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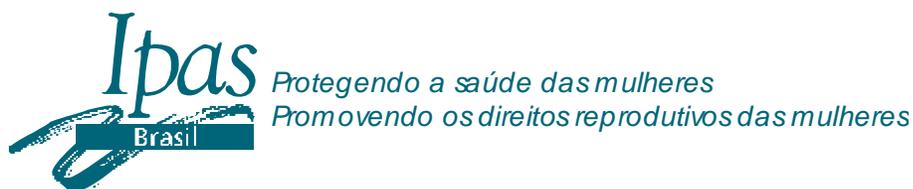
Ref: Information on effective practices in eliminating preventable maternal mortality and morbidity in Brazil

Dear Commissioner,

This document is intended to provide additional information on effective practices in eliminating preventable maternal mortality and morbidity in Brazil aiming to contribute to the Office of the United Nations High Commissioner for Human Rights to produce a useful, analytical compilation on this issue.

Very sincerely,

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Good and effective practices relating to human rights and maternal mortality and morbidity in Brazil

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Submission by Ipas Brasil, IMAIS Institute and National Feminist Network on Health Sexual Rights Reproductive Rights, in response to the OHCHR Note Verbale of 13 January 2011

I. Panorama of unsafe abortion: preventable cause of maternal mortality and morbidity in Brazil

Since 1990, the Brazilian government has endeavored to reduce maternal death rates, which according to the Health Ministry were estimated at 74 deaths per 100,000 live births in 2005.¹ The second cause of hospitalizations in the public health system is related to obstetric causes, including deliveries and complications of unsafe abortion. Among the government's efforts to reduce maternal mortality and morbidity was the launching in March 2004 of the National Pact for the Reduction of Maternal and Neonatal Mortality.

Despite the importance of this initiative, its implementation has been ineffective in addressing preventable maternal mortality and morbidity in the country. Unsafe abortion, an entirely

¹ Health Ministry. 2006. *Health in Brazil*. Health Vigilance Secretary, Brasilia

preventable cause of mortality, is the fourth cause of women's pregnancy-related deaths in Brazil.² For decades, unsafe abortion has been the first cause of maternal mortality in Salvador city, state of Bahia, where 82% of the female population is afro-descendent and lives in the poor urban areas.

In Brazil, abortion is only legally permitted in cases of rape or to save the life of a pregnant woman. In all other circumstances, Brazil's Penal Code penalizes women who undergo induced abortions with 1-3 years of imprisonment; physicians who provide abortions can receive up to 20 years' imprisonment (Penal Code articles 123-128). Between 1989 and 2008, only 1606 women were able to have legal abortions in Brazil.³

As a result of the great restrictions on legal abortion, one million unsafe abortions are estimated to occur each year in Brazil, with women running the risks of suffering short- and long-term maternal morbidity, as well as death. As many as a quarter million women are treated annually in hospitals for complications from unsafe abortions.⁴ Maternal mortality in Brazil thus indicates an omission and lack of diligence by the State, since the majority of maternal deaths result from causes that can be prevented if women have access to good quality emergency obstetric care.⁵

The incidence of high rates of maternal mortality in Brazil reveals discrimination on the grounds of sex, gender, race and ethnicity, marital status and geographic location.^{6,7} For example, the

² Research on mortality among women aged 10-49 years, with an emphasis on maternal mortality. Draft Final Report Draft. Ministry of Health, Brasília, DF, 2006.

³ Católicas pelo direito de decidir. 2006. *Panorama do aborto legal no Brasil*. São Paulo. See also: Rosângela Aparecida Talib and Maria Teresa Citeli. 2005. Serviços de aborto legal em hospitais públicos brasileiros (1989-2004) Dossiê. *Cadernos Católicos pelo direito de decidir*.

⁴ Ministério da Saúde. 2005. *Norma Técnica para Atenção Humanizada ao Abortamento*, Brasília, Ministério da Saúde.

⁵ Beatriz Galli. 2002. Note 7.

