

5-9-2018

# Brazil's Zika Epidemic and Its Effects on the Criminalization of Abortion

Laura M. Monteiro

Follow this and additional works at: <https://repository.law.miami.edu/umialr>

 Part of the [Comparative and Foreign Law Commons](#), and the [Health Law and Policy Commons](#)

---

## Recommended Citation

Laura M. Monteiro, *Brazil's Zika Epidemic and Its Effects on the Criminalization of Abortion*, 49 U. Miami Inter-Am. L. Rev. 99 (2018)  
Available at: <https://repository.law.miami.edu/umialr/vol49/iss2/6>

This Notes and Comments is brought to you for free and open access by University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

# Brazil's Zika Epidemic and Its Effects on the Criminalization of Abortion

Laura M. Monteiro

I. INTRODUCTION .....	99
II. BACKGROUND .....	102
A. <i>The Zika Virus</i> .....	102
B. <i>Life in the Northeast</i> .....	103
III. PERSPECTIVE: HISTORY OF BRAZIL'S CRIMINALIZATION OF ABORTION .....	107
IV. ANALYSIS—THE IMPACT OF THE ZIKA VIRUS ON ABORTION LAWS AND SOCIETY .....	112
A. <i>Brazilian Women's Reality</i> .....	112
B. <i>Effects and Hindrance of Societal Growth</i> .....	115
C. <i>A Solution—Is Microcephaly Different from Anencephaly?</i> .....	126
V. MEANWHILE, BRAZIL PROGRESSES .....	128
VI. CONCLUSION .....	131

## I. INTRODUCTION

Brazil is the largest country in South America and the fifth largest country in the world, with a land area of over 3,220,000 square miles and a population of over 210,000,000.<sup>1</sup> Brazil has emerged as a regional power in Latin America<sup>2</sup> and has outgrown its “third-world country” classification. Nevertheless, this developing giant still struggles with combating the residual third-world problems it

---

<sup>1</sup> *Brazil Population*, WORLDOMETERS, <http://www.worldometers.info/world-population/brazil-population/> (last visited Mar. 17, 2018).

<sup>2</sup> *Brazil: Playing Chess in Latin America*, COUNCIL ON HEMISPHERIC AFF. (AUG. 6, 2012), <http://www.coha.org/brazil-playing-chess-in-latin-america/>.

faced in the past.<sup>3</sup> For instance, Brazil faces many social issues, including having one of the largest rich-poor gaps in the world.<sup>4</sup> Additionally, violence and crime is rampant nationwide.<sup>5</sup> Much of the population is poorly educated, if not illiterate, and there is a high infant mortality rate, which is directly linked to sanitation, education, and the financial income of the family.<sup>6</sup> While attempting to combat these centuries-old problems, the country also finds itself facing new and unprecedented issues that arise from the planet's constantly advancing globalization.

Since the outbreak of the Zika virus, Brazil has been hit the hardest compared to other countries in South American and the Caribbean.<sup>7</sup> In March of 2016, Brazil reached an all-time high of reported Zika cases—nearly 8,000 new cases.<sup>8</sup> Moreover, the majority of the cases “remain clustered in the northeast region of the country,” which houses a very young and poor population.<sup>9</sup> As a direct consequence of this epidemic, Brazil has also seen the rate of abortion skyrocket.<sup>10</sup> Research shows that given the illegality of the procedure in their home country, women are finding new methods to conduct an abortion:

Researchers reported in the *New England Journal of Medicine* on July 28 that in Latin American countries

---

<sup>3</sup> Mariah Donnelly, *Stuck Between a First World and a Third World Country*, GLOBAL CITIZEN YEAR (Apr. 25, 2012), [http://www.globalcitizenyear.org/updates/stuck-between-a-first-world-and-a-third-world-country/?nabe=4608649546170368:0&utm\\_referrer=https://www.google.com/](http://www.globalcitizenyear.org/updates/stuck-between-a-first-world-and-a-third-world-country/?nabe=4608649546170368:0&utm_referrer=https://www.google.com/).

<sup>4</sup> See Amelia Meyer, *Brazilian Social Issues*, BRAZ. (2010), <https://www.brazil.org.za/social-issues.html>

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Brazil Struggles to Contain Surging Zika Virus Outbreak*, CBS NEWS (Feb. 1, 2016), <https://www.cbsnews.com/news/zika-virus-outbreak-brazil-epicenter-world-health-organization-geneva-public-health-emergency/>.

<sup>8</sup> Liz Szabo, *Zika Outbreak May Have Peaked in Brazil, Researchers Say*, USA TODAY (July 14, 2016, 2:02 PM), <http://www.usatoday.com/story/news/2016/07/14/zika-outbreak-may-have-peaked-brazil-researchers-say/87078324/>.

<sup>9</sup> Stephanie Nolen, *Brazil Open Probe as Cases of Zika Babies Defy Predicted Patterns*, THE GLOBE AND MAIL (Aug. 5, 2016), <http://www.theglobeandmail.com/news/world/brazil-opens-probe-as-cases-of-zika-babies-defy-predicted-patterns/article31268428/>.

<sup>10</sup> *Id.*

where the new strain of Zika is spreading and abortion is illegal, there has been a huge spike in the number of requests to Women on the Web, a Dutch-based organization which [provides] women with online consultations and then mails the drugs to induce a medical abortion. The increase over the rate of requests last year ranges from 38 percent to 108 percent in Brazil. (Brazilian authorities are now intercepting all deliveries to Brazilian women, the group said.)<sup>11</sup>

As a result of the increased Zika cases, and consequently, the increased rates of illegal abortions, the country now faces a series of issues regarding the laws on the criminalization of abortion.

This article will analyze the various effects that the Zika virus will have on Brazil. Specifically, it will look at Brazil's criminalization of abortion, the social impact that the Zika virus will have on abortion laws, and the newly arising problems that the country will face due to its restrictive abortion laws. Part II will provide a background on the Zika virus and on the life of a Brazilian in the northeast region—where most of the epidemic has flourished. Part III of this article will discuss, in depth, the historical and legal reasoning on the criminalization of abortion in Brazil. Part IV will seek to explain how Brazil is setting societal development backwards by the continuous criminalization of abortion, specifically for those women who choose to terminate a pregnancy in which the fetus has been diagnosed with microcephaly. Furthermore, this section will address a possible solution for legislatures regarding abortion laws. Finally, Part V will address the current political atmosphere in the country and the changes that are happening due to the Zika epidemic. It will discuss how the country's judiciary faces unprecedented issues and is thus moving towards a more liberal interpretation of the law.

---

<sup>11</sup> *Id.*

## II. BACKGROUND

### A. *The Zika Virus*

“The Zika virus is a mosquito-borne flavivirus that was first identified in Uganda in 1947 in monkeys . . . .”<sup>12</sup> Five years later, the virus was seen in humans in Uganda and the United Republic of Tanzania.<sup>13</sup> Thereafter, the first large outbreak was detected in the Island of Yap (Federal States of Micronesia) in 2007.<sup>14</sup> Since then, there had not been any serious concentration of the Zika virus until October 2015, when Brazil first reported Zika outbreaks.<sup>15</sup> In March of 2016, Brazil reached an all-time high of reported Zika cases—nearly 8,000 new cases.<sup>16</sup> In humans, the Zika virus is primarily contracted through the bite of a mosquito.<sup>17</sup> Additionally, the virus can be spread by sexual transmission or from mother to fetus.<sup>18</sup> To prevent contracting the Zika virus, the World Health Organization (WHO) advises that individuals in active transmission areas should wear clothing that covers their whole bodies and use protection during sexual intercourse.<sup>19</sup>

Individuals infected with the Zika virus manifest symptoms similar to dengue fever or chikungunya infections, such as fever, skin rashes, muscle pain, headache, etc.<sup>20</sup> Typically, these symptoms are not too serious in an individual infected with Zika. However, pregnant women who contract the Zika virus may have much more serious complications that can implicate the fetus.<sup>21</sup> According to the World Health Organization, “Zika virus infection during pregnancy is a cause of congenital brain abnormalities, [such as] microcephaly.”<sup>22</sup> The virus can spread from the mother through the placenta

---

<sup>12</sup> *Zika Virus*, WORLD HEALTH ORG., <http://www.who.int/mediacentre/factsheets/zika/en/> (last updated Sept. 6, 2016).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *See Id.*

<sup>16</sup> *See Szabo, supra* note 8.

<sup>17</sup> *See Zika Virus, supra* note 12.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Zika Virus, supra* note 12.

and, in turn, affect the fetus.<sup>23</sup> Microcephaly affects the fetus by impeding proper brain development during the pregnancy; thus, babies with microcephaly are born with a noticeably smaller head than babies that do not have microcephaly.<sup>24</sup> Complications associated with microcephaly vary; however, common health complications include seizures, developmental delays, intellectual disabilities, disabilities pertaining to movement and balance, and even death.<sup>25</sup> Microcephaly severely impedes a baby's natural growth and development both inside and outside the womb. Consequently, an individual with microcephaly will often be dependent on another human being for the rest of his or her life.<sup>26</sup>

*B. Life in the Northeast*<sup>27</sup>

“The Northeast is seen in Brazil as a problem.”<sup>28</sup> This area of the country is the poorest and least developed region—it houses the largest concentration of poverty in all of Latin America.<sup>29</sup> Nine states make up this region: Alagoas, Bahia, Ceará, Maranhão, Paraíba, Pernambuco, Piauí, Rio Grande do Norte, and Sergipe.<sup>30</sup> The interior of the northeast is a high altitude region, bare, hot and dry and plagued by serious droughts.<sup>31</sup> In contrast, the coastal cities are

---

<sup>23</sup> *Id.*

<sup>24</sup> *Facts About Microcephaly*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/ncbddd/birthdefects/microcephaly.html> (last updated Dec. 7, 2016).

