

# Death and life in the abortion debate: an analysis based on the public hearing on ADPF 442<sup>1</sup>

## Morte e vida no debate sobre aborto: uma análise a partir da audiência pública sobre a ADPF 442

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### Abstract

Starting from the premise that the agenda on reproductive rights is home to political disputes in the field of sexuality and reproduction, this article reviews the debate held at the public hearing on the Argument of Noncompliance with a Fundamental Precept (*Arguição de Descumprimento de Preceito Fundamental*, ADPF) # 442 in August 2018. The lawsuit proposes the decriminalization of abortion induced by the pregnant woman herself or with her consent until the 12th week of gestation. At the hearing convened by the Supreme Court, 50 *amicus curiae* presentations were held, catalyzing the current arguments raised in the public debate on abortion in Brazil. The content of the public hearing (characters, places, images, audios, texts, and video) is taken as empirical material for this research. Considering the centrality of the **defense of life/combating death** argument, both in speeches for and against the ADPF, we examine the different frameworks used by political actors on the scene when debating the issue of abortion in terms of a clash between death and life. More than a polysemy, it is a clash that makes explicit hierarchies regarding reproduction and women's lives.

**Keywords:** Decriminalization of Abortion; ADPF 442; Reproductive Justice; Sexual and Reproductive Rights; Intersectional Feminism.

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## Resumo

Partindo da premissa de que as pautas sobre direitos reprodutivos constituem uma gama de disputas políticas no campo da sexualidade e da reprodução, este artigo examina o debate travado na audiência pública sobre a Arguição de Descumprimento de Preceito Fundamental (ADPF) 442, ocorrida em agosto de 2018. A ação propõe a descriminalização do aborto induzido pela própria gestante ou com seu consentimento, até a 12<sup>a</sup>. semana de gestação. Na audiência convocada pelo Supremo Tribunal Federal, 50 exposições de *amici curiae* foram realizadas, catalisando os atuais argumentos acionados no debate público sobre aborto no Brasil. O conteúdo da audiência pública (personagens, lugares, imagens, áudios, textos e vídeo) é tomado como material empírico desta pesquisa. Considerando a centralidade do argumento de defesa da vida/combate à morte, tanto nas exposições favoráveis quanto naquelas contrárias à ADPF, examinamos os distintos enquadramentos utilizados pelos atores políticos em cena, ao debater a problemática do aborto em termos de um embate entre morte e vida. Mais do que uma polissemia dos termos, trata-se de um embate que explicita hierarquias em relação à reprodução e à vida das mulheres.

**Palavras-chave:** Descriminalização do Aborto; ADPF 442; Justiça Reprodutiva; Direitos Sexuais e Reprodutivos; Feminismo Interseccional.

## Introduction

The Argument of Noncompliance with a Fundamental Precept (*Arguição de Descumprimento de Preceito Fundamental*, ADPF) # 442 that proposes decriminalizing abortion until the 12th week of gestation was filed by the Socialism and Liberty Party (*Partido Socialismo e Liberdade*) on March 6, 2017, in a context of the full rise of neoconservatism in Brazil (Vaggione; Machado; Biroli, 2020). To date, the main development of this action has been the Public Hearing convened by the Supreme Court (STF) and held in August 2018, on the eve of the election that led a coalition of ultraconservative political forces to occupy the highest instances of power in the country. In this sense, presenting the ADPF 442 constitutes a bold move, as it puts the debate on abortion in the public arena, formulating it in terms of social justice and women's human rights (highlighting the rights to life, health, self-determination, dignity, and gender equality).

The public hearing on ADPF 442 can be considered a battleground where the strategies adopted by the main political players who have historically focused on the issue of abortion in Brazil were updated. Over two days, the 50 entities selected by the STF (*amici curiae* - "friends of the court") defended their favorable (33) or opposing (17) positions on the issue at stake. In addition to summarizing the data and arguments accumulated since the 1970s (when, under pressure from women's/feminist movements, the "abortion issue" began to be treated as a public problem), expositions announced the new configurations and the very centrality that the disputes around abortion would assume in the following years, under the government of Jair Bolsonaro (2019-2022).

The empirical material of this research is composed of the videos containing the complete record of the public hearing (adding up to approximately 20 hours), and the document with the transcript of the expositions, both made available by the STF. The on-site follow-up of the hearing also led to the recording, in a field diary, of observations about the characters and the austere and tense

environment, as well as reflections and analyses produced in the interaction with other researchers and activists (both for and against) present there.