⁶ In 2009, the Committee on Economic, Social and Cultural Rights (CESCR) expressed its concern to the Brazilian State, saying "*that maternal mortality rates remain extremely high and that the risk of maternal death disproportionately affects marginalized communities [sic], particularly Afro-Brazilians, indigenous women and women from rural areas. Furthermore, the Committee notes that these disparities are attributable, in part, to the inequitable distribution of emergency obstetric care facilities and to the fact that health-care funding fails to pay adequate attention to disadvantaged populations.*" The Committee further noted: "*with concern that clandestine abortions remain a major cause of death among women. (art. 12.1 and 12.2.(d)). The Committee reiterates the recommendation made in its concluding observations on the State party's initial report, namely that the Committee requests the State party to undertake legislative and other measures, including a review of its present legislation, to protect women from the effects of clandestine and unsafe abortion and to ensure that women do not resort to such harmful procedures.*"⁶

South and Southeastern regions of the country present better quality health care and also maintain better statistical records to monitor that care.⁸ Low-income women of African descent with little education and poor access to family planning services are moreover most likely to die or suffer from complications due to unsafe abortions.⁹ Women of color especially suffer a greater proportion of deaths due to easily preventable pregnancy-related causes, such as edema, proteinuria, hypertensive disorders, problems during childbirth and in the puerperium, and unsafe abortions. In Brazil, in comparison with white women, black women's mortality risks from these causes are approximately three times greater.¹⁰ The profile of maternal death victims is thus one of women who are low-income, non-white, single mothers, living in the poor regions of the country. These characteristics are considered to be the risk factors for unsafe motherhood that affect women's ability to exercise their human rights related to reproductive self-determination.¹¹

II. Legislative Parliamentary Commission and the role of maternal mortality committees in promoting accountability to prevent avoidable maternal death due to unsafe abortion

CPI on Maternal Mortality in Brazil

According to Article 58, paragraph 3 of the Constitution, the establishment of a Legislative Investigation Commission (CPI), which has special functions to deal with a specific issue, can be requested by a group of one-third or more of the legislative members of the Deputy Chamber, the Federal Senate or both. The CPI procedure can be established at the federal, state or municipality levels in order to investigate governmental acts and the functioning of public services¹². A(CPI)

⁷ Maria Beatriz Galli. 2002. *A human rights approach to maternal mortality in Brazil*. Master's Degree Thesis, Law College, Toronto University, Toronto. See also: Maria Beatriz Galli (coord.), Flávia Piovesan, Valéria Pandjarian. 2005. *Mortalidade materna e direitos humanos: as mulheres e o direito de viver livre de morte materna evitável* (Maternal Mortality and human rights: women and the right to live free from preventable maternal death). Rio de Janeiro: ADVOCACI, p. 14.

⁸ S. Valongueiro. 2007. Mortalidade materna em Pernambuco, Brasil: o que mudou em dez anos? ("Maternal Mortality in Pernambuco, Brazil: what changed in ten years?") *Reproductive Health Matters*, 15 (30):134-144.

⁹ Inquiry Legislative Commission. August 2001. *Relatório*. Comissão Parlamentar de Inquérito sobre a Situação da Mortalidade Materna no Brasil..

¹⁰ Monteiro M., Black women and maternal mortality in Brazil, , Seminar Maternal Mortality and Human Rights Report May 27-28 2009, available at www.ccr.org.br.

¹¹ Cook R. and Dickens B. *Advancing Safe Motherhood through Human Rights*.

¹² Oliveira, E.da Silva, "Comissão Parlamentar de Inquérito" (Legislative Inquiry Commission), Lumen Juris Editor, Rio de Janeiro, 2001.

was created especially to investigate maternal mortality in Brazil.¹³

The CPI on maternal mortality had as its central objective to map the context of maternal mortality in Brazil¹⁴, along with:

- a) *The elaboration of a diagnosis on the causes, indicators and determinant factor related to maternal mortality;*
- b) ***The assessment of legal norms and public policies related to women's health;***
- c) ***The assessment of different health practices to combat maternal mortality developed in different regions of Brazil, aiming to identify cases of negligence, omissions and lack of due diligence from public health professionals and public authorities;***
- d) *The assessment of existing different practices and policies directed to maternal mortality in national and international contexts;*
- e) *The presentation of suggestions with subsidies and contributions for the revision of existing public health policies directed to maternal mortality.*¹⁵ [Emphasis added]

The CPI's final report is a source of information on the situation of maternal mortality in the country. Moreover, it is an important document issued by the Brazilian State in which it recognizes the health system's failures to reduce maternal mortality, in addition to giving recommendations to change the scenario.