<sup>25</sup> *Id.*

<sup>26</sup> *What Does the Future Hold for Babies with Microcephaly?*, CBS NEWS (Feb. 10, 2016), <http://www.wctv.tv/home/headlines/What-Does-the-Future-Hold-for-Babies-with-Microcephaly-368407181.html>.

<sup>27</sup> This is not applicable to every individual in the country, but this is the reality for most of those who live in poverty.

<sup>28</sup> Peter Robb, *Life in Recife, Northeast Brazil*, THE GLOBALIST (Aug. 29, 2005), <https://www.theglobalist.com/life-in-recife-northeast-brazil/>.

<sup>29</sup> Falguni Vyas, *In Context: Spotlight on Rural Poverty in Brazil*, HEIFER INT'L (Apr. 13, 2012), <https://www.heifer.org/join-the-conversation/blog/2012/April/in-context-rural-poverty-vs-urban-poverty.html>.

<sup>30</sup> *See Região Nordeste*, ESTADOS E CAPITAIS DO BRASIL, <https://www.estadosecapitaisdobrasil.com/regiao/nordeste/>. (last visited Apr. 21, 2018).

<sup>31</sup> *See* Robb, *supra* note 28.

moist, lush, and vibrant.<sup>32</sup> The overall average temperatures in this area range from 59 to 100 degrees Fahrenheit year-round.<sup>33</sup>

Due to the climate and geographical make-up of the region, the most disadvantaged individuals are forced to live in the inner areas of the region with very poor conditions and limited access to public services.<sup>34</sup> These areas lack proper sanitation, and in turn, have become a paradise for the mosquitos carrying the Zika virus: The “species thrives in the stagnant water pools that proliferate” the northeast.<sup>35</sup> Furthermore, in 2016, the northeast state of Pernambuco experienced the hottest and driest year since 1998, and also happens to be the state with the highest number of Zika cases.<sup>36</sup> Additionally, “as the temperature rises, nearly everything about the biology of [the mosquito that carries Zika] . . . speeds up when it comes to spreading the disease.”<sup>37</sup> With the higher temperatures, the mosquitos are feeding more frequently and are replicating faster, which enables them to transmit the disease earlier in life.<sup>38</sup>

The majority of the families that reside in the poor rural area of the northeast work in family farming; however, most do not generate enough income to lift their family out of poverty.<sup>39</sup> Moreover, women sometimes lead the households in these rural areas.<sup>40</sup> This could be because the husbands migrate to other parts of the country

---

<sup>32</sup> *Id.*

<sup>33</sup> Karolina Puin, *Weather in Brazil*, THE BRAZ. BUS. (June 21, 2012), <http://thebrazilbusiness.com/article/weather-in-brazil>.

<sup>34</sup> *See* Vyas, *supra* note 29.

<sup>35</sup> Bruce Douglas, *City at Centre of Brazil’s Zika Epidemic Reeling from Disease’s Insidious Effects*, GUARDIAN (Jan. 25, 2016), <https://www.theguardian.com/global-development/2016/jan/25/zika-virus-mosquitoes-countries-affected-pregnant-women-children-microcephaly>.

<sup>36</sup> *Higher Temperature Makes Zika Mosquito Spread Disease More*, NDTV (Feb. 3, 2016), <http://www.ndtv.com/health/higher-temperatures-makes-zika-mosquito-spread-disease-more-1273107>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Steven M. Helfand et al., *Agricultural Productivity and Family Farms in Brazil: Creating Opportunities and Closing Gaps*, WORLD BANK, 65 (June 15, 2015), <https://economics.ucr.edu/people/faculty/helfand/Helfand%20Ag%20Productivity%20and%20Family%20Farms%20in%20Brazil%202015.pdf>

<sup>40</sup> Vyas, *supra* note 29.

in attempts to find work.<sup>41</sup> In these cases, the women bear responsibility for running both the family farm and the household.<sup>42</sup> Additionally, families in this region tend to be large, so the women may end up having to support a large family all by themselves.<sup>43</sup>

Brazil's education system has improved significantly over the years; however, significant improvement is still needed. Brazil invests in its education the same amount relative to GDP that Austria invests—5.6 percent;<sup>44</sup> However, Brazil's students rank sixtieth in the world in math and science while Austria ranks nineteenth.<sup>45</sup> Additionally, there is a clear gap in illiteracy between the northern region of the country and the southern region.<sup>46</sup> The northeast region of Brazil houses the highest illiteracy rate in the country, while it is also the most populous region.<sup>47</sup> “[T]he Northeast holds fifty-four percent of Brazil's illiterate population, and was also the area that witnessed the highest growth of illiteracy from 2012-2013.”<sup>48</sup> Improper management of educational funds and corruption play a significant role in this regional education discrepancy.<sup>49</sup>

Citizens in the northeast do not have sufficient access to proper education. Although it is the area with the highest population in Brazil, the northeast only has three of the twenty public universities in the country.<sup>50</sup> These public universities also happen to be the most prestigious and have the most rigorous admission standards in the country.<sup>51</sup> Thus, to have any real chance in attending these public universities, a student must attend a private school because public

---

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> See *Brazil Northeastern Urban Region*, COMPASSION, <http://www.compassion.com/brazil/fortaleza.htm>. (last visited Mar. 17, 2018).

<sup>44</sup> *Belindia: Brazil and Education*, COUNCIL ON HEMISPHERIC AFF. (Nov. 25, 2013), <http://www.coha.org/belindia-brazil-and-education/>.

<sup>45</sup> *The Best Education Systems in the World in 2015*, FAIR REPORTERS (Oct. 24, 2015), <http://fairreporters.net/world/the-best-education-systems-in-the-world-in-2015/>.

<sup>46</sup> *Belindia: Brazil and Education*, *supra* note 44.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

education in the primary and secondary levels across Brazil is sub-par.<sup>52</sup> However, the cost of private education is often out of reach for most Brazilian families, especially those living in poverty in the northeast.<sup>53</sup> Consequently, only the wealthy families can subsidize the education necessary for their children to attend these coveted universities.<sup>54</sup> In turn, “this inequality of opportunity continues the cycle of illiteracy and classism” in the country.<sup>55</sup>

Nevertheless, even if looking just at the primary and secondary levels of education in the country as a sample, the northeast is still at a great disadvantage.<sup>56</sup> Often schools in the region are not ready to operate.<sup>57</sup> Occasionally, buildings are not properly or fully constructed.<sup>58</sup> Additionally, students must travel great distances to reach the schools and do not have the proper materials for school such as books or pencils.<sup>59</sup> Upon arrival, students will find classrooms that may lack desks, and, at times, teachers will even fail to show up to work.<sup>60</sup> Under these conditions, the students may feel discouraged and will often repeat an academic year various times, with most students ultimately dropping out before graduating high school.<sup>61</sup> This inequality of opportunity once again creates a vicious cycle in the country: “the Northeast is poor because it is illiterate, but due to the lack of adequate management of education, it is therefore illiterate because it is poor.”<sup>62</sup>

---

<sup>52</sup> *Belíndia: Brazil and Education*, *supra* note 44.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *See id.*

<sup>57</sup> *Fantástico Mostra Situação Precária de Escolas Públicas em Alagoas, em Pernambuco e no Maranhão*, GLOBO (Sept. 3, 2014), <http://g1.globo.com/fantastico/noticia/2014/03/fantastico-mostra-situacao-precaria-de-escolas-publicas-em-alagoas-em-pernambuco-e-no-maranhao.html>.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Veruska Donato, *Faltam Professores de Matérias Específicas nas Salas do País*, GLOBO (Mar. 21, 2013), <http://g1.globo.com/jornal-hoje/noticia/2013/03/faltam-professores-de-materias-especificas-nas-salas-de-aulas-do-pais.html>.

<sup>61</sup> *Brazil's Poor Schools: Still A Lot to Learn*, THE ECONOMIST (June 4, 2009), <http://www.economist.com/node/13782570>.

<sup>62</sup> *Belíndia: Brazil and Education*, *supra* note 44.

