

## COLOMBIA

Article 13 of the Constitution of Colombia, adopted in 1991, guarantees that “all persons are born free and equal before the law, shall be given equal protection and treatment by the authorities, and shall enjoy the same rights, freedoms and opportunities without any discrimination on grounds of sex, race, national or family origin, language, religion, political opinion or philosophy.” Article 43 of the Colombian Constitution provides that “women and men have equal rights and opportunities. Women may not be subjected to any kind of discrimination.” Article 93 of the Constitution also requires that “the rights and duties set forth in this Constitution shall be interpreted in accordance with the international human rights treaties ratified by Colombia.” Article 3 and Article 26 of the Covenant guarantee equality under the law and equal protection of the law to men and women. Equality Now welcomes the steps that have been taken to promote gender equality, as set forth in Colombia’s Constitution and various laws which are described in the country’s fourth report to the Committee. However, Equality Now has concerns with regard to implementation in Colombia of these provisions and wishes to highlight several civil and criminal laws which remain in force despite their discriminatory impact upon women. Equality Now has consulted a number of non-governmental organizations (NGOs) in Colombia, including Servicio Colombiano de Comunicación, Profamilia and Consejo Nacional de Mujeres de Colombia. Additionally, Equality Now sought information from the Dirección Nacional de Equidad para las Mujeres, the main government agency charged with protecting and promoting women’s rights in Colombia. Based on this extensive information, which is appended, Equality Now wishes to draw the attention of the Committee particularly to the discrimination faced by women in employment and in marriage, the discriminatory impact on women of the criminal abortion law, gaps in the laws and implementation of the laws regarding domestic violence and rape, and concerns regarding the conditions of imprisonment for women in Colombia.

### Discrimination in Employment

Decree No. 1398 of 1990, which expands upon Law No. 51 of 1981, dictates that women shall not face discrimination in employment. Article 25 of the Colombian Constitution protects the right to employment, while Article 26 ensures the freedom to choose professions. However in paragraph 143 of its report, the government notes that women of all ages and males under 18 years of age are prohibited from working underground in mining. The report makes no mention of other discriminatory work codes, including those which have been clearly pinpointed by the Dirección Nacional para la Equidad de las Mujeres. Regardless of age women cannot work at night in any industrial business, unless the business is owned and operated solely by members of her family. Women and minors are not allowed to work in paint factories where they might encounter any materials containing pigment or other dangerous chemicals. Women and minors are additionally prohibited from participating in any type of work classified as dangerous, unhealthy, or which requires great strength. Presumably, these laws are intended to benefit women. However, they are discriminatory in nature and serve to exclude women from gainful employment opportunities. Although mining and similar professions are often characterized by rigorous and difficult conditions, such work environments should be regulated to ensure the safety, equal opportunity, and equal protection of both men and women. It should also be noted

that according to the Servicio Colombiano de Comunicación, despite a narrowing of the gap, there remains a differential of 30% between the salaries of men and women.

Moreover, Equality Now notes that there is no legal recourse for women who are subjected to sexual harassment under current Colombian law. This impunity further underscores the precarious position of women in the workplace, and is a clear violation of the spirit of Law No. 51, Article 25 of the Colombian Constitution, and Article 26 of the Covenant.

### Discriminatory Marriage Laws

Equality Now has several concerns relating to the status of married women under Colombian law. Article 140 of Colombia's civil code provides for the marriage of minors, with parental consent, in cases where the male is at least 14 years old and the female is at least 12 years old. Articles 5 and 6 of Law 28 of 1932 establish that a married woman below the age of 18 is denied legal self-representation and is instead legally represented by her husband. According to Article 66 of Decree 2820 of 1974, only those deemed incapable are denied the right to self-representation. Equality Now submits that in accordance with the equality provisions of the Covenant, the minimum age of marriage should be the same for men and women, as should the minimum age for legal self-representation. Such provisions in Colombian law implicitly makes marriage an act of property rights and constitutes a failure of the government in its obligation to afford women equal protection before the law. Additionally, Equality Now proposes that, as a twelve year old girl is still a minor and is therefore due the special protection of the State, the minimum age for marriage should be reconsidered by Colombia.

### The Criminalization of Abortion

Abortion is a criminal offence in Colombia, punishable by 1 to 3 years imprisonment, for both the woman seeking the abortion and the practitioner who performs it. There are no exceptions, even in instances of rape and in situations where it is the only means to save the life of the mother or to avoid serious and permanent damage to her health. Equality Now submits that forced maternity constitutes cruel, inhuman and degrading treatment, in violation of Article 7 of the Covenant. This is particularly true in cases of pregnancy resulting from rape and when it is a threat to a woman's life.

In January, Colombia's Constitutional Court voted to uphold the imprisonment of women for abortion as a criminal offence, even in cases of rape and incest. Although three of the judges dissented, citing respect for the dignity of the women, the majority decision held that "the right to life prevails over the dignity of women." (Annex 1, pg. 14). Equality Now notes that the criminalization of abortion leads to higher rates of maternal mortality. As reported by both the Servicio Colombiano de Comunicación and Profamilia, abortion is the second leading cause of maternal mortality in Colombia. Even according to the Colombian Ministry of Health, abortion was the fourth leading cause of women's mortality, and the fifth leading cause of mortality among women in the country. The right to life of these women, protected under Article 6 of the Covenant, is threatened by the criminalization of abortion.