The research comprises an ethnographic dimension that provides a privileged look at documentary analysis (Lowenkron; Ferreira, 2014). The articulation of both methodological strategies proved to be essential to address the context in which the public hearing was held, tracking the actors on stage (their academic and/or political paths, their social spaces of belonging, the connections they maintain with institutions and national and international movements) and to outline the four fields of knowledge and practices that served as grounds for speakers to elaborate their arguments. In the last decades, these fields have shaped the public debate about abortion in Brazil: the biological/health sciences, law, religions and the so-called “civil society organizations” (movements, associations, NGOs). The collation of the research questions, the theoretical framework and the semantic nuclei identified in the content analysis of the empirical *corpus* allowed the construction of analysis categories comprising the main ideas, beliefs and values mobilized in the expositions.

In this analytic-interpretative process, we highlight the frequency and polysemy of the terms “life”, “death”, and their derivatives. Within the argumentative logic inherent to each discourse, the position adopted in relation to the decriminalization of abortion is sustained by the **defense of life** and the **fight against death**. However, we must question what are the specific demands inscribed in this “double-faced” flag (the struggle for life and against death), according to the political actors who claim them. In other words, which lives are declared worthy of protection? Whose death is one wished to avoid? What are the concrete implications of each of the positions in dispute? It seems unavoidable to us to examine the distinct claims underlying such slogans, as well as their material and symbolic effects.

This study is part of a larger body of research that seeks to reflect on the field of reproductive health and rights as inextricably intertwined with state policies

and issues of gender, sexuality, race, and social class. In this area, the concept of reproductive governance is very fertile, as it constitutes a theoretical lens that allows for the explicitness of

the mechanisms through which different historical configurations of actors - such as state, religious, and international financial institutions, NGOs, and social movements - use legislative controls, economic inducements, moral injunctions, direct coercion, and ethical incitements to produce, monitor, and control reproductive behaviours and population practices. (Morgan; Roberts, 2012, p. 241)

The controversies over the decriminalization of abortion make explicit the disputes, controls, incidences and forms of life (and death) management that the concept of reproductive governance seeks to unravel. In this sense, the scenario, plot and actors involved in the ADPF constitute a “good object for thinking” about the different social projects in dispute in contemporary Brazil, under the banner of the “defense of life”.

## Death and life of women: the drama of maternal death in Brazil

When we talk about life and death in the field favorable to ADPF, we are talking about women, their life conditions and their early death from causes related to pregnancy, abortion, childbirth and the puerperium. The discussions around maternal morbimortality are crucial in the presentations of the entities that defend the decriminalization of abortion. It is important to highlight that more than 90% of maternal deaths in Brazil are preventable (Brazil, 2018), with complications related to unsafe abortion being one of their main causes.

The Brazilian scenario is characterized by a significant drop in the maternal mortality ratio (MMR) throughout the 1990s, with a reduction of approximately 43% in that period (from 140 to 80 per 100,000 live births) (Amorim, 2014). The main determinant of this drop was the expansion of access to health services (resulting from the

implementation of the Brazilian Unified Health System, known as SUS), highlighting contraception and prenatal, childbirth and puerperium care. In the case of abortion, which ranked third among the causes of maternal death (MD) in the 1990s, the widespread use of Misoprostol also played a crucial role in reducing mortality (Brazil, 2009).

Starting in the 2000s, there is a deceleration in the decline of MMR; the downward trend is maintained until 2012, when we reached approximately 60 deaths per 100,000 live births (LB) (Amorim, 2014). During the 2010s, the MMR was practically stagnant around this rate, a level still far from the rate considered acceptable by the World Health Organization (below 20 deaths per 100,000 LB).

The emergence of the Covid-19 pandemic - under a government that not only omitted to take the necessary health and social measures to protect the population, but also deliberately contributed to the spread of the virus - had disastrous effects on maternal mortality in Brazil. In 2021, we reached the sad mark of 107 deaths per 100,000 LB (Brazil, 2022a). By the end of October 2022, 2543 pregnant and postpartum women had died from complications of Severe Acute Respiratory Syndrome, caused in most cases by the Coronavirus (OOBR SRAG, 2022).

As it is an extremely sensitive indicator of the living and health conditions of the population, and of the quality of obstetric care, the MMR brutally reflects social inequalities. We will highlight here the differences in the MMR according to region and race/color, taking the year 2019 as a reference, because it is a scenario closer to that in effect at the time of the public hearing about the ADPF 442. In 2019, the number of maternal deaths per 100,000 LB ranged from 38.3 in the South region to 82.5 in the North region; regarding racial inequalities, 66% of women who died from maternal causes were Black (54% brown and 12% Black), 30% were white, and 2% were indigenous (Brazil, 2021).

