

The Muwaji Law

Muwaji's law requires all members of a tribal community to tell the authorities about any woman in a "situation of risk" whom they "suspect" may be pregnant. The law applies to everyone, including expectant fathers and other family members. All those who fail to report the pregnancy, whether real or merely suspected, commit a crime for which they can be sent to prison for six months.

The "situation of risk" which triggers a duty to report is not defined. It might be said to exist in any community where infanticide was once practised, even if the last reported case was years ago and was not proved. The only safe bet for those who want to keep out of prison will be to report every pregnancy as a matter of course. If this happens, the law may rapidly become unworkable.

The duty is to report the pregnancy to a state or federal authority. The authority will itself commit an offence if it doesn't then take "appropriate measures". The law does not explain what these measures might be, but presumably they will at least require that women are interrogated - perhaps in the last stage of their pregnancy - as to whether or not they intend to kill their babies once they are born.

The law provides that the authority must remove the child if it thinks that the practice of infanticide "persists" in the group to which the mother belongs. It does not matter that the mother or her partner have never themselves practised infanticide or shown any inclination to do so. It will be enough that other members of their community have, or allegedly have. The child can apparently be removed at the moment of birth, without further discussion.

The removal remains "provisional" until attempts to resolve the problem through "dialogue" have been exhausted. It will be entirely for the authorities to decide when this stage is reached, and whether and when to put the child up for adoption.

The mother and father are apparently to have no rights in this process. The new law does not allow them to challenge in court the initial removal of their child, or the decision to offer it for adoption. It gives them no right to be told where their child has been taken, or to be provided with any other information about it, or even to maintain any relationship with it.

These rights are all supposedly guaranteed to parents by Article 9 of the UN Convention on the Rights of the Child, which Brazil ratified more than 20 years ago. Their conspicuous absence from the new law appears to be in breach not only of the Convention but of Brazil's own constitution, which provides that the family is "the foundation of society" and should enjoy "special protection from the State".

A further draft of Muwaji's law approved by a commission in June 2011 does not mention the removal of children. However, the evangelical sector in Brazil wishes to bring the enforced removal of children back into the draft. It is not known which version, if any, will be finally passed into law. It could include the removal provisions that it was originally based around, and to which the analysis above refers.