**CONTRIBUTION TO THE DEBATE ON GENERAL COMMENT NO. 36 ON ARTICLE 6 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, ON THE RIGHT TO LIFE**

**Marcosur Feminist Articulation - AFM**

**Afro-Latin American, Afro-Caribbean and Diaspora Women's Network**

**Caribbean Youth Network for Sexual and Reproductive Health and Rights (RedLac)**

**Latin American and Caribbean Network of Catholics for the Right to Decide**

**The RedTraSex LAC (Latin American and Caribbean Female Sex Workers' Network)**

**Consortium for Parliamentary Dialogue and Equity**

***October 3, 2017***

The organizations signing this letter have been monitoring compliance with human rights agendas, in particular the sexual and reproductive health and rights agenda, at the global and regional level. The following contribution seeks to provide insight into a better and more consistent interpretation of the right to life, particularly in regard to the relationship between life and health, freedom, and other rights of women, in matters that involve their reproductive life. The document is organized as follows: First, there is a brief overview of each network, followed by the aforementioned contribution, which is structured around four core subjects: (i) The use of the State’s punitive power and abortion, (ii) The right to life as an interdependent right; (iii) Women’s right to life and reproductive life; and (iv) The value of women's lives.

**The Marcosur Feminist Articulation (AFM)** is a Latin American feminist political thought and action group, created in 2000 and made up of feminist organizations, coalitions, networks and feminist activist whose main objective is to contribute to generate the necessary changes for the expansion and full exercise of women’s rights in Latin America and the Caribbean. It is present in Argentina, Bolivia, Brazil, Colombia, Chile, Paraguay, Peru, Dominican Republic and Uruguay. **The Afro-Latin American, Afro-Caribbean and Diaspora Women's Network** is a development space for the articulation, participation, and political and social impact of Afro-descendant women in Latin America and the Caribbean, in the fight against racism, racial discrimination, sexism and poverty. **The** **Caribbean Youth Network for Sexual and Reproductive Health and Rights (RedLac)** is a regional network of autonomous and feminist youth organizations and groups who work for the defense and promotion of the sexual rights of young people in Latin America and the Caribbean. It is currently made up of organizations and young men and women from 6 countries of the region -Ecuador, El Salvador, Colombia, Nicaragua, Guatemala and Mexico-, and has working partnerships with youth in Bolivia, Costa Rica and Honduras. **The Latin American and Caribbean Network of Catholics for the Right to Decide** is an autonomous movement of Catholic people, committed to the pursuit of social justice and the change of cultural and religious patterns in societies. It promotes women’s rights, especially those related to sexuality and human reproduction, and is present in 11 countries in the region and in Spain. The **RedTraSex LAC** (Latin American and Caribbean Female Sex Workers' Network) is a grassroots organization that since 1997 has the main objective of defending the human rights of female sex workers, and is present in 14 countries. It currently integrates feminist and women's mechanisms and coalitions to end violence against sex workers. **The Consortium for Parliamentary Dialogue and Equity** is a Mexican organization that works at the national and regional levels to make a feminist impact in the women’s human rights debate and agenda.

We would like to take this opportunity to highlight the work of the Human Rights Committee in the production of the draft proposal of General Comment No. 36 as it addresses in a comprehensive and solid way the abortion debate. In particular, paragraph 9 points in the right direction and is certainly the one that truly recognizes and treats women as full citizens, is concerned about their safety, and seeks to ensure the protection of a significant set of rights that can put at risk the protection of the right to life. The prohibitions it includes on the use of criminal norms, as well as the considerations it makes in relation to different forms of suffering and threat to women’s life or health deriving from such norms, will be an unquestionable contribution to the protection of women’s right to life. Our contribution is aimed at reinforcing this perspective of the Comment draft.