Additionally, families in the northeast live in less than humane conditions. The houses are typically “crude, fragile constructions of brick, plywood and whatever other scrap materials can be found.”<sup>63</sup> Homes are extremely small, dirty, and lack adequate sanitation.<sup>64</sup> Families have to improvise their living conditions.<sup>65</sup> Family members often sleep on hammocks because they are able to be stored during the day, creating more space in the house.<sup>66</sup> The adults in this environment often suffer from alcohol and drug abuse and the children suffer from sexual and physical abuse.<sup>67</sup> As a result, northeastern families become broken and dysfunctional and parents often leave the home looking for employment, but then never return.<sup>68</sup> Without parental guidance or support from the community, children from such broken families often turn to drugs and crime.<sup>69</sup> In 2017, a study reported that at least five of the nine state capitals that make up the northeast region appeared on the list of the world’s most dangerous cities.<sup>70</sup>

### III. PERSPECTIVE: HISTORY OF BRAZIL’S CRIMINALIZATION OF ABORTION

Historians generally credit Pedro Álvares Cabral as the first European to reach Brazil, when he sailed under the sponsorship of the King of Portugal in the 1500s.<sup>71</sup> However, Brazil only emerged as a nation 300 years after its initial discovery because the Portuguese royal family had to flee their native country.<sup>72</sup> On November 29,

---

<sup>63</sup> *Brazil Northeastern Urban Region, supra* note 43.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Brazil Northeastern Urban Region, supra* note 43.

<sup>70</sup> Jessica Dillinger,

*The Most Dangerous Cities in the World*, WORLD ATLAS (Mar. 20, 2018), <https://www.worldatlas.com/articles/most-dangerous-cities-in-the-world.html>.

<sup>71</sup> Pedro Calmon, *Pedro Álvares Cabral*, ENCYC. BRITANNICA, <https://www.britannica.com/biography/Pedro-Alvares-Cabral> (last updated Apr. 27, 2015).

<sup>72</sup> LAURENTINO GOMES, 1808: COMO UMA RAINHA LOUCA, UM PRÍNCIPE MEDROSO E UMA CORTE CORRUPTA ENGANARAM NAPOLEÃO E MUDARAM A

1807, the citizens of Portugal woke up to alarming news: their monarchs and the court were fleeing to Brazil because of threats of imprisonment by the French military general Napoleon.<sup>73</sup> People all around Europe wanted change, and consequently, innovations and revolutions were emerging all over various countries.<sup>74</sup> Nevertheless, Portugal and its monarchs remained the most Catholic and conservative country in Europe.<sup>75</sup>

The Catholic Church had an immense influence over Portugal and its people—science and medicine were far less advanced compared to neighboring nations due to religious beliefs.<sup>76</sup> Moreover, individuals' lives in Portugal revolved around religious ceremonies such as mass and processions.<sup>77</sup> People conducted themselves in their private and public life in accordance with the teachings of the Catholic Church.<sup>78</sup> Consequently, when the Portuguese court moved to Brazil, it took its deeply embedded Catholic and conservative principles and engraved them on Brazil's newly forming society.<sup>79</sup> Brazil quickly progressed from no-man's land to a monarchy. Soon after his arrival, King John VI moved back to Portugal, leaving his son Peter I as the leading monarch in Brazil.<sup>80</sup> However, the monarchy did not last long. On September 7, 1822, Brazil formally declared its independence from Portugal and named Peter I as the emperor.<sup>81</sup> Brazil was then left with various challenges as a newly independent country attempting to restructure its legal system.<sup>82</sup> The new emperor immediately appointed members (nobles, slave owners) to the Council of State to draft an Imperial Constitution, which

---

HISTÓRIA DE PORTUGAL E DO BRASIL 21 (Editora Planeta do Brasil, 3d ed. 2014) [hereinafter 1808].

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 57.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 58.

<sup>78</sup> *See* 1808, *supra* note 72, at 58.

<sup>79</sup> *Id.*

<sup>80</sup> CELSO CAMPILONGO, *History and Sources of Brazilian Law*, INTRODUCTION TO BRAZILIAN LAW 6 (Fabiano Deffenti & Welber Barral, eds., 2011).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 7.

did not have popular support.<sup>83</sup> Consequently, “the [emperor’s] intention of changing society and the state through laws allowed for the expansion of a legalistic and elitist legal culture.”<sup>84</sup>

Brazil became a republic on November 15, 1889,<sup>85</sup> with around fourteen million citizens.<sup>86</sup> However, for every one hundred citizens, only fifteen knew how to read and write their own name.<sup>87</sup> Only one in every six children attended school and the rate of illiteracy among the recently freed black slaves was more than ninety-nine percent.<sup>88</sup> For 350 years, Brazil had been the largest territory on the western hemisphere to participate in the slave trade.<sup>89</sup> It is estimated that, out of the ten million slaves that left Africa to go to the Americas, forty-percent of them ended up in Brazil.<sup>90</sup> Additionally, Brazil was the last country in the western hemisphere to abolish slavery in 1888.<sup>91</sup> Consequently, the newly emerging independent society consisted mostly of uneducated, poor citizens. Brazil was governed by the aristocrats, who were deeply conservative and patriarchal. Like in Portugal, Brazilian citizens’ lives also revolved around masses, religious processions, ceremonies, and holidays.<sup>92</sup>

Catholicism was not abolished as the official state religion until 1891.<sup>93</sup> Now Brazil is a civil law country that bases its legal system on codes and legislations.<sup>94</sup> Nevertheless, the substance of the laws

---

<sup>83</sup> LUÍS ROBERTO BARROSO, *Constitutional Law*, INTRODUCTION TO BRAZILIAN LAW 15 (Fabiano Deffenti & Welber Barral, eds., 2011).

<sup>84</sup> CAMPILONGO, *supra* note 80, at 7.

<sup>85</sup> *Id.* at 8

<sup>86</sup> LAURENTINO GOMES, 1889: COMO UM IMPERADOR CANSADO, UM MARECHAL VAIDOSO, E UM PROFESSOR INJUSTICADO CONTRIBUÍRAM PARA O FIM DA MONARQUIA E A PROCLAMAÇÃO DA REPÚBLICA NO BRASIL 55 (Editora Globo S. A., 1st ed. 2013).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 150.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 63.

<sup>93</sup> Patrick Bruha, *Relation Between Politics and Religion in Brazil*, THE BRAZ. BUS., <http://thebrazilbusiness.com/article/relation-between-politics-and-religion-in-brazil> (last updated July 31, 2014).

<sup>94</sup> *The Legal System of Brazil*, LIBR. OF CONG., <https://www.loc.gov/law/help/legal-research-guide/brazil-legal.php> (last updated June 9, 2015).

and codes that the country adopted in 1850<sup>95</sup> have remained consistent—strong evidence that Catholicism still has a strong influence on Brazilians and their life choices. “92% of Brazil’s population says that they are religious[; thus], it is difficult to dissociate religion from political debate.”<sup>96</sup> The country makes abortion explicitly illegal in Article 2 of its Civil Code, which states that the law protects an individual’s rights, starting at conception.<sup>97</sup> However, there are three unique exceptions in which women are legally allowed to obtain an abortion: (1) if the woman’s life is at risk; (2) if the woman was raped; or (3) if the fetus has anencephaly, a condition where part of the brain or skull is missing, and thus the child cannot survive outside the womb.<sup>98</sup> The reason for allowing an abortion when a fetus is diagnosed with anencephaly is because anencephalic infants die shortly after birth, indicating that the fetus is not truly viable.<sup>99</sup> Outside of these exceptions, Articles 123-126 of Brazil’s Penal Code lists punishments that will be enforced if the law is broken:

Illegal abortion in Brazil is punishable by one to four years of imprisonment for the person performing the abortion; the penalty is higher if the pregnant woman’s consent is not obtained, if the woman suffers serious injury or dies, or if the woman is under 14 years of age. Abortion performed by a pregnant woman on herself or performed by another person with her consent is punishable by one to three years’ imprisonment.<sup>100</sup>

One of the aforementioned exceptions to the abortion ban, carrying an anencephalic fetus, only became legal in 2012 through a

---

<sup>95</sup> Código Civil [C.C.] [CIVIL CODE] art. 2 (Braz.).

<sup>96</sup> Bruha, *supra* note 93.

<sup>97</sup> Código Civil [C.C.] [CIVIL CODE] art. 2 (Braz.).

<sup>98</sup> Brent McDonald, *Brazil’s Abortion Restrictions Compound Challenge of Zika Virus*, N.Y. TIMES (May 18, 2016), [http://www.nytimes.com/2016/05/19/world/americas/zika-virus-abortion-brazil.html?\\_r=1](http://www.nytimes.com/2016/05/19/world/americas/zika-virus-abortion-brazil.html?_r=1).

<sup>99</sup> Eduardo Soarez, *Brazil: Criminalization of Some Abortions Ruled Unconstitutional*, LIBR. OF CONG. (Apr. 19, 2012), <http://www.loc.gov/law/foreign-news/article/brazil-criminalization-of-some-abortions-ruled-unconstitutional/>.

<sup>100</sup> *Brazil: Abortion Law*, WOMEN ON WAVES, <https://www.womenonwaves.org/en/page/4938/brazil--abortion-law> (last visited May 19, 2018).

