

Zika before the Brazilian Supreme Court: From a delay in hearing to denial of rights?

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On May 22, the Supreme Court of Brazil (STF) was supposed to hear a case regarding the consequences of the Zika epidemic in Brazil ([ADI 5581](#)). Amid Brazil's current political crisis, in which the public welfare budget is at risk, the introduction of this case on the STF agenda, which happened months ago, was immensely consequential. However, two weeks before the hearing and without further explanation, the case was removed from the schedule and no new date for the hearing was announced. In addition to asking why this decision was made, it is important to consider the possible adverse and rights-violating consequences of inaction.

The case at hand, presented by the Public Defenders National Association (ANADEP), offered the Court an important opportunity to rectify the shortcomings of the national response to the Zika epidemic and fulfill its constitutional and international obligations to uphold the health and rights of those affected. While Zika was cast as a national health emergency, the briefing for this case made clear that a health and rights response must attend to the inequalities and inequities within Brazil, as intersecting factors such as race, gender, geography and socioeconomic status pinpoint those most affected by Zika. A delay in deciding the case can become a denial of these person's rights.

As a reminder of the health risks, Zika virus infection during pregnancy [can lead to microcephaly and other congenital abnormalities](#) in the developing fetus and newborn, as well as a range of other complications and neurological conditions. The first signs of the Zika virus were detected Brazil in April 2015, and by November of that year, the country declared a national public health emergency. As of November 2017, over [369,013 suspected and confirmed](#) cases of Zika [and nearly 2,952 confirmed cases](#) of babies with congenital Zika syndrome (CZS) had been reported. The majority of infections occurred in the Northeast region, a part of Brazil marked by poverty and inequity, and disproportionately affected women of color of reproductive age. The petition that the STF removed from its schedule set forth steps the Brazilian state can take to address this urgent reality, and it is the STF's responsibility to respond to the petition in a rights-affirming and time-sensitive manner.

In 2018, the Center for Reproductive Rights, the Harvard T.H. Chan School of Public Health and the Yale Global Health Justice Partnership [released a report](#) laying bare Brazilian state's failures to fulfill its rights obligations and to meet basic resource needs in the context of the Zika epidemic, while also offering specific guidance to the judiciary and government on ways to remedy these shortcomings. The researchers concluded that at bare minimum, a rights-based approach to the Zika emergency should include: (i) **access to quality and comprehensive information about the virus**, its risks, and the options available regarding reproductive health; (ii) **access to comprehensive reproductive health services**, including contraception, quality maternal health, and termination of pregnancy services when needed; (iii) **the provision of reasonable accommodations, including welfare plans**, that guarantee the full inclusion of and support

for the development of children with disabilities; and (iv) **the protection of their right (and their families rights) to an adequate standard of living** through the provision of access to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic use.

Regarding public welfare benefits, the petition to the STF seeks to protect the economic and social rights of women, families and children by expanding access to the Benefício de Prestação Continuada (BPC), a constitutional benefit that guarantees a minimum wage for disabled people and many elderly. The action seeks to remove the legal provisions that limit the concession of BPC to three years and that prohibit its combination with paid maternity leave, in addition to expanding BPC coverage to include all children with CZS-related disorders (not solely microcephaly) and waiving the requirements regarding a minimum family income and a Brazilian Social Security Institute expert examination.

The BPC is especially important given the approval of Constitutional Amendment n. 95/2016, which limits public expenses in Brazil. The BPC is also a target of the government's pension reform currently being debated by the Congress. These measures, are likely to impact the same low-income families disproportionately bearing the burden of the Zika epidemic and will further strain already overtaxed public services.

Moreover, the petition calls for laboratory tests to be freely available, as diagnostic information is necessary to make well-informed family planning decisions and prevent sexual transmission of the virus. The petition also sets out the need for access to reproductive-related services, including long-term reversible contraceptive methods and the option of termination of pregnancy: each of these steps are necessary to respect the self-determination and mental health of women infected with Zika. These claims collectively aim to address specific state obligations to ensure that women have the material and legal conditions to exercise their reproductive rights and freedom.

Importantly, in its comprehensive scope on sexual and reproductive rights, the petition does not compromise the rights of children, and in particular those with disabilities. To the contrary, by demanding healthcare, treatment services and public welfare benefits for children with CZS and their families, the action before the Court seeks to enable women to decide if and how carry out their pregnancies and offers them hope that they will be able to raise their children with appropriate resources and dignity.

All of the current politically driven efforts to undermine national care and support for the Brazilian population fly in the face not only of its Constitutional obligations but also its international duties. Under international human rights law, Brazil is required to respect and protect women's equality by prioritizing steps that support women's autonomy and self-determination. Brazil also has an obligation to provide the reasonable accommodations, support, training, and services necessary for raising a child with a disability.

[On the economic side](#), the failure to meet these rights represent huge losses. For instance, lost income due to new childcare obligations for children with CZS could alone represent extremely high losses of \$0.5–4.8 USD billion for Latin America.

The STF has a duty to reconcile these national and international standards by reviewing the case and reflecting on the harsh human consequences of the Zika epidemic. This is even more urgent in a time when

welfare rights are under serious threat and the "children of the epidemic" are growing older, potentially aging out of the current payment limit of BPC. The STF's denial to hear the case in a timely and responsive manner can mean the permanent denial of rights to the most affected by the national health emergency. Brazilians and the international community are watching closely: action (or inaction) on the part of the STF is meaningful not just to those directly impacted by Zika, but for all those invested in a government that respects, protects, and fulfills its human rights obligations.