As a means to safeguard constitutional guarantees, the CPI and its recommendations should be used strategically in the development of effective remedies to address the situation of maternal mortality. Legal scholarship has defined the CPI as an instrument of Constitutional Process Law.¹⁶ In addition, the report issued by the CPI on maternal mortality explicitly made reference to human rights principles and norms, international conferences and human rights treaties.

The CPI was a major step for Brazilian State compliance with international human rights obligations concerning the reduction of maternal mortality rates and the protection of women's

¹³Final Report from the Legislative Investigative Commission is available at: http://www.portalmédico.org.br/biblioteca_virtual/cpi/CPIMortalidade_Matern.htm

¹⁴ Ibid.

¹⁵ These objectives are included in the CPI report page 7 [translated by the author].

¹⁶ *Supra.* at page 106.

right to be free from avoidable maternal death. The CPI acknowledged in its final report that the devaluation of women in society, poverty, as well as women's lack of access to education and justice, are central factors that contribute to the maintenance of high maternal death rates.

The CPI issued many recommendations directed to different State organs, such as the President, the Health Ministry, the Education Ministry, the Welfare Ministry, the Justice Ministry, the Federal Public Attorney, health professionals at state and municipal levels, legislative organs, medical associations and the National Health Council, urging them to take measures to address the situation of maternal mortality in the country¹⁷. These recommendations are guidelines for future policymaking to reduce maternal mortality and two are related to addressing unsafe abortion through a human rights approach:

- The CPI recommended to the Health Ministry the implementation of Maternal Mortality Committees in the country.¹⁸
- The CPI recommended to the Health Ministry to give priority to family planning programs as a central strategy to avoid maternal deaths due to unsafe abortion.¹⁹

Maternal Mortality Committees' role and effectiveness in addressing maternal mortality

Beginning in 1987, the Brazilian State, through its Health Ministry, established maternal mortality committees and neonatal committees, in addition to hospital infection commissions.²⁰

The creation of the maternal mortality committees in the states and municipalities forms part of a policy strategy defined in 1984.²¹ The development of maternal mortality committees and its implementation started in 1987. From 1993 to 1996 the Health Ministry worked for the implementation of these committees in all states of the country²².

These committees were initially conceived as a political response for developing educational

¹⁷ CPI Report page 199.

¹⁸ *Ibid.* at page 199.

¹⁹ *Ibid.* at page 202.

²⁰ Health Ministry decrees no. 3.016 of June 19, 1998; no. 3.017 of June 19, 1998; no. 3.018 of June 19, 1998; no. 3.477 of August 20, 1998; no. 3.482 of August 20, 1998.

²¹ See Guide of Maternal Mortality Committees, Health Ministry, Brasília, 2002, page 19.

²² *Ibid.* at page 20.

activities about maternal mortality and efforts to raise social awareness of the problem.²³ Their mandate included the following tasks:

- 1) To investigate maternal deaths to complement the work of the state Health Secretariats in epidemiological vigilance.²⁴
- 2) To analyse the causes of maternal deaths and to assess whether they were avoidable and why.
- 3) To educate and promote discussion on the clinical aspects of cases in hospital committees, to provide training for prevention of maternal deaths and to disseminate information on maternal mortality.
- 4) To provide suggestions for preventive measures to be adopted for the states of the country²⁵. In addition to a National Maternal Mortality Committee, state, regional and municipal committees have been implemented in the country to reduce of maternal mortality.²⁶

The Committees' guidelines establish the nature of their work as: multidisciplinary, intersectional with the work of other institutions, confidential, non-coercive or punitive and functioning for mainly educational purposes²⁷. Despite the confidential nature of their investigations, a human rights approach to their role could make it possible to seek accountability through administrative or judicial remedies in cases of preventable maternal deaths. Evidence has shown that they lack effectiveness in preventing avoidable deaths and that they should be focusing on establishing accountability within the health system.²⁸

An important step in improving the work of these committees was taken in 1998, with Resolution No. 256, which established compulsory notification of maternal deaths. However, in the poor regions of the country, it is difficult to monitor whether these deaths have been reported and this legislation is being implemented. These committees could have an important role in documenting avoidable deaths due to unsafe abortion that do not necessarily appear in official

²³ CPI Final Report page 79. According to the Health Ministry the percentage of active Maternal Mortality Committees by region in Brazil is: 100% in the South, 75% in the Southeast, 44% in the Northeast, 42% in the North and 25% in the Centre West of the country. Accordingly, high rates of maternal mortality were found where the Committees are more active, due to their role in promoting awareness of the problem.