Supreme Court decision.<sup>101</sup> The case was heard by all the judges on the bench and became law through a majority vote.<sup>102</sup> With this decision, women carrying an anencephalic fetus do not need a judicial decree to get an abortion; the only requirement is a medical diagnosis confirming that the fetus carries anencephaly.<sup>103</sup> This decision shields the women and doctors who perform the procedure from any criminal charges. Anencephaly became an exception to Brazil's abortion ban because a majority of the judges believed that an anencephalic fetus does not have the slightest possibility of survival outside of the mother's womb.<sup>104</sup> Thus, there is no killing because the fetus will die immediately after its birth.<sup>105</sup>

The recent anencephaly exception decision demonstrates how religion still manipulates the country's laws.<sup>106</sup> The primary reason the judges were in favor of allowing the abortion of an anencephalic fetus was because they *personally believed* that because the fetus does not have a life expectancy past twenty-four hours, and therefore abortion did not actually kill the fetus.<sup>107</sup> Thus, a logical conclusion is that the judges' attitudes towards this historic decision were, at a minimum, influenced by their personal religious beliefs. Today, Brazil has the largest population of Roman Catholics in the world<sup>108</sup> and the population's "attitude towards women's reproductive rights is an example of the contradictions in a country that still embraces many of its religious traditions and mores but dispenses with dogmas that for many no longer fit into a modern, busy lifestyle."<sup>109</sup>

---

<sup>101</sup> S.T.F. A.D.P.F. 54, Relator: Min. Marco Aurélio, Supremo Tribunal Federal Jurisprudencia [S.T.F.J.], 4.12.2012 (Braz.), available at <http://s.conjur.com.br/dl/acordao-interruptao-gravidez-anencefalo.pdf>.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Elton Bezerra, *Decisão Histórica: Leia acórdão sobre interrupção de gravidez de anencéfalo*, CONSULTOR JURÍDICO (May 13, 2013), <http://www.conjur.com.br/2013-mai-13/leia-acordao-stf-autoriza-interruptao-gravidez-anencefalo>.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> Fred de Sam Lazaro, *World's Shifting Views of Church, Abortion and Lifestyle*, PBS (Aug. 30, 2011), <http://www.pbs.org/newshour/rundown/brazil-abortion/>.

<sup>109</sup> *Id.*

Although the anencephaly exception became law, advocates of the Catholic Church have not waved the white flag. Various religious groups, including the National Conference of Bishops of Brazil, are working to get the decision overturned.<sup>110</sup> The Catholic bishops from this organization argue that the decision violates the fundamental right to life, which starts at conception.<sup>111</sup> These bishops believe that “a fetus within the mother’s womb ‘has rights’ which ‘must be respected regardless of the phase or condition in which it is found.’”<sup>112</sup>

#### IV. ANALYSIS—THE IMPACT OF THE ZIKA VIRUS ON ABORTION LAWS AND SOCIETY

##### A. *Brazilian Women’s Reality*<sup>113</sup>

In Brazil, women primarily seek abortions because of unwanted pregnancies, not fetal health complications.<sup>114</sup> Yet research shows that unsafe abortions are directly linked to maternal mortality and that maternal mortality is one of the leading causes of female premature death in the country.<sup>115</sup> One study showed that one method the government can use to prevent young people from unwanted pregnancies is by providing access to sexual education.<sup>116</sup> Sexual education would have a snowball effect. Simply by providing the public access to sexual education, the government can prevent women from being surprised with unwanted pregnancies, consequently reducing

---

<sup>110</sup> Mario Osava, *Health-Brazil: Abortion of Anencephalic Fetuses Fires Debates*, INTER PRESS SERV. (Jul. 14, 2004), <http://www.ip-snews.net/2004/07/health-brazil-abortion-of-anencephalic-fetuses-fires-debate/>.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> While this section is not applicable to every woman in the country, unfortunately it describes the reality for less fortunate women who seek an abortion.

<sup>114</sup> See Vanessa Cruz Santos et al., *Criminalization of Abortion in Brazil and the Implications for Public Health*, REVISTA BIOÉTICA, 492, 495 (Aug. 23, 2013), [http://revistabioetica.cfm.org.br/index.php/revista\\_bioetica/article/view-File/778/1026](http://revistabioetica.cfm.org.br/index.php/revista_bioetica/article/view-File/778/1026).

<sup>115</sup> Beatriz Galli, *Effects of Abortion Criminalization in Brazil: Lack of Access, Lack of Good Quality of Health Care and Increased Risk of Morbidity and Maternal Mortality*, IPAS BRAZ. 1, 3 (Nov. 25, 2009), [www.ohchr.org/Documents/Issues/Women/WRGS/MaternalMortality/Ipas-Brazil.doc](http://www.ohchr.org/Documents/Issues/Women/WRGS/MaternalMortality/Ipas-Brazil.doc).

<sup>116</sup> See Santos, *supra* note 114.

the rate of illegal abortions and the rate of maternal mortality.<sup>117</sup> However, the Brazilian government fails to provide such service because of corruption and the mishandling of government funds and now the country faces a major health issue.<sup>118</sup>

Brazilian women are aware of the Penal Code's criminalization of abortion; nevertheless, an estimated 1,054,243 abortions occur annually.<sup>119</sup> Furthermore, Brazilian hospitals treat about 250,000 women every year just for complications arising from unsafe abortions.<sup>120</sup> Rates of maternal mortality vary according to geographic regions of the country; however, there is an alarmingly high rate in the northeastern region of the country where the women have extremely poor access to the public health system.<sup>121</sup> Nevertheless, even if a woman is granted a legal abortion by the government, religion is so embedded in a Brazilian's subconscious that doctors often refuse to perform the procedure due to their personal religious beliefs.<sup>122</sup> Ipas Brazil, a nongovernmental organization, reported that women waiting to get a legal abortion sometimes would need to wait for doctors to change their shifts because the ones currently on duty would refuse to carry out the procedure even if it was legal.<sup>123</sup> The report found that, out of forty physicians on duty, only two of those physicians were willing to perform the procedure.<sup>124</sup> This led some of the women to leave the facility without obtaining their judicially-granted legal abortion.<sup>125</sup> Consequently, these women were left without any other choice than to seek clandestine abortions.

As previously stated, the Zika epidemic has unfortunately become concentrated in the poorest and most undeveloped region of the country, which is Brazil's northeastern region.<sup>126</sup> Many the women affected by the Zika virus barely have the means to support their already existing families—much less the means to provide for a baby with microcephaly. Caring for an individual with mental and

---

<sup>117</sup> See *id.* at 494-95.

<sup>118</sup> *Belíndia: Brazil and Education*, *supra* note 44.

<sup>119</sup> Galli, *supra* note 115, at 4.

<sup>120</sup> *Id.* at 4.

<sup>121</sup> *Id.* at 5.

<sup>122</sup> See Santos, *supra* note 114.

<sup>123</sup> Galli, *supra* note 115, at 8.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Nolen, *supra* note 9.

physical disabilities is a substantial financial burden. Thus, these women turn to abortion in desperate need of a solution—even if that means risking their own lives.<sup>127</sup> A comparative study on requests for illegal abortifacients showed Brazilian women’s requests to Women on Web,<sup>128</sup> a group that specializes in providing abortifacients to women in countries with restrictions via drone, speedboat, and other methods, increased when the Zika epidemic emerged in Brazil in 2015.<sup>129</sup> Specifically, research showed that Brazil saw a spike in the demand for illegal abortions just two months after the first case of Zika appeared.<sup>130</sup>

This emergency situation gained attention worldwide. The United Nations urged the countries affected by the Zika virus, including Brazil, to loosen their strong restrictions on abortion.<sup>131</sup> Even Pope Francis spoke about this Zika epidemic.<sup>132</sup> Nonetheless, the Brazilian legislature is moving in the opposite direction.<sup>133</sup> The deeply religious government is drafting a bill that punishes a woman for up to four-and-a-half years, as compared to the current one to three years, for having an abortion specifically because the fetus was diagnosed with microcephaly; the doctors who perform the procedure could spend up to fifteen years in prison under this new legislation.<sup>134</sup> With support from the Catholic Church, advocates for this bill claim that abortion laws should not become more lenient—even in light of this Zika crisis—because “abortion leads to eugenics, [which is] the practice of selecting perfect people.”<sup>135</sup>

---

<sup>127</sup> McDonald, *supra* note 98.

<sup>128</sup> See Nolen, *supra* note 9.

<sup>129</sup> Maggie Fox, *Zika Virus Epidemic Has Doubled Abortion Requests, Study Finds*, NBC NEWS (June 23, 2016, 8:20 AM), <http://www.nbcnews.com/story-line/zika-virus-outbreak/zika-virus-epidemic-doubles-abortion-requests-study-finds-n597276>.

<sup>130</sup> McDonald, *supra* note 98.

<sup>131</sup> Alex Zielinski, *In Response to Zika, Brazil Moves to Restrict Abortion Even More*, THINK PROGRESS (Feb. 23, 2016, 4:48 PM), <https://thinkprogress.org/in-response-to-zika-brazil-moves-to-restrict-abortion-even-more-9ee4d527c2cf#.vsssn2dbp>.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Matt Sandy, *Brazilian Legislators Look to Increase Abortion Penalties in the Wake of Zika Outbreak*, TIME MAGAZINE (Feb. 22, 2016), <http://time.com/4230975/brazil-abortion-laws-zika-outbreak/>.

