Federal Chamber. The harshest opposition to this slight change was led by conservative religious groups.

Two more attempts to fill the existing legislative gap on legal and safe abortion by approving a technical norm on the assistance to women who had suffered violence were the 1998 "*Norma Técnica de Atendimento à Mulher Vítima de Violência*" and the 2012 "*Norma Técnica Atenção Humanizada ao Abortamento*"¹¹⁸. Again, there was not a proper change in the law, but just a reiteration of the already existent right to abortion.

A significant step in the path of abortive legislation in Brazil was also the 2012 sentence of the Supreme Federal Court that established that the national healthcare system guaranteed the right to medical treatment to pregnant women whose fetus was suffering from anencephaly¹¹⁹: the *Arguição de Descumprimento de Preceito*

¹¹⁶ Ibid.

¹¹⁷ The PL 20/1991 by Federal Deputy Eduardo Jorge states that the public healthcare system (SUS) is obliged to assist women willing to have an abortion, in the cases provided by the Penal Code. See Câmara dos Deputados, PL 20/1991, Brasília, 1991. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=14943>>. Accessed June 8th, 2017

¹¹⁸ Ministério da Saúde, *Norma técnica - Atenção humanizada ao abortamento*, Série A. Normas e Manuais Técnicos Série Direitos Sexuais e Direitos Reprodutivos - Caderno nº 4, Brasília, 2005.

¹¹⁹ Anencephaly is a cephalic disorder that causes the absence of a major portion of the brain, skull, and scalp during embryonic development. According to medical research, there is no possibility at all to survival anencephaly; if the fetus survives until childbirth, it will die within minutes or days.

*Fundamental No. 54 (ADPF-54)*¹²⁰. This document claims that women are guaranteed the right to the voluntary interruption of pregnancy if the anencephaly of the fetus has been diagnosed. In this case too, the sentence has not provided a change in the legislation on abortion but it was welcomed by feminists and pro-choice groups as a milestone along this path.

This far, we have observed that the legislation on abortion has changed slightly between 1940 and the 2010s, remaining strict. Such immobility has negative outcomes not only on women's life but also on Brazilian society. On the one hand, the illegality of abortion implies a difficulty in accessing healthcare services, so women resort to illegal practices. The lack of hygiene and post-abortive complications often endanger the life of pregnant women, who need to be hospitalized. However, the costs of hospitalization reach 40 million *reais* per year¹²¹, a heavy burden for public coffers. On the contrary, if abortion were legal, there would be no need to spend such amount of money and women would benefit from high-quality, safe services. On the other hand, the criminalization of abortion affects negatively also women's rights. It is the State itself that first stigmatized abortion and does not guarantee any respect for freedom of choosing, since in many circumstances induced abortion is stigmatized by doctors and medical personnel. Abuses within the healthcare system are a violation of international human rights and Brazil has to address the needs and the rights of its. For this reason,

¹²⁰ MELLO, Marco Aurélio, *Arguição de Descumprimento de Preceito Fundamental No. 54 (ADPF-54)*. Available at <<http://www.stf.jus.br/arquivo/cms/noticianoticiastf/anexo/adpf54.pdf>>. Accessed September 24th, 2017.

¹²¹ GONÇALVES, Juliana; BORGES, Helena, *Qual o preço que o Brasil paga pela criminalização do aborto?*. <<https://theintercept.com/2017/03/16/qual-o-preco-que-o-brasil-paga-pela-criminalizacao-do-aborto/>>. Accessed August 8th, 2017.

the country has been warned by the United Nations that it must revise the legislation on abortion, in the sense of decriminalizing its practice¹²².

We may conclude that the current situation of illegality has severe negative impacts on society and economy in Brazil. What may seem strange is the fact that, despite this, almost no change has involved the Brazilian legislation on abortion since 1940. Immobility has been a typical feature of all these decades. In the next chapters, we will analyze why the situation has not changed yet and whose actors are responsible for it at institutional and social level. As a matter of fact, the debate on abortion has seen the opposition of both religious and feminist groups, pro-life and pro-choice association: the framework we have depicted up to now is the result of the fight of the above-mentioned actors, both within and without the National Congress, which is the place where the issue of abortion has moved along its legislative path.

¹²² FREIRE, Nilcéa. *Aborto seguro: um direito das mulheres?* In: Revista Ciência e Cultura, 2012. <http://cienciaecultura.bvs.br/scielo.php?pid=S0009-67252012000200013&script=sci_arttext>. Accessed June 27th, 2017.

CHAPTER TWO

THE DEBATE ON ABORTION FROM THE POINT OF VIEW OF POLITICAL AND SOCIAL ACTORS

In the previous chapter, we have seen that sexual and reproductive rights have been guaranteed at international level since the 1980s. The proper legitimization of those rights has occurred in the following decade, marked by the final documents of the 1994 International Conference on Population and Development, held in Cairo, and of the 1995 Beijing Conference.

The former has set qualitative and quantitative goals concerning development, universal education, reduction of child mortality, etc¹²³. As concerns sexual and reproductive rights, Member States have promised to apply actions aimed at:

- The reduction of maternal mortality by 50% until 1990 and by a further 50% by 2015; moreover, any disparity in rates of maternal mortality within countries should be reduced;
- Easier access to healthcare services related to sexuality and reproduction: this implied counseling on family planning, pre- and post-natal care, prevention of unsafe abortions, high-quality standards for the treatment of post-abortive complications, etc.

The latter reiterated the importance of such warranties and, in addition, stated that Member States should revise penal legislation in case it criminalized abortion¹²⁴.

¹²³ United Nations Population Fund. *International Conference on Population and Development*. <<http://www.unfpa.org/icpd>>. Accessed September 17th, 2017.

¹²⁴ CORRÊA, Sonia; ÁVILA, Maria Betânia, Direitos Sexuais e Reprodutivos. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003. p. 22.

The final document that was created is called Beijing Platform for Action and provided specific guidelines for the creation, protection and implementation of social and economic policies concerning the fields of healthcare and human rights. This specific declaration is viewed across the globe as a milestone to women's and gender policy.

Brazil took part to both international meetings and signed their final declarations. In 2000, the Brazilian Government submitted to the UN General Assembly its National Report on the Implementation of the Platform for Action, declaring that the Beijing Conference was a landmark both for society and the State. Despite its international commitments, though, the Brazilian legislation on sexual and reproductive rights - especially abortion - has not changed since the 1940s. In other words, while some steps towards the decriminalization of abortive practices and the safeguard of women's rights have been made at international level, Brazil did not manage to change its legislation and remained stuck to the dispositions provided by the 1940 Penal Code.

Artt. 124 to 128 of the Brazilian Penal Code typify abortion as a heinous crime, a crime against life; punitive measures for women who undergo abortive practices range from one- to three-year imprisonment, while it ranges from one- to four-year detention for third parties that performs abortion¹²⁵. From 1940 to 2012, abortion was considered legal just in two cases: if there is no other way to save the pregnant woman's life; or when the pregnancy has been the result of rape and the pregnant woman, or her legal representative if she is incapacitated, consents to the procedure of abortion. A third exception to the criminalization was introduced by the *Arguição de*

¹²⁵ Presidência da República - Casa Civil - Subchefia para Assuntos Jurídicos, *Decreto-Lei No 2.848, de 7 de dezembro de 1940, artt. 124-128*. <http://www.planalto.gov.br/ccivil_03/decreto-lei/Del2848compilado.htm>. The criminalization of abortion appears also in the 1984 revision of the Brazilian Penal Code. Accessed June 6th, 2017.

*Descumprimento de Preceito Fundamental No. 54 (ADPF-54)*¹²⁶: in 2012 the Supreme Federal Court, ruled by an 8-2 vote, established that abortion was permitted in cases of fetuses with anencephaly. However, this sentence did not bring any change to the existent legislation. To sum up, we may be aware that a certain degree of immobility has characterized the legislative path towards the decriminalization of abortion.

The reason for this paralysis lies in the fact that there has been harsh confrontation among pro-life and pro-choice supporters within and without Brazilian institutions. What has always prevailed was the conservatism of pro-life groups. This chapter will deal with the different positions of these two opposite fronts, since their interaction has deeply influenced the evolution (or involution) of abortive rights in the last decades in Brazil. Furthermore, the chapter will provide the theoretical background for the analysis of the legislative proposals that have been submitted to the National Congress: as a matter of fact, the beliefs and the power of pro-life and pro-choice groups have often oriented the decisions on sexual and reproductive rights within Brazilian institutions.

2.1 The opposition to the decriminalization of abortion: pro-life supporters

First of all, this chapter takes into consideration some social, political and religious actors that are in favor of life and, thus, against the decriminalization of abortion in Brazil.

¹²⁶ MELLO, Marco Aurélio, *Arguição de Descumprimento de Preceito Fundamental No. 54 (ADPF-54)*. Available at <<http://www.stf.jus.br/arquivo/cms/noticianoticiastf/anexo/adpf54.pdf>>. Accessed September 24th, 2017.

Pro-life movements declare to be favorable to the dignity of human life, which is sacred to them and need to be fully respected. This concept dates back to ancient times and refers to the protection and respect of all human beings, since they bear equal rights and duties¹²⁷. Nowadays it is believed to be the most important ethical value of modern civilizations. For this reason, the dignity of human life is established by both international norms and constitutional articles. As a matter of fact, the Universal Declaration of Human Rights in its Preamble and in Art. 1 states that

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, [...The General Assembly declares that] all human beings are born free and equal in dignity and rights¹²⁸.

The 1988 Brazilian Federal Constitution itself defends the dignity of human life in Art. 1, among its fundamental principles:

The Federative Republic of Brazil, formed by the indissoluble union of the states and municipalities and of the Federal District, is a legal democratic state and is founded on:

- I – sovereignty;
- II – citizenship;
- III – the dignity of the human person;
- IV – the social values of labor and of the free enterprise;
- V – political pluralism¹²⁹.

The concept of dignity of human life goes at an equal pace with the right to life: since everyone is equal to the others in dignity and rights, he/she must neither deprive nor be deprived of their right to survive. Pro-life interpretation of the above-mentioned

¹²⁷ KUMAGAI, Cibele, NADER, Taís Marta. *Princípio da dignidade da pessoa humana*. <http://www.ambito-juridico.com.br/site/index.php?n_link=revista_artigos_leitura&artigo_id=7830>. Accessed September 26th, 2017.

¹²⁸ United Nations. *Universal Declaration of Human Rights*. Preamble and art. 1. <<http://www.un.org/en/universal-declaration-human-rights/>>. Accessed September 26th, 2017.

¹²⁹ Senado Federal. *Constituição da República Federativa do Brasil*. Diário Oficial da União, Art. 1, Brasília, 1988.

articles implies that all human beings cannot be denied the experience of life: as far as abortion is concerned, its performance would preclude to the fetus any chance of living; for this reason, abortion is thought to represent a violation of human dignity. In other words, pro-life supporters oppose all those activities - e.g. abortion, euthanasia, death penalty, human cloning, etc. - that prevent people from exerting their fundamental rights to life and dignity. We may observe that actions as euthanasia, death penalty and human cloning involve the participation of born subjects. On the contrary, the case of abortion is peculiar because its performance targets the fetus, an unborn subject.

Here lies the main difference between pro-life and pro-choice thinking. As a matter of fact, pro-life supporters believe that life begins at the very moment of conception, so the fetus would benefit from all the rights that are attributed to born human beings. According to this view, the fetus would gain its own juridical personality, and the act of interrupting pregnancy would be equal to assassination.

An example of this conception may be found in the words of Deputy Elimar Máximo Damasceno, who belongs to the conservative party PRONA, in front of the Brazilian National Congress in 2003:

Abortion should be considered the very abominable crime against humanity. It implies the violation of the first among all rights - LIFE - of the most innocent and vulnerable human being - THE UNBORN CHILD [...]. Abortive practices are crueler than the way of dying to which adults are submitted. Which criminal would ever butcher, cut into pieces or poison the victim? Those are the methods used for intrauterine assassination¹³⁰.

At institutional level, pro-life supporters ask for the safeguard of both extra- and intrauterine life. Due to the strong influence of pro-life parties and representatives within Brazilian institutions, it is no coincidence that the country protects life from

¹³⁰ Câmara dos Deputados, PL 849/2003.
<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=113241>>. Accessed June 24th, 2017.

conception. As a matter of fact, Brazil signed the American Human Rights Convention, or Pact of San José¹³¹. This convention grants embryos the right to life, "in general, from the moment of conception". Moreover, the Brazilian Civil Code also safeguards the rights of the unborn: "The legal personality of an individual starts with the birth; nevertheless, the law safeguards the rights of unborn children since the moment of conception"¹³².

Clearly, the conservative attitude of Brazilian legislative tools is the reflection of the great influence of pro-life supporters, most of all of religious groups and congregations. Traditionally, the interference of religion with public issues has been a common feature of the past decades in Brazil, and religious fundamentalism has obstacle the progress of women's rights. This is due to the fact that Churches constantly try to violate the secularity of the State by imposing ultraconservative measures that prevent citizens - especially women - to exert their rights¹³³. Religious conservatism flooded the National Congress since many representatives of the Church have formed parliamentary groups that impede the passing of laws on public policies.

In the next paragraphs, thus, we will deal with the pro-life thinking of some religious institutions, especially the Neopentecostal Churches and the Catholic Church. It must be highlighted that the former are cohesive in the condemnation of abortion; on the contrary, the latter has no single approach to the issue, but is partly pro-life and partly pro-choice.

¹³¹ Organization of American States. *American Human Rights Convention - Pact of San José*. San José, 1969.

¹³² Presidência da República- Subchefia para Assuntos Jurídicos, *Lei No 10.406, de 10 de janeiro de 2002, Art. 2.* <http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm>. Accessed May 27th, 2017.

¹³³ AWID Women's Rights, *Religious-Based Political Parties and Groups Continue to Resist Women's SRHRs in Brazil*, 2013. < <https://www.awid.org/news-and-analysis/religious-based-political-parties-and-groups-continue-resist-womens-srhrs-brazil>>. Accessed September 26th, 2017.

Later, specific attention will be addressed to the existence of pro-life groups within the Brazilian National Congress: as a matter of fact, the *Movimento Nacional da Cidadania pela Vida - Brasil sem Aborto* and the *Frente Parlamentar contra o Aborto* have struggled tenaciously to enhance the criminalization of abortion, by favoring pro-life initiatives.

2.1.1 Pentecostal Churches

Pentecostalism is a movement of renovation within Protestantism that places great emphasis on a direct personal experience of faith through the baptism in the Holy Spirit. They praise the necessity of accepting Christ as personal savior, as a means to forgive all sins and to reconcile with God¹³⁴. They are persuaded of the fact that baptism, the regeneration and the intimate connection with the Holy Spirit are the only way to save themselves from sin and hell. In the last decades, Brazil has seen a sharp increase in the number of people faithful to this doctrine¹³⁵, despite existing since the 1980s. A plurality of denominations characterizes the pentecostal movement; however, the most-known are the *Igreja Universal do Reino de Deus* (Universal Church of the Kingdom of God) and the *Igreja Internacional da Graça de Deus* (International Grace of God Church). These are also called “The Churches of prosperity” because they believe that people must offer God anything - especially money - so as it can pay them back with luck, prosperity, health, etc. Notwithstanding the subtle differences that exist among all of them, pentecostal supporters do share their condemnation towards abortive practices and, consequently, oppose the process of decriminalization of

¹³⁴ DUFFIELD, Guy; VAN CLEAVE, Nathaniel, *Foundations of Pentecostal Theology*, Los Angeles: Foursquare Media, 1983, p 239.

¹³⁵ VATICAN INSIDER, *L'onda lunga del Pentecostalismo in Brasile*. <<http://www.lastampa.it/2017/03/20/vaticaninsider/ita/nel-mondo/londa-lunga-del-pentecostalismo-in-brasile-9q7ZXvO3PdDG2V8ZhBmwKL/pagina.html>>. Accessed September 26th, 2017.

abortion in Brazil. Their pro-life attitude derives from the belief of the sacredness of life, which begins with the moment of conception.

Pentecostal thinking on social issues, such as abortion, has entered the National Congress thanks to its participation to the so-called *Bancada Evangélica*: this Evangelical parliamentary front defends the interests of Protestant and Pentecostal Churches and has proved to exert high political influences within Brazilian institutions, declaring its opposition to any project of decriminalization of abortive practices¹³⁶. We should take into consideration that the current Evangelical front is formed by 90 representatives in the Parliament, of which 87 being Federal Deputies and 3 Senators. As we will see more in detail in the next chapter, this group has always lobbied Brazilian Presidents and Ministers to the extent of reinforcing the feature of illegality of abortion. An example of their requests is the legislative proposal on the creation of the *Estatuto do Nascituro*, a document signed by spiritist, conservative Deputy Luis Bassuma, in defence of the rights of the unborn child¹³⁷. One year later, in 2008, the *Bancada Evangélica* asked for the creation of a Parliamentary Inquiry Committee to collect information on illegal abortion¹³⁸. In another occasion, the front succeeded also in dismissing a Minister in favor of abortion. At the beginning of 2012, in fact, Ms. Eleonora Menicucci was named Minister for the Secretary on Women's Policies; the pressures of Evangelicals and Pentecostals forced the President Dilma Rousseff to declare that the Minister "would act according to the guidelines of the government",

¹³⁶ BOHN, Simone, *Evangélicos no Brasil. Perfil socioeconômico, afinidades ideológicas E determinantes do comportamento eleitoral*. In: Opinião Pública, Vol. X, nº 2, Campinas, 2004, pp. 288-338.

¹³⁷ Câmara dos Deputados, PL 478/2007
<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=345103>>. Accessed August 2nd, 2017.

¹³⁸ Câmara dos Deputados, RCP 9/2008.
<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=390049>>. Accessed June 3rd, 2017.

meaning that there would not have been any possibility to discuss the legalization of abortion¹³⁹.