²⁴ Ibid at page 22.

²⁵ Ibid at page 20.

²⁶ Ibid.

²⁷ Ibid at page 24.

²⁸ Maria Beatriz Galli. 2002. *A human rights approach to maternal mortality in Brazil*. Master's Degree Thesis, Law College, Toronto University, Toronto.

health system statistics, thereby contributing to efforts to identify where the system is failing.

If these Committees adopt a human rights approach in addition to their epidemiological role they could be more effective and responsive to health system's failures in avoiding preventable deaths fostering accountability and giving visibility to women's inequality in accessing good quality of care.²⁹

According to the CPI final report³⁰ and evaluation, the Maternal Mortality Committees should move beyond their epidemiological research and start working in close partnership with civil society institutions to promote accountability and social monitoring of the problem of maternal mortality.³¹ In the state of Pernambuco, the Maternal Mortality Committee has adopted a human rights approach in their investigation of maternal deaths and in some cases has worked in partnership with Public Prosecutor to investigate preventable deaths due to unsafe abortion.³²

III. Using a human rights approach for Maternal Mortality Committees to investigate preventable maternal deaths

The Feminist National Network on Health Sexual and Reproductive Rights, and the Rapporteur on the right to sexual and reproductive health from the Brazilian Platform on Economic Social Cultural and Ambiental Rights (ESCAR Platform) have developed a project entitled "Using Human Rights for Women's Health: Tools to Strengthen Public Policies." It aims to study violations of sexual and reproductive rights and broader human rights with an emphasis on maternal mortality due to unsafe abortion.

²⁹ Maria Beatriz Galli. 2002. *A human rights approach to maternal mortality in Brazil*. Master's Degree Thesis, Law College, Toronto University, Toronto.

³⁰ Data provided by an inquiry legislative commission report on the situation of maternal mortality in Brazil, issued on August 2001. This report is a result of the legislative investigation undertaken by the members of the Deputy Chamber. The inquiry legislative committee is called CPI³⁰, and worked from 1996 to 2001.

³¹ CPI Report, page 81.

³² Valongueiro S., Analysis of cases, professional secrecy in Maternal Mortality Committees, São Paulo, 2009. In *Maternal Mortality and Human Rights in Brazil, Final Report*. Available at <http://www.ccr.org.br/uploads/noticias/seminário%20mortalidade%20materna.pdf>

The methodology comprises an analysis of exemplary individual cases of preventable maternal deaths due to unsafe abortion using a human rights approach. The analysis does not intend to replace the role of maternal mortality committees in their epidemiological work but aims to develop and apply a complementary methodology to connect the causes of maternal deaths with human rights violations that are usually not addressed by the maternal mortality committees' analyses. The exemplary cases, obtained from the cases addressed in the maternal mortality committees' research on medical records, investigate which failures of the health system and the health care provided contributed to the woman's death. The project thus aims to bring a human rights perspective to individual cases of preventable maternal death, giving visibility to women's inequality in accessing good quality of care in an emergency situation.

The CPI report recommended that the Maternal Mortality Committees' scope of action be broadened beyond educational purposes to identify individual responsibilities, including in cases of newborn deaths and morbidity. In addition, it suggested that the Committees more closely interact with the Public Attorney's Office to foster the development of effective judicial remedies to address preventable causes of maternal mortality and seek accountability of health providers and the public health system.

The project responds to recommendations established by the CPI final report, which stated that the investigation of cases of preventable maternal deaths is central for mapping maternal mortality causes and circumstances. Moreover, it intends to complement and improve the role of Committees in addressing accountability related to omission or negligence in the provision of emergency obstetric care that can lead to preventable maternal deaths.

The Rapporteur on the Right to Sexual and Reproductive Health from the ESCAR Platform has visited until April 2011 seven state and municipal Committees on study and prevention of maternal mortality to discuss their scope of work and support them in the application of the proposed methodology using a human rights approach to their analysis. This initiative was recently presented in a national Seminar organized by the ESCAR Platform in partnership with the Gender and Race UN Task Force in Brazil which has been working to develop instruments and indicators to include race/ethnicity strategically to bring visibility of women's specific

vulnerabilities.