Despite individuals' personal opinions regarding abortion, a woman's need to have an abortion is independent from whether abortion is legal or illegal. Also, this sensitive decision is part of a woman's reproductive rights, which are fundamental human rights that no one else should interfere with—not even the government.<sup>136</sup> Thus, lawmakers in the country who remain opposed to changing the law are preventing Brazilian society from benefiting from the consequences of less restrictive abortion laws. Brazilian citizens' and lawmakers' insistence on letting their historic religious beliefs guide social and legal norms is having a destructive effect on society and is hindering societal growth and development. The negative effects of the criminalization and stigmatization of abortion are many, including but not limited to broken families, increased maternal mortality, saturated orphanages, and increased crime rates.<sup>137</sup>

### B. *Effects and Hindrance of Societal Growth*

Northeast Brazil is already plagued by broken families due to the various environmental and social issues that are native to the region.<sup>138</sup> Families are easily broken and the children are often left with one parent trying to make ends meet for the whole family. These children are already at a disadvantage in society because not only are they born and raised in the poorest region of the country, but because studies have also shown that children who are raised in a single-parent household have reduced chances for future prosperity.<sup>139</sup> Children raised in single-parent households are more likely to

---

<sup>136</sup> Rebecca J. Cook, *Women's Health and Human Rights*, WORLD HEALTH ORGANIZATION, [HTTP://APPS.WHO.INT/IRIS/BITSTREAM/HANDLE/10665/39354/9241561661\\_ENG.PDF;JSESSIONID=76D904BDBA47BD5960F8CCE73826843E?SEQUENCE=1](http://apps.who.int/iris/bitstream/handle/10665/39354/9241561661_eng.pdf;jsessionid=76D904BDBA47BD5960F8CCE73826843E?sequence=1). (last visited on Apr. 21, 2018).

<sup>137</sup> Mansureh Yazdkhasti *et al.*, *Unintended Pregnancies and Its Adverse Social and Economic Consequences on Health System: A Narrative Review Article*, NCBI (January 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4449999/>.

<sup>138</sup> *See generally supra*, section B. Life in the Northeast.

<sup>139</sup> Steve Doughty, *Broken Home Children Are 'Five Times More Likely to Suffer Mental Troubles'*, DAILY MAIL (Oct. 21, 2008, 6:44 PM), <http://www.dailymail.co.uk/news/article-1079510/Children-broken-homes-times-likely-suffer-mental-troubles-says-Government-study.html> (this study was not done in Brazil; however, it applies to societies in general, not one of a specific ethnicity).

be unsuccessful in school, suffer from weakened health conditions, and have an increased potential of turning to crime and drugs.<sup>140</sup> Parental break-ups may weaken the relationship between the children and parents, leading the child to destructive ways of handling conflict, and diminishing the child's social competence.<sup>141</sup> Additionally, children that come from broken homes tend to pass these negative experiences and behavior onto to their own children,<sup>142</sup> thus, creating a continuing cycle of family imbalance and distress. The family is the building block of a society and when a family becomes broken, it may weaken the individual's ties to the institutions that make up society: the family, the church, the school, the marketplace, and the government.<sup>143</sup> Consequently, broken homes may create broken individuals, which in turn may create broken and dysfunctional societies.

Studies have shown that banning abortion fails to achieve the law's intended purpose, which is to prevent women from obtaining the procedure.<sup>144</sup> Adding on to the northeastern women's precarious reality, Brazil's restrictive abortion laws virtually lay out these women's fates. Because these women live in poverty, they have little to no access to education and, consequently, they lack knowledge and access to contraceptives and family planning. With the lack of education and the criminalization of abortion, these women seek clandestine abortions, which increases the rates of unsafe abortions and the risk of health complications.<sup>145</sup> Therefore, abortion criminalization only perpetuates the various problems in Brazilian society that arise from the socioeconomic gap in the country, given that abortion criminalization "disproportionately affects marginalized communities, particularly Afro-Brazilians, indigenous women,

---

<sup>140</sup> *Id.*

<sup>141</sup> Patrick F. Fagan & Aaron Churchill, *The Effects of Divorce on Children*, MARRIAGE & RELIGION RESEARCH INST. 1 (Jan. 11, 2012), <https://downloads.frc.org/EF/EF12A22.pdf>.

<sup>142</sup> *Id.* at 22.

<sup>143</sup> *Id.*

<sup>144</sup> Beatriz Galli, *Negative Impacts of Abortion Criminalization in Brazil: Systematic Denial of Women's Reproductive Autonomy and Human Rights*, 71 U. Miami L. Rev., 969, 977 (2011)

<sup>145</sup> *Id.* at 972.

women from rural areas, and women with lower educational levels.”<sup>146</sup>

For instance, in one case, twenty-seven-year-old Jandira Cruz found a clandestine abortion provider and agreed to meet a stranger in a bus station who promised to take Cruz to a clinic to get the procedure done.<sup>147</sup> However, to this day, this twenty-seven-year-old, young woman has not been found.<sup>148</sup> Adding to the crimes resulting from the illegality of abortion, the government has sponsored various raids on clandestine clinics, which forces these already clandestine abortion providers to go even further underground, further diminishing the safety of the women who seek their services.<sup>149</sup> Ms. Cruz’s case is only one example of the various cases that happen every day to women in her situation.<sup>150</sup> Furthermore, the Zika epidemic only exacerbates the situation for women that seek an abortion because a woman infected with Zika, who has reason to believe that her baby may develop microcephaly, may be more likely to seek an abortion.

Another consequence of restrictive abortion laws in the country is increased crime rates, which have major economic and social consequences to the country.<sup>151</sup> Researchers have concluded that the direct economic cost of crime for Brazilian cities and states range between three to five percent of the country’s GDP per year.<sup>152</sup> Furthermore, the study predicted that “if the homicide rate in Brazil had been ten percent lower between 1991 and 1995, per capita income could have been 0.2-0.8 percent higher over the following five years.”<sup>153</sup> Although these numbers were calculated many years ago, it is predicted that today this number could be higher. Consequently,

---

<sup>146</sup> *Id.* at 971-72.

<sup>147</sup> Beatriz Galli, *Brazil’s Criminal Abortion Laws Are Killing Women*, REWIRE (Sept. 16, 2014, 11:36 AM), <https://rewire.news/article/2014/09/16/brazils-criminal-abortion-laws-killing-women/>.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Yazdkhasti, *supra* note 137.

<sup>152</sup> *Crime, Violence and Economic Development in Brazil: Elements of Effective Public Policy*, GEORGETOWN UNIV. CTR FOR LATIN AM. STUDIES ii (June 2016), <http://pdba.georgetown.edu/Security/citizenssecurity/brazil/documents/docworldbank.pdf>.

<sup>153</sup> *Id.* at vi.

with an increase in income per capita, the socioeconomic gap in the country would decrease,<sup>154</sup> eliminating various issues that originate due to the socioeconomic gap in Brazilian society.

Additionally, by decreasing crime rates, the government could redirect its resources and efforts towards societal needs such as education, infrastructure, and even funding of clinics where legal abortions could be performed, instead of concentrating its resources in the judicial system to address the violence and crime that come with the illegality of the procedure. Since 2011, the Brazilian prison population has been considered the fourth largest prison population in the world, only behind the United States, China, and Russia.<sup>155</sup> This high rank was reached well before the Zika epidemic emerged in the country and with the continuing criminalization of abortion, the Zika virus may be a strong contributor to an ever-growing prison population in the years to come.

Brazil's large prison population is not only problematic for the government, but it also negatively affects society. Contrary to popular belief, high "incarceration levels do little to deter crime while they do much to rip up families, increase racial disparities, and destroy lives."<sup>156</sup> Thus, it is a never-ending cycle—larger incarceration rates mean more broken families, which leads to more crime. Brazil also has a government subsidy that allows the family of incarcerated, social security contributing citizens to obtain a monthly pension for the duration of the relative's incarceration.<sup>157</sup> Like most government subsidies, this pension has restrictions in order to be

---

<sup>154</sup> John D. Sutter, *7 Ways to Narrow the Rich Poor Gap*, CNN (Oct. 30, 2013), <http://www.cnn.com/2013/10/29/opinion/sutter-solutions-income-inequality/index.html> (although this article is talking about economic inequality in the United States, I believe it is applicable to many countries around the world.)

<sup>155</sup> Joseph Murray et al., *Crime and Violence in Brazil: Systematic Review of Time Trends, Prevalence Rates and Risk Factors*, 18 *AGGRESSION AND VIOLENT BEHAVIOR* 471, 472. (July 1, 2013), available at [https://ac.els-cdn.com/S1359178913000566/1-s2.0-S1359178913000566-main.pdf?\\_tid=eac2b2a3-a88a-4a19-81e2-848650c63d5d&acdnat=1521506192\\_9425e276f3b3781977177467854cb121](https://ac.els-cdn.com/S1359178913000566/1-s2.0-S1359178913000566-main.pdf?_tid=eac2b2a3-a88a-4a19-81e2-848650c63d5d&acdnat=1521506192_9425e276f3b3781977177467854cb121).

<sup>156</sup> David Brooks, *The Prison Problem*, N.Y. TIMES (Sept. 29, 2015), <http://www.nytimes.com/2015/09/29/opinion/david-brooks-the-prison-problem.html>.