**The use of the State’s punitive power and abortion**

Reproductive health is one of the few health fields, if not the only one, where the punitive power of the State is expressed in several ways, and in all of them, it carries risks to the life and health of girls, adolescents and women in general. The notion of punitive power referred to in this document is shared by authors such as Douglas Husak (2008) and even by the Inter-American Court of Human Rights, who consider that different restrictive norms are punitive and not only those that use criminal law: “…administrative sanctions, as well as penal sanctions, constitute an expression of the State’s punitive power and that, on occasions, the nature of the former is similar to that of the latter. Both, the former and the latter, imply reduction, deprivation or alteration of the rights of individuals, as a consequence of unlawful conduct.” (INTER-AMERICAN COURT OF HUMAN RIGHTS. Baena Ricardo et al. V. Panama Judgment of February 2, 2001. Merits, Reparations and Costs).

In this context, the persistence of abortion as a crime in almost the entire world including all countries in Latin America, where crime coexists with varying permission regimes that allow women to access legal abortion either by terms or according to indications provided there is compliance with certain requirements, remains an unjust expression of the use of the States’ punitive power. Except in those cases where abortion is practiced against the woman’s will, which in effect constitutes a crime.

The result is that unsafe abortion is persistent and widespread in the region, and continues to contribute not only to maternal mortality but is also a threat to their physical and mental health, as well as a violation of other rights such as freedom from torture and cruel or inhuman treatment, health or freedom. In addition, abortion continues to be associated with stigma, affecting both women who seek abortion and health service providers. In relation to the latter, the consequence of stigma is that few professionals want to provide this basic health service, and those who do it often face disproportionate work overloads and even threats to their health or that of their families (Medical Group for the Right to Decide, 2016. Access at: https://globaldoctorsforchoice.org/en/recursos/gdc-colombia-publicaciones/).

In this sense, any regime that limits the possibility of accessing a legal and safe abortion, prevents what the law promises to defend: health, freedom and life of women. Finally, “punitive measures in regard to abortion are informed by the value given to women’s life and therefore the existence of limitations to cover health needs associated with the practice of a safe abortion confirms the undervaluation or the lesser value associated with the lives of women seeking to make their own decisions regarding reproduction” (González, 2017, Draft doctoral thesis).

**The right to life as an interdependent right**

“The right to health must be interpreted as interdependent with the right to life, in those cases in which guaranteeing the continuity of life itself in conditions of dignity depends on the protection of the former. All interpretations of the right to life involve positive obligations on the part of the States to preserve it and provide decent living conditions.

This notion exceeds the biological meaning of life and includes elements of wellbeing and also subjective elements related to an individual life project. The right to a dignified life must be understood not only as the right to the preservation of life in its biological meaning, but as the right to (i) the autonomy or possibility of building the “life project” and determining its characteristics (living as one wishes), (ii) certain concrete material conditions of existence (living well), (iii) the intangibility of non-property assets, physical and moral integrity (living without humiliation).

The concept of life project emphasizes the importance of a person’s expectations regarding their own life according to their conditions and context. The background is, of course, self-determination of how each person chooses to live their life.

The life project can be affected by the continuation of a pregnancy that is incompatible with the individual design of such project, and also affects women’s health (in addition to causing different types of harm, it affects women's expectations about their future wellbeing, and with it their life project).” (González, Durán. *Causal Salud, Interrupcion Legal del Embarazo, Ética y Derechos Humanos. La Mesa por la Vida y la Salud de las Mujeres.* Available at: [http://www.despenalizacion.org.ar/pdf/publicaciones/causal -salud.pdf](http://www.despenalizacion.org.ar/pdf/publicaciones/causal%20-salud.pdf))

**Women’s right to life and reproductive life**

The protection of life involves much more than the prohibition of a deliberate and direct threat against it, and this fact is clear when it comes to women’s lives and particularly their reproductive lives. The experience of pregnancy is unique and definitive in the life of a woman because it alters her life project forever and at the same time it may involve risks to her physical or mental health, making the protection of women's lives also dependent on the protection of their freedom (to choose a life project) as well as the protection of their health and bodily integrity. That is, a dignified life.

In relation to the life project, several authors (Ferrajoli 2002, Pitch 2003, Laurenzo, 2012) “recognize that abortion is a limiting case in the field of law because it deals with *a relationship of special nature of which there is no parallel in any other social behavior* (Laurenzo, 2012, p, 103), making the persistence of restrictions on abortion inexplicable and unjustifiable. By virtue of this relationship it seems logical to give women moral responsibility and competence to decide on gestation because it is a matter of women's moral autonomy insofar as a person is a born being and in any case “destined by the mother to be born” (Ferrajoli, 2002, p.6).