It is also important to mention the cases classified as near miss, i.e., those in which women almost died due to very serious complications related to the

pregnancy-puerperal cycle. Specifically in relation to abortion, it is estimated that in Brazil for each maternal death there are between 25 and 30 cases of near miss, which evolve with complications such as hemorrhage, infection, septic shock, intoxication, perforation of viscera and genital trauma, and which usually leave sequela such as chronic pelvic pain and infertility (Amorim apud Brazil, 2019; Brazil, 2018). Every year, about 5,000 women are hospitalized with very serious conditions resulting from unsafe pregnancy termination procedures (Brazil, 2018).

In the general context of underreporting of maternal deaths, those resulting from abortion complications are the most subject to underreporting. Hence the glaring difference between the “raw” data recorded in the Mortality Information System (*Sistema de Informações sobre Mortalidade, SIM*) and the data corrected after investigation of deaths that could conceal abortion as a cause. The work to review the data for 2016, whose results were presented at the hearing by the spokespersons of the Ministry of Health, led to the identification of 203 maternal deaths from abortion<sup>2</sup>, with the risks being “higher for Black women, with education up to the elementary level, and single” (Brazil, 2018, p. 8). These 203 deaths correspond to 11% of the 1,841 maternal deaths occurred in 2016.

The reasons for the extreme underreporting of deaths from abortion were discussed at the public hearing by Tania Lago, physician, demographer, member of the Ministry of Health during the government of Fernando Henrique Cardoso and representative of the Brazilian Center for Analysis and Planning (*Centro Brasileiro de Análise e Planejamento, CEBRAP*). The reasons presented by the speaker include poor communication between health professionals and women who seek assistance due to complications of an unsafe abortion (a talk hindered by the climate of fear, tension and distrust), the incorrect completion of death certificates (either by lack or omission of information), and difficulties in investigating the cause of death. It is common for women who die from complications of an abortion

<sup>2</sup> The corrected number of deaths from abortion is 3.6 times higher than that recorded in the DATASUS Maternal Mortality Monitoring Panel (56).

not to have told anyone about the pregnancy. Fear of condemnation for the act (including criminal, but also within the family, at work, and in community relations) creates a fatal cycle of “delay” in seeking help when complications arise, late and/or poor quality care, hospitalization with a serious clinical condition (when the woman does receive this type of care), and progression to death. This fatal cycle is present in the “case behind the numbers” submitted to the Supreme Court by the representatives of the Ministry of Health:

This woman, 26 years old, resident in Espírito Santo, was found by a cousin at home, with fever, trembling. No one knew she was pregnant [...]. She arrives at the maternity hospital with a clinical condition of infected abortion. [...] She evolves to a complicated condition, goes into intensive care, and only at that moment she confesses that she had gone through a clandestine abortion clinic. She dies 10 days after hospitalization. [...] We have several stories, and they are all similar. (Souza apud Brazil, 2019, p. 27, free translation)

Deaths from abortion “hide” both under other causes of maternal death (mainly hemorrhage and infection) and in the broader category of mortality of women of childbearing age (WCA), of 10 to 49 years old. In 2019, the increase in the number of maternal deaths after the investigation of WCA deaths was 32.7%, jumping from 1,188 to 1,576 (Brazil, 2021). In addition to identifying hundreds of maternal deaths initially not declared as such, the surveillance of WCA deaths produces a correction factor that should be applied to the number of maternal deaths obtained after the investigation, in order to get to a more reliable estimate. In 2019, with the application of the correction factor (1.05), the Ministry of Health estimates that 1,655 maternal deaths occurred in our country (Brazil, 2021).

Although this method has improved the capture of maternal deaths not reported in the SIM, an unknown but certainly high number of deaths

from abortion remains hidden. In her presentation at the STF, Tania Lago drew attention to the fact that, in the year 2016, “ill-defined or undetermined causes” ranked fifth among the causes of WCA deaths, corresponding to approximately 3,500 deaths; among these, 550 occurred in the total absence of medical care. Based on her 40-year experience investigating maternal deaths, Tania Lago states: “I am sure that these causes hide many abortions. [...] Even when we can’t find someone who says ‘she caused her abortion’, you exclude countless other causes, and there are almost no reasons left” (Lago apud Brazil, 2019, p. 201, free translation).

