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Dominican Republic: Constitutional and Penal reforms should enhance women's rights, not limit them

Constitutional and legal reforms now underway in the Dominican Republic could lead to violations of women's human rights, Amnesty International warned today. The measures may be used as justification for criminalising abortion in all circumstances, including where the life or health of the woman is at risk or where the pregnancy is the result of rape.

The Congress is considering a new constitutional provision that includes a reference to the inviolability of the right to life "from conception to death". The constitutional amendment is widely thought to have been introduced to bolster efforts to criminalize and prohibit abortion in all cases. The Dominican Congress is also considering an amendment to the penal code which would increase the penalties for persons involved in carrying out an abortion and explicitly providing for the imprisonment of women pregnant as a result of rape, incest or involuntary assisted fertilization who seek or cause their own termination of pregnancy.

International human rights law and the Constitution as it is currently in force already protect prenatal life. **Amnesty International calls on the Dominican Republic to give effect to this obligation in a manner compatible with the rights of women, including their rights to life and health.** This may include measures to prevent miscarriage and stillbirth, the provision of antenatal, emergency obstetric and post-natal care and skilled attendance at birth. Pregnancy cannot be used as an occasion for suspending the concerned woman's human rights. The protection of the foetus does not invalidate women's human rights claims.

In order to give effect to its obligations under international human rights law, Amnesty International calls on the Dominican Republic authorities to reform the Penal Code to ensure that women and girls are not subject to criminal sanctions for seeking or obtaining an abortion under any circumstances. **In particular, Amnesty International calls on the Dominican Congress to eliminate the proposed Article 239 which targets rape, incest and involuntary fertilisation victims for criminal punishment for abortion.** The reform must also ensure that medical practitioners are not criminalised solely for providing abortion services that are safe. The Dominican Government must take all necessary measures to ensure that safe and legal abortion services are accessible without unreasonable restrictions to all girls and women who require them in cases of pregnancy resulting from rape or incest and in circumstances where continuation of pregnancy would put the health or life of the woman or girl at risk.

Background

Abortion is criminalised under the current national legislation (Penal Code). In August 2006, the executive branch decided to develop a new penal code and tasked the national congress with revising and correcting "incongruities" in the text. After one year a bicameral commission was formed to evaluate the penal code revisions and in July and August 2007 public hearings were held for arguments on decriminalizing abortion. This review process is still ongoing.

Article 8 of the Constitution as it is currently in force only mentions the "inviolability of life". The

current constitutional reform proposal was introduced to Congress by the President of the Dominican Republic, Mr. Leonel Fernandez, in October 2008. The proposal is currently being examined by the Congress sitting in its capacity of “parliamentary assembly for the revision of the constitution” (*Asamblea Revisora*). The assembly votes article by article in first reading. The text will be then subject to a second reading, in which any changes will be voted.

The proposed Article 30 of the constitutional reform has provoked concerns among women organizations, the medical profession and other civil society organizations. In particular, the Dominican Society of Obstetrics and Gynaecologists expressed its concerns that the impact of the article could “be catastrophic on maternal mortality”, as a consequence of the restrictions that the interpretation of the article would impose to the medical sector.

Article 4.1 of the American Convention on Human Rights uses language similar to that of the proposed constitutional amendment, providing that “[e]very person has the right to have his life respected. This right shall be protected by law, and, in general, from the moment of conception.” According to the Inter-American Commission on Human Rights, state parties to the Convention that do permit abortion in law and facilitate access in practice are not in violation of the Convention. The President of the Inter-American Court of Human Rights has commented: “In certain cases, such as when continuing the pregnancy would endanger the life of the woman, or when the pregnancy is as a result of rape, the criminalization of abortion would cause a violation of the obligation of the state to protect the life of the woman”.

Amnesty International regrets to note that the proposed reform of Article 30 does not follow the human rights-affirmative approach taken by the Constitutional Court of Colombia in its 2006 judgment invalidating the complete ban of abortion, an approach which distinguished the right to life of the woman from the state's duty to protect prenatal life in international human rights and constitutional law.