To sum up, we have seen that Protestant faiths support the right to life of any individual, including the fetus, since life is believed to start in the moment of conception. Such pro-life thought permeates also Brazilian institutions, because Evangelicals and Pentecostals join a parliamentary front against any form of decriminalization of abortion. This conservatism shows that its religious representatives have not grasped the changes that occurred both within and without Brazil. As a matter of fact, at least between the 1980s and the late 1990s, an international and national demand for women's rights burst out, as we have observed in Chapter One. Nonetheless, Protestant Churches have continued on the path towards the condemnation of abortion.

However, other religious representatives have declared their opposition to the softening of abortive laws in Brazil: this is the case of conservative Catholics.

2.1.2 The conservative Catholic Church

In Brazil, the Catholic Church has held hegemonic power on morality over sexuality and reproduction for a long time. Its position on the topic of abortion has slightly changed in recent times because some groups within it have supported pro-choice arguments and backed the right of women to decide freely over their body. This

¹³⁹ NUBLAT, Johanna, COSTA, Breno. *Dilma diz que nova ministra atuará 'segundo diretrizes do governo'*, 2012. <<http://www1.folha.uol.com.br/poder/2012/02/1046896-dilma-diz-que-nova-ministra-atuara-segundo-diretrizes-do-governo.shtml>>, and AGÊNCIA O GLOBO, *Religiosos e ativistas exigem a demissão imediata da Ministra Eleonora Menicucci*, 2012. <<http://d24am.com/noticias/religiosos-e-ativistas-exigem-a-demissao-imediata-da-ministra-eleonora-menicucci/53573/>>. Accessed September 26th, 2017.

paragraph will focus on the conservative, pro-life traditional thinking of the Catholic Church.

Traditionally, Catholics have shown their fierce opposition towards abortive practices, starting from the assumption that life is a sacred, absolute, inviolable right. Moreover, they believe that life is a gift God gives us from the very moment of conception. The sacrality of human life on the one hand, and the living condition attached to the fetus on the other gave birth to the radical criticism of abortion.

“Every human being, even unborn children, are provided with the right to life directly from God”¹⁴⁰: endangering one’s life meant committing violence against God himself, one of the worst sins. Therapeutical abortion was condemned for being a threefold injustice: against God sovereignty, who is the only entity accountable for life; against a fellow, for depriving him/her from the right to existence; against society, who loses one of its members. For decades, Catholic Church has been so conservative that has not allowed abortion even in cases of severe fetal anomalies¹⁴¹. In the last century, some Catholics have justified their theory with the support of scientific proof: the moment of conception implies the union of female and male gametes, generation a new genetical code, which would correspond to a new individual. In other words, several conservative Catholics went on revendicating the rights of unborn children, regardless of the fact that an unwanted pregnancy would violate the right of women to choose freely over their body¹⁴².

¹⁴⁰ POPE PAUL VI, *Declarations on abortion*. In: Sedoc, Vozes, Petrópolis, 1973, pp.1034-1036.

¹⁴¹ ANJOS, M. F. *Da argumentação sobre a moralidade do aborto ao modo justo de se argumentar em teologia moral*, Loyola, São Paulo, 1976, p. 16.

¹⁴² NUNES, Maria José Rosado, *O tema do aborto na Igreja Católica: divergências silenciadas*. In: *Ciência e Cultura*, vol.64(2), São Paulo, Apr./June 2012, pp. 23-31.

As we will see in detail in chapter three, the conservative position of the Catholic Church is promoted by the National Conference of Bishops of Brazil (*Conferência Nacional dos Bispos do Brasil*)¹⁴³, a civil association founded in the city of Rio de Janeiro. This important institution has been the symbol of Catholic Church and of conservative, pro-life instances at national level, and since the 1950s is deeply engaged in the fight against the decriminalization of abortion. Its action has always been addressed towards any legislative proposal for the revision of abortive laws; moreover, it often has borne proof of hostility also towards the legal abortive cases allowed by law¹⁴⁴. Apart from disliking the access to abortive services in case of rape or risk for the life of the pregnant woman, the Conference of Bishops did not welcome the sentence of the Supreme Federal Court on cases of fetal anencephaly. In a 2008 official note, the Catholic association declared that

The legalization of abortive practices in case of fetal anencephaly undermines the inviolability of life, which is clearly included in the Brazilian Federal Constitution. The National Conference of Bishops of Brazil declares its radical opposition to abortive practices performed on anencephalic fetuses. Notwithstanding the fact that the life of fetuses with irreparable cephalic damages is extremely short, their right to life is not negotiable¹⁴⁵.

What is striking is the fact that the Conference of Bishops is an institution of paramount importance in Brazil. Starting from the 1980s, the Brazilian social reality has started changing dramatically and numerous claims for the decriminalization of abortion and for the free disposal of sexual and reproductive rights have emerged. Moreover, the international panorama on human rights have changed and brought to

¹⁴³ See Conferência Nacional dos Bispos do Brasil, available at <<http://cnbb.net.br/>>. Accessed May 27th, 2017.

¹⁴⁴ MORENO, Saulo, *CNBB se mantém contra mudanças na lei do aborto*, 2004. <<http://memoria.etc.com.br/agenciabrasil/noticia/2004-12-16/cnbb-se-mantem-contra-mudancas-na-lei-do-aborto>>. Accessed September 26th, 2017.

¹⁴⁵ Conferência Nacional dos Bispos do Brasil, *Nota da CNBB sobre aborto de fetos anencefálicos*, 2008. <<http://www.cnbb.org.br/site/imprensa/notas-e-declaracoes/1434-nota-da-cnbb-sobre-aborto-de-feto-anencefalico>>. Accessed September 26th, 2017.

the creation of meeting (e.g. in 1994 in Cairo and in 1995 in Beijing) to cope with the renewed social reality. These events, however, seem not to have weakened the official position of the conservative *Conferência Nacional dos Bispos do Brasil*.

On the contrary, the conservatism of this association has grown even stronger in the last decade. It has started lobbying the governments with the purpose of avoiding a change in the political orientation and thinking on sexual and reproductive rights. A clear example of their influence on politics may be found during the electoral campaign of 2010. Catholic religious groups distributed leaflets against abortion in the States of Minas Gerais and São Paulo: at that time, Dilma Rousseff and José Serra were disputing the second round of the Presidential elections. The flyers were subscribed by the National Conference of Bishops of Brazil, who was trying to convince electors to express their vote according to the candidates' position on abortion¹⁴⁶. They would favor whoever stood against the decriminalization of abortion: thus, to the detriment of Dilma Rousseff, who supported the legalization of abortive practices. The Federal Police ordered the sequestration of such material.

Even after Rousseff's election as President of Brazil, conservative Catholics went on protesting against the position of the government, which appeared to be too favorable to abortion. To spread their conservative thought further, the *Conferência Nacional dos Bispos do Brasil* launched a campaign in favor of life in 2011: it established the Week of Life (*Semana da Vida*) from 1 to 7 October, and the Day of the Unborn Child (*Dia do Nascituro*) on October, 8th. Their aim was "not only the

¹⁴⁶ NOBLAT, Ricardo, *Panfletos contra Dilma e PT distribuídos em SP e MG*. <<http://noblat.oglobo.globo.com/noticias/noticia/2010/10/panfletos-contradilma-pt-distribuidos-em-sp-mg-332129.html>>. Accessed September 26th, 2017.

defence, but also the promotion of human life”¹⁴⁷. One year later, on March 9th, 2012, it also launched the Campaign of Fraternity, whose topic was public health, and the conservative sectors of the Catholic Church reaffirmed their strong opposition to abortion¹⁴⁸.

To sum up, part of the Catholic Church in Brazil is still stuck on conservative pro-life beliefs, in compliance with the sacred concept of life as a gift of God. This current is mainly represented by the National Conference of Bishops of Brazil, which has not changed its position towards abortion-related issues for decades. As occurs with both Evangelicals and Pentecostals, Catholics exert a deep influence on both society and politics, lobbying government representatives so as to inhibit any attempt to promote pro-life attitudes. Religious representatives and supporters play a great role in keeping the *status quo* of reproductive and sexual rights also within the National Congress, as depicted in the next paragraph.

2.1.3 Conservatism within the National Congress: parliamentary fronts against abortion

The opposition to the free disposal of sexual and reproductive rights and to legal abortion has been exerted by religious pro-life groups within the Brazilian National Congress. The immobility of the legislation on abortion has been guaranteed also by the creation of parliamentary fronts which supported pro-life ideas.

¹⁴⁷Conferência Nacional dos Bispos do Brasil, *Semana da Vida e dia do nascituro*. <<http://www.cnb.org.br/site/comissoes-episcopais/vida-e-familia/7765-semana-da-vida-e-dia-do-nascituro>>. Accessed September 26th, 2017.

¹⁴⁸ Conferência Nacional dos Bispos do Brasil, *Campanha da Fraternidade 2012: A Igreja leva saúde e fraternidade para todos*. <<https://www.pastoraldacrianca.org.br/campanha-da-fraternidade/campanha-da-fraternidade-2012-fraternidade-e-saude-publica>>. Accessed September 26th, 2017.

Who benefitted most by this organization within the National Congress were Evangelicals and Pentecostals¹⁴⁹. The reasons why they are eager to participate into the legislative correspond to the reinforcement of their values. In particular, they aim at surviving within a societal order that is rapidly changing and where the instances of progressive, pro-choice and feminist actors are increasing; thus, Evangelicals and Pentecostals hold dear the safeguard of their own beliefs, which may be endangered by new claims, e.g. for sexual diversity, for the revision of public policies in favor of women's rights, etc. Apart from protecting their thinking, their place at the national Congress assures that their guidelines are recognized and project an influence on society. Not by chance, in 2003 the Evangelical Parliamentary Front (or *Bancada Evangélica*) was created by Deputy Adelor Vieira, a supporter of the *Assembleia de Deus*. Its importance lies on her fierce opposition to the right to abortion within the Deputy Chamber.

What really enables these parliamentary fronts to be successful in preventing progress is the fact that they reunite representatives of different Churches. For instance, the *Frente Parlamentar em Defesa da Vida – Contra o Aborto* was created for the first time in 2005; its leader was spiritist deputy Luiz Bassuma, the same author of the legislative proposal on the *Estatuto do Nascituro*¹⁵⁰. Later, the front was joined by several deputies, being spiritists, Catholics, Presbiterians, etc.: they all struggled in favor of life, and are deeply concerned about:

¹⁴⁹ MACHADO, Maria das Dores Campos; BURITY, Joanildo. *A ascensão política dos pentecostais no Brasil na avaliação de líderes religiosos*. In: Dados, vol. 57, nº 3, Rio de Janeiro, jul.-set. 2014, pp. 601-631.

¹⁵⁰ Câmara dos Deputados, *Informações do deputado - Luiz Carlos Bassuma*. <http://www.camara.leg.br/internet/deputado/Dep_Detalhe_Inativo.asp?id=520299>. Accessed September 27th, 2017.

- The revocation of the exceptions to the ban on abortion: this means they aim at changing Artt. 124 to 128 of the 1940 Brazilian Penal Code, and make abortion illegal in any case.
- Tightening the rules and introduce new punitive measures towards whomever performs illegal abortions;
- Create a national register of pregnant women, the so-called *Registro Público da Gravidez*: this proposal suggests that hospitals issue a certificate whenever a pregnant woman resorts to healthcare services, thus detecting cases of abortion and easily adopt judicial measures against them¹⁵¹;
- Prohibit abortion even if it is the result of sexual violence, and offer the pregnant women a financial subsidy - which has been named *Bolsa Estupro*¹⁵² -.
- Introduce the right to life “from the moment of conception” in the Brazilian Constitution, which does not clearly affirm this.

Parliamentary fronts in favor of life, though, do not necessarily have a religious connotation: it is the case of the *Movimento Nacional da Cidadania pela Vida – Brasil Sem Aborto*¹⁵³, an organization which is not attached to any specific political party or religious group. Yet, it shares the same pro-life principles, defending the right of unborn children since conception; moreover, it promotes the realization of research in the fields of genetic, embryology, bioethics, law. Among its ranks there are professors, lawyers, community leaders, scientists etc,. In 2016, the movement celebrated its ten-year commitment with the organization of the First International Meeting in Defense of

¹⁵¹ Câmara dos Deputados, PL 8516/1986. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=233062>>. Accessed June 24th, 2017. This was the first proposal on a national register of pregnant women.

¹⁵² OAB - Rio de Janeiro, *Comissão da Câmara aprova bolsa estupro*, 2013. <<https://oab-rj.jusbrasil.com.br/noticias/100550204/comissao-da-camara-aprova-bolsa-estupro>>.

¹⁵³ See Movimento Nacional da Cidadania pela Vida – Brasil Sem Aborto. <<http://brasilemaborto.org/sobre/>>. Accessed September 26th, 2017.

Life (1^o *Seminário Internacional em Defesa da Vida*¹⁵⁴), a sign of its paramount importance in the debate on abortion in Brazil.

In 2005, the legislative proposal PL 1135/1991¹⁵⁵ on the decriminalization of abortion was almost approved - but for one single vote - by the Federal Chamber. Many pro-life movements were involved in the vote but they lacked cohesion. This is the reason why the *Frente Parlamentar pela Vida* was created, to collect all similar instances against abortion¹⁵⁶.

Two years later, the legislative proposal was rejected - 33 votes against 0 - within the same commission, especially due to the active participation of the movement; furthermore, it strongly supported other proposals, such as that on the *Estatuto do Nascituro*. On the contrary, it voted against the *Arguição de Descumprimento de Preceito Fundamental No. 54 (ADPF-54)*¹⁵⁷, which allowed abortion in case of fetal anencephaly - without results, though -.

To summarize, pro-life supporters organize themselves into parliamentary fronts - with or without religious connotation - so that their requests gain more force. In many cases, this conservative opposition has proved successful. Nevertheless, it is undeniable that they attempt to violate women's fundamental rights and to criminalize women themselves for exerting their right to a free sexual and reproductive health. Chapter three will deal in detail the strategies that pro-life movements apply within the National Congress. In any case, not only pro-life groups act inside institutions or in society, but also pro-choice movements make their voice heard in Brazil.

¹⁵⁴ Sempre Família, *Movimento Brasil Sem Aborto completa 10 anos com conquistas importantes a celebrar*. <<http://www.semrefamilia.com.br/movimento-brasil-sem-aborto-completa-10-anos-com-conquistas-importantes-a-celebrar/>>. Accessed September 26th, 2017.

¹⁵⁵ Câmara dos Deputados, *PL 1.135/1991*.

<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=16299>>. Accessed June 25th, 2017.

¹⁵⁶ Ibid.

¹⁵⁷ MELLO, Marco Aurélio, *Arguição de Descumprimento de Preceito Fundamental No. 54 (ADPF-54)*. Available at <<http://www.stf.jus.br/arquivo/cms/noticiarnoticiastf/anexo/adpf54.pdf>>. Accessed September 24th, 2017.

2.2 In favor of the decriminalization of abortion: pro-choice supporters

In Brazil, the conservatism of pro-life groups has often clashed with the more progressive view of pro-choice claims. The latter are carried out by people or social movements that defend women's personal freedom on sexual and reproductive matters. Thus, they advocate for liberalizing abortion services and are in favor of their decriminalization. Generally speaking, pro-choice supporters demand the safeguard and enhancement of all reproductive rights, e.g. access to sexual education, to safe and legal abortive services, to contraceptives, and legal protection against any form of forced abortion.

Despite praising the respect of women's rights, pro-choice groups themselves are divided as to the kinds of abortion services that should be legalized; in other words, they may believe either in the *tout court* liberalization of abortion or in restrict access to it. On the one hand, there is a revindication of the total control of women on their own body, thus enabling them to undergo abortion at any time and in any case; on the other hand, women's rights are valued as important and the right of abortion stands among them, but it should be exerted within some limits. For instance, divergent opinions have emerged on the legalization of late-term abortions¹⁵⁸, which may be allowed or not depending on circumstances, e.g. the state of health of the woman or the fetus, fetal deformities, the stage of pregnancy, etc.

¹⁵⁸ Late- term abortion is referred to as a termination of pregnancy that occurs during a later stage of the biological process. However, there is no uniform definition on what a "later stage" really is: in general, late-term abortion refers to interruption of pregnancies after the 20th week of gestation, but many sources disagree, considering either the 16th or the 27th week as "late". See SPRANG, M.L; NEERHOF, M.G. *Rationale for banning abortions late in pregnancy*. In: Journal of the American Medical Association, 280 (8), 1998, pp. 744-747. GRIMES, D.A. *The continuing need for late abortions*. In: Journal of the American Medical Association, 280 (8), 1998, pp. 747-750.

Disregarding of these subtleties, the pro-choice front is an active promoter of female's rights and often ground their claims on international norms and dispositions. As a matter of fact, the international institutional environment promotes human and women's rights, especially through the UN Committee on the Elimination of Discrimination against Women (CEDAW)¹⁵⁹: it encourages Member States to revise their legislation on abortion, so as to make it less strict, and to guarantee and safeguard women's right to access to healthcare services. In compliance with Art. 12 of the Convention on the Elimination of all Forms of Discrimination Against Women,

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation¹⁶⁰.

To sum up, pro-choice thinking is based on the fundamental assumption that the State must guarantee women's reproductive and sexual rights and enable them to decide freely how to dispose of their own body.

In the previous paragraphs, we have observed that pro-life groups hold dear the principles of human dignity and right to life, and consider them as a distinctive feature of both born and unborn human beings. The pro-choice agrees on the importance of right to life and dignity, while they strongly disagree on their application to the fetus¹⁶¹.

¹⁵⁹ See UN Committee on the Elimination of Discrimination against Women <<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>>. Accessed May 16th, 2017.

¹⁶⁰ Ibid, Art. 12.