Another issue addressed in the public hearing on ADPF 442 was indirect obstetric death<sup>3</sup>, a problem often neglected in discussions about the decriminalization of abortion, despite its enormous impact on maternal mortality. It is known that the vast majority of these deaths would be preventable if pregnancy were terminated in a timely manner. But the criminal status ascribed to abortion has as one of its effects the blocking of the rights to information and to terminate a risky pregnancy:

Very few doctors will say to the woman in this condition: “Look, you have a pregnancy that, if it evolves, will have.... 20, 30% chance of progressing to death, and we can’t know if you are in this group or the one that will survive. Do you want to continue with the pregnancy or not?”. There is no such talk, and my fellow obstetricians should know that. (Lago apud Brazil, 2019, p. 203, free translation)

The rule currently in force that criminalizes the induction of abortion and provides for exceptions to its application was written into our Criminal Code in 1940. Since then, there has been a considerable accumulation of clinical knowledge and diagnostic and therapeutic resources. In Brazil, we have built a public health system based on the principles of universality, equity, and integrality. Today, pregnancy termination

<sup>3</sup> Indirect obstetric maternal death is that resulting from diseases that existed before pregnancy, or developed during pregnancy, not caused by direct obstetric causes, but worsened by the physiological effects of pregnancy.

techniques are quite safe, and we have a public health care network at all levels of complexity of care. In this context, it is atrocious not to offer women the possibility of terminating a pregnancy that puts at risk their health and, sometimes, their very life. In Brazil, more than 30% of maternal deaths result from indirect causes, i.e., we are talking about hundreds of women who, every year, are denied the right to choose a procedure that would have preserved their lives.

The difficulty of access to safe and free abortion is also evident in situations of pregnancy resulting from rape, which make up 94% of cases seen in legal abortion services (Madeiro; Diniz, 2016). In recent years, there has been an upsurge in the attack to the right to abortion in Brazil, especially in cases of rape. During the Bolsonaro government this attack was coordinated from the three spheres of state power (Executive, Legislative and Judiciary) through bills, ordinances<sup>4</sup>, “technical” manuals, and direct intervention in specific cases, aiming to prevent the termination of pregnancy. The level of cruelty that such interventions can reach is well exemplified by the *via crucis* traveled by two 10-year-old girls and their families, in Espírito Santo (in 2020) and Santa Catarina (in 2022), to get an abortion in situations that fit the two hypotheses foreseen in the Criminal Code since 1940.

The first of these cases involved the intervention of the Ministry of Women, Family and Human Rights, whose representatives (sent by then Minister Damara Alves) interfered in the conduct of municipal bodies; they proposed the transfer of the child to a hospital where she would be monitored until the end of the pregnancy and deliver the baby; they intimidated and verbally assaulted the girl’s family members; they tried to

delay/impece her discharge from the hospital in Vitória (which had refused to perform the procedure) so that she would miss the flight to Recife, where the service that was willing to terminate the pregnancy is located (Vila-Nova, 2020). There were also anti-abortion demonstrations at the doors of the hospital that finally performed the procedure and the denunciation of its director to the CRM-PE, in addition to the leaking of the child’s personal data and the family’s address on social networks.

In the case of Santa Catarina, the attempt to deny the right to abortion to another ten-year-old girl was led by the Judiciary. Judge Joana Ribeiro Zimmer ordered the sheltering of the child for more than 40 days - an act that can be framed as imprisonment (Guimarães; Lara; Dias, 2022). The video of a hearing conducted by the same judge, which ended up leaking on social networks, reveals a true session of psychological torture of the girl and her mother. The pregnancy was only terminated in the 29th week, upon recommendation by the Federal Public Ministry.

These two shocking episodes indicate the degree of articulation and the capacity of political incidence of the neoconservative forces in contemporary Brazil, as well as the legal armor they have, since none of the cited actors was punished for the serious violations of human rights perpetrated. The aforementioned events also reveal the intensification of actions to reject the rights of women and girls, coming precisely from representatives of the Brazilian State.

## Women versus embryos/fetuses – a false dichotomy

There is definitely no lack of consistent data on the magnitude of maternal mortality in Brazil and

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4 Ordinance # 2282, of August 27, 2020, defined: the compulsory notification to the police authority, by the professionals or responsible for the health establishment, of the cases (confirmed or suspected) of rape, being also mandatory the preservation of “possible material evidence of the crime of rape”; the signature of a Term of Consent containing distorted information about the risks of interrupting the pregnancy; and the offer of the “possibility of visualization of the fetus or embryo [by the pregnant woman,] by means of ultrasound imaging”, before performing the abortion in the situations provided by law (Brazil, 2020, p. 359, free translation). Faced with the strong reaction of leftist parties and feminist movements, which mobilized nationally and internationally, the Ministry of Health published a new ordinance on September 24, 2020, on the eve of the trial by the STF of the request to suspend the ordinance. The new wording eliminated the last cited determination, but kept the other two points that had been challenged. Until the completion of this article, the Project of Legislative Decree (*Projeto de Decreto Legislativo*, PDL) 409/2020, submitted by 13 female federal deputies to stop the ordinance, was awaiting the opinion of the rapporteur in the Commission for the Defense of Women’s Rights (Chris Tonietto - PL/RJ).

