

MAINUMBY'S CASE AND INTERNATIONAL PRESSURE FOR DECRIMINALIZING ABORTION IN PARAGUAY

By Erman Tejeda Barbarito[1]

BRIEF REVIEW OF PARAGUAY

The history of Paraguay has been characterized by conflict and isolation in relation to its neighboring countries. In more than one instance, Paraguayan people had to move on without their neighbor's cooperation, which has contributed to developing a strong culture and a profound national identity.

Paraguay has been suffering from long wars, poverty and poor education. Under these circumstances, it is no surprise that one of the major problems in Paraguay are incest and child sexual abuse by males closest to the families (stepfathers, neighbors, etc.) In this kind of society, given the lack of education, people start to have an active sexual life in their early teens. The Paraguayan Health Ministry confirmed that this country is the second of South America with the highest rate of teenage pregnancy[2]. This situation is not new, which does not justify the lack of attention to this problem.

Internationally, the World Health Organization states that to accomplish point 5-B of the Millennium Development Goals[3] (universal access to reproductive health) it's imperative to all international organizations: "to deal with the health impact of unsafe abortion as a major public health concern"[4]. Thus, as will be shown in this report, international organizations demand legal abortion as an objective to be fulfilled.

LEGAL BASIS

Paraguay, as most of Latin American countries, recognizes the right to life from conception. Hence, its National Constitution establishes in article 4 that: "The right to life is inherent to the human person. Its protection is guaranteed, in general, from [its] conception." [5] In the same way, in chapter four about family rights, article 54 claims: "In case of conflict, the rights prevailing are the children's rights." [6] In 1969, through the American Convention of Human Rights (Pact of San Jose), and according to article 1, the Paraguayan Government committed to respect every person's right. This same Convention establishes that "For the purposes of this Convention, 'person' means every human being." [7] To protect the right to life is an obligation to all country members of this convention, as it is stated in art 4.1: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life." [8]

To continue, article 137 of National Constitution of Paraguay establishes a hierarchy of Paraguayan positive law: 1) National Constitution, 2) treaties, conventions and international agreements approved and ratified, 3) laws dictated by the Congress and, 4) other juridical provisions of inferior hierarchy.

Last, Paraguayan law defines the child as a person under the age of eighteen years old; and being a conceived human being, its right to life is, therefore, protected. The Paraguayan government is thus obligated to respect and guarantee this right.

FACTS

On April 21st 2015, the case of a ten-years-old-girl's pregnancy became public- she was given the pseudonym "Mainumby," which means butterfly in Guarani language, as she was a minor (child) and her name cannot be published-, and Amnesty International began a media-campaign to make the case well-known.

The 10-years-old girl was victim of sexual abuse of her step-father. Her mother, single-mother of three children, worked as a cook. In 2014, the mother presented charges against her husband for sexual abuse, which started a criminal inquiry by the Public Ministry to determine the truth of this accusation. Finally, that inquiry ended in a dismissal of the cause[9].

It was the beginning of April in 2015 when the mother took her little girl to a local hospital, because of an abnormal growth in her belly. After a wrong diagnosis, finally the 21 weeks pregnancy of the child was discovered.

Immediately, an arrest warrant for her stepfather, principal suspect, was executed. Currently, the man is kept in preventive detention and is being accused of child abuse. The mother of the child was helped with psychological and legal support, even though she has restricted freedom to facilitate the investigation of the case; and she was also accused of complicity and negligent child caring.

Amnesty International and Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM) took the matter in their own hands. They offered their help and legal consulting to the girl's mother, in order to request for pregnancy interruption of her daughter[10]. They also took the opportunity to allocate to themselves the defense of the mother, though she already had an advocate.

On May 11th, a group of experts (independently from UN), acting by their own means and without any enquiry, made declarations accusing the Paraguayan government of putting Mainumby's life in danger and infringing human rights. Facing these accusations, the Human Rights office of the chancellery issued a press release[11] to show the measures that have been taken in this case and the care that have been given to the minor.

This little girl's situation was used by different organizations that promote decriminalization of abortion in every country. And that is how Amnesty International initiated a massive campaign, manipulating the case to gather as many signatures as it could, to get the authorization of the Paraguayan government to allow the girl the performance of an abortion. The government was being pressured due to wrong assumption about the girl's imminent danger of death.