¹⁶¹ FANTI, Fabiola, *Mobilização social e luta por direitos: movimento feminista e a campanha pela descriminalização e legalização do aborto no Brasil*. Centro Brasileiro de Análise e Planejamento (CEBRAP), 2016, pp. 20-22.

This is due to the fact that women's life and rights are far the most significant value to protect, and that fetuses are not considered as proper human beings.

While pro-life approach states that life begins at the very moment of conception, the pro-choice alternative criticizes this view and supports its counter-evidence with scientific proof¹⁶². Many experts in the biological field in believing that an embryo is no proper human being, at least in the first stage of gestation. They suggest that the fetus may be considered a real living entity several weeks after the moment of conception. The existence of a genetic code - the DNA - is no sufficient condition to state that the embryo is a person. Consequently, the fetus would turn into a proper living being later, either when its tissues separate into different types or when it gives the firsts signs of brain activity: the cerebral cortex starts growing 15 days after conception and becomes developed enough to detect any cerebral sign of activity after 8 weeks¹⁶³. To summarize, according to pro-choice supporters, life would become a feature of the fetus during a later stage of pregnancy, after the brain is developed. So, attributing rights and juridical personalities to the fetuses would undermine women's rights, prevent already-living human beings from making their own sexual and reproductive choices, endangering their freedom.

As we are about to see, in Brazil, the pro-choice front has gained strength since the 1980s, during the period of transition from the military regime to the re-democratization of the country. It is not a coincidence that those same years were characterized by the reinforcement of feminist and social movements. As a matter of fact, pro-choice actions have been undertaken mainly by feminist associations.

¹⁶² IRVING, Dianne, *When do human being begins? "Scientific" myths and scientific facts*. In: *International Journal of Sociology and Social Policy*, 19:3/, 1999, pp. 22-36.

¹⁶³ REISSLAND, Nadja; KISILEVSKY, Barbara, *Fetal Development: Research on Brain and Behavior, Environmental Influences, and Emerging Technologies*, Springer, 2016, pp. 23-44.

Nonetheless, also some sectors of the Catholic Church - e.g. the *Católicas Pelo Direito de Decidir* - have given their support to the cause, breaking with its traditionally conservative pro-life orientation. Finally, it is necessary to mention also the positions of some Brazilian institutions - e.g. the Supreme Federal Court and the National Council of Health - in favor of the decriminalization of abortion and the safeguard of women's rights.

2.2.1 The feminist commitment to women's rights

The emergence of the feminism in Brazil dates back to the mid-20th century, when women started an organized movement to struggle for their rights. The first wave of feminism - still not completely organized - aimed at obtaining rights connected to education, such as the possibility to enroll in universities (1879). Moreover, it took part into the struggle for abolitionism, that led to the end of slavery in 1888¹⁶⁴.

Later, in the first decades of the 21st century, they focused the attention on constitutional rights, e.g. the right to vote, which was established by the 1934 Federal Constitution¹⁶⁵. The so-called *Suffragettes* constituted the first real organized feminist association in Brazil and had also been able to enter into Parliament with the *Partido Republicano Femenino* in 1910. One of the most reknown personalities of that time was Bertha Luz, who organized the First Feminist Congress in 1922 and founded the *Federação Brasileira pelo Progresso Feminino* (FBPF), the first feminist entity of national and international relevance¹⁶⁶. From the 1920s to the 1960s, the feminist

¹⁶⁴ GARCIA, Carla Cristina, *Breve histórico do Movimento feminista no Brasil*, 2015, p.16.

¹⁶⁵ HAHNER, June Edith. *Emancipating the Female Sex: The Struggle for Women's Rights in Brazil, 1850-1940*. Durham: Duke University Press, 1990, pp. 21.

¹⁶⁶ GARCIA, Carla Cristina, *Breve histórico do Movimento feminista no Brasil*, 2015, p.18. See Federação Brasileira pelo Progresso Feminino (FBPF) <http://cpdoc.fgv.br/sites/default/files/verbetes/primeira_republica/FEDERA%C3%87%C3%83O%20BRASILEIRA%20PELO%20PROGRESSO%20FEMININO.pdf>.

movement was mainly concerned with constitutional, economic and property rights, and few room was left to the debate on sexuality and reproduction.

However, the 1960s marked a turning point in the feminist trajectory: sexual and reproductive rights began to be discussed, and the fight for acquiring them was strictly intertwined with the protests against the authoritarianism of the military regime (1964-1985)¹⁶⁷. During those years, Brazilian citizens were asking for conquering democratic rights, such as equality, individual freedom and citizenship. The right to abortion, thus, became a pivot of the feminist claims because it implied the right to personal autonomy and to individual freedom. In other words, the feminist movement developed as a non-violent reaction to the harsh political repression of the military dictatorship, raising new social issues and questioning the existing concepts of sex and reproduction. What stood at the core of the claim for the right to abortion in Brazil was the radical criticism to the State interference in female-body-related issues, to moral and religious discipline¹⁶⁸.

The problematization of abortion as a healthcare issue began in the 1970s with the research of Maria Lucia Milanesi, who highlighted the negative outcomes of illegal abortion on the national healthcare system, especially in terms of economic expenditures. Moreover, she proved that illegal abortive practices were the only form of family planning accessible to poor women: in this sense, the criminalization of abortion declared by the 1940 Penal Code was a means to perpetuate social inequality¹⁶⁹.

¹⁶⁷ BARSTED, Leila de Andrade Linhares, *Legalização e descriminalização: 10 anos de luta feminista*. In: Estudos Feministas, 1992, pp. 104-130.

¹⁶⁸ Ibid.

¹⁶⁹ BARSTED, Leila de Andrade Linhares, *Legalização e descriminalização: 10 anos de luta feminista*. In: Estudos Feministas, 1992, pp. 104-130.

In the mid-1970s, in an attempt to reply fiercely to the oppression of the regime, the feminist movement organized the first workshop on women's rights and role in the society, with the support of the United Nations, so as to discuss the conditions of Brazilian female population. The relevance of this event lay in the will of feminists to start a political alliance with other political and religious groups - among which the Catholic Church - against the military regime. In short, during the 1970s feminist groups and the Church created a unitary front of opposition to the regime, despite their different opinion on women's rights.

From this point (1975), though, two tendencies emerged within Brazilian feminism: on the one hand, the struggle for economic and labor rights, while, on the other hand, the fight for sexual and reproductive rights. Only the former tendency succeeded in emerging on the political scenario due to the fact that the opposition to the military regime involved mainly constitutional, economic, labor issues. In addition, the feminist movement had some difficulties in promoting its instances on sexuality and reproduction: for example, the Center for Brazilian Women (Centro da Mulher Brasileira) did not express its position on abortion and on family planning for a long time, so as not to lose its alliance with the Catholic Church against governmental oppression. To sum up, during the 1970s the issues of abortion and reproductive rights emerged but did not catalyze much attention due to the specific political panorama of Brazil¹⁷⁰.

Nonetheless, things started to change by the late-1970s and early 1980s with the disruption of the military regime. The path towards the re-democratization of the country had begun, allowing feminists to bring to the fore also taboo subjects such as

¹⁷⁰ MARQUES, Ana Maria; ZATTONI; Andreia Marcia, *Feminismo e resistência: 1975 – o centro da mulher brasileira e a revista Veja*. <<https://www.revistas.ufg.br/historia/article/viewFile/31223/18873>>. Accessed September 27th, 2017.

the right to free sexuality and to abortion. In this way, the pro-choice tendency of Brazilian feminist movement gained relevance within the debate on women's rights. With the advent of democracy, feminists published articles on newspapers and magazines, organized meetings, distributed leaflets in the streets, gave interviews on the TV, pressured the National Congress with the aim of discussing the legislation on abortion, which appeared clearly updated¹⁷¹.

The fight for the decriminalization of abortion acquired strength and legitimation but it caused a conscious rupture with the former allied against the dictatorship, above all with the conservative Catholic Church. As we have seen, most Catholics were in favor of the defense of life of the fetus and against abortive practices. On the contrary, feminists fought for women's freedom of choice and for the decriminalization of its practice, considered a form of safeguard of female rights. They felt the urgent need of making laws more flexible also because of the reluctance of the medical staff to perform abortion even in case of rape, as occurred with a 12-year old who was not allowed to interrupt her pregnancy¹⁷².

Brazilian feminist associations revindicate the legalization of abortion [...] so that no woman is deprived from her right to life and human dignity. These include access to contraceptive methods, to specific information on sexuality and reproduction and to abortive and post-abortive medical treatment. [...] In addition, it is reasonable to think that the legalization of abortive practices will improve the health conditions of women, who are still forced by the conservative legislation to undergo medical procedures in precarious conditions¹⁷³.

As we will analyze in detail in Chapter Three, feminists brought their claims also within the National Congress, encouraging the submission of legislative proposals on

¹⁷¹ COSTA, Ana Alice Alcântara, *O movimento feminista no Brasil: dinâmicas de uma intervenção política*. In: Revista Gênero, vol. 5, no. 2, 2005, pp. 37-53.

¹⁷² The case of the 14-year old Jacilene, who was prohibited to undergo an abortion after being raped, was related by PRADO, Danda, *Vida de mãe é assim mesmo?*, Brasiliense, São Paulo, 1980.

¹⁷³ BARSTED, Leila de Andrade Linhares, *Legalização e descriminalização: 10 anos de luta feminista*. In: Estudos Feministas, 1992, pp. 104-130.

the decriminalization of abortion: among them, the most relevant had been subscribed by Deputy João Menezes in 1975 and 1980, with the purpose of increasing case-laws of legal abortion and of implementing healthcare policies addressed to women. None of the proposal passed due to the opposition of conservative representatives of the Catholic Church. Despite the failure, pro-choice feminists doubled the effort to revise the articles on abortion contained in the 1940 Penal Code.

To pursue its objective, in the 1980s, feminism sought for other allies, as was the case of the Brazilian Order of Attorneys (*Ordem dos Advogados do Brasil, OAB*)¹⁷⁴. As a matter of fact, several lawyers agreed on the necessity of decriminalizing abortion. As lawyer Zulaiê Cobra Ribeiro observed,

when gender equality in sexuality and reproduction is debated, many take the defense of the rights of the fetus and ignore that thousands of women die or get severely injured as a consequence of unsafe abortions, which are massively practiced in the country¹⁷⁵.

However, the Order of Attorneys has not expressed an unanimous position on the issue of abortion until now and, consequently, has not exerted any pressure in favor of decriminalization at national level.

As an alternative, in 1982, feminist groups promoted dialogue with political parties within the National Congress, especially with those representatives who had declared to be pro-choice. One year later, some feminist associations of Rio de Janeiro organized a national meeting on sexual and reproductive rights involving feminists and

¹⁷⁴ See Ordem dos Advogados do Brasil. <<http://www.oab.org.br/>>. Accessed June 30th, 2017.

¹⁷⁵ BARSTED, Leila de Andrade Linhares, *Legalização e descriminalização: 10 anos de luta feminista*. In: Estudos Feministas, 1992, pp. 104-130.

deputies. In that occasion, the International Safe Abortion Day was launched on September 28th, 1983¹⁷⁶.

The pro-choice orientation of feminist groups was also reinforced by the new scientific progress in the medical field. Since research on fetal anomalies had been developed, many asked for the introduction of a new disposition in the Penal Code enabling abortion in case of severe irreversible fetal abnormalities.

The Catholic Church strongly criticized this claim, since it was considered an abominable violation of the rights of the fetus¹⁷⁷. What is striking is that the feminist movement and the religious one no more supported each other on the issue of women's rights, especially when the subject of discussion was a religious dogma. Furthermore, the fact that the legislation on abortion had not changed yet meant that the influence of religion on the State apparatus was invincible. As a matter of fact, in occasion of the promulgation of the 1988 Federal Constitution, feminists tried to introduce the decriminalization of abortive practices in some articles. Catholics and Protestants lobbied the National Congress and prevented this from occurring¹⁷⁸.

To summarize, the 1980s-decade was characterized by the debate of abortion both at social and institutional level. Feminists, whose motto was "*Nosso Corpo nos pertence*" (Our body belongs to us), struggled for the decriminalization of abortion and the defense of women's reproductive rights and freedom. Despite their strong commitment at the National Congress and on the media, their instances remained often unheard, due to the strong conservative lobbying of religious representatives.

¹⁷⁶ See 28 de setembro: Dia Mundial pela Descriminalização do Aborto. <<https://anistia.org.br/28-de-setembro/>>. Accessed May 26th, 2017.

¹⁷⁷ GIFFIN, K.; COSTA, SH. *Questões da saúde reprodutiva*. Rio de Janeiro: Editora Fiocruz, 1999, pp. 78-80.

¹⁷⁸ Senado Federal, *Constituição da República Federativa do Brasil*, Diário Oficial da União, Brasília, 1988.

Aware of the obstacles that exist at national level, during the 1990s, the feminist movement decided to revendicate its pro-choice position at municipal or regional level¹⁷⁹. This was a successful move because in many cities women obtained the right to access healthcare services. As a matter of fact, the opposition of the Churches was not so fierce at microlevel¹⁸⁰: cities and Federal States guaranteed services of legal abortion in public hospitals. The main reason why this change could be done was that local and regional laws may extend rights, provided that: they do not violate the federal legislation; and that the entity that issues the law has the competence on the subject.

Thus, feminist representatives in local and regional councils enabled the regulation of Art. 128 of the Penal Code at microlevel, guaranteeing the access to safe and legal abortion in public infrastructures¹⁸¹.

In the 1990s-decade, the issue of abortion lost its relevance within the debate on women's sexuality and reproduction. The focus shifted to the issue of sterilization, an irreversible contraceptive method¹⁸². Many women resorted to such practice for many reasons, which are the results of the failure of addressing reproductive needs in the previous decade: among them, the inefficacy of healthcare public policies - e.g. *Programa de Assistência Integral à Saúde da Mulher*¹⁸³-, which did not offer easy access to reversible contraceptive methods. It is undeniable that the feminist movement did not focus its attention on abortion anymore and its commitment within

¹⁷⁹ BARSTED, Leila de Andrade Linhares, *Legalização e descriminalização: 10 anos de luta feminista*. In: Estudos Feministas, 1992, pp. 104-130.

¹⁸⁰ Ibid.

¹⁸¹ In compliance with Art. 128 of the 1940 Penal Code, legal abortion was allowed in case the life of the pregnant woman was in danger, or in case of sexual violence.

¹⁸² Sterilization is defined as the "deliberate disruption of healthy organs. The only medical procedures intended to destroy or inhibit healthy organs are those aimed at the male and female reproductive systems.". See <<https://www.hli.org/resources/female-sterilization/>>. Accessed September 27th, 2017.

¹⁸³ BARSTED, Leila, O Campo Político-Legislativo dos Direitos Sexuais e Reprodutivos no Brasil. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003, p.80.

the National Congress for the decriminalization of its practice became milder. Therefore, the legislation on abortion remained unaltered.

With the softening of pro-choice claims, the only interlocutor that exerted its strong influence within and without the National Congress was the Church. As we have seen, the conservative sectors of the Catholic and Pentecostals Churches have played a great role in the preservation of the *status quo*.

Since the 2000s, feminism has become more institutionalized thanks to an increase in the number of feminist groups and NGOs. Clearly, women have become more aware of their potential and have started revendicating their rights stronger and stronger. Nonetheless, their claims have face the fierce opposition of a renewed wave of conservatism: this has endangered most of the achievements of the previous decades. The legislation on abortion is still stuck to 1940, partly because the Catholics and Protestants have lobbied the National Congress against the decriminalization of abortion. Pro-choice and pro-life beliefs have battled on the legislative ground, and the latter have often prevailed.

As we have observed, Pentecostal Churches are unanimous in the condemnation of abortion. On the contrary, the Catholic Church was affected by an internal schism: part of it has remained faithful to pro-life principles; another sector has supported pro-choice claims, siding with the feminist movement in the struggle for women's control over their body.

2.2.2 A split in the conservative position of the Catholic Church: *Católicas pelo Direito de Decidir*

Católicas pelo Direito de Decidir (Catholics for Choice) is an international political movement structured in many NGOs around the world. It has been founded

by Catholic women with the aim of re-discussing ecclesiastic principles on sexual and reproductive rights, abortion and women's free disposal of their body. Supporting the pro-choice movement, they are far from the conservative, pro-life orientation of the traditional Catholic Church. In Brazil, the movement was founded in the city of São Paulo in 1993, on the International Day of Women¹⁸⁴.

This NGO supports the work of feminists with the purpose of fostering change in society, especially on cultural and religious beliefs. This means that it questions the traditional orthodoxy of the Catholic Church, allowing the coexistence of faith, respect for women's rights and laity of the State.

Religions are extremely important in history, culture and society because of their influence on everyday behaviors and decisions. We strongly believe that religions should help people to live a decent and healthy life; moreover, they ought not to interfere with their autonomy and freedom, especially in the spheres of sexuality and reproduction. For this reason, we promote the laity of the State, which deserves to be free from religious interference as far as the creation and implementation of public policies are concerned¹⁸⁵.

In other words, Catholics for Choice praise the distinction between religion and State: the non-interference of religious principles on social matters would, therefore, guarantee freedom to all citizens; in particular, women's right to personal autonomy would not be endangered. The respect of pluralism is valued as an element of progress in society:

Human development is dependent on the respect for human and civil rights of the population, in all its forms. We struggle in favor of equality in gender relations within the societal framework, the Catholic Church and other faiths. We adopt a feminist ethical-religious approach to the right of choice and freedom and we do recognize the capacity of women to freely take decisions concerning every aspect of their life¹⁸⁶.

¹⁸⁴ KISSLING, Frances, *Perspectivas católicas progressistas em saúde e direitos reprodutivos: o desafio político da ortodoxia*. In: Caderno de Saúde Pública, 14(Supl. 1), Rio de Janeiro, 1998, pp. 135-137.