on the contribution of the illegal status of abortion to the production of this scenario, which is all the more tragic for being notoriously preventable. Still, the actors opposed to the decriminalization of abortion insist on minimizing, disqualifying, omitting and/or distorting such data. At the public hearing under analysis, this tactic was present in ten of the 17 presentations against the ADPF 442. Speakers referred to abortion and MD data as “lies”, “guesses”, “inflation”, “exaggeration”, “an act of faith”, and adjectivized them as “fallacious”, “inconsistent”, “biased”, “questionable”, and “disguised” (Brazil, 2019). At least two speakers appealed to their personal experience as opposed to robust scientific studies, such as the National Abortion Survey and the aforementioned maternal mortality studies:

I, at 41 years old, have worked in the largest maternity hospitals in Rio de Janeiro and have only seen one death from abortion. (Parente apud Brazil, 2019, p. 80, free translation)

I understood that, with all due respect, as much as religions – Christian, Jewish, Muslim – feminism is also an act of faith. [...] For example, the belief in the research carried out in 2010 and in 2016 is an act of faith. It is claimed, as if it were an absolute truth, that out of every five women, one has an abortion. I am 45 years old and I met *one* woman who has had an abortion. (Silva, J. apud Brazil, 2019, p. 576, free translation)

According to gynecologist and obstetrician Raphael Câmara Parente, among the causes of maternal mortality observed in the city of Rio de Janeiro, “abortion is little!” (Parente apud Brazil, 2019, p. 73, free translation). Considering the profile of women who suffer serious complications of abortion in Brazil, it is not difficult to identify

which lives mean “little” in the perspective of this doctor who, in June 2020, was appointed Secretary of Primary Health Care in the Bolsonaro government<sup>5</sup>.

Faced with the contempt for the lives of women who effectively pay the price of adopting a criminal policy to address the “abortion issue”, Fernanda Lopes (representative of Criola NGO) launches a sequence of uncomfortable questions, which break the veneer of neutrality of the Democratic State based on the Rule of Law:

Would it be bold to say that the possibility of safe abortions by white or economically advantaged women guarantees that abortion itself is not properly put up for discussion? Does the population suffering from illegal procedures effectively not matter to the public authorities? [...] Are we Black women considered less legitimate in our humanity and, consequently, less able to exercise our rights? [...] Are we, Black women, elected to carry the burden of unintended pregnancy, or to be stigmatized, criminalized, punished with our very lives if we do not do it? (Lopes apud Brazil, 2019, p. 238-241, free translation)

Although most of the talks in favor of ADPF 442 mention the racial inequalities reproduced and amplified by the criminalization of abortion, the only two speeches that place racism at the center of the debate – in its intersections with the dimensions of gender, social class, territory of life, etc. – are those of Fernanda Lopes and Lívia Drumond Casseres. Based on the field of Law, the latter speaker (representing the Public Defender’s Office of the State of Rio de Janeiro) denounces the entrenched racism in the Brazilian penal system.

The devices that criminalize abortion not only focus on race, as something external to them, but are part of a set of phenomena linked to the Brazilian

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<sup>5</sup> Parente is a protagonist in several regrettable episodes involving the Ministry of Health under the Bolsonaro government, regarding reproductive rights; he stated that “obstetric violence does not exist”. Under his command, in June 2022 the document “Technical attention for prevention, evaluation and conduct in cases of abortion” (*Atenção técnica para prevenção, avaliação e conduta nos casos de abortamento*) was published. The document disseminates misinformation and expands the barriers to perform abortion in cases provided by law, without any legal support or evidence-based medicine (Brazil, 2022b).

social structure, in which race and the penal system mutually constitute each other, and determine the lives worthy of being protected and those that can be allowed to die. If the feminist movements worldwide discuss the issue of abortion in terms of sexual and reproductive rights, private autonomy, and the right to one's own body, for Black Brazilian women this has always been a debate of life and death. (Casseres apud Brazil, 2019, p. 554-555, free translation)