<sup>157</sup> *Auxílio-reclusão*, MINISTÉRIO DA PREVIDÊNCIA SOCIAL (Nov. 14, 2012, 10:26 AM), <http://www.previdencia.gov.br/servicos-ao-cidadao/todos-os-servicos/auxilio-reclusao/>.

obtained: the family must have a certain income amount, classify as close relatives, and several others.<sup>158</sup> Nevertheless, because the criminalization of abortion increases crime rates, abortion criminalization also burdens the government to redirect funds to comply with this subsidy, simultaneously affecting society by not using those funds to address other various social needs. As can be seen, criminalizing abortion has a negative snowball effect that substantially impacts society. Through a simple measure of reevaluating and modifying its abortion laws, Brazil can, at a minimum address, if not, prevent, many current and future problems that plague the country.

“When I most needed his help, he left me.”<sup>159</sup> A mother of two used these words to describe the abandonment of the father of her children when the second child was diagnosed with microcephaly.<sup>160</sup> He abandoned the family even before the afflicted child was born.<sup>161</sup> Now, she has moved into her parents’ cramped house and is left to care for her two daughters by herself.<sup>162</sup> This scenario is not uncommon for mothers who are expecting a baby with microcephaly. In Brazil, it is already normal for children from poor families to grow up in a household with a single parent<sup>163</sup>—one third of mothers are unmarried.<sup>164</sup> Furthermore, some studies show that children born with special needs can increase the chance of a marital breakdown.<sup>165</sup> Now, with the Zika epidemic, doctors across the country are concerned with the increase of women being abandoned because they are carrying a fetus with microcephaly.<sup>166</sup> There is an enormous emotional strain, economic burden, and social stigma of

---

<sup>158</sup> *Id.*

<sup>159</sup> Stephen Eisenhammer, *Brazil’s Mothers Left to Raise Microcephaly Babies Alone*, REUTERS (Mar. 11, 2016), <http://www.reuters.com/article/us-health-zika-women-idUSKCN0WD21D>.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> Alexandra Zavis, *When it Comes to Raising a Child Disabled by Zika, Brazilian Women Often Do It Alone*, L.A. TIMES (July 21, 2016, 2:00 PM), <http://www.latimes.com/projects/la-fg-brazil-zika-mothers/>.

<sup>165</sup> Mark Stabile & Sara Allin, *The Economic Costs of Childhood Disability*, FUTURE OF CHILD., Spring 2012, at 65, 78 available at <https://files.eric.ed.gov/fulltext/EJ968438.pdf>.

<sup>166</sup> See generally Zavis, *supra* note 164.

raising a child with microcephaly that often men cannot endure.<sup>167</sup> Additionally, because families tend to be larger in northeast Brazil, mothers who have a baby born with microcephaly frequently have other children and, with the lack of support from the father, it is highly probable that society will have to step in and help take care of these disabled children.<sup>168</sup> Thus, babies with the Zika virus not only affect the family dynamic, but they also burden society.

Babies born with microcephaly need special care at all times.<sup>169</sup> They need round-the-clock care from their parents because, given the size of their heads, there is constant pressure on the child's brain and higher sensitivity to light and sound causing most babies to cry almost constantly.<sup>170</sup> Additionally, babies with microcephaly need to visit specialized doctors because most of the babies will start experiencing seizures and other serious complications before they reach the one year of age.<sup>171</sup> These families may live in remote towns and have to take public transportation for hours in order to reach the rehabilitation centers.<sup>172</sup> As if transportation challenges were not enough, these families often have to wait for months for the appropriate treatment for their babies.<sup>173</sup> Now, these mothers who already come from low-income homes and struggle just to buy baby formula are trying to raise a disabled baby alone because their

---

<sup>167</sup> *Id.*

<sup>168</sup> Pam Belluck and Tania Franco, *For Brazil's Zika Families, a Life of Struggle and Scares*, NY TIMES (Mar. 11, 2017), <https://www.nytimes.com/2017/03/11/health/zika-virus-brazil-birth-defects.html?action=click&contentCollection=Health&module=Translations&region=Header&version=en-US&ref=pt-BR&pgtype=article>. (stating, "Ms. Vieira has separated from her husband, lost monthly government assistance, relinquished a job and now patches together a livelihood with other government help").

<sup>169</sup> Cláudia Collucci, *Babies with Microcephaly in Brazil Are Struggling to Access Care*, THE BMJ (Nov. 16, 2016), <https://www.bmj.com/content/355/bmj.i6157>.

<sup>170</sup> Matt Roper, *Babies with Small Heads Will Be DUMPED in Orphanages Because They Are in So Much Pain They Cry All The Time and Mothers Cannot Cope, Brazil Warns*, DAILY MAIL (Feb. 18, 2016, 4:39 AM), <http://www.dailymail.co.uk/news/article-3451671/Babies-small-heads-DUMPED-orphanages-pain-cry-time-mothers-cope-Brazil-warns.html>.

<sup>171</sup> *Id.*

<sup>172</sup> See Associated Press, *In Brazil, Moms of Zika Babies Struggle to Get Help*, NBC NEWS (Oct. 19, 2016, 10:56 AM), <http://www.nbcnews.com/storyline/zika-virus-outbreak/brazil-moms-zika-babies-struggle-get-help-n668871>.

<sup>173</sup> *Id.*

partners have abandoned them, solely because of the child's condition.

The mother of a baby with microcephaly is constantly worn out and fatigued due to the baby's increased needs, thus, there is a high chance that the emotional ties of the mothers to these babies will be broken.<sup>174</sup> As a result, some mothers decide that they cannot cope with the daily struggles and abandon their babies in orphanages.<sup>175</sup> Now, orphanages across the country are attempting to prepare to deal with an increase in the number of abandoned children with microcephaly who are expected to arrive in the coming months and years.<sup>176</sup> In the meantime, these orphanages do not receive any money from the government, leaving them "in total chaos, completely unprepared to deal with this epidemic."<sup>177</sup> Instead, these institutions have to rely on donations from the public to meet the minimum requirements to house these babies.<sup>178</sup>

The World Health Organization predicts that if the law in Brazil does not change, around 2,500 babies will be born with microcephaly in the near future.<sup>179</sup> Allowing these babies to be born with microcephaly will greatly impact Brazil's present and future society:

The loss of productivity due to the Zika outbreak [is a major concern for Brazilian officials]. Children with microcephaly may not have the ability to achieve their full cognitive potential because they are generally born with impaired cognitive and physical development. Moreover, children who are physically

---

<sup>174</sup> See Roper, *supra* note 170.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> Lena Sun, *Zika: More Than 2,500 Babies Born with Microcephaly in Brazil, WHO Predicts*, THE WASH. POST (Mar. 22, 2016), [https://www.washingtonpost.com/news/to-your-health/wp/2016/03/22/zika-in-brazil-more-than-2500-births-with-microcephaly-who-predicts/?utm\\_term=.aa68427db753](https://www.washingtonpost.com/news/to-your-health/wp/2016/03/22/zika-in-brazil-more-than-2500-births-with-microcephaly-who-predicts/?utm_term=.aa68427db753).

and cognitively disadvantaged are less likely to attend school, resulting in lower educational achievement.<sup>180</sup>

Although symptoms in children born with microcephaly vary, they range from mild learning disabilities to impaired motor function, seizures, or even death.<sup>181</sup> Nonetheless, babies born with microcephaly have a diminished chance to be fully integrated into society because they are more likely to have limited opportunities to succeed financially and socially.<sup>182</sup> Additionally, individuals with disabilities in general are at a greater risk of developing mental illnesses such as anxiety and depression.<sup>183</sup>

The individuals who have been diagnosed and have grown up with microcephaly face daily challenges in society.<sup>184</sup> For instance, Maria, a twenty-year-old girl with microcephaly who lives in the United States and has full access to all the special services she needs, says that it was hard growing up because she did not fit in in school; her classmates bullied her and one peer called her “mentally retarded” from elementary school through high school.<sup>185</sup> Additionally, she has physical disabilities due to the disorder, such as scoliosis.<sup>186</sup> She tires easily and has POTS syndrome, a heart condition that affects the blood flow through the body causing the individual to feel dizzy when standing or laying down.<sup>187</sup> Even though Maria has a less severe form of microcephaly, she is unable to perform

---

<sup>180</sup> Dagna Constenla *et al.*, *The Potential Economic Impact of the Zika Virus*, JOHNS HOPKINS SCH. OF PUB. HEALTH (Mar. 7, 2016), <http://www.jhsph.edu/research/centers-and-institutes/ivac/IVACBlog/the-potential-economic-impact-of-the-zika-virus>.

<sup>181</sup> *Microcephaly Symptoms & Causes*, BOS. CHILDREN’S HOSP., <http://www.childrenshospital.org/conditions-and-treatments/conditions/microcephaly/symptoms-and-causes> (last visited Mar. 19, 2018).

<sup>182</sup> See *Facts About Microcephaly*, *supra* note 24.

<sup>183</sup> *Disability & Health*, CTR. FOR DISEASE CONTROL AND PREVENTION (Apr. 11, 2016), <https://www.cdc.gov/ncbddd/disabilityandhealth/relatedconditions.html>.

<sup>184</sup> Collucci, *supra* note 169.