¹⁸⁵ See *Católicas pelo Direito de Decidir*. <<http://catolicas.org.br/institucional-2/nosso-trabalho/>>. Accessed September 27th, 2017.

¹⁸⁶ *Ibid.*

Consequently, *Católicas pelo Direito de Decidir* address the needs of women, young people, LGBT community, black women in order to strengthen such social groups and to build a society where rights are guaranteed and prejudice and violence are rejected. In addition, they promote citizenship and the recognition of sexual and reproductive rights as part of fundamental human rights.

The objectives of this pro-choice group are quite ambitious but they plainly reflect the compromise that have been found between religion, social needs and human rights. Moreover, they mark the split in the conservative position of the Catholic Church:

- Contribute to the construction of a pro-choice-oriented feminist ethical and theological discourse, so as to safeguard women's autonomy, sexual diversity, social justice and the right to a life without violence;
- Raise awareness on the fact that the human disposal of sexuality and reproduction must be recognized, respected and exerted freely and autonomously;
- Promote inter-religious dialogue and the culture of respect for free religious expression.
- Defend the democratic principles of the laity of the State, stressing its autonomy from religious interferences.
- Work for the approval and effective implementation of laws, public policies and services addressed to women, young people, LGBTs, black people¹⁸⁷.

As far as the last point is concerned, Catholics for Choice have played a great role in the social and political scenarios. For instance, in the occasion of the visit of Pope John Paul II in Brazil in 1998, they participated to the public debate on abortion, declaring their favorable position towards its legalization.

Later, between 2004 and 2007, they launched the *Campanha pela Legalização do Aborto*, a national campaign whose aims were: the adoption of a pro-active attitude

¹⁸⁷ *Católicas pelo Direito de Decidir*. <<http://catolicas.org.br/institucional-2/nosso-trabalho/>>. Accessed September 27th, 2017.

in favor of the decriminalization of abortive practices; and the contribution to widen the social participation to pro-choice approach¹⁸⁸.

Their commitment to women's rights can be found also within the Brazilian National Congress. For instance, in 2013 they strongly supported the project of complementary law subscribed by Deputy Iara Bernardi, representative of the progressive Worker's Party, whose goal was to guarantee that the public healthcare system provided adequate assistance to victims of sexual violence¹⁸⁹.

To sum up, *Católicas pelo Direito de Decidir* provide a clear example on the possibility of co-existence of both religious beliefs and full respect of women's rights. Moreover, they value personal autonomy as a fundamental element in the progress of society and praise the distinction between religion and State according to the principle of laity.

2.2.3 The Supreme Federal Court in favor of a pro-life approach to abortion

As we have pointed out, since the 1940s Brazil has not changed its legislation on abortion. In the past decades, pro-life and pro-choice supporters have struggled for the imposition of their view both in society and in the National Congress. Conservatism has always prevailed, especially since the 2000s. The international position of Brazil concerning abortion is strictly conservative. Nonetheless, there is no unanimous approach to the issue of sexual and reproductive rights among Brazilian institutions.

Probably, the most proactive institution in favor of the decriminalization and legalization of abortion in Brazil has been the Supreme Federal Court (*Supremo*

¹⁸⁸ SUCUPIRA, Fernanda. *Católicas lançam campanha pela legalização do aborto*, 2005. <<http://reporterbrasil.org.br/2005/01/catolicas-lancam-campanha-pela-legalizacao-do-aborto/>>. Accessed September 27th, 2017.

¹⁸⁹ JUSBRASIL, *Projeto de Lei Complementar No.3/2013*. <<https://www.jusbrasil.com.br/topicos/26877431/plc-3-2013>>. Accessed September 27th, 2017.

Tribunal Federal). It represents the highest degree of law in Brazil for constitutional issues and its rulings cannot be appealed. It is the highest expression of the judicial power and it safeguards constitutional values and their application¹⁹⁰. It is constituted by 11 judges, who monitors the respect of the principles of the Federal Constitution, and the work of the President, the Vice-President and of the Members of the National Congress¹⁹¹.

Its involvement in the debate on abortion has been extremely relevant, since it has enabled the creation of a new case law among legal abortive practices. In 2012, it voted in favor of the proposal by Public Minister, Marco Aurélio Mello, who suggested that the national healthcare system guaranteed the right to medical treatment to pregnant women whose fetus was suffering from anencephaly. The proposal had been submitted in 2004, but the Supreme Federal Court found an agreement on it only in April 2012. The so-called *Arguição de Descumprimento de Preceito Fundamental No. 54* (ADPF-54)¹⁹² claims that women are guaranteed the right to the voluntary interruption of pregnancy if the anencephaly of the fetus has been diagnosed.

This decision is a remarkable landmark on the path towards the legalization of abortion. It must be reminded that it does not imply a change in the legislation on abortion issued by Artt.124-128 of the 1940 Brazilian Penal Code. Nonetheless, it provide clear norms on the anencephalic case to all Brazilian tribunals. Before ADPF-54's approval, Brazilian judges had no coherent approach to the issue, since there

¹⁹⁰ Senado Federal, *Constituição da República Federativa do Brasil*, Art. 102, Diário Oficial da União, Brasília, 1988.

¹⁹¹ See Supremo Tribunal Federal. <<http://www.stf.jus.br/portal/cms/verTexto.asp?servico=sobreStfConhecaStfInstitucional>>. Accessed september 27th, 2017.

¹⁹² MELLO, Marco Aurélio, *Arguição de Descumprimento de Preceito Fundamental No. 54* (ADPF-54). Available at <<http://www.stf.jus.br/arquivo/cms/noticianoticiastf/anexo/adpf54.pdf>>. Accessed September 24th, 2017.

were not homogeneous norms on it. Statistics pointed out that before 2012, several Brazilian tribunals had allowed more than 350 abortions in case of fetal anencephaly; however, the authorizations would be signed only if two conditions were complied: first, doctors had to provide medical proof of the irreversible and irreparable damaged cephalic condition of the fetus¹⁹³; second, authorities needed to previously verify if abortion had eugenic purposes. To sum up, despite not implying the revision of the existent law on abortion, ADPF-54 has been valued as an important “watershed to the public opinion”¹⁹⁴.

Recently, in March 2017, the Supreme Federal Court received for the first time a proposal on the decriminalization of abortion, the *Arguição de Descumprimento de Preceito Fundamental No 442* (ADPF-442)¹⁹⁵. We do know that abortion is legal only in case of: rape as a result of sexual violence; fetal anencephaly; deathly risk for the life of the pregnant woman. Whoever undergo an abortion risk from one- to three-year imprisonment, while whoever performs an abortion risk up to four years in jail. ADPF-442 asks for the revision of these two articles of the Penal Code: abortion performed for any reason within the 12th week of gestation should no more be considered a crime¹⁹⁶.

The request made by ADPF-442 correspond to a pro-choice approach to the topic of abortion, since its authors recognize that the criminalization of abortion is a

¹⁹³ GOLDIM, José Roberto, *Aborto no Brasil*. <<https://www.ufrgs.br/bioetica/abortobr.htm>>. Accessed June 29th, 2017.

¹⁹⁴ Agência Brasil, *Julgamento sobre anencéfalos será divisor de águas, diz Ayres Britto*. <<https://oglobo.globo.com/brasil/julgamento-sobre-anencefalos-sera-divisor-de-aguas-diz-ayres-britto-4607983#ixzz4tbXH3jqm>>. Accessed September 24th, 2017.

¹⁹⁵ See Arguição de Descumprimento de Preceito Fundamental No 442 (ADPF-442). <<http://adpf.442-federal-codigo-penal-aborto-legislador-positivo-direito-comparado-ausencia-direito-fundamental-ao-aborto-vf-1.pdf>>. Accessed September 27th, 2017.

¹⁹⁶ Supremo Tribunal Federal, *Partido questiona no STF artigos do Código Penal que criminalizam aborto*. <<http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=337860>>. Accessed September 24th, 2017.

violation of women's fundamental human rights. In particular, it is a violation of the dignity of women: a decent life is identified with the right of women to choose freely to dispose of their sexual and reproductive rights.

ADPF-442 is being analyzed within the *Supremo Tribunal Federal* by judge Rosa Weber, who voted in favor of the approval of ADPF-54 on anencephaly. In addition, in November 2016, she publicly declared to agree on the decriminalization of abortion until the 12th week of gestation. Rosa Weber urged the National Congress to discuss the proposal and the first expressions were against the change of the existent law. Nonetheless, the pro-choice orientation of the Supreme Federal Court may be fundamental for the progress on the path of abortion laws.

In this chapter, we have observed that many conventions for the protection of sexual and reproductive rights have been issued since the 1980s. Brazil has declared its commitment to enhance such rights and to revise its legislation on abortion. However, the latter has not changed since the 1940s. Abortion is legal only in three cases: if there is no other way to save the pregnant woman's life; or when the pregnancy has been the result of rape; moreover, in 2012 the Supreme Federal Court has allowed its performance in case of fetal anencephaly. The reason for this paralysis lies in the relationship between pro-life and pro-choice approaches. What has always prevailed was the conservatism of pro-life groups.

On the one hand, pro-life movements declare to be favorable to the dignity of human life, which is sacred to them and must not be endangered. They claim that life begins at the very moment of conception, so the fetus must benefit from all the rights that are attributed to born human beings. Therefore, the act of interrupting pregnancy would be equal to assassination. It is not by chance that the Brazilian law criminalizes

abortion because this conservatism is the reflection of the power of pro-life supporters - especially religious groups and congregations - who has always interfered within Brazilian institutions.

Pentecostal churches share their condemnation towards abortive practices and, consequently, oppose the process of decriminalization of abortion in Brazil. Their thinking has entered the National Congress thanks to their participation to the so-called *Bancada Evangélica*: an Evangelical parliamentary which opposes the decriminalization of abortive practices.

Also the conservative sectors of the Catholic Church are plainly against any progress in the regulation of the issue of abortion. Their belief in the sacrality of human life and the living condition attached to the fetus gave birth to the radical criticism of abortion. Their conservative position is promoted by the National Conference of Bishops of Brazil, which has opposed all legislative proposals for the revision of abortive laws and has lobbied the National Congress to prevent it.

Both the Catholic and the Protestant-Pentecostal Churches created pro-life parliamentary fronts to safeguard the immobility of the legislation on abortion: the most known are the *Frente Parlamentar em Defesa da Vida – Contra o Aborto* and the *Movimento Nacional da Cidadania pela Vida – Brasil Sem Aborto*. The organization into such groups enables them to perpetuate their conservatorism.

On the other hand, pro-choice movements defend women's personal freedom on sexual and reproductive matters. Therefore, they ask for liberalizing abortion services and are in favor of their decriminalization and ground their claims on international norms and dispositions. Pro-choice approach values the rights to life and dignity as fundamental but it attached them just to women, not to fetuses - which are

not considered proper human beings -. The actors that represent this conception are the feminist movement and the progressive Catholic group *Católicas Pelo Direito de Decidir*.

Feminism has emerged in Brazil since the mid-20th century, but has addressed sexual and reproductive rights only from the 1960s. Its real concern about abortion started in the following decade but the issue was not central to the feminist claims for two reasons: on the one hand, the struggle for economic and labor rights appeared more urgent; on the other hand, feminists could not lose their alliance with the Catholic Church against the military regime. In the 1980s, though, the re-democratization of the State favored the emergence of abortion within the social and institutional debate. Feminist associations gained more and more strength and entered the National Congress asking for the decriminalization of abortive practices. Despite their strong commitment to the cause, they failed due to the conservative lobbying of religious representatives. In the 1990s, feminists achieved the right to access healthcare services at local and regional levels but the focus of the debate shifted to the issue of sterilization. At national level, though, conservatism still prevails and contributed to the immobility of abortion laws.

The fight in favor of the legalization of abortion was undertaken also by the *Católicas pelo Direito de Decidir*, who support the pro-choice movement. Moreover, they question the conservative orientation of the traditional Catholic Church, allowing the coexistence of faith, women's rights and laity. To this purpose, they have launched many national campaigns in favor of pro-choice policies and supported legislative proposals on the decriminalization of abortion.

Finally, also the Supreme Federal Court has shown its support to the decriminalization and legalization of abortion in Brazil. Among its most relevant interventions stands the issuing of the so-called *Arguição de Descumprimento de Preceito Fundamental No. 54* (ADPF-54), which allows abortion in case of fetal anencephaly. Recently, it has started discussing also a proposal on the decriminalization of abortion, the *Arguição de Descumprimento de Preceito Fundamental No 442* (ADPF-442): it praises that abortion may be performed for any reason within the 12th week of gestation.

To summarize, we have traced the profiles of the religious, social and institutional actors that have played the strongest influence on the path of abortion laws and legislative proposals. The next chapter will provide a closer look of the actions they have undertaken within the National Congress. In particular, it will analyze some legislative proposals and documents moving from the premises we have just taken into consideration.

CHAPTER THREE

THE DEBATE ON ABORTION AT THE NATIONAL CONGRESS

As we have pointed out in the previous chapters, the debate on abortion has been led both within Brazilian society and in the National Congress. Aware that the issue was of paramount importance for the country, social, political and religious actors have expressed their position on it. The confrontation among pro-life and pro-choice supporters have been particularly harsh within the National Congress and, consequently, it has shaped the path towards the (de)criminalization of abortion. As a matter of fact, religious representatives and feminists have brought their claim to the ground: the former against the legalization of abortion, the latter in favor of it and of women's rights. This chapter will provide an analysis of some legislative proposals on abortion which have passed through the Federal Chamber of the Brazilian National Congress since 1949 to 2016-17¹⁹⁷.

There are plenty of books and studies about the political process involving abortion laws within the National Congress; nonetheless, no work on the contents of legislative proposals since 1940s up to now had been found. What was already part of the literature on this topic were either punctual analyses on the 1980s and 1990s – and of the changes that occurred in those decades -, or studies on the challenges we are facing nowadays.

¹⁹⁷ The full list of legislative proposal on abortion is available in the appendix at the end of this work.

Taking into consideration the legislative proposals and the bibliographical references on the political conjunctures on abortion that have been waved within the Brazilian National Congress, it is possible to understand the reasons of the current political process on this matter. For this reason, the work aims at showing the strategies that pro-choice and pro-life groups have adopted so as to revise the legislation on abortion or to maintain the *status quo* in the last decades.

The unchanged legislation on abortion was the result of both an historical and a political-ideological conjuncture. As emerged in chapter two, the topic of abortion was the focus of political debate especially during the 1980s, after the process of re-democratization of the country. As a matter of fact, religious and feminist representatives flooded the National Congress with proposals either against or in favor of the legalization of abortion. In the previous decades, there had been much more concern on other issues, e.g. economic and constitutional rights: in particular, between 1964 and 1985 all social actors together were committed to resist to the oppression of the military regime, thus sexual and reproductive rights seemed not to be a priority on the political agenda. When Brazil started the process of re-democratization, though, the debate on abortion flourished and this implied a confrontation of pro-life and pro-choice attitudes. Despite the increase in the number of legislative proposals on the issue, no change to the 1940 law was introduced because of the growing influence within the National Congress of religious exponents, who opposed fiercely to any attempt to revise existent norms. This conservative attitude has prevailed until now.

The shifts on the concerns about the topic of abortion may be detected in the quantity of legislative proposals¹⁹⁸ subscribed in each period from 1949 to 2017.

¹⁹⁸ For more information about the different legislative tools used in the National Congress, see Introduction.

Among the 175 legislative proposals found, the *Projetos de Lei* (PL) account for the majority, being 114 (63%) of them related to abortion or to reproductive rights. Taking a look at the period 1949-1979, we see that only 9 *Projetos de Lei* passed to the Federal Chamber of the National Congress, since the assembly had more urgent issues to discuss. During the 1980s and the 1990s the debate on abortion gained strength, so dozens legislative proposals were submitted to the Congress, as we will see in detail in the next paragraphs. The content of the proposals is really interesting, since it reflected the process of re-democratization of the country after 1988. Within the 28 PLs we considered, 7 dealt with the decriminalization of abortive practices, while 14 claimed the safeguard of reproductive and sexual rights, family planning and the enhancement of the cases of legal abortion. During 2001-2014, 61 bills have been presented to the National Congress: most of them were about the criminalization of abortive practices through the aggravation of pre-existent penalties, the creation of new penalties, the withdrawal of the conditions for legal abortions, etc. As we can observe, the last two decades have been characterized by strong conservative tendencies.

As concerns the current situation of the 175 legislative proposals, we may observe that 126 were filed, 38 are still pendant, 1 was rejected, 1 was withdrawn by the author himself, only 2 became law. There was no information about the remaining 5. With respect to the process, 120 proposals underwent ordinary law procedures, 18 had a priority status, 1 was declared urgent and 4 underwent extraordinary law procedures. The website of the Federal Chamber does not provide information on the remaining 30. Therefore, we may conclude there has been strong opposition to any attempt to change the existing law on abortion.

The following paragraphs will provide the analysis of the most relevant legislative tools about the criminalization and the decriminalization of abortion and sexual and reproductive rights. First of all, it will depict the conservative position of the pro-life front, which is mainly represented by Protestant-Pentecostals Churches and by the traditional Catholic Church. Later, it will focus on the actions that pro-choice supporters have taken in favor of the decriminalization of abortive practices; these have been led by feminists and by the progressive association *Católicas Pelo Direito de Decidir*. Moreover, the chapter will provide an outlook on the decisions of the Supreme Federal Court in support of the right to abortion. Finally, it will focus on women's sexual and reproductive rights, showing the debate on family planning, and introduce the expectations about the fate of abortive laws in Brazil.

3.1 The pro-life front and the criminalization of abortion

Pro-life supporters have long struggled in favor of a process of criminalization of abortive practices, which are valued as a severe crime against life. They argue that life begins from the very moment of conception, thus, the fetus is attributed human rights and juridical personality. The performance of an abortion would deprive the fetus of its right to life and, as a consequence, it is compared to a murder. For these reasons, the pro-life front, led by Protestant-Pentecostal Churches and by conservative sectors of the Catholic Church, has asked for a rise in the harshness of punitive measures against abortion.