However, it is in the name of "life" that it is defended that inducing abortion continues to be treated as a crime. This discourse focuses on an embryo/fetus completely disconnected from the body that gestates it – an absurd maneuver that requires some subterfuge in order to be presented as plausible. A stratagem widely used in anti-abortion campaigns is the representation of embryos and fetuses in the proportions and shapes of babies weeks or even months old, bearing white racial-ethnic characteristics and "floating" in an empty, undefined space. By eclipsing the pregnant body and its social environment, such images feed the idea of a supposed autonomy and universality of the embryo/fetus. The obstinacy to "detach" the unborn being from the body of the woman who shelters and nurtures it can take quite unusual forms:

If it's a girl, she already has a uterus. So to people who say "I have a right to my own uterus", I say: "You do, and your daughter has the right to hers!". (Garcia apud Brazil, 2019, p. 149-150, free translation)

The fetus in the mother's womb is not part of the woman. It is not a fingernail that has grown, it is not a strand of hair, it has constitutional rights still in the mother's womb. (Malta apud Brazil, 2019, p. 478, free translation)<sup>6</sup>

Variations of the formula "the embryo/fetus is not part (of the body) of the woman" can be found in four other communications. Three speakers opposed to ADPF 442 used images of embryos or fetuses, through the projection of videos and photographs,

and the display of a rubberized replica of a human fetus in the 12th week of gestation. Such images are presented as a definitive, irrefutable argument of the "inviolability of human life from conception onwards", a position defended *ad nauseam* throughout the public hearing.

The artifice of personification of the embryo/fetus was performed, for example, by José Paulo Veloso Silva, representative of the State of Sergipe (where he holds the position of Attorney General). The first slide of his presentation showed a photograph of a 12-week fetus, accompanied by the phrase (in large letters) "Mommy, I'm already here!". In smaller font, the slide disclosed the interrogation sequence: "Freedom? Autonomy? Statization of the uterus? Imposition of risk? Full equality? Secular state?". After stating that "this child [...] has to be in the discussion" (as "protagonist"), the speaker went on to describe in detail the fetus at this gestational age: its size, face, internal organs, nervous system (Silva, J. apud Brazil, 2019, p. 565, free translation). Throughout the exhibition, Veloso Silva referred to the fetus as "child". This slippage became more evident the moment he projected a video with images captured by an ultrasound device, and thus narrated it:

This is the actual image of my younger cousin. Her name is Luíza. She is now out of her mother's womb. She moves her legs, she moves her arms – she is 12 weeks old! – she has a heart. And soon, the heart will be heard. Honestly, Madam Minister, is it possible to believe that any judge on the planet has the right to authorize the death of this being?! [...] This being is alive, [...] it belongs to the human species! So it is a shame that someone says they defend human rights and consider this a thing, an animal, an object that can be found in the garbage! (Silva, J. apud Brazil, 2019, p. 568, free translation)

As a matter of logic, the evident existence of a line of continuity in human development, from the embryonic stage to adulthood, does not admit

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<sup>6</sup> The representation of the embryo/fetus as an autonomous individual is also fundamental to its construction as a subject of rights, a topic that we will not be able to address in this article.

temporal leaps like this one that Veloso Silva allowed himself. To identify Luíza (a child, adolescent or young adult) with the 12-week-old fetus that she once was means to bypass the emotional bonds and all the experiences that make up her life trajectory. We are clearly facing a sophism, a rhetorical resource aimed at producing the illusion of truth that the voluntary interruption of pregnancy up to the 12th week would be equivalent to the murder of a child.

The most radical expression of the strategy of sliding between the statuses of embryo/fetus and child/person can be observed in the exhibition of Rosemeire Santiago, representative, founder and director of the Life Restructuring Center (*Centro de Reestruturação para a Vida*, CERVI)<sup>7</sup>. The exhibition began with a staging in which a young Black man, dressed in a suit and tie, stood up from his seat in the plenary and walked towards the rostrum, while playing on his violin an excerpt from Antonio Vivaldi's "The Four Seasons". He was abruptly interrupted by Rosemeire, who then began her speech. At the end of the exhibition, after showing a video produced by CERVI containing a statement of this young man, Rosemeire, hugging him, said:

[The] life of this boy could have been interrupted. His mother went through an unexpected pregnancy, [he] suffered imminent danger of having his life interrupted, because his father didn't want him, and she was accompanied. I can imagine if Caleb's life had been interrupted, as I interrupted him here. Today his mother is our volunteer, and so is he. So, for me, he is a living example - *living!* - that the possibility of life generates hope. (Santiago apud Brazil, 2019, p. 252-253, free translation)

Rosemeire Santiago persists in the narrative of "saving" children and young people through initiatives aimed at preventing women from having abortions: "Once, a little four-year-old girl came to me and said: 'Aunt Rose, have I thanked you yet?'"