<sup>185</sup> Kimberly Leonard, *Microcephaly: After Diagnosis, a Life of Uncertainty*, U.S. NEWS (Mar. 4, 2016, 6:58 PM), <http://www.usnews.com/news/articles/2016-03-04/microcephaly-after-diagnosis-a-life-of-uncertainty>.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

daily activities that other individuals her age are doing, such as driving.<sup>188</sup> Maria's parents also suffer as a consequences of the disorder; her mother explained:

[M]y husband and I feel sad because we are seeing our friends' children getting married and having kids, and it's difficult when people talk about how advanced their kids are because [ours] are staying about the same, and that makes me sad. I want my daughters to get out there and meet a nice person and have relationships. It would be nice to have them drive and have their own homes.<sup>189</sup>

A distinctive consequence of microcephaly is smaller head size; as such, individuals with microcephaly also have a smaller brain, which tends to limits them intellectually and physically.<sup>190</sup> Although individuals with microcephaly can meet age group milestones, they may reach them later than non-microcephalic children.<sup>191</sup> "Parents often don't know at what point their children's brains will stop developing past a certain age, causing them for the rest of their lives to act younger than they are."<sup>192</sup> As a consequence, children with microcephaly may have below average IQ scores: Maria's IQ is between 63 and 70, while the average IQ for her age is 100.<sup>193</sup> Accordingly, children with microcephaly may have a lower chance to receive education past high school.<sup>194</sup>

The burden of the disorder does not fall solely on the person with microcephaly and his or her family. Caring for a disabled family member places various burdens on the family system and these burdens usually remain for a lifetime.<sup>195</sup> "The day-to-day strain of providing care and assistance leads to exhaustion and fatigue, taxing

---

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> Leonard, *supra* note 185.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Disabilities - Impact of Disabilities on Families*, JRANK, <http://family.jrank.org/pages/396/Disabilities-Impact-Disabilities-on-Families.html> (last visited Jan. 23, 2017).

the physical and emotional energy of family members.”<sup>196</sup> Often, the heavy task of caregiving for a disabled individual falls on the female family members because of their higher inclination to nurture, resulting in them having to give up or change their previously established work plans.<sup>197</sup> As previously stated, in the northeast, the women sometimes bear the responsibility for taking care of the household, as well as earning the money.<sup>198</sup> Thus, where the male figures often abandon the family, the task of taking care of the child with microcephaly may fall upon the older siblings.<sup>199</sup> That will, in turn, further strain family ties because the ones caring for the disabled child may have to give up their dreams and plans for the future. If the internal family challenges were not enough, outsiders and people in the community will most likely react negatively to the child’s disability and, as a consequence, exclude the individual or the entire family from the rest of the community.<sup>200</sup> Additionally, studies show that the added stress of caring for a disabled family member increases the risk of psychological and behavioral symptoms in the other members of the family—increasing the overall number individuals in the household exposed to health risks.<sup>201</sup>

Children born with disabilities affect the family dynamic as a whole, and also affect the socioeconomic standing of the entire family due to the added burden of caring for the child and their increased medical expenses.<sup>202</sup> The reality of families in the northeast only makes matters worse, because of the lack of financial means these families experience. Furthermore, if Brazil experiences an increase in the birth of babies with disabilities, the country’s continued

---

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> See Vyas, *supra* note 29.

<sup>199</sup> Poonam Daryani, *Zika’s Other Children: A Powerful Look at the Families Affected By Brazil’s Zika Epidemic*, HUB-JOHN HOPKINS UNIVERSITY (Oct. 12, 2017), <https://hub.jhu.edu/2017/10/12/how-zika-epidemic-in-brazil-affects-families-children/>.

<sup>200</sup> *Disabilities: Impact of Disabilities on Families*, JRANK, <http://family.jrank.org/pages/396/Disabilities-Impact-Disabilities-on-Families.html> (last visited Jan. 23, 2017).

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

productivity could be negatively impacted due to the reduced size of the workforce in the future.<sup>203</sup>

Lastly, contrary to popular belief, women who have an abortion are not at an increased risk of mental health issues.<sup>204</sup> On the other hand, the risk of mental health problems may be increased by negative societal reaction to the procedure.<sup>205</sup> The American Psychological Association (APA) conducted a study in 2008, which revealed that it is the perceived stigma and the need for keeping the procedure a secret that increases the risk for mental health issues in women who obtain an abortion.<sup>206</sup> The study showed that the stigma can negatively affect a woman's physical and mental health and overall well-being.<sup>207</sup> As explained by Kristen M. Shellenberg and Amy O. Tsui, the report found as follows:

Internalized stigma—the process of internalizing other people's negative attitudes about abortion into beliefs about oneself—can be particularly harmful to women's well-being. The process of internalizing or coping with a stigma (often done through secrecy) has been shown to directly impact a person's self-perception, self-esteem, and health outcomes and, as well as lead to self-doubt and depression.<sup>208</sup>

In countries where abortion is illegal, along with the lack of access to the procedure, comes the stigmatization of the procedure. By legalizing and providing access to abortion care, the stigma of the

---

<sup>203</sup> Dagna Constenla *et al.*, *The Potential Economic Impact of the Zika Virus*, JOHN HOPKINS SCH. OF PUB. HEALTH (Mar. 7, 2016), <http://www.jhsph.edu/research/centers-and-institutes/ivac/IVACBlog/the-potential-economic-impact-of-the-zika-virus>.

<sup>204</sup> Pam Belluck, *Abortion is Found to Have Little Effect on Women's Mental Health*, N.Y. TIMES (Dec. 14, 2016), <https://www.nytimes.com/2016/12/14/health/abortion-mental-health.html>.

<sup>205</sup> Kristen M. Shellenberg & Amy O. Tsui, *Correlates of Perceived and Internalized Stigma Among Abortion Patients in the USA: An Exploration by Race Hispanic Ethnicity*, 118 INT'L J. OF GYNECOLOGY AND OBSTETRICS S152, S152 (2012), available at <https://obgyn.onlinelibrary.wiley.com/doi/epdf/10.1016/S0020-7292%2812%2960015-0>.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

procedure could slowly disappear. Thus, Brazilian society would benefit because by legalizing abortion, the government would also be protecting and preventing mental health issues in women.

C. *A Solution—Is Microcephaly Different from Anencephaly?*

Anencephaly is a condition where part of the brain or skull is missing and, therefore, the child cannot survive outside the womb.<sup>209</sup> In 2004, the Supreme Court in Brazil decided to allow women with an anencephalic fetus to obtain a legal abortion.<sup>210</sup> This third exception was adopted in large part because an anencephalic fetus cannot survive outside of the mother's womb.<sup>211</sup>

Anencephaly and microcephaly both belong to the cephalic disorders characterization.<sup>212</sup> Cephalic disorders refer to disorders resulting from abnormal development of or damage to the brain and spinal cord of the fetus.<sup>213</sup> Cephalic disorders emerge in the early developmental stages of the fetus and can be caused by one or many factors, including hereditary or genetic conditions, environmental exposure of the mother and fetus to infections or toxic substances, or exposure to radiation.<sup>214</sup>

There are multiple types of cephalic disorders, and the severity of the symptoms of each varies.<sup>215</sup> Microcephaly falls on the less extreme severity continuum because fetuses diagnosed with microcephaly can be born and survive outside the womb; while on the other hand, anencephalic fetuses *rarely* survive more than one day after birth.<sup>216</sup> Once study found that around twenty-five percent of the fetuses diagnosed with anencephaly die while still inside the womb or during birth; fifty-three percent die within one day of being

---

<sup>209</sup> *Facts About Anencephaly*, CTR.FOR DISEASE CONTROL AND PREVENTION (Nov. 21, 2015), <https://www.cdc.gov/ncbddd/birthdefects/anencephaly.html>.

<sup>210</sup> Debora Diniz & Ana Cristina Gonzalez Vélez, *Aborto Na Suprema Corte: O Caso da Anencefalia no Brasil*, SCIELO BRASIL (Aug. 2008), [http://www.scielo.br/scielo.php?script=sci\\_arttext&pid=S0104-026X2008000200019](http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0104-026X2008000200019).

<sup>211</sup> *Id.*

<sup>212</sup> *Cephalic Disorders Fact Sheet*, NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE (Sept. 2003), <https://www.ninds.nih.gov/Disorders/Patient-Caregiver-Education/Fact-Sheets/Cephalic-Disorders-Fact-Sheet>.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

born; seventeen percent die between the first and fifth day of birth; and only five percent live more than six days.<sup>217</sup> Nevertheless, although microcephalic fetuses survive outside the womb, many are left with many sequelae that impair them the rest of their lives.<sup>218</sup>

Currently, fetuses with anencephaly have not survived long enough for doctors to know the sequelae of the disorder; thus, the only identifiable characteristic that distinguishes anencephaly from microcephaly is the immediate death of the baby with anencephaly, while the microcephalic baby may be able to survive. Whereas fetuses with anencephaly do not develop part of their brain and skull,<sup>219</sup> fetuses with microcephaly have a diminished and impaired development of their brain and skull, which results in the characteristic smaller head.<sup>220</sup> Nevertheless, microcephaly can still result in death, although at a lower rate.<sup>221</sup> Additionally, the two disorders can be detected around the same time: anencephaly can be detected as early as the eleventh to the fourteenth week of the pregnancy,<sup>222</sup> while microcephaly can be detected between the eighteenth to the twentieth week.<sup>223</sup> Both are also detected by the same method: conducting an ultrasound.<sup>224</sup> Essentially, the two disorders are quite alike.