As far as the increase in the penalty is concerned, the legislative proposal PL 3872/1989¹⁹⁹ by Deputy and pastor Matheus lensen was an important reference in the 1980s. Nonetheless, the resumption of the above-mentioned proposal has occurred also in the following decades. Through another proposal (PL 1105/1991²⁰⁰), social-democrat Deputy Aloizio Santos suggested that the punitive measures for people who practiced abortion were reinforced, thus making even stricter Art. 124 to Art. 128 of the Brazilian Penal Code. Later, in 2007, socialist Deputy Marcelo Serafim submitted PL 2433²⁰¹ to the Federal Chamber, with the aim of reinforcing punitive measures for both pregnant women who underwent or consented to abortion, and of the other subjects involved; moreover, this proposal defined in detail the crime of inducing, urging or supporting a woman in case of abortive practices. In 2010, the same Deputy Serafim wrote PL 7254²⁰² and asked for a rise to 20-year imprisonment for women practicing abortion. On the other hand, the proposal PL 1545/2011²⁰³ by Deputy Eduardo Cunha - who also belong to the Assembly of God - suggested that also doctors practicing abortions were sentenced to 6- to 20 year-imprisonment and were forbidden to pursue their profession again. To sum up, the above-mentioned proposal by Deputy Matheus lensen was a landmark in the process of criminalization of abortion, being this the reason why it inspired the legislative proposals of many other deputies.

¹⁹⁹ Câmara dos Deputados, PL 3872/1989. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=216710>>. Accessed June 21st, 2017.

²⁰⁰ Câmara dos Deputados, PL 1105/1991. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=187423>>. Accessed June 21st, 2017.

²⁰¹ Câmara dos Deputados, PL 2433/2007. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=376911>>. Accessed June 22nd, 2017.

²⁰² Câmara dos Deputados, PL 7254/2010. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=475358>>. Accessed June 22nd, 2017.

²⁰³ Câmara dos Deputados, PL 1545/2011. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=507573>>. Accessed June 22nd, 2017.

It is no coincidence that pro-life claims emerged during the 1980s: the process of re-democratization of Brazil had started and many social actors - e.g. feminists - had started asking for more rights, including those to free sexuality and reproduction. However, the pro-life front decided to exert pressure within the National Congress against those new instances, so as to preserve the conservative *status quo*. Its fight against the decriminalization of abortion procedures went on also in the following decade.

As a matter of fact, the 1990s were characterized by further legislative proposals and projects aiming at criminalizing methods. As an example, Deputy Osmânio Pereira demanded that any form of birth control or any proposal in favor of legal abortion was prohibited²⁰⁴. One year later, the Requirement of Information 1208/1995²⁰⁵ invited the Ministry of Health to provide information on the production, selling and control of Cytotec²⁰⁶, probably the most known medication used to cause an abortion. Furthermore, pro-life supporters resorted also to ethical arguments to defend their position: for instance, Deputy Wilson Leite Passos allowed doctors and professionals in the medical field to decline to practice any abortion²⁰⁷.

However, as concerned the criminalization of abortion, we must highlight that the 2000s were the decade in which the highest number of legislative proposals were submitted to the National Congress. In that decade, a relevant amount of proposals

²⁰⁴ Câmara dos Deputados, *Projeto de Lei Complementar 190/1994*. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=234289>>. Accessed June 23rd, 2017.

²⁰⁵ Câmara dos Deputados, *Requerimento de Informação 1208/1995*. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=238805>>. Accessed June 23rd, 2017.

²⁰⁶ Misoprostol, sold under the brandname Cytotec, is a medication used to start labor, cause an abortion and treat postpartum bleeding due to poor contraction of the uterus. See <<https://www.drugs.com/monograph/misoprostol.html>>. Accessed June 23rd, 2017

²⁰⁷ Câmara dos Deputados, *PL 2118/1996*, <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=199960>>. Accessed June 23rd, 2017.

concerned information on abortion and the practices to which people resorted to: this preceded and strengthened the requests for the institution of the Parliamentary Inquiry Committee on abortion, as we will discuss later. All those requests proved that abortion was a major concern for conservative deputies, who needed information on abortion so as to design adequate strategies to obstacle its legalization.

In 2003, the Federal Chamber of the National Congress was flooded by the claims of Deputies who asked several entities or institutions for information. As an example, the Attorney General of the Republic was asked by request INC 696/2003 to adopt measures to investigate on the work of the *Promotoria de Justiça Criminal de Defesa dos Usuários dos Serviços de Saúde - Pró-Vida*, an institution that intervenes when the professionals operating in the medical field put at risk the life of their patients²⁰⁸. Another request for information, RIC 720/2003, invited the Special Office for Women's Policies to take into consideration the Brazilian report on abortion submitted to the UN in fulfillment of the 1990 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women²⁰⁹. Moreover, RIC 255/2003 was a request of information about legal abortion to the Minister of Health²¹⁰. Later in 2003, Deputy Marco Feliciano suggested the organization of a public meeting on abortion with the participation of: Deputy João Campos, the author of the legislative proposal on the Parliamentary Inquiry Committee; Hermes Rodrigues Nery, supervisor of the Diocesan Commission in Favor of Life of the city of Taubaté (State of São Paulo);

²⁰⁸ Ministério Público do Distrito Federal e Territórios, *Promotoria de Justiça Criminal de Defesa dos Usuários dos Serviços de Saúde - Pró-Vida*. <<http://www.mpdft.mp.br/portal/index.php/conhecampdf-menu/promotorias-justica-menu/promotorias-de-justia-criminal-da-defesa-dos-usurios-de-servios-de-sade-pr-vida-mainmenu-117>>. Accessed June 23rd, 2017.

²⁰⁹ Câmara dos Deputados, *Requerimento de Informação 720/2003*. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=129215>>. Accessed June 23rd, 2017.

²¹⁰ Câmara dos Deputados, *RIC 255/2003*. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=109856>>. Accessed June 23rd, 2017.

and Thereza de Lamare Franco Neto, director of the Department of Strategically Programmed Actions of the Ministry of Health. This call for a plebiscite on the issue is a clear sign of the concern of the Church on women's right to abortion; besides, it highlights the strong interference of religious thinking within Brazilian institutions: not by chance, Deputy Marco Feliciano was the leader of a Pentecostal Church. In 2007, similar proposals (RIC 750/2007, 682/2007, 607/2007 and 408/2007) were addressed to the Minister of Health so as to point out the statistics on abortion in Brazil.

We should not forget that in those same years, progressive social actors - e.g. feminist associations - were revindicating their right to the free disposal of sexual and reproductive rights. In order to counteract such pro-choice claims, in 2007 many Deputies signed the *Requerimentos* REQ 1334/2007, 1334/2007 and 773/2007 with the aim of creating a pro-life group within the Federal Chamber: it is referred to either as *Frente Parlamentar em Contra a Legalização do Aborto - Pelo Direito à Vida* (Parliamentary Front against the Legalization of Abortion - In Favour of Right to Life) or *Frente Parlamentar em Defesa da Vida - Contra o Aborto* (Parliamentary Front in Defense of Life - Against Abortion). Such an action stresses the fact that the opposition to legal abortion had grown even stronger during the 2000s.

A relevant proof of this tendency can be found in the Draft of Legislative Decree (PDC 2840/2010²¹¹) by Deputy Paes de Lira, who asked for the suspension of the final document - called *Consenso de Brasília* - subscribed during the XI Regional Meeting on Women of Latin America and the Caribbean²¹². Deputy Paes de Lira claimed that

²¹¹ Câmara dos Deputados, *Projeto de Decreto Legislativo de Sustação de Atos Normativos do Poder Executivo* No. 2840/2010. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=484558>>. Accessed June 23rd, 2017.

²¹² The XI Regional Meeting on Women of Latin America and the Caribbean was held in Brasília between 13th and 16th July 2010. It was organized by the CEPAL and the UN with the aim of discussing about gender and equality. For further details on the conference and the final resolution, see

the participation of Foreign Minister Celso Amorim and of the Secretary for Women's Policies Nilcéia Freire to the meeting was illegal because they had expressed an unqualified opinion on the legalization of abortion, without considering that the access to abortive practices in Brazil was quite strict, as stated by the law.

The [Brazilian] Federal Constitution asserts that life is a fundamental and inalienable right. The life of the fetus is undoubtedly separated by the life of his/her mother. If it was not so, the life existing inside the womb would be compared to a parasite's, a worm whose death would be so desirable that it would involve even the disregard for the potential danger in which the life and the health of the pregnant woman are put. In short, it is not relevant if we discuss about the interruption of the life of an unborn child, a newborn child, a baby or a teenager. In any case, there will be interruption of life.²¹³

The above-mentioned episode indicates that pro-life supporters were worried about the fact that the international institutional environment would project a negative influence on the Brazilian government, pushing it to favor a pro-choice approach towards abortion.

It is worth recalling, then, three *Requerimentos* (RIC 3136/2013, 2714/2012 and 2475/2012), addressed to the Minister of Health, to investigate on official visits abroad of the Ministry employees for purposes of research or attendance to international projects and programs on safe abortion. Based on the initiative of the Parliamentary Front of Evangelicals (*Frente Parlamentar Evangélica*) this proposal suggested the creation of a Parliamentary Inquiry Committee to investigate the "existence of international interests and funding to promote the legalization of abortion in Brazil". It was a critic to the attitude of the government and showed the reluctance of

<https://www.cepal.org/cgi-bin/getprod.asp?xml=/mujer/noticias/paginas/2/40332/P40332.xml&xsl=/mujer/tpl/p18f.xsl&base=/mujer/tpl-p/top-bottom-pconferencia.xslt>.

²¹³ Câmara dos Deputados, *Projeto de Decreto Legislativo de Sustação de Atos Normativos do Poder Executivo* No. 2840/2010. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=484558>. Accessed June 23rd, 2017.

conservatives to accept a change in abortive laws. In their request, Evangelicals stressed that abortion was still a crime according to the Brazilian Penal Code.

The campaign against abortion could not be led only within the walls of the national Congress. Among the different types of legislative proposals, the so-called *Requerimentos* play also the role of requesting public meetings. Deputy Fernando Franceschini grabbed the opportunity to issue REQ 205/2013: it aimed at publicly discussing the support of the President of the Federal Council of Medicine (*Conselho Federal de Medicina*, CFM) to abortive practices²¹⁴. This institution has expressed its support to the decriminalization of abortion, being welcomed by feminists and progressive social actors. *Católicas pelo Direito de Decidir* declared that:

Not only does the Federal Council of Medicine meet the claims of the movements in favor of the decriminalization of abortion, but it also strengthens the necessity of discussing the topic at every level of society²¹⁵.

To sum up, pro-life groups have lobbied the National Congress and urged also Brazilian society to show their opposition to any form of decriminalization of abortive practices. The preservation of the *status quo* would enable them to detain power on Brazilian institutions and citizens. The next paragraphs will show more in detail two actions that they have waged to secure their position: on the one hand, the proposal of the creation of a public record on pregnancy, on the other hand, the issuing of new types of criminal offences against abortion.

²¹⁴ Câmara dos Deputados, *Requerimento 205/2013*. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=569747>>. Accessed June 23rd, 2017.

²¹⁵ OLIVEIRA, Cida, *Aborto: posição do Conselho Federal de Medicina é histórica, diz ativista*. <<http://www.redebrasilatual.com.br/saude/2013/03/posicao-do-cfm-e-historica-no-debate-sobre-descriminalizacao-do-aborto-diz-ativista-2>>. Accessed September 28th, 2017.

3.1.1 The National Record of Pregnancy

As concerns the criminalization of the voluntary termination of pregnancy, in the 1980s some representatives within the National Congress brought up the idea of creating the so-called *Registro Público da Gravidez*. This proposal suggests that hospitals issue a certificate whenever a pregnant woman resorts to healthcare services, thus detecting cases of abortion. The source draft was PL 8516/1986²¹⁶ by Deputy Francisco Dias, but during the 2000s the document re-emerged and, in addition, argued that the record should be legally guaranteed by the 2002 Brazilian Civil Code, and that control mechanisms on abortion should be intensified. In 2005, Deputy Milton Cardias resumed the proposal, adding that also a national register on pregnant women should be created, so that life could be really safeguarded since the moment of conception. Moreover, he declared that in Brazil the right to abortion can be accessed only by affluent people. From this perspective, the principle of “rendering to every man his due” is applied, meaning that poor people would not access abortive services due to their economic condition of misery, while well-off people would²¹⁷.

The author of PL 2504/2007, Deputy Walter Brito Neto, stated that it will be the director of the hospital to be accountable for the registration of the pregnant patient on the *Registro Público da Gravidez*. Furthermore, he claimed that the project would facilitate the gathering of evidence in case of illegal abortion because the data contained in the register would immediately lead to the person who practiced or underwent an abortion²¹⁸. The *Registro Público da Gravidez* has not been realized yet,

²¹⁶ Câmara dos Deputados, PL 8516/1986. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=233062>>. Accessed June 24th, 2017.

²¹⁷ Câmara dos Deputados, PL 5044/2005. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=281454>. Accessed June 24th, 2017.

²¹⁸ Câmara dos Deputados, PL 2504/2007. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=378526>>. Accessed June 24th, 2017.

as it is still be debated at the National Congress. Deputy Rodvalho wrote PL 7022/2010 and remarked that the lack of such tool was a dangerous loophole and the situation had to be necessarily fixed within the Brazilian legal framework. Other types of public registers (e.g. those of births and deaths) are compulsory in Brazil, so why should the State not have a register of pregnancy? The register would protect the unborn child and make abortive practices more difficult; on the contrary, the lack of would let abortion practices go unpunished²¹⁹. To sum up, the proposal of a *Registro Público da Gravidez* may be understood as a fundamental tool to secure the criminalization of abortion; nonetheless, its creation would persuade many people to resort to illegal abortion, since it will institutionalize a sense of guilty towards the women who could resort to public healthcare services.

3.1.2 New criminal offences against abortion

Another important feature of the pro-life front may be detected in its will to further criminalize abortion by making law even stricter. During the 1980s, indeed, many legislative proposals referred to the creation of a new criminal offence. It is the case of PL 8073/1986, which aimed at issuing punitive measures towards whoever “induces, instigates or offer any means to pregnant women, consents to or provokes abortion, [...]”, punishing also those who published articles, research or books that teach abortive practices and publicized the use of contraceptives”²²⁰. The fight against contraceptive methods is an issue that has come to the fore again in the 21st century.

New drugs have been discovered and sometimes some of them may be used and sold for abortive purposes. It is necessary that unscrupulous people who both provide women with abortive substances and sell them “herbs” are

²¹⁹ Câmara dos Deputados, PL 7022/2010. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=470756>. Accessed June 24th, 2017.

²²⁰ Câmara dos Deputados, PL 8073/1986. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=232627>. Accessed June 24th, 2017.

punished. The punitive measure is already laid down in Art. 126 [of the Brazilian Penal Code], that is imprisonment from one to four years²²¹.

In 2003 the suggestion for the creation of a call center to which citizens could report any case of illegal abortion was put forward, according to the dispositions of PL 849/2003²²². Its author, Deputy Elimar Máximo Damasceno, proclaimed that the diffusion of that service through social media and phone books would enable police officers to seek for illegal clinics where “poor babies are put to death”.

Abortion should be considered the very abominable crime against humanity. It implies the violation of the first among all rights - LIFE - of the most innocent and vulnerable human being - THE UNBORN CHILD -. What is even worst is the fact that the crime is perpetrated by those who are supposed to fiercely defend the victim: the PARENTS, who have generate life, or the DOCTORS, who have solemnly sworn to defend human life [...]. Abortive practices are crueller than the way of dying to which adults are submitted. Which criminal would ever butcher, cut into pieces or poison the victim? Those are the methods used for intrauterine assassination. A country which legalizes abortion is not worth existing.²²³

Years later, Deputy Talmir Rodrigues emphasized this idea and subscribed PL 2154/2007²²⁴: he stated that abortion was a major issue of public healthcare - together with the lack of appropriate sexual education taught at school -, and that recently it had not been possible to glimpse any reduction in the number of abortions. Thus, his proposal focuses on the strain that illegal abortions put on public healthcare services, and enhances mechanisms of prevention. In this sense, the creation of a call center would be welcomed to assure that citizens may get in contact with professional

²²¹ Câmara dos Deputados, PL 2237/2007. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=373518>. Accessed June 24th, 2017.

²²² Câmara dos Deputados, PL 849/2003. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=113241>. Accessed June 24th, 2017.

²²³ Ibid.

²²⁴ Câmara dos Deputados, PL 2154/2007. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=370233>. Accessed June 24th, 2017.

psychologists, and that women and teenager may be oriented adequately in their choices.

In 2007 two more similar proposals were submitted to the Federal Chamber of the National Congress. First, PL 2237/2007 by Deputy Talmir Rodrigues defined as crime the practice of helping or supplying tools and medicines for abortive purposes. Second, the proposal by Deputy Miguel Martini, who suggested that the advertisement and the administration of abortive substances or practices be punished by law. Again, the latter was relaunched by a group of deputies with the goal of enforcing punitive measures against pregnant women who practiced abortion: as a matter of fact, PL 5069/2013 was a call for four- to eight-year imprisonment²²⁵.

The idea of the legalization of abortion has been forcibly introduced to everyone by international organizations. [...] Populational control programs promoted by the feminist movement and the United States are the means to reach the following goal: [...] abortion would be considered as an important step for women's emancipation. Not demographers but feminist movements - organized in international NGOs - would claim control on "sexual and reproductive rights", to the detriment of Brazilian law.²²⁶

Furthermore, in 2008 Deputy Miguel Martini wrote a proposal suggesting that each pack of abortive medicines must warn citizens about the fact that "[...] abortion is crime; abortion may cause the death of pregnant women; the punishment for induced abortion is one- to three-year imprisonment"²²⁷.

