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Challenging abortion law in Colombia

An interview with Monica Roa

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Monica Roa is the director of the Gender Justice Program at Women's Link Worldwide and the attorney that filed the case in Colombia

AWID: Could you please explain the current abortion law in Colombia and how this impacts women?

MR: Abortion in Colombia is illegal under every circumstance. Colombia's abortion law stipulates that both the woman who has the abortion and the abortion provider can be sentenced to up to three years in prison. Colombia, Chile and El Salvador are the only three countries in Latin America that prohibit abortion under all circumstances. Only 4% of the world's population lives in countries where abortion is totally banned.

Although women do not go to jail for this reason often, the illegality constitutes a violation of their right to life, equality, integrity and dignity. Women are forced to risk their lives and health by getting unsafe abortions. This is how abortion is the third leading cause of maternal mortality in Colombia, which is unacceptable given that unsafe abortion is the only cause of maternal mortality that can be prevented.

AWID: What exactly have you targeted for change within the law, and what immediate impacts for women would result if the case was successful?

MR: The complaint petitions the review of the constitutionality of Article 122 of the

Colombian penal code, which criminalizes abortion under all circumstances. It sets forth that the criminalization of abortion, when the woman's life or health is in danger, the pregnancy is the result of rape, and/or when the fetus has impairments incompatible with life outside the womb, violates the following rights:

1. The right to equality and to non-discrimination (political constitution, art. 13), by criminalizing a medical practice that only women need and which, in certain cases, is necessary to save their lives. The result of this discrimination is that, for example, women lack control over their own bodies, including their reproductive health. The criminalization of abortion stigmatizes a medical procedure that all women have the right to obtain. This discrimination disproportionately impacts young, poor and rural women.
2. The right to life, health and integrity (political constitution, art. 11, 12, 43 and 49), by failing to recognize the effects the total criminalization of abortion has on the life, health and integrity of women.
3. The right to dignity, reproductive autonomy and the free development of personhood (political constitution, preamble and art. 1, 16 and 42), by obligating women to carry unwanted pregnancies to term - in the case of rape from the beginning of the pregnancy, or in other cases, when serious fetal impairments, incompatible with life outside the womb, are found to exist - including when it goes against the woman's best interest for her physical, psychological or emotional well-being. These rights are also violated in that women are treated as "reproductive machines," ignoring the right to determine their own lives.

A favorable decision from the court would immediately give all women under these circumstances the right to have a legal and safe abortion provided by the public health system. At the same time, our objective is to take the debate around abortion to another level. We want Colombian society to discuss the issue as a matter of gender equality, social justice, and public health. The moral and religious positions should only be relevant as personal choices and not as public policy. Hopefully having this kind of debate will derive in a broader liberalization in the future.

AWID: What prompted you to challenge the law in the constitutional court at this time, and not before? Has there been a significant change in the political/social climate regarding abortion?

MR: "The likelihood of passing a new abortion law is higher now than at any other point in Colombian history," says Roa. "Legal precedent, international law, and societal attitudes towards abortion all appear to be working in favor of protecting the lives of Colombian women."

In the past 10 years two relevant legal developments have occurred that make this challenge viable and irrefutable. On one hand the Colombian constitutional court has recognized the legal value of international human rights arguments and has used them to solve constitutional challenges in other areas. On the other hand the international human rights arguments that frame illegal abortion as a violation of women's rights have become clearer and stronger. I am only putting those two together.

From the public opinion point of view, I am gladly surprised by the response we have received so far. We have received a lot of support, the media coverage has all been favorable, and in many cases I have been accused of being too conservative. I hope this facilitates the decision making process to the court.

Several additional factors offer reason to believe that the challenge could be positively acted upon by Colombia's highest court, which needs a simple majority (5 out of 9 votes) to overturn the current provisions. The court composition includes the first-ever female magistrate and other justices who have in recent years issued statements against the criminalization of abortion in judicial arguments. Colombian society also appears to be sympathetic to a liberalization of the abortion law. A 2003 survey of Colombian men and women who are self-identified Catholics reveals that they condone abortion when: the

woman's life is in danger (73%), the woman's health is at risk (65%), in cases of serious physical or mental fetal impairment (61%), and/or the pregnancy is the result of rape (52%) (source: Catholics for the right to decide).

AWID: What role has the women's movement in Colombia played in the development of a favorable climate for political change on the issue?

MR: In Colombia the women's movement has been working on the issue of abortion for a long time. Several attempts at passing law reforms have failed, but the debate has been ongoing and has been "maturing" with time. I am only building up on these fruitful advocacy efforts. The role of the international women's movement has also been key since we owe the development of the international human rights standards to them.

From a strategic point of view, within the context of the constitutional challenge, the women's movement plays the role of standing by the principle of complete liberalization. They remind society that this is only a first step, that it is not enough, and by the way they make my arguments sound more moderate (which facilitates the support of a group that does not agree with total liberalization or total criminalization).

AWID: If successful, how do you think the result could resonate within the region? Could it affect other countries with similar restrictive laws on abortion like Chile and El Salvador?

MR: I am positive it will. There is momentum in the region about the liberalization of anti-abortion laws. There are projects in many countries going on that have good chances of success. This momentum will be more visible as the projects advance, and it will be undeniable when successes start coming. All these will give advocates from other countries like the ones you mention, tools and inspiration to continue the struggle. This is a global movement that has no frontiers. It is time that the rights provisions written in international human rights treaties come to life and start having a real impact on women's lives. That is the judge's role and women's rights activists must give them the chance to do so by bringing challenges to the courts.

For more information on the case, please visit the Women's Link Worldwide website: <http://www.womenslinkworldwide.org>