And I said: 'Why?' 'Because it was because of you that my mother didn't kill me in her belly.'" (Santiago apud Brasil, 2019, p. 252, free translation).

The deliberate confusion between the conditions of zygote, embryo, fetus, baby, and child/person was classified by Maria José Rosado Nunes (representative of the NGO *Católicas pelo Direito de Decidir* [Catholics for Choice]) as an act of "evident bad faith" (Nunes apud Brasil, 2019, p. 404, free translation). Effectively, the maneuver of personifying the embryo/fetus serves to qualify the voluntary termination of pregnancy as murder. However, if the practice of abortion were comparable to infanticide - from an affective, moral, and legal point of view -, we would certainly not observe the extreme contrast between the high number of induced abortions in Brazil (estimated at up to one million per year) and the very rare occurrence of the murder of children (of any age) by their mothers.

Beyond bad faith, it is cruelty to attribute to Brazilian women who have abortions the reputation of murderers, when these same women are the main or only responsible for all the work of reproduction of life, including the work of protection and care of the children who are **born and live** in our country. To a great extent, this enormous volume of work necessary to maintain life is carried out under precarious conditions, whether due to lack of value (in terms of remuneration and guarantee of labor rights, when performed in a paid manner), or due to social helplessness and exposure to various forms of violence, in the daily life of the home and in the territories where most women in Brazil live.

## In defense of life

Most of the time, when they use the terms "life", "death" and their derivatives, the speakers against ADPF 442 are referring to the embryo/fetus, bearer of a supposed universality. It is as if the developing human being were devoid of social markers of

7 CERVI was founded in 2000, in the city of São Paulo, as a representative of the Pregnancy Resource Center network in Brazil. Created in the early 1970s by the "pro-life movement" in the USA and Canada, this network is linked to Christian organizations such as CareNet and Life International. CERVI functions as a "shelter home" for women facing an unforeseen pregnancy, "valuing the option for life" (Santiago apud Brazil, 2019, p. 246, free translation).

difference, such as race and class. This reading is only possible through a complete abstraction of the unequal conditions experienced since intrauterine life, in contexts of social injustice such as the current one in Brazil.

The fallacy of a starting point common to all human beings, guaranteed simply by the “right to be born”, is not supported by the concrete reality. Intrauterine development is deeply affected by the circumstances of pregnant woman’s life such as food (in)security, work, housing and health conditions, the presence of diseases caused or worsened by pregnancy, exposure to stress, violence and accidents. These circumstances have an unequal impact on women’s life paths, according to the intersections between race, class, age, and place of residence, among other factors that place them in the social hierarchy and determine the distribution of benefits and disadvantages.

The coherent and consistent defense of human life implies the engagement in processes of change of the entire social organization, so that we can guarantee universal access to healthy food, to adequate housing, to basic sanitation, to quality public transportation, to dignified work, to leisure, to culture, to education, to safety, and to health. And it is in this direction that the defense of life (including that of children) is expressed in the field in favor of the ADPF 442, with the decriminalization of abortion understood as a piece within the much broader and more complex scenario of the struggles for social justice.

The defense of universal and integral social policies holds a central place in the argument in favor of ADPF 442. After all, international historical experience shows that the decriminalization of abortion has more positive results the more it is accompanied by a process of expansion of social rights. At the public hearing under analysis, the speakers in favor of the matter at hand emphasized mainly sexual and reproductive health policies, which should cover: comprehensive sexual education; prevention, diagnosis, and treatment of diseases and sexually transmitted infections; information on and access to the various contraceptive methods and reproductive planning;

and the reception and care of “all the possibilities of a reproductive decision” (Dias apud Brasil, 2019, p. 109, free translation), including termination of pregnancy. At this point, it is important to take up the concept of reproductive justice (forged by the Black feminist movement in the 1990s in the United States) to argue that the struggle for social protection for motherhood is not dissociated from the struggle for the decriminalization of abortion. As important as deciding whether and when to have children is being able to raise them “with the necessary social supports in safe environments and healthy communities, and without fear of violence from individuals or the government” (Ross, 2006, p. 3).