²²⁵ Câmara dos Deputados, PL 5069/2013. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=565882>. Accessed June 24th, 2017.

²²⁶ Ibid.

²²⁷ Câmara dos Deputados, PL 3204/2008. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=389695>. Accessed June 24th, 2017.

In short, conservative deputies aimed also at persuading citizens that abortive practices were serious crimes, and to report to institutions any case; thus, they tried to attach a social stigma to them.

3.1.3 *Estatuto do Nascituro* and *Bolsa Auxílio*

The conservative plan against the legalization of abortion involved also the revision of the case laws of legal abortion allowed by the 1940 Penal Code. We must mention some legislative proposals related to the assistance to women who have been raped and thus have opted for resorting to legal abortion services.

At present, the Federal Chamber has analyzed a legislative proposal that aims at giving subsidies to those women whose pregnancy has been the result of rape – and thus decide to resort to legal abortion -, or to women who suffer a miscarriage. The former *Projetos de Lei* are PL 1085/2001²²⁸ and PL 3748/2008²²⁹, while the latter is PL 1763/2007²³⁰.

The idea of offering a subsidy, which is called *Bolsa Auxílio*, goes hand in hand with the projects²³¹ on the creation of the *Estatuto do Nascituro*, a document for the safeguard of unborn children. As pointed out in the previous chapter, the pro-life approach holds in great consideration the right and the juridical personality of the fetus. Federal Deputies Luiz Bassuma and Miguel Martini are the authors of the proposal on

²²⁸ Câmara dos Deputados, PL 1085/2011, <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=498623>>. Accessed August 2nd, 2017.

²²⁹ Ibid. PL 3748/2008, <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=405056>>. Accessed August 2nd, 2017.

²³⁰ Ibid. PL 1763/2007, <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=362577>>. Accessed August 2nd, 2017.

²³¹ Ibid. PL 489/2007 and PL 6150/2005 <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=345301>> <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=305340>>. Accessed August 2nd, 2017.

the *Estatuto do Nascituro*, in conformity with PL 478/2007²³². The content of this proposal is to extend all personal rights to the unborn child, claiming that:

It is a duty for the family, society and the State to: guarantee the right to life to the unborn child as an absolute priority; to give it the possibility of right to life, to health, to food, to dignity, to respect, to freedom and to family; to protect it from any form of negligence, discrimination, exploitation, violence, cruelty and oppression²³³.

The concern for the protection of the unborn child assumes that it is already a human being - although not born yet - and this definition, thus, includes *in vitro* produced embryos, which are generated thanks to cloning or to any scientific- and ethically-accepted procedure.

As concerns fundamental rights, Art. 9 of the PL 478/2007 states that:

The State and individuals are forbidden to discriminate the unborn child, denying it the expectation of any right, on the basis of gender, age, ethnicity, origin, physical or mental deficiency or of the likelihood of survival²³⁴.

Moving to Art. 10,

The medically-deficient unborn child will be provided with every therapeutic and prophylactic means to prevent, fix or minimize his/her deficiency, notwithstanding the ectopic likelihood of survival²³⁵.

Further, in Art. 13, the authors declare that the unborn who was conceived as a result of a violent act will be given priority to the access to healthcare and adoption, so as to the right to a subsidy for food until it reaches the age of 18. In addition, in case one of the parents is identified, this will be

²³² Ibid. PL 478/2007

<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=345103>>. Accessed August 2nd, 2017.

²³³ BASSUMA, Luiz; MARTINI, Miguel. *Projeto de Lei No 478, de 2007, Art. 4*. Brasília.

²³⁴ Ibid. Art. 9.

²³⁵ Ibid. Art. 10.

responsible for the subsidy; if it is not identified, it will be the State itself to provide it.

Art. 23 of the legislative proposal on the *Estatuto do Nascituro* defines also the criminal measures against abortive practices, punishing voluntary abortion with detention up to three years, except for the case in which the consequences of the offense are so severe that the penal sanction will not be required. In the same line of thinking, Art. 25 declares that whoever freezes, manipulates or treat the unborn child for experimental practices shall be punished by imprisonment from one to three years and shall also be fined.

In short, we may infer that this legislative proposal represents a severe violation of fundamental rights, such as dignity, freedom, equality, and deny the plurality of knowledge, be it biomedical, biological, juridical or social. Attributing a legal status to the unborn child, the document gives voice to a single morality and does not take into consideration other thoughts and the - likely - absence of consensus on this matter. As Sarmiento pointed out,

this disposition violates the principle of gender equality, since it discriminates women, imposing them a burden that no men would ever carry. Moreover, it is an offence to social equality because it generates a strong impact especially on women who belong to lower economic and social classes²³⁶.

It is known that Brazilian law ensures the rights of the person and marks a distinction between the unborn child and a child who is effectively born in Art. 2 of the 2002 Civil Code²³⁷. The legal personality of an individual starts with the birth; nevertheless, the law safeguards the rights of unborn children since the moment of conception. We should not forget that this topic is related to studies in the fields of

²³⁶ SARMENTO, Daniel, *Legalização do Aborto e Constituição*. In: CAVALCANTE, Alcilene; XAVIER, Dulce, *Em defesa da vida: aborto e Direitos Humanos*. São Paulo: Publicações Cdd, 2006. p. 163.

²³⁷ Presidência da República- Subchefia para Assuntos Jurídicos, *Lei No 10.406, de 10 de janeiro de 2002, Art. 2.* <http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm>. Accessed May 27th, 2017.

physiological and molecular biochemistry, which are still to be explored in detail: this means that, among experts, there is no unanimity in determining when life really starts.

On the other hand, the 1988 Federal Constitution does not mention the inviolability of the right to life since conception: in short, neither the law does determines which is the starting point of human life²³⁸. The Constitutional Courts that are concerned with the topic of abortion usually take an intermediary position: on the one hand, they recognize the constitutional safeguard of extrauterine life, while on the other hand, they attribute a feeble protection to the intrauterine one. The reasons of this choice lie on scientific evidence and on the separation from religious beliefs; moreover, Brazilian law on abortion keeps itself close to international treaties on human rights²³⁹.

It is, therefore, possible to conclude that the Brazilian constitutional order safeguards intrauterine life, despite being such protection milder than the one which is guaranteed to born individuals; [...] This means yielding to the fundamental rights of pregnant women. Moreover, we can also state that the protection of the life of unborn children is far stronger at the end of the gestation and takes into consideration the stage of development of the fetus²⁴⁰.

The legislative proposals that aspire to the integral protection of the unborn child generate antinomies within the juridical apparatus, since they try to give unborn children the same rights which are attributed to - born - children or women; besides, such proposals ignore basic features of personality, such as consciousness, participation to a political community, birth and ability to live.

²³⁸ CANDOTTI, Ennio, *Na Terra como no Céu*. In: CAVALCANTE, Alcilene; XAVIER, Dulce, *Em defesa da vida: aborto e Direitos Humanos*. São Paulo: Publicações Cdd, 2006. pp.57-64.

²³⁹ SARMENTO, Daniel, *Legalização do Aborto e Constituição*. In: CAVALCANTE, Alcilene; XAVIER, Dulce, *Em defesa da vida: aborto e Direitos Humanos*. São Paulo: Publicações Cdd, 2006. pp. 111-168.

²⁴⁰ *Ibid.* p. 150.

Initiatives, such as the *Estatuto do Nascituro*, force women to carry on pregnancies which have been the result of rapes, imposing a policy of violence funded by public coffers – and this also infringes the federal law on State budget -. Furthermore, this approach is a typical feature of totalitarian States, where the outcomes of sexual violence are not punished but, on the contrary, depenalized. Suggesting the criminalization of therapeutic abortion implies a retrocession in the field of law in Brazil, because it calls forth the historical practice of violation of women's rights.

When it comes to the enforcement of sanctions, the proposal about the *Estatuto do Nascituro* contemplates the triplication of the punitive measures against therapeutic abortion. If we consider that post-abortion curettage is a very common medical procedure to which SUS public services resort - second only to natural birthing ⁻²⁴¹, it would be necessary to increase dramatically the construction of prisons for women: this would imply a heavier burden on the State budget. In Art. 23., Par. 2 it is stated that the penal sanction will be applied except for the case in which the consequences of the offense are so severe that the penal sanction will not be required: in other words, a woman may get rid of the punishment only if she is endangered by death or severe injury.

Last, the freedom of thought is irretrievably violated by the *Estatuto do Nascituro*, to the extent that scientific knowledge and human intervention in the field of reproduction are endangered, and this makes also scientific research turn into a crime.

Notwithstanding the limits that should be fixed to human activity, [...] society has a right to self-protection against the abuses of power perpetrated one over the other, and the State must guarantee such protection, [...]. [Society] must take into account another reasonable principle, which has been long

²⁴¹ Ministério da Saúde, *Norma técnica - Atenção humanizada ao abortamento*, Série A. Normas e Manuais Técnicos Série Direitos Sexuais e Direitos Reprodutivos - Caderno nº 4, Brasília, 2005, p.8

documented throughout history: the fact that human beings have also a “second nature”, quite different from their “first nature”, constituted by biology; [...] Human beings share also a technical and cultural nature, thanks to which they can modify their first nature according to their desires and projects; in other words, they can transcend (at least partially and over a certain period) their biological condition. Indeed – as the theologian Leonardo Boff wrote – a human being is the “only creature that can intervene in natural processes and co-pilot the development of evolution.”²⁴²

One of the most troubling issues about the policy on the protection of unborn children is the insistence on inscribing abortion among heinous crimes, as stated by Law No 8.072 of June 25th, 1990²⁴³.

From this perspective, abortion is the death of a child in the belly of his/her mother, occurred at any step of gestation, from fecundation (union of female and male gametes) to the moment immediately before birth, according to PL 7443/2006²⁴⁴. These words are used in one of the *Projetos de Lei* that proposes to further criminalize abortion in Brazil and make it become a heinous crime. Other proposals make a step forward, recognizing the unborn child as a human person and attaching to it juridical personality. Among the *Projetos de Lei*, during the 1990s, 7 of them would make abortion become a heinous crime (PL 999/1995 and PL 4703/1998²⁴⁵), while 5 with a similar request were presented in the 2000s (PL 4917/2001, PL 5058/2005, PL 7443/2006, PL 7443/2007, PL 3207/2008²⁴⁶).

²⁴² SEGRE, Marco, *A Questão Ética e a Saúde Humana*, Atheneu, 2006, pp. 46-47.

²⁴³ Câmara dos Deputados, *Lei nº 8.072, de 25 de julho de 1990*. <<http://www2.camara.leg.br/legin/fed/lei/1990/lei-8072-25-julho-1990-372192-norma-pl.html>>. Accessed June 13th, 2017.

²⁴⁴ Câmara dos Deputados, PL 7443/2006. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=333041>>. Accessed June 5th, 2017.

²⁴⁵ Câmara dos Deputados, PL 999/1995. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=185741>>, and PL 4703/1998 <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=21071>>. Accessed June 8th, 2017.

²⁴⁶ Ibid. Available at <<http://www2.camara.leg.br/>>.

3.1.4 The Parliamentary Inquiry Committee on abortion at the National Congress

We have already mentioned the fact that deputies in favor of the pro-life approach have asked the National Congress permission to collect information on the status of abortion in Brazil; their purpose was to grasp the magnitude of the problem and, thus, to elaborate adequate responses to it.

First, in 2008 appeared one of the most complex initiatives on the criminalization of abortion in Brazil: the creation of Parliamentary Inquiry Committees (*Comissões Parlamentares de Inquérito*, CPI) within the National Congress. “In the city of Rio de Janeiro, abortifacient drugs are sold in shops. They can be purchased on the Internet too. This must be submitted to the police, it is a major violation of the law²⁴⁷”. In his *Requerimento de Instituição de CPI* (Requirement for the institution of a Parliamentary Inquiry Committee), deputy Luiz Bassuma reported the words of the Minister of Health, José Gomes Temporão, who had given an interview to TV Cultura on April 16th, 2007²⁴⁸. Given this assumption, Bassuma suggested that the Brazilian Federal Chamber had to investigate on the illegal commerce of abortifacient drugs. Moreover, his *Requerimento* (RCP 9/2008) contained many more documents published by the media on illegal activities related to abortion.

Hence, the declaration of the Minister of Health, shown above, represents a serious accusation of the disrespect towards the legal order; consequently, the Parliamentary Inquiry Committee has any reason to exist, so that it can investigate on the criminal offence caused by the indiscriminate sale of abortifacient drugs and by any other performance of illegal abortion²⁴⁹.

²⁴⁷ Câmara dos Deputados, RCP 9/2008. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=390049>>. Accessed June 3rd, 2017.

²⁴⁸ The full interview to José Gomes Temporão to Programa Roda Viva is available at <http://www.rodaviva.fapesp.br/materia/348/entrevistados/jose_gomes_temporao_2007.htm>. Accessed July 13th, 2017.

²⁴⁹ Câmara dos Deputados, RCP 9/2008. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=390049>>. Accessed June 3rd, 2017.

Moreover, deputy Bassuma claimed that the Parliamentary Inquiry Committee would favor urgent and necessary investigations, since many complaints have been brought on, but nothing has been ascertained yet, leaving criminals free to kill more and more children in their mothers' womb and to put women's lives in danger due to inadequate sanitary conditions.

We must mention another important document: the *Requerimento de Instituição de CPI No 21/2013*²⁵⁰, based on the initiative of the Parliamentary Front of Evangelicals (*Frente Parlamentar Evangélica*) within the National Congress, of the Parliamentary Front in Favour of Life (*Frente Parlamentar Mista em Defesa da Vida*), and of deputies João Campos and Salvador Zimbaldi. This proposal suggested the creation of a Parliamentary Inquiry Committee to investigate on international interests and funding to promote the legalization of abortion in Brazil. Of the 178 Members of the Parliament that had signed the document, 7 asked to withdraw their own signatures but their requests were rejected.

RCP 21/2013 suggests the “existence of international interests and funding to promote the legalization of abortion in Brazil”, and adds that abortion is still considered a crime, according to Artt. 124-128 of the Brazilian Penal Code. In other words, there was great concern about international organizations that fund and/or make research on issues related to abortion in Brazil, and that monitored constantly public policies. Besides, the work of NGOs has been monitored, especially if they are linked with the feminist movement and encourage political actions in favor of women's rights. The

²⁵⁰ Câmara dos Deputados, REQ 21/2013. <
http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra?codteor=1075429&%20filename=RC+21/2013>. Accessed June 23rd, 2017.

RCP 21/2013 proposal is still undergoing its process within the Federal Chamber, and this highlights the fact that it is a relevant topic to academic research.

Nonetheless, we must be aware that the pro-life front was not the only subject that asked for the creation of a Parliamentary Inquiry Committee. The pro-choice too submitted the same request to the National Congress.

Federal deputy Pompeo de Mattos – as the President of the Human Rights Committee (*CDHM, Comissão de Direitos Humanos*²⁵¹) – took part into the public hearing held at the tribunal of Campo Grande (State of Mato Grosso do Sul): his objective was to collect information on the criminal process against 9,896 women who stood accused to have undergone illegal abortive practices between 2000 and 2008. Concerned about the condition of criminalization that those women were suffering, de Mattos presented the *Projeto de Lei 3673/2008*²⁵² as an alternative to mitigate the situation. Among its measures, the proposal suggested that the punishment for illegal abortion passed from 3-year to 2-year detention, thus considering illegal abortion a less severe offence, according to Law 9.099/1995²⁵³.

On April 4th, 2008, the newspaper *O Estado de São Paulo* published an article about a process against 10,000 women who had been accused of practicing illegal abortion in a clinic in Campo Grande – MS. The decision was taken by judge Aloísio Pereira dos Santos, meeting the request of public prosecutor Paulo César dos Passos²⁵⁴.

²⁵¹ See Comissão de Direitos Humanos. <<http://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/conheca-a-comissao/oquee.html>>. Accessed June 26th, 2017.

²⁵² Câmara dos Deputados, *PL 3673/2008*. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=403331>>. Accessed June 26th, 2017.

²⁵³ Câmara dos Deputados, *Lei 9.099/1995*. <<http://www2.camara.leg.br/legin/fed/lei/1995/lei-9099-26-setembro-1995-348608-norma-pl.html>>. Accessed June 27th, 2017.

²⁵⁴ Câmara dos Deputados, *REQ 233/2008*.

As a result of the Parliamentary Inquiry Committee, prosecutor Paulo Cesar dos Passos requested to the Civil Police an enquiry on all those 9,896 women. In the second audience, judge Aloísio Pereira dos Santos explained the difficulties for both the police and the judicial authorities to investigate on those cases of abortion. The determination of the crime of abortion is different from that of other offences because it involves the private life of the women accused, but sexual matters have nothing to do with criminal prosecution. The intimate life of those women would be violated, since the judicial authorities would enquire on the crime and all its circumstances, including sexual relations²⁵⁵.

In case a woman denies, [...] the situation will worsen for her, because authorities would seek for evidence against her. The judge would enquire witnesses, such as her boyfriend or lover, her relatives (mother/father); the judge would make questions and may also force her to undergo examinations on the *corpus delicti*. Thus, the life of the woman is completely unveiled.²⁵⁶

Later, deputy Pompeo de Mattos wrote another *Requerimento* (REQ 61/2008) scheduling a public hearing, so that the case of those 9,896 women²⁵⁷ from Campo Grande could be debated. Deputies Perpétua Almeida, Vanessa Grazziotin, Jô Moraes and Manuela D'Avila asked for the creation of an External Comitee of the Federal Chamber (*Comissão Externa da Câmara Federal*) with the aim of discovering any abuse perpetrated by the authorities during the procedure of Campo Grande. However, this proposal was rejected by the Board of Directors of the Deputies Chamber (*Mesa Diretora da Câmara dos Deputados*) in 2011.

