

## CEDAW and Abortion The Path to Liberalizing Colombia's Abortion Laws

### Introduction

On May 10<sup>th</sup>, 2006, the Constitutional Court of Colombia made a historic decision, overturning the nation's total ban on abortion, and ruling that abortions would now be permitted in the most extreme cases: "when the life of a mother was in danger or the fetus was expected to die or in cases of rape or incest." This unprecedented case was the first to challenge a domestic abortion law using the United Nation's Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

### CEDAW: Background and Overview

CEDAW was adopted in 1979 by the UN General Assembly as the first document of its kind to provide what is often described as an international bill of rights for women. It defines, discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". The Convention also discusses measures that should be taken on both national and international levels to end such discrimination. Colombia signed CEDAW on July 17, 1980, and ratified it on January 19, 1982.

While CEDAW is most commonly cited in cases regarding gender discrimination including marital status and employment discrimination, it had never before been used to ensure the reproductive rights of women regarding abortion. The only other instance where CEDAW was successfully used to protect the reproductive rights of women was seen in South Africa, in September of 2000, where it was used to protect HIV positive women against discrimination.

Although abortion is never explicitly mentioned in CEDAW, the decision to legalize abortion in the extreme cases given by the Constitution's Court was seen as protected under the requirement for equality and the right to reproductive health. As part of the ruling, the Constitutional Court stated that "Sexual and reproductive rights also emerge from the recognition that equality in general, gender equality in particular, and the emancipation of women and girls are essential to society. Protecting sexual and reproductive rights is a direct path to promoting the dignity of all human beings and a step forward in humanity's advancement towards social justice." This statement clearly and effectively enforces between the right to abortion and the rights protected under CEDAW.

### Abortion in South America: Regional Context

This decision brings Colombia in line with many other South American nations, although access to safe, legal abortion is still sporadic throughout the region. For example, Brazil passed a resolution in 2005 to provide access to safe and decriminalized abortion in cases of rape and if the women's life is at risk. However in other nations, such as Venezuela, access is ambiguous. The Venezuelan Code of Medical Ethics of 1971 allows abortions for "therapeutic purposes";

however, the term is not defined and the risk of criminal punishment is still present for both women and their doctors. Similarly, El Salvador's congress has amended legislation which eliminates the possibility of waiving criminal punishment in all cases of abortion, yet still allows for doctors to be prosecuted if a woman dies because of medical complications that could have been avoided if an abortion has been performed. And since September 2006, President Michelle Bachelet of Chile has authorized government distribution of the emergency contraceptives to women age 14 and older; however, abortion is still illegal.

### Abortion in Colombia

Prior to May 10<sup>th</sup> 2006, Colombia had one of the most restrictive abortion laws in the world. Article 122 of the Colombian penal code previously stipulated that abortion was illegal in all circumstances, defining it as a crime against life and personal integrity. As a result, any woman who was found guilty of having an abortion, and any doctor who performed one, could be sentenced to one to three years in prison. Thus even if the woman's life was at risk, the option of terminating the pregnancy did not exist. In response to this, Monica Roa, with Women's Link Worldwide, challenged what they considered to be an unconstitutionally repressive law.

The Colombia Constitutional Court is comprised of nine magistrates, and its duty is to review the constitutionality of laws passed by congress or the executive branch. The law states that any Colombian citizen may present a petition on the constitutionality of a law, which the Court is then obliged to review. The plaintiff is not required to have directly suffered a violation of rights in order to file a complaint, and the court may rule in the abstract.

Using this right to demand that the Court review Colombian abortion law, Monica Roa brought a petition on December 12<sup>th</sup> 2005 before them claiming that the criminalization of abortion a violation of fundamental rights in certain circumstances. The petition argued that outlawing abortion if the woman has been raped, the woman's life is in danger, or if the fetus is incapable of surviving outside of the womb violates the right to equality and non discrimination, the right to life, health and integrity, the right to dignity, reproductive autonomy and the free development of personhood, and the right to equality in the application of international law on abortion.

In an historic decision, on May 10<sup>th</sup> 2006, the Constitutional Court voted 5-3 to de-criminalize abortion under the three circumstances previously mentioned: if the woman's life is in danger, if the pregnancy is the result of sexual assault, or if the fetus has a malformation incompatible with survival outside of the womb. In the strictly Catholic Colombia, the ruling was and continues to be a point of contention, with anti-abortion groups arguing that abortion is a moral issue, not one of public health. There was however also an immense amount of public support for the de-criminalization after the case of Marta Gonzalez, a woman who was unable to received treatment for ovarian cancer due to being refused the right to have an abortion at a public hospital.