If we recognize that abortion addresses like no other a special type of problem, and that none such as female freedom is so directly or indirectly linked with the body and reproduction, “such freedom is the body's immunity from restrictions” (Pitch, 2003).

As Pitch says, the right that punishes it (abortion) puts the mother in conflict with the fetus, instead of reclaiming that “the event of conception and even its eventual desire does not imply a project and even less a desire for motherhood” (Pitch, p.83). In all these cases the heteronomy of norms on abortion becomes a detrimental element for women, who not only see their health and life exposed -which even in a material sense depends on their being able to show suffering-, but the inability to decide on their life project hampers a wide set of freedoms, the most fundamental of which relates to the ownership of one’s own body, *habeas corpus* (Pitch 2003, Ferrajoli en Pitch)” (González Vélez, 2017. Draft doctoral thesis).

**The Value of Women's Lives**

“Any restriction on reproductive matters is informed by the value that is given to life in at least three ways: the greater value given to prenatal biological life by subordinating women’s lives to it; by the differential value given to women’s biological and biographical life (which often undervalues ​​the life project); and by the lesser value given to the lives of certain women as [the norms] create, reproduce and sustain inequalities among women” (González Vélez, 2017. Draft doctoral thesis).

In this context, the networks that signed this contribution shares the interpretation of the right to life that encompasses its integral protection, and recognizes the centrality of reproduction in women’s lives so that the protection of the former presupposes a free, unrestricted exercise of reproductive freedom, without risks to their safety and without disproportionate burdens of physical or mental suffering.[[1]](#footnote-1) This protection also implies a full recognition of women as citizens -and therefore of their lives during the reproductive stage- as well as the obligation to prevent inequalities resulting from abortion-restricting norms. This interpretation is consistent with the Committee's statement in paragraph 9, in which it questions the existence of legal prohibitions on abortion by opening the understanding of the right to life to one which in fact takes women's lives seriously.

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**Sources**

INTER-AMERICAN COURT OF HUMAN RIGHTS. **Case Baena Ricardo el at V. Panama**. Judgment of February 2, 2001. (Merits, Reparations and Costs).

LAURENZO COPELLO PATRICIA. **Dogmática y política criminal del aborto.** Colección delitos 98. Tirant lo Blanch. Valencia. 2012.

FERRAJOLI, L. **La cuestión del embrión entre derecho y moral**. Biblioteca Jurídica Virtual del Instituto de Investigaciones Jurídicas de la UNAM. Available at: [www.juridicas.unam.mx](http://www.juridicas.unam.mx) (article originally published in the journal Judges for democracy, information and debate. Madrid. N. 44, July 2002.

GONZALEZ-VELEZ, Ana Cristina. **Cuando la propia norma es la violación: *Vidas ilegítimas y cuerpos inseguros*. Las normas restrictivas sobre aborto en América Latina.** Doctoral thesis (Fundación Fiocruz). Draft, September 2017.

HUSAK, Douglas. **Overcriminalization. The limits of criminal law**. Oxford: Oxford University Press, 2008

MADRAZO Alejandro**. Narratives of Prenatal Personhood in Abortion Law. *Abortion Law in Transnational Perspective. Cases and Controversies.*** Edited by Rebecca Cook, Joanna Erdman, Bernard Dickens. University of Pennsylvania Press, Philadelphia. Chapter 15. 327-346. 2016.

PITCH, Tamar. **Un derecho para dos. La construcción jurídica de género, sexo y sexualidad.** Editorial Trotta. Madrid, 2003. (copyright, Milan 1998). Preface Luigi Ferrajoli, p. 11. Chapter 2. Aborto, p. 75-121.

1. The imperative need to avoid risks to women's safety and therefore their lives, as well as the interest in effectively recognizing them as full citizens, led to the elimination of abortion from the penal code in Canada in 1988 (*Morgentaler, Smoling and Scott v The Queen).* [↑](#footnote-ref-1)