²⁵⁵ Câmara dos Deputados, PL 3673/2008. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=403331>>. Accessed June 26th, 2017.

²⁵⁶ Ibid.

²⁵⁷ This number accounts for 40% of the female population who is currently serving any kind of sentence in Brazil (the total amount is 25,000 women). The case of Campo Grande is so relevant because of the unusual amount of people standing accused and of the absence of individualization of the sentence.

To summarize, since the 1980s, pro-life supporters have undertaken many actions aimed at further criminalizing or applying a total ban on abortion. On the one hand, they have praised the tightening of the existent norms on abortion; on the other hand, they have revindicated the rights of the fetus, especially with the *Estatuto do nascituro*. Finally, the elaboration of their conservative strategies has relied on the creations of Parliamentary Inquiry Committees, so as to grasp the magnitude of abortion in Brazil. The pro-life front has represented a conservative approach to the issue and is still fighting for the maintenance, or even the regression, of the *statuo quo*. Nonetheless, it has not been the only force that has debated abortion within Brazilian institutions and society.

3.2 Pro-choice actions in favor of the decriminalization of abortion

The pro-choice movement has always struggled for women's rights, especially for the free disposal of sexuality and reproductivity. For this reason, it has led a process for the decriminalization and legalization of abortive practices. The main actors in this group have been feminists and progressive sectors of the Catholic Church, e.g. *Católicas pelo Direito de Decidir* (since 1993).

The origins of pro-choice claims have to be traced back to the mid-1960s. In 1965, the legislative proposal PL 2.684/1965, by Deputy Eurico de Oliveira, suggested that voluntary abortion would stop being criminalized and that doctors were allowed to practice it²⁵⁸. In other words, Deputy Oliveira proposed a complete legalization of abortion performances. Two years later, Deputy Erasmo Martins Pedro made a

²⁵⁸ Câmara dos Deputados, *PL 2.684/1965*.

<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=205780>>.

Accessed

June 27th, 2017.

different proposal, establishing that abortion should be punished with one-month to one-year imprisonment, and with a fine of one- to ten-time the value of the highest national salary. In other words, his proposal aimed at reducing the penalty for abortion still inserted in the 1940 Penal Code²⁵⁹. Later, in the 1970s, during the military dictatorship, Deputy João Menezes asked for legalizing abortive practices within the twelfth week of gestation.

We do know that during the years of the military regime, the debate on abortion had not been on top of the political agenda. However, with the process of re-democratization of Brazil, pro-choice supporters had intensified their claims.

In 1983, Deputy Cristina Tavares wrote a proposal aimed at introducing more case laws of legal abortion, so as to “stop the industry of illegal abortion, which is accountable for thousands of deaths and surgical injuries”²⁶⁰. She was in favor of a decriminalization of punitive measures against abortion because asking for its legalization would be too difficult and controversial.

In 1985, Deputy José Genoíno set forth proposal PL 5456, with the goal of decriminalizing any abortion practiced by surgeons with the consent of the pregnant woman; nonetheless, his project was archived in 1987²⁶¹. The same author tried to submit two similar proposals on legal abortion - up to 90 days after the moment of conception - in 1989 and in 1993²⁶². In those same years, another project of

²⁵⁹ Câmara dos Deputados, *PL 370/1967*.

<<http://www2.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=175840>>. Accessed June 27th, 2017.

²⁶⁰ Câmara dos Deputados, *PL 590/1983*. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=179335>>. Accessed July 3rd, 2017.

²⁶¹ Câmara dos Deputados, *PL 5456/1985*. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=227634>>. Accessed June 27th, 2017.

²⁶² Câmara dos Deputados, *PL 3465/1989*, and *PL* <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=227634>>

decriminalization of abortive practices was put forward by Deputy Denisar Arneiro²⁶³: abortion should not be considered a crime if practiced by surgeons within the eighth week of gestation, under judicial authorization and with the consent of the pregnant woman.

All those proposals caused restlessness among the pro-life front. The conservative Catholic Church used all its powers to reject the possibility that those documents could be approved. Not only did Catholics lobby the National Congress, but also oppose pro-choice laws at local and regional level. For instance, in 1985, feminist Deputy Lúcia Arruda supported the approval of a regional law on healthcare services: the State of Rio de Janeiro would offer medical assistance to women who underwent abortions, according to the cases allowed by law²⁶⁴. This norm, however, was soon withdrawn due to the political pressures of the Catholic Church. Despite the fact that the State was lay, religious powers have always played a great role within Brazilian institutions.

Regardless of such resistance, pro-choice groups led their campaign for the decriminalization further. In the early 1990s, Deputy Luiz Salomão wrote PL 4726/1990, establishing that abortion could be legally practiced until the third month of gestation, and enabling its practice from the fourth month of gestation only if the woman's life were at risk, or the fetus suffered from severe or incurable physical or psychic anomaly. Moreover, abortion would be legal in case it was the result of rape,

3609/1993. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=214314>>. Accessed June 27th, 2017.

²⁶³ Câmara dos Deputados, PL 1651/1983. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=194634>>. Accessed July 3rd, 2017.

²⁶⁴ Jusbrasil, *Lei nº 832, de 07 de janeiro de 1985*. <<https://gov-rj.jusbrasil.com.br/legislacao/149851/lei-832-85>>. Accessed July 3rd, 2017.

incest and/or when the pregnant woman had no material condition to raise a child²⁶⁵. In 1991, Deputy Gilvam Borges' proposal reiterated the right to abortion to any pregnant woman²⁶⁶. In that same year, Deputy Nobel Moura proposed that women could voluntarily interrupt their pregnancy up to the twelfth week of gestation, and established several cases of legal practices.

The 1990s' decade was particularly rich in terms of legislative proposals submitted to the National Congress. What really mattered in those years was the fact that the issue became widely debated in its several aspects - ethical, religious, political - not only in the National Congress, but also within the Brazilian society. A reflection of this tendency was PL 1.135/1991 by Deputies Eduardo Jorge and Sandra Starling, which outlined the arena of controversies between deputies who had either a religious or a feminist perspective on abortion; moreover, they asked for the elimination of Art. 124 of the Brazilian Penal Code, since it was considered to penalizing too much women who practiced abortion²⁶⁷. From that moment, several other proposals were submitted to the Federal Chamber and public hearings were also organized within the House of Representatives (*Câmara dos Deputados*), so that experts could debate abortion from scientific, juridical or religious points of view. Proposal No. 1.135/1991 was finally archived on January 31st, 2011 by the Board of Directors of the House of Representatives (*Mesa Diretora da Câmara dos Deputados*).

²⁶⁵ Câmara dos Deputados, *PL 4726/1990*.
<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=223858>>. Accessed July 3rd, 2017.

²⁶⁶ Câmara dos Deputados, *PL 2006/1991*.
<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=198686>>. Accessed July 3rd, 2017.

²⁶⁷ Câmara dos Deputados, *PL 1.135/1991*.
<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=16299>>. Accessed June 25th, 2017.

In the 2000s, instead, there has been a decrease in the number of *Projetos de Lei* on the decriminalization, while the number of proposals aimed at further criminalizing those practices has grown. For instance, the number of legislative proposals for the abolition of Art. 124 of the Brazilian Penal Code - which criminalizes pregnant women who decide to abort with or without their consent - has significantly decreased. On the one hand, an attempt was made by Deputy Roberto Gouvêia, who withdrew his project in 2005, though. On the other hand, the *Requerimento* 641/2007²⁶⁸ by Deputy Cida Diogo demanded that the 2004 proposal by Deputy Jandira Feghali²⁶⁹ on the decriminalization of therapeutical abortion was unarchived. Nonetheless, Diogo's request was denied.

3.2.1 Public hearings on public policies

The pro-choice movement had understood that the issue of abortion needed to be debated publicly, involving all sectors of society. Up to the 1980s, the topic of abortion had been discussed among deputies within the Federal Chamber of the Brazilian National Congress. However, a proposal to hold a plebiscite on the issue had already emerged in the 1990s, when Deputy Cristina Tavares delivered PL 4718²⁷⁰ to the Federal Chamber, with the aim of redefining the concept of induced abortion in Art. 128 of the Brazilian Penal Code.

²⁶⁸ Câmara dos Deputados, *Requerimento 641/2007*.
<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=346514>>. Accessed July 3rd, 2017.

²⁶⁹ Câmara dos Deputados, *PL 4403/2004*.
<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=269436>>. Accessed July 3rd, 2017.

²⁷⁰ Câmara dos Deputados, *PL 4718/1990*.
<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=223792>>. Accessed June 22nd, 2017.

Ten years later, Deputy Inocêncio Oliveira's Proposal of Legislative Decree (PDC 467/2000²⁷¹) proposed again a plebiscite on abortion, civil unions and life imprisonment on the occasion of general elections, claiming that those were relevant topics for the Brazilian society. Moreover, in 2005 he became author of two more PDCs about the right of Brazilian citizens to establish whether the practice of abortion until the twelfth week of pregnancy should be considered legal or not.

As lawyer Ives Gandra Martins wrote on his article "*Um plebiscito necessário*", published on *Jornal do Brasil* on April 7th, [2005], "The right to life cannot be determined by a small group of ideologists, feminists or intellectuals, who claims to be the keepers of truth and whose solution appears to be the only and most reasonable. (...).²⁷².

During the years of the Lula's presidency, several conferences on public policies, the so-called *Conferências de Políticas Públicas*, were the forum in which deputies, civil society and organized social movements discussed about relevant topics, such as healthcare, environment or urban plans. The final resolution of the first National Conference of Women's Policies contained the dispositions for the creation of a special commission (*Comissão Tripartite de Revisão da Legislação Punitiva sobre o Aborto*), whose purpose was to revise laws on abortion and to broaden the access to legal abortive services²⁷³.

This proposal has been drafted by the *Comissão Tripartite*, which is formed by representatives of legislative and executive powers and by civil society, with the coordination of the Secretary for Women's Policies [*Secretaria Especial de Políticas para as Mulheres*]. It entails the decriminalization of abortion within the twelfth week of gestation for every woman, also when pregnancy is the result of sexual violence; in addition, the interruption of

²⁷¹ Câmara dos Deputados, PDC 467/2000. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=13834>>. Accessed June 22nd, 2017

²⁷² Câmara dos Deputados, PDC 1832/2005. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=297261>>. Accessed June 22nd, 2017.

²⁷³ GOMES, Edlaine; NATIVIDADE, Marcelo; MENEZES, Rachel Aisengart. *Preposições de leis e valores religiosos: controvérsias no espaço público*. In: DUARTE, Luiz Fernando Dias et al (Org.). *Valores Religiosos e Legislação no Brasil: A tramitação de projetos de lei sobre temas morais controversos*. Rio de Janeiro, 2009, ch. 1, pp. 15-44.

pregnancy may be determined by a doctor in case of fetal malformation or if the woman's life is put at risk. As far as the novelty of this project is concerned, we must highlight that: all healthcare plans - included those provided by the public healthcare system - must compulsorily cover the full costs of abortion; furthermore, in case an abortion must be performed on an underage woman, and her parents' will is against hers, the legal authorization to the practice must be left to the Public Ministry. (REQ 1517/2007)

Furthermore, Deputies Givaldo Carimbão, Eduardo Valverde, Luciana Genro and Takayama asked the Federal Chamber to retake the above-mentioned project on the decriminalization of abortion by Deputies Jorge and Starling²⁷⁴.

As a result of the debate led in this Conference, Deputy Jandira Feghali took responsibility for the elaboration of a draft that could put all those requests together and revise the current law on abortion, the one contained in the Brazilian Penal Code. In addition, she asked for the realization of a public hearing to discuss the above-mentioned PL 1.135/1991, in conformity with her *Requerimento 250/2005*²⁷⁵. Despite being submitted to the Committee of Social Security and Family in 2005, Feghali's draft - is still stuck within the mechanisms of the Federal Chamber: this is due to the fact that the Brazilian Federal Government has not yet succeeded in the confrontation with the several religious groups that put obstacles to any proposal of decriminalization of abortion.

But why are religious representatives within political institutions reluctant to legalize abortion *tout court*? How have religious principles influenced the process of (de)criminalization of abortion within the National Congress? The religious perspective on abortion began strongly orienting and influencing the public and institutional debate

²⁷⁴ Câmara dos Deputados, *PL 1.135/1991*.

<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=16299>>. Accessed June 25th, 2017.

²⁷⁵ Câmara dos Deputados, *Requerimento 250/2005*.

<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=304241>>. Accessed June 27th, 2017.

on the referred topic. The movement against the decriminalization of abortion bases its basic assumptions on the divine nature of life. From this belief, several proposals have been born, whose purpose being the change on the legislation on abortion and, especially, its further strictness; for instance, many anti-abortion proposals have suggested that abortive practices would be inserted in the list of heinous crimes - e.g. genocide and terrorism -, set by Law 8.07/1990.

As we have seen, pro-choice supporters have often dealt with the opposition of pro-life fronts on the topic of abortion. Conservatism has characterized the National Congress, especially in the last two decades. Nonetheless, the path towards the decriminalization of abortive practices has not come to a complete standstill, thanks to the pro-choice decisions taken by the Supreme Federal Court.

3.2.2 The Supreme Federal Court and the case of fetal anencephaly

The Supreme Federal Court (*Supremo Tribunal Federal*) has played a fundamental role in supporting the decriminalization of abortive practices. As we have seen in detail in Chapter Two, in 2012, it has enabled the creation of a new case law among legal abortive practices. The so-called *Arguição de Descumprimento de Preceito Fundamental No. 54* (ADPF-54)²⁷⁶ states that the national healthcare system must ensure the right to medical treatment to pregnant women whose fetus is suffering from anencephaly. This decision is a remarkable landmark on the path towards the legalization of abortion, despite not changing the 1940 legislation on abortion.

Another step forward in favor of less restrictive punitive measures on abortion may be represented by *Arguição de Descumprimento de Preceito Fundamental No*

²⁷⁶ MELLO, Marco Aurélio, *Arguição de Descumprimento de Preceito Fundamental No. 54* (ADPF-54). Available at <<http://www.stf.jus.br/arquivo/cms/noticianoticiastf/anexo/adpf54.pdf>>. Accessed September 24th, 2017.

442 (ADPF-442)²⁷⁷, which is being analyzed in these same months. ADPF-442 asks for the revision of two articles of the Penal Code concerning sanctions, praising for their reduction. Moreover, the judges of the Supreme Federal Court have shown their support to the decriminalization of abortion performed for any reason within the 12th week of gestation²⁷⁸. The request made by ADPF-442 correspond to a pro-choice approach to the topic of abortion, since its authors recognize that the criminalization of abortion is a violation of women's fundamental human rights and women's dignity.

3.3 Family planning as a controversial issue within the National Congress

Up to this point we have ascertained that abortion has been extensively debated within the National Congress. Many have been the efforts to decriminalize its practice, in the name of women's rights. However, the influence and lobbying of conservative pro-choice exponents has obstructed any proposals in favor of a deep change of the 1940 legislation. Abortion is still illegal, except for three circumstances: the law on abortion continues strictly severe. We must be aware, though, that the debate among pro-life and pro-choice has involved sexual and reproductive rights on the whole.

The reknown *Projetos de Lei* on family planning²⁷⁹ have also provided fertile ground for controversies on reproduction in the field of Brazilian legislation. As we have

²⁷⁷ See Arguição de Descumprimento de Preceito Fundamental No 442 (ADPF-442). <http://adpf_442_-_federal_-_codigo_penal_-_aborto_-_legislador_positivo_-_direito_comparado_-_ausencia_direito_fundamental_ao_aborto_vf_1_.pdf>. Accessed September 27th, 2017.

²⁷⁸ Supremo tribunal Federal, *Partido questiona no STF artigos do Código Penal que criminalizam aborto*. <<http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=337860>>. Accessed September 24th, 2017.

²⁷⁹ Law No. 9.263, signed on January 12th, 1996, regulates Art. 226 of the Brazilian Federal Constitution on family planning. Presidência da República - Casa Civil -Subchefia para Assuntos Jurídicos, *Lei No. 9.263, de 12 de Janeiro de 1996*. <http://www.planalto.gov.br/ccivil_03/leis/L9263.htm>. Accessed June 16th, 2017.

already seen in Chapter One, until the 1960s sexuality and reproduction were constantly under the yoke of criminal law, and this emphasized the naturalistic, sacred and exclusive nature of reproduction²⁸⁰.

In 1976, Deputy Nina Ribeiro submitted proposal PL 1829/1976²⁸¹ to the Federal Chamber, aiming at revising Art. 20 of the Law on Penal Violations²⁸² on the advertisement on contraceptives. However, her proposal was rejected in 1984. During the 1980s, Deputy Inocência Oliveira suggested that remedies for anovulation should be legally distributed; he renewed his proposal in 1991, with no success, though²⁸³.

In 1980, Deputy João Menezes' PL 2605/1980 established norms for the realization of a program on family planning, but the proposal was rejected the following year. Three years later, the above-mentioned Deputy Inocência Oliveira set out a proposal in favor of the authorization to the use of contraceptive methods²⁸⁴, and in 1988 he focused again on the regulation of remedies for anovulation, asking for the revision of Art. 20 of the Law on Penal Violations.

In the following decade, it was Deputy Cristina Tavares that became pioneer of the issue of family planning and claimed that primary and middle schools had to provide

²⁸⁰ BARSTED, Leila, *O Campo Político-Legislativo dos Direitos Sexuais e Reprodutivos no Brasil*. In: BERQUÓ, Elza (Org.). *Sexo & Vida: Panorama da Saúde Reprodutiva no Brasil*. São Paulo: Unicamp, 2003, p.85.