Additionally, the criminalization of abortion has a discriminatory impact upon impoverished women. Women of higher socio-economic classes are generally able to secure a safe, albeit illegal, abortion in Colombia. Women of lower income, who are forced to seek dangerous backroom abortions, are at a higher risk of pregnancy resulting from minimal access to contraceptives and sex education. The system of Social Security established congressionally through Law 100 in 1993 commits the government to the creation of special informational and educational programs on reproductive health and family planning for women in lesser developed areas of Colombia. However, the Servicio Colombiano de Comunicación reports that these programs have been suspended for 1997.

### Domestic Violence

Article 42 of Colombia's Constitution declares domestic violence destructive and orders its penalization. Law 294 of 1996 expands upon this and provides for programs to prevent and eradicate domestic violence. It calls upon authorities to offer the victim of domestic violence all necessary assistance to prevent the repetition of such abuses. The law incorporates the concept of psychological mistreatment, and contains a number of other steps towards improving the legal response to domestic violence. While the law represents a positive development in the struggle to end domestic violence in Colombia, its effects in practice appear minimal. According to the Servicio Colombiano de Comunicación, domestic violence and its corollary effects are the primary causes of death in women of 15 to 44 years of age. Profamilia observes that the state has not followed through on its commitment to eradicate domestic violence, citing the lack of government sponsored shelters for battered women, and the absence of free or reduced-cost legal services. In accordance with the right to equal protection of the law set forth in Article 3 of the Covenant, the government of Colombia should take effective measures to prevent domestic violence and to ensure prosecution of those who commit domestic violence.

### Rape

Equality Now has several concerns regarding rape law and the legal procedures governing the prosecution of rape in Colombia. Under Colombian law, rape is narrowly defined excluding sexual violence which does not involve penetration. Although the penalties for rape have recently been increased, the penalty for rape depends on whether it takes place within marriage -- one to three years' imprisonment for rape outside marriage and a lesser six months to two years' imprisonment for rape within marriage. This differentiation, based on marital status, denotes lesser rights for married women, who are entitled to equal protection of the law. Moreover, in accordance with Article 25 of Law 294 of 1996, prosecution in cases of conjugal rape can only occur at the request of the rape survivor. There are apparently no educational programs for the prevention of rape, nor any services specifically for the support of rape survivors.

### Women in Prison

Equality Now is concerned about the situation facing women who are serving sentences in Colombia's prisons, particularly women who are pregnant or nursing children. The Servicio

Colombiano de Comunicación and Profamilia note that of these women, around 40% do not receive prenatal care, while 86.5% receive no care at all in preparation for childbirth. 65% of these prisons have deficient nutritional programs for the needs of mothers and young children. Equality Now additionally notes that nine departments of Colombia currently contain no women's prisons. Instead, women are locked up in small cells with men. Conjugal visitations, infant care, gynecological care, and opportunities to work and study are summarily denied. In Arauca, women are not permitted outdoor recreation. The case of Ana Milena Campo Ramos, enumerated upon in the appended *acción de tutela* (Annex 1, pg.78), illustrates the dire conditions encountered by pregnant women in Colombia's prisons. Once imprisoned, Ana Milena was denied any medical attention until practically the moment of birth. Once her daughter was born, they were both returned to prison where all health care continued to be inaccessible to them. Equality Now observes that Ana Milena's situation is common within Colombia, despite the fact that Article 49 of the nation's Constitution calls for the state to meet all needs for the maintenance of the health of those who are imprisoned in the country. The treatment of women prisoners in Colombia appears to be incompatible with Article 10 of the Covenant, which requires that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

## **INDEX OF ANNEXES**

### **Annex 1**

Situación de los derechos humanos de la mujer en Colombia, prepared by Elena Alvarez and Johanna Barrero of the Servicio Colombiano de Comunicación.

- Analyzes the situation of Colombian women, focusing on Colombia's Constitutional provisions, violence within the family, rape, prostitution, trafficking of women, abortion, women in prison, migration of women because of political violence, discrimination in the workplace, and the participation of women in the political and public spheres.
- Annexes include copies of Law 51 of 1981; Law 294 of 1996; Law 311 of 1996; the Constitution of Colombia (1991); the Colombian Penal Code; Law 248 of 1995; excerpts from the Colombian newspaper, *El Tiempo*, on the Constitutional Court's ruling on abortion; and Sentencia No. T-437, which relates to the case of Ana Milena Campo Ramos.

### **Annex 2**

Submission prepared by Adriana de la Espriella of Profamilia.

- Examines women's human rights in Colombia with respect to Articles 6, 7, 10, and 25 of the Covenant, focusing specifically on the issues of abortion, domestic violence, prisoner's right to fair treatment, and the right to participate in public life.

### **Annex 3**

La condición de la mujer en las Americas: Colombia, prepared by the Dirección Nacional de Equidad para Las Mujeres.

- Summarizes the situation of women's rights in Colombia, specifically those codified within the obligations of the Inter-American system.

- Subjects covered include women's concerns with respect to health care, abortion, marriage, discrimination in the workplace, domestic violence, and education.

**Annex 4**

Submission prepared by Cecilia C. de Rios and Inés Barrera Estevez of the Consejo Nacional de Mujeres de Colombia.

- Addresses the political and social climate in Colombia with regard to women's human rights.