The decriminalization of abortion, when inserted in a comprehensive public policy of sexual and reproductive health, and accompanied by the promotion of other social rights, has the effect of reducing the very rates of induced abortion. Different speakers presented a large amount of data that points to these results in countries that decriminalized abortion, highlighting the experiences of Uruguay, Colombia, United Kingdom, France, Romania, Portugal and South Africa. The decline in induced abortion rates after decriminalization of the practice is largely due to post-abortion care programs, which include counseling and contraceptive method provision; after all, about 40% of induced abortions are recurrent (or “repetition”, according to medical jargon) abortions (Amorim apud Brasil, 2019, free translation). Moreover, when abortion is legal and accessible, “women who used to be invisible, because they had to remain invisible, begin to reach the health service; and their welcoming can result in several beneficial effects, including the social protection of desired pregnancies” (Amorim apud Brasil, 2019, p. 65, free translation).

In the field contrary to ADPF 442, the defense of some form of assistance to women and children also pervades the argument, but in a timid, superficial and fragmented way, not unfolding in the evaluation and proposition of specific programmatic actions. Terms like “prevention”, “assistance”, and “public policies” are repeatedly used in an empty way, without mentioning any object that gives them materiality,

or are filled with such vague contents as “prioritize public policies to safeguard pregnant women and unborn human beings” (Silva, R. apud Brasil, 2019, p. 259, free translation). The commitment of neoconservative actors to neoliberalism prevents their adherence to universal, integral and equitable social policies, capable of effectively promoting the “universal right to life” (to use their own terms). Their discourses reinforce the protective function of the private sphere, represented by the family (cis-heteronormative, monogamous, procreative) and by religious communities, to the detriment of collective processes of struggle for the full guarantee of rights and for social justice.

The recurrent accusation that the defenders of ADPF 442 would be depriving prenatal life of value and protection constitutes a flagrant distortion of their positions and arguments, and is part of the strategy of moral disqualification adopted by neoconservative actors. The entities in favor of the decriminalization of abortion advocate the protection of human life “in all its phases, but in a way that is differentiated and appropriate to the moment of the life cycle” (Barboza apud Brasil, 2019, p. 276, free translation). Such understanding is in line with the ethical-legal concept of **gradual protection of the right to life**, widely spread in international human rights case law, and already incorporated into the Brazilian legal system, in norms on assisted reproduction, on stem cell research and on abortion itself, to which the Criminal Code does not enforce the same penalty as to the crime of homicide (Telles apud Brasil, 2019).

Decriminalizing abortion means only excluding this practice from the scope of incidence of the Criminal Law, without prejudice to other forms of protection of intrauterine life. International experience has already shown that embryos and fetuses are better protected with support measures for pregnant women than through the threat of punishment (which, in Brazil, can reach the extreme of imprisonment). The maintenance of a penal rule notoriously ineffective in fulfilling its declared purpose is not explained by mere hypocrisy or “moralism”. Lívia Drumond Casseres is precise in

stating that the defense of the criminal status of abortion has much more to do with the conservation of a social order that cannot do without the control of women’s sexuality and reproductive capacity (especially those of certain women) than with the protection of the life of the so-called “unborn”:

Quite contrary to a real project of protecting life, here we are facing the defense of a penal rule that is not able to meet its declared function, but fulfills, in a very efficient manner, a decisive rhetorical function of maintaining a society structured on racism and patriarchy. (Casseres apud Brazil, 2019, p. 553, free translation)

For most of the Brazilian population, and especially for Black people and traditional peoples, the struggle for life has always been something concrete, present in everyday life. Surviving a despoiling and violent historical process has been made possible, over centuries, by the creation of several resistance strategies, at the material and symbolic/cultural levels, in an inseparable way. When it comes to defending life, women historically play a crucial role - in constituting networks of protection and care, in preserving our cultural traditions, and in the front line of battles against the politics of death, “always sew[ing] life with iron threads” (Evaristo, 2016, p. 109, free translation).

## Final considerations

The usurpation of the flag of “defense of life” by neoconservative actors engaged in the anti-abortion campaign serves to cover up and/or justify the systematic violation of the rights of girls, adolescents, and women underway in Brazil. Unmasking this strategy and the abstract and idealistic conception of life that underlies it is one of the urgent tasks of the movements committed to a defense of life based on the materiality of the conditions of its reproduction, in each singular historical-social context. In this sense, reproductive justice, as a political praxis that articulates health and reproductive rights with a radical defense

of social justice and human rights as a whole, has been a fundamental beacon to guide our struggles in this challenging scenario.

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### **Contribution by the authors**

Rybka was responsible for the data analysis and the text production. Cabral contributed to the design of the article and the critical review of its content. Both authors approved the final version of the manuscript.

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