An abortion is the deliberate termination of a pregnancy by removing the fetus. Abortions may be sought out for many reasons, including the fact that the fetus has been diagnosed with an abnormality. Furthermore, “[m]ost scientists agree that a fetus cannot feel pain until late in the pregnancy because the fetal brain is not sufficiently developed to feel pain until approximately the twenty-sixth

---

<sup>217</sup> Monika Jaquier, *Report About the Birth and Life of Babies with Anencephaly*, ANENCEPHALY INFO (Sept. 20, 2015), <http://www.anencephaly.info/e/report.php>.

<sup>218</sup> *Facts About Microcephaly*, *supra* note 24.

<sup>219</sup> *Facts About Anencephaly*, *supra* note 209.

<sup>220</sup> *See Facts About Microcephaly*, *supra* note 24.

<sup>221</sup> *Id.*

<sup>222</sup> Monika Jaquier, *Frequently Asked Questions About Anencephaly*, ANENCEPHALY INFO (Mar. 23, 2015), <http://www.anencephaly.info/e/faq.php#13>.

<sup>223</sup> *Prenatal Care: Microcephaly*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/zika/hc-providers/pregnant-women/prenatal-diagnosis-microcephaly.html> (last updated Feb. 20, 2018).

<sup>224</sup> *Id.*; Jaquier, *Frequently Asked Questions About Anencephaly*, *supra* note 222.

week.”<sup>225</sup> Thus, by choosing to end the life of a fetus at an early stage when the fetus is diagnosed with a disorder, whether it be anencephaly or microcephaly, the mother may be averting the child from a life of suffering and disability, given their living conditions and their lack of access to changing their socioeconomic status.

#### V. MEANWHILE, BRAZIL PROGRESSES

Brazil is making progress. In 2013, a couple<sup>226</sup> was arrested at an abortion clinic while attempting to obtain an abortion.<sup>227</sup> Three years later, the Supreme Court of Brazil finally entertained the couple’s case when a writ habeas corpus was filed on their behalf.<sup>228</sup> The Court reviewed the case and a majority of the five-judge panel, pulled from the eleven judges, reached the decision.<sup>229</sup> This decision of first impression allows doctors to perform abortion procedures within the first three months of pregnancy.<sup>230</sup> This historic decision puts a hold on all arrests and incarcerations of individuals who are charged with violating abortion laws.<sup>231</sup> The pivotal vote in this decision was made by Minister Luís Roberto Barroso, who justified his vote by stating that the long-history of the criminalization of abortion in the country goes against a citizen’s fundamental rights, including sexual rights and a women’s reproductive rights.<sup>232</sup> However, this decision does not legalize abortion yet; it is just the beginning.

---

<sup>225</sup> Michelle Haynes, *Inner Turmoil: Redefining the Individual and the Conflict of Rights Between Woman and Fetus Created by the Prenatal Protection Act*, 11 TEX. WESLEYAN L. REV. 131, 150 (2004).

<sup>226</sup> The identities of the individuals have not been revealed due to security reasons.

<sup>227</sup> *Notícias STF*, SUPREMO TRIBUNAL FEDERAL (Nov. 29, 2016), <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=330769>.

<sup>228</sup> *Id.*

<sup>229</sup> *See id*; *see also* KIETH S. ROSENN, *Judicial Reform in Brazil*, 4 LAW & BUS. REV. AM. 19, 26 (1998).

<sup>230</sup> *See* Cida de Oliveira, *Aborto Volta à Pauta do STF, Em Decisão Sobre Gestantes Com Zika, Rede Brasil Atual* (Dec. 2, 2016), <http://www.redebrasilatual.com.br/saude/2016/12/decisao-sobre-aborto-em-caso-de-zika-nesta-4a-feira-mantem-tema-aceso-no-stf-4697.html>.

<sup>231</sup> *Notícias STF*, *supra* note 227.

<sup>232</sup> *Id.*

To understand how the decision can have legal effect, it is necessary to first understand Brazil's complex judiciary system. The Supreme Court of Brazil is made up of eleven judges whose primary function is to uphold the Constitution.<sup>233</sup> Like in the United States, the Supreme Court has jurisdiction to review cases, but it also has original jurisdiction to try and decide cases involving constitutional issues.<sup>234</sup> When a constitutional issue reaches the Supreme Court, in order to create binding precedent, the matter needs to be "repeatedly decided in the same way by two-thirds of the Court's members."<sup>235</sup> Although Brazil maintains a civil law system, the country amended its Constitution in 2004 to adopt a modified doctrine of *stare decisis*.<sup>236</sup> This means that the Supreme Court can issue decisions and is bound only in rare circumstances.<sup>237</sup> When the Court does issue one of these binding decisions, they are called *Súmula Vinculantes* (strict translation is binding precedent).<sup>238</sup> At all other times, the Supreme Court's decisions are not binding on the lower courts, as they are here in the United States.<sup>239</sup> Only then will lower courts follow, setting a new legal standard for the judiciary as a whole.<sup>240</sup>

Brazil's Supreme Court's agenda for 2017 included, among other issues, the "car wash scandal" that shattered the country, religious education in the schools, and the decriminalization of abortion due to the Zika virus.<sup>241</sup> All the Court needs is for two-thirds of the judges to decide that abortion is not a crime up to the third month of pregnancy and abortion will become completely legal in that timeframe. Additionally, the Court has already stated that this case is a *Súmula Vinculante*, thus, the decision will be binding on all lower courts.<sup>242</sup> However, at the time of writing, no progress has been made in the case.

Nevertheless, although a milestone for the judiciary system, this pending decision does not change much for mothers whose fetuses

---

<sup>233</sup> *The Legal System of Brazil*, *supra* note 94.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> *The Legal System of Brazil*, *supra* note 94.

<sup>240</sup> *Id.*

<sup>241</sup> Oliveira, *supra* note 230.

<sup>242</sup> *The Legal System of Brazil*, *supra* note 94.

have been diagnosed with microcephaly. As previously mentioned, microcephaly is typically detected in the late second and early third trimester of pregnancy—and at the earliest cannot be detected until 18 weeks.<sup>243</sup> The first trimester of pregnancy ends at the twelfth week of pregnancy;<sup>244</sup> thus, the time period in which the judges are considering allowing abortions to be performed legally still does not affect fetuses that are diagnosed with microcephaly. Consequently, the majority of women who are affected by the Zika epidemic will still be left without any choice other than to seek clandestine abortions.

By legalizing abortion procedures within the first three months of pregnancy, Brazil is taking valuable steps towards progress; nevertheless, such steps may not be appropriately addressing the current problems that have risen due to the Zika epidemic. Because microcephaly can only be diagnosed in the beginning of the second trimester,<sup>245</sup> if this new law passes, women may seek legal abortions during the first three months due to fear of their fetus *possibly* having microcephaly. Thus, an abortion will likely be used as a preventative method, similar to birth control pill, instead of being used as a last resort procedure. Nevertheless, Brazil will still have women who choose to wait until the beginning of the second trimester for the fetus to be positively diagnosed with microcephaly before making such a life-changing decision. Those women who choose to wait—the ones whose fetuses have been *positively* diagnosed with microcephaly—will still be left without a legal remedy. If those women are determined not to bring a baby with microcephaly into the world, they will seek an illegal abortion. Thus, the demand for illegal abortions will remain a problem in the country because women seek abortions due to need, regardless of the procedure's legal status.

---

<sup>243</sup> *Prenatal Care: Microcephaly*, *supra* note 223.

<sup>244</sup> *Stages of Pregnancy*, OFFICE ON WOMEN'S HEALTH (Feb. 1, 2017), <https://www.womenshealth.gov/pregnancy/youre-pregnant-now-what/stages-pregnancy>.

<sup>245</sup> *Prenatal Care: Microcephaly*, *supra* note 223.

## VI. CONCLUSION

Although Brazil has reached a significant milestone by decriminalizing abortion during the first three months of pregnancy, it still needs to address the unexpected crisis that is haunting the country due to the Zika virus. While Brazil has recently made progress regarding its abortion laws, the change does not affect women who are told that their fetus has microcephaly. Thus, the government is still failing to address the problem that comes with the Zika virus. Consequently, Brazil's abortion laws, except in three rare exceptions, only perpetuate a vicious cycle of crime and violence that plagues the country.

Given the various similarities between anencephaly and microcephaly and the conditions these women live in, Brazil's lawmakers could address the Zika virus and considerably help society by reexamining and modifying the country's antiquated abortion laws. The consequences of unsafe abortions can be reduced by legalizing abortion and providing better health care to those who retain the services. Furthermore, the number of abortions overall—legal or illegal—can be decreased by preventing the unwanted pregnancies through access to education and family planning services. By revisiting the law, Brazil may be able to prevent many negative consequences that plague the nation due to the criminalization and stigmatization of abortion. If the government continues to neglect how the Zika epidemic could affect its current and future society, the country will continue to experience increasing numbers of broken families, extremely high rates of maternal mortality, and high crime rates. Additionally, it will see in the future a diminished workforce due to the boom of disabled children being born. Once again, by simply reevaluating its abortion laws, Brazil could solve many current and future problems that may burden society.