²⁸¹ Câmara dos Deputados, PL 1829/1976. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=196657>>. Accessed June 24th, 2017.

²⁸² Presidência da República - Casa Civil - Subchefia para Assuntos Jurídicos, *Decreto-Lei No. 3.688, de 3 de Outubro de 1941 - Lei das Contravenções Penais*. <http://www.planalto.gov.br/ccivil_03/decreto-lei/Del3688.htm>. Accessed June 24th, 2017.

²⁸³ Câmara dos Deputados, PL 567/1983. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=178975>> and PL 667/1991. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=180552>>. Accessed June 24th, 2017.

²⁸⁴ Câmara dos Deputados, PL 244/1983. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=173746>>. Accessed June 24th, 2017.

compulsory classes on human reproduction and environmental protection²⁸⁵. In that very same year, Deputy Darcy Deitos highlighted the fact that the Brazilian social security system had to allow doctors and surgeons to practice medical operations of restriction of natality, such as uterus wrapping, tubal ligation or vasectomy²⁸⁶; this measure should have been applied to people who already had at least three children, thus revising Art. 7 of the 1988 Brazilian Federal Constitution. The above-mentioned legislative proposals point out that family planning was a big concern in those years, and the feminist movement itself reported that Brazil had been living in a condition of populational control implemented by the military regime. This circumstance led to the creation of a Parliamentary Inquiry Committee (*Comissão Parlamentar de Inquérito*) within the National Congress, whose purpose was to investigate on the likeliness of violations of reproductive control. In 1993 the Committee wrote a proposal on family planning, authorizing surgical sterilization in case of high-risk pregnancy, except during the period of gestation, childbirth, post-delivery or puerperium; the methods that could have been legally used were tubal sterilization and vasectomy, while hysterectomy was prohibited²⁸⁷. Some months later, Deputy Max Rosenmann claimed that citizens should prefer “natural and behavioral methods” to surgical and chemical means, when they decided whether to have children or not²⁸⁸.

²⁸⁵ Câmara dos Deputados, PL 5184/1990. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=226561>. Accessed June 24th, 2017.

²⁸⁶ Câmara dos Deputados, PL 5983/1990. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=229590>. Accessed June 24th, 2017.

²⁸⁷ Câmara dos Deputados, PL 3633/1993. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=214528>. Accessed June 25th, 2017.

²⁸⁸ Câmara dos Deputados, PL 3891/1993. <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=216875>. Accessed June 25th, 2017.

Several legislative proposals - e.g. PL 2059/2003 and PL 5061/2005²⁸⁹ - on the right to sterilization after childbirth or to vasectomy, provided by the public healthcare system, were renewed. Furthermore, a new project aiming at issuing norms and criteria on assisted human reproduction was submitted to the Federal Chamber in 2005²⁹⁰. Up to this point we may have observed that deputies addressed most of their proposals towards long-term or permanent methods of fertility control, since sterilization, vasectomy and the likes are irreversible. This choice may be welcomed because it has guaranteed some rights to a certain extent. Nonetheless, the attitude towards reversible methods and practices - e.g. the so-called “day-after pill” or emergency contraception - has proved different.

As a matter of fact, in that same decade, a huge number of legislative proposals on the prohibition of the commercialization of the “day-after pill” flooded the Brazilian Federal Chamber. The first document on this issue was Deputy Carlos Nader’s PL 5376/2005²⁹¹. Two years later, Deputy Luiz Bassuma - who was also the author of the *Estatuto do Nascituro* - proposed that any product linked to emergency contraception - such as the “day-after pill” itself - would be provided neither by public healthcare infrastructures nor by drugstores²⁹².

This proposal aims at prohibiting the indiscriminate use of the “day-after pill” by young people and adults, since they irresponsibly resort to such drug to take the life of the unborn child in his/her very first moments. Therefore, this implies depriving a human being - as we are - of his life. It means killing a

²⁸⁹ Câmara dos Deputados, PL 2059/2003. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=134831>> and PL 5061/2005. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=281734>>. Accessed June 25th, 2017.

²⁹⁰ Câmara dos Deputados, PL 4889/2005. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=277889>>. Accessed June 25th, 2017.

²⁹¹ Câmara dos Deputados, PL 5376/2005. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=288318>>. Accessed June 25th, 2017.

²⁹² Câmara dos Deputados, PL 1413/2007. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=357240>>. Accessed June 25th, 2017.

fellow. And how can we deny that each life carries a pre-determined plan of God? We should not forget about Mary, our Holy Mother, whose child has marked relevantly the history of mankind.²⁹³

It is worth stressing that the year 2007 was crucial as far as legislative proposals about family planning were concerned: some aimed at preventing abortion, while others strongly criminalized its practice. The main concern still laid on surgical methods different from abortion. Through PL 313/2007, Deputy Maurício Trindade proposed that citizens benefitted from at least three reversible contraceptive methods, and one irreversible practice for both women and men; moreover, he would allow voluntary sterilization starting from the age of twenty-three²⁹⁴. Later, Deputy Waldemir Moka suggested that the costs of vasectomy would be compulsorily paid by the public healthcare system (*Sistema Único de Saúde*) and by institutions which offered health insurances²⁹⁵. An alike request was subscribed by Deputies Talmir Rodrigues and Henrique Alfonso, who stated that the public healthcare system had to cover the full cost of any surgery of vasectomy reversal²⁹⁶. From 2007 to 2017 the number of legislative proposals on family planning has dramatically decreased. Nevertheless, there are two *Projetos de Lei* worth mentioning. In 2013 Deputy Sueli Vidigal declared that it is the public healthcare system that must orientate women on the choice of injectable contraceptives, and this measure would have a stronger impact on less-

²⁹³ Câmara dos Deputados, PL 5376/2005. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=288318>>. Accessed June 25th, 2017.

²⁹⁴ Câmara dos Deputados, PL 313/2007. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=343759>>. Accessed June 25th, 2017.

²⁹⁵ Câmara dos Deputados, PL 1308/2007. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=355088>>. Accessed June 25th, 2017.

²⁹⁶ Câmara dos Deputados, PL 2464/2007. <<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=377625>>. Accessed June 25th, 2017.

affluent women²⁹⁷. In 2015, Deputy Major Olímpio remarked that the State must be accountable for family planning and, thus, low-class citizens could be advised over the best practices or methods²⁹⁸.

In conclusion, it is undeniable that conservative positions have not only be adopted as far as abortion is concerned; the reluctance to recognize women all their fundamental, sexual and reproductive rights has been great at any level.

In this chapter, we have traced the legislative path of the most relevant proposals on the topic, focusing on the content of the documents and on the approach to the issue in the last decades. The debate between pro-life and pro-choice front has been particularly harsh within the National Congress and has led to the current situation of sexual and reproductive rights in Brazil. Most legislative proposals on abortion were submitted during the 1980s, after the re-democratization of the country.

On the one hand, the pro-life front has fought for the further criminalization of abortion, considering it a heinous crime. Its aim was to create a rise in the harshness of punitive measures against abortion. The highest number of this kind of proposals is be found in the 2000s, together with the creation of a conservative parliamentary front: this helped pro-life supporters to generate a greater resistance towards pro-choice claims. Among the proposals of deputies against the legalization of abortion, we must remind:

²⁹⁷ Câmara dos Deputados, *PL 6980/2013*.
<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=604628>>. Accessed June 25th, 2017.

²⁹⁸ Câmara dos Deputados, *PL 917/2015*.
<<http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=1155777>>. Accessed June 25th, 2017.

- *Registro Público da Gravidez*, the national record of pregnancy, which would control the access of women to public hospitals, detecting cases of abortion; it has not been realized yet, as it is still to be debated at the National Congress.
- *Bolsa Auxílio*, a subsidy to those women whose pregnancy has been the result of rape or to women who suffer a miscarriage.
- *Estatuto do Nascituro*, a document for the safeguard of unborn children, which would attach juridical personality to the fetus, and which includes severer punitive measures against abortion.

In addition, pro-life supporters have required the creation of Parliamentary Inquiry Committees to collect information on the status of abortion in Brazil, so that they can elaborate adequate responses to it.

On the other hand, the pro-choice front has put greater emphasis on the safeguard of women's right to freedom, sexuality and reproduction, being in favor of the legalization of abortion. The first proposals on decriminalized abortion dates back to the 1960s but most of them were submitted to the National Congress in the 1980s. Pro-choice claims, yet, faced the fierce opposition of the conservative Catholic Church, which contributed to the rejection of their proposals. In order to foster the debate on abortion, pro-choice exponents suggested the creation of plebiscites on such a relevant topic for the Brazilian society: it is the case of *Conferências de Políticas Públicas*, during Lula's presidency.

Despite the spread of conservatism on this issue, the Supreme Federal Court has expressed its support to pro-choice claims. For instance, in 2012 it has allowed the performance of legal abortion in case of fetal anencephaly, in compliance with *Arguição de Descumprimento de Preceito Fundamental No. 54* (ADPF-54). Moreover,

it is discussing *Arguição de Descumprimento de Preceito Fundamental No 442* (ADPF-442), a proposal of decriminalization of abortion within the twelfth week of gestation.

The confrontation of pro-life and pro-choice approaches has involved sexual and reproductive rights on the whole. As far as family planning is concerned, many legislative proposals suggested that the State facilitated the access to reversible and irreversible contraceptive methods: generally speaking, deputies have been hostile towards the former.

To sum up, we have observed that the national Congress is permeated by conservatism with regard to sexual and reproductive rights. The pro-life front, backed by traditional religious orthodoxy, has been prevailing since the mid-21st century. The legislation on abortion in Brazil is still stuck in year 1940, despite the debate has been lively. However, in recent years, some steps towards the decriminalization of abortion have been moved.

CONCLUSION

This work has dealt with the debate on sexual and reproductive rights in Brazil, focusing on the legislative path towards the (de)criminalization of abortion. The political and social confrontation on this topic has gained great relevance from the 1980s; its starting point is the strictness of abortive laws, which date back to 1940. The Brazilian Penal Code originally allowed abortion just in two cases: if the life of the pregnant woman was in danger; or if the pregnancy was the result of sexual violence. Since then, the legislation has remained unaltered. However, in 2012 the Supreme Federal Court allowed the performance of abortion also in case of fetal anencephaly.

The objective of this work was to analyze whose actors have influenced the debate on abortion in the last decades and which political conjunctures have determined the preservation of the *status quo* on abortion-related issues.

The first part of this work provided an outlook on the right to abortion within the framework of international law. Abortion in Brazil is a major issue of public health and human rights: in 2015, approximately 416,000 women declared to have had an abortion, but the number of illegal abortions may account to 1 million; moreover, it is estimated that 13% of illegal abortions end up in maternal deaths. The country must guarantee the access to high-quality healthcare services, so as to ensure the respect of women's dignity and fundamental rights, as stated by many international conventions. The current status of laws on abortion in Brazil has negative outcomes both on society and economy. On the one hand, the public healthcare system fails in providing adequate assistance to pregnant women, thus, many of them resort to illegal methods; this generates high rates of post-abortive hospitalizations, making public expenditures increase sharply. On the other hand, institutions attach a moral stigma to

patients (who are mainly poor), disrespecting their rights. The illegality of abortion prevents women from disposing freely of their sexual and reproductive rights and goes in countertrend with the international commitments of Brazil.

The work also introduced the actors that are accountable for the paralysis of abortive laws in Brazil and provided the theoretical background of their claims. On the one hand, pro-life supporters are represented by the Protestant-Pentecostal Churches and by the conservative sectors of the Catholic Church. They believe life is the most valuable right and it is thought to begin at the moment of conception; for this reason, the fetus is attributed juridical personality and it cannot be deprived of its right to life by abortion. To support their anti-abortive position within the National Congress, pro-life supporters have created parliamentary fronts such as *Bancada Evangélica* and *Frente Parlamentar em Defesa da Vida – Contra o Aborto*. On the other hand, pro-choice groups hold dear women's rights to free sexuality and reproduction; moreover, they do not consider fetuses as proper human beings. Their main representatives are feminists and progressive Catholic groups, e.g. *Católicas Pelo Direito de Decidir*. The Supreme Federal Court has also shown its support to the decriminalization and legalization of abortion in Brazil, expressing favorable opinions on legal abortion in case of anencephaly.

Finally, we focused on the debate between pro-life and pro-choice instances within the Brazilian National Congress, since their power has shaped situation of sexual and reproductive rights in Brazil. Pro-life supporters have praised a further criminalization of abortion though a rise in the harshness of punitive measures, a closer control on public hospitals (*Registro Público da Gravidez*) and through the recognition of the rights of the fetus (*Estatuto do Nascituro*). In addition, they asked for the creation of Parliamentary Inquiry Committees on the magnitude of abortion, and lobbied the

Congress so as to prevent changes to abortive laws. On the contrary, pro-life representatives have supported the decriminalization and legalization of abortion, also through the organization of plebiscites. Despite the immobility of abortive laws, the Supreme Federal Court has provided authorization to the performance of legal abortion in case of anencephaly.

To sum up, we may be able to understand that the immobility of abortive laws in Brazil has been caused by specific political conjunctures. The confrontation between pro-life and pro-choice supporters has last for a long time and has been represented by the differentiation of the priorities of both groups. During the 1960s and 1970s, it has moved the first steps but the historical and political context of that time has prevented the debate on abortion to be a priority on the institutional agenda. As a matter of fact, in the years of the military regime (1964-1985), social actors revendedicated different rights from sexual and reproductive ones. Their main concern was the right to democracy, freedom, together with constitutional and labor rights. In addition, e.g. feminist groups and the Catholic Church stood together in their opposition to the authoritarian government, but let little room for the discussion of sexual and reproductive issues.

However, after the re-democratization of the country, the debate on abortion burst out. Pro-life and pro-choice forces made opposite pleas: conservative Catholics and Protestants asked that the right to life was preserved and that abortion continued penalized; on the other hand, feminists revendedicated women's fundamental rights and the legalization of abortion as a proof of female freedom of choice. What prevailed was conservatism, orthodoxy: religion has always exerted a great influence on Brazilian society and institutions, notwithstanding the laity of the State. Pro-choice, progressive ideas have never really prevailed, despite the fact that there is a growing

consciousness about the need of enhancing human rights and letting people dispose freely of their bodies.

The legislation on abortion has not changed since 1940 and this denotes a certain reluctance of Brazil to abandon its traditional ideas and embrace social change. We must take into consideration that the country has not a long democratic tradition, thus, the fight for any kind of rights appears to be more difficult. Moreover, the predominance of conservatism is before everyone's eyes. The 1980s could have been the appropriate time for legislation to change; however, the political conjuncture has prevented this from happening. The following decades, and especially the 2000s, have marked the return of more conservative approaches to abortion-related issues. One of the reasons was certainly the strengthening of Protestant and Pentecostal Churches, which permeate the societal and the institutional spheres in Brazil.

We cannot state, therefore, that the legalization of abortion in Brazil will never take place. The Supreme Federal Court has proved that some change may be brought about. Despite not changing the dispositions on abortion issued in the 1940 Penal Code, the decision on the *Arguição de Descumprimento de Preceito Fundamental No. 54* about fetal anencephaly has been relevant. As a matter of fact, it may be seen a fundamental step on the path towards the decriminalization of abortion. Moreover, the discussion within the Court of *Arguição de Descumprimento de Preceito Fundamental No. 442* on legal abortion within the twelfth week of gestation is another clear sign of this orientation. The pro-choice attitude of this institution ought to be welcomed because it may push Brazil to align to the international human rights standards.

Brazil has subscribed many international convention on the protection of women and on the enhancement of fundamental rights.

As far as research and studies on abortion are concerned, the fact that abortion is criminalized and stigmatized is detrimental to their realization. First of all, in a context in which abortion is illegal in most circumstances, it is difficult to collect data and raise information on the topic. On the one hand, there are no accurate national statistics on the magnitude of abortion and its consequences. Even the National Abortion Survey (*Pesquisa Nacional de Aborto*, PNA) provide no certain information; it is limited to the urban context, took data only in public healthcare infrastructures and is addressed to women aged 18-39, with at least a minimum degree of literacy. In other words, this survey grasps just a little piece of the complex reality of abortion; it does not provide data on rural areas, neither takes into consideration illiterate population and, of course, does not unveil the impact of illegal abortion. Moreover, the feature of criminalization of abortive methods, together with the lack of privacy and protection, force both interviewers and interviewees to work in unsuitable conditions for research.

Second, a strong moral stigma is still attached to the issue of sexuality and reproduction. Abortion continues a taboo subject in Brazil and this clearly obstacles the development of surveys and research on the topic. Most publications on sexual and reproductive issues focus on quantitative data and statistics, even if they are not always completely reliable due to the above-mentioned reasons. Fewer are willing to investigate the qualitative aspects of the topic and its moral, ethical, philosophical implications. Even fewer authors investigate the topic of abortion calling into question religion. The conservatism, the orthodoxy, the rigidity of religious groups hinder the discussion of sexual and reproductive rights. As a matter of fact, the search for documentation on the relationship with the Church and laws on abortion has been extremely challenging; this is a proof of the reluctance of many religions to question their traditional views. On the contrary, it has been much easier to discover the world

of pro-choice supporters because of their propensity to discuss beliefs, human rights, social problems etc.

In short, there is still much to do debunk the taboo that burdens on sexuality and reproduction. Brazilian society, institutions, religious groups should adopt a more open and tolerant attitude towards such topics. The reality shows us that the criminalization of abortion is a source of rights violations, social inequality and denial of one's freedom. Discussing the decriminalization and legalization of abortive practices would mean providing and safeguarding the right to freedom and choice of every human being. Everyone would be left free to dispose of their own body as they desire, according to their moral, religious, ethical, personal beliefs. On the contrary, considering abortion as a crime is detrimental to part of the society. In other words, it is desirable that Brazil adopts a pro-choice attitude so as not to discriminate its population as it has done too often until now.

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