As consequence of this case, on May 19th the vice president of the National Commission for the Reform of the Penal Code, convened a public audience[12] in the bicameral chamber of the legislature to know the opinion of the civil society and NGOs about Art. 109 of the Penal Code, which refers to the crime of abortion. Representatives of both chambers were present, but right-to-life defenders were superior in number. Besides, their arguments- legal, anthropological, and from international law- were powerful enough to make clear that the real problem in this and similar cases is poverty, lack of education, and lack of severe punishment to abusers. Abortion was not the solution to any of these problems, but a new trauma in the victim's life, and it did not punish the real guilty.

On May, 21st a new press release[13] issued by the Paraguayan government. The government invited all national and international entities to have access to Mainumby's case information.

Taking this invitation up, International Human Rights Group representatives visited Paraguay and participated in several meetings where they could test that Mainumby and her unborn baby were being taken care of correctly. Thus, they stated, "This girl from Paraguay is in an excellent state of physical, psychic, and environmental conditions. She is being attended to professionally by those who are in charge of her." [14]

All this time, Mainumby was kept and well taken care of in *Hogar Reina Sofia* of the Red Cross, by Dr. Dolores Castellano. On August 13th at 8, 30 a.m. a girl was born, safe and sound, with no complication[15] at all. Mainumby's mother was given an alternative means of imprisonment to allow her to stay with her little girl.

CONCLUSION

The objective of CLADEM, the Committee, and other international organizations mentioned before has been taking advantage of this particular case to create case law on abortion so that criminal law can be changed or modified. Partly, this has to do with the fact that having ended 2015, the Millennium Development Goals have not been achieved yet.

The pressure to fulfill these goals will continue, as Millennium Goals have been replaced by Sustainable Development Goals. And there are now fifteen more years to compel countries like Paraguay to modify even their Magna Carta; and become another country in which performing an abortion is perfectly legal.

This case is still being used by different organizations that promote “sexual and reproductive rights.” The press announced^[16] that Mainumby’s mother, for example, was at Washington D.C. by the end of October last year to expose her case before the Inter American Commission of Human Rights and discuss about the Paraguayan legislation on abortion.

Paraguay is one of the few countries that stands for the right to life from conception until natural death in its constitution. But the government’s neglect of acting against the real problem in child pregnancy can be its worst enemy in facing international pressure in this field.

[1] Lawyer by National University of Rosario. Argentina. Alliance Defending Freedom – Areté Delegate 2015.

[2] Declaration of the Health Ministry available at: <http://www.mspbs.gov.py/v3/paraguay-segundo-pais-del-cono-sur-con-mas-embarazos-adolescentes/>

[3] See Target 5.B. Available at: <http://www.un.org/millenniumgoals/maternal.shtml>

[4] Statement available at: http://www.who.int/reproductivehealth/topics/unsafe_abortion/hrpwork/en/

[5] See complete Article at: https://www.constituteproject.org/constitution/Paraguay_2011.pdf?lang=en

[6] idem

[7] See Art. 1.2 of the American Convention available

at: http://www.oas.org/dil/treaties_32_American_Convention_on_Human_Rights.htm

[8] idem

[9] See Item 4. Press 2 Ministry of Foreign Affairs of Paraguay, available

at: <http://www.mre.gov.py/v2/Noticia/2802/comunicado-de-prensa-n-2>

[10] See the request. Page 1, paragraph 1. Available

at: <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC178-15-ES.pdf>

[11] Press Release: <http://www.mre.gov.py/v2/Noticia/2802/comunicado-de-prensa-n-2>

[12] Release of Chamber deputies of Paraguayan Congress. Available

at: http://www.diputados.gov.py/ww1/noticia/13200.debatiran_sobre_el_aborto_en_una_audiencia_publica.html

[13] Release of Chamber deputies of Paraguayan Congress. Available

at: <http://www.mre.gov.py/v2/Noticia/2802/comunicado-de-prensa-n-2>

[14] See interview to lawyer Gualberto Garcia Jones , director of the organization Human Rights Group International available at: <http://www.abc.com.py/edicion-impres/politica/se-manipulo-el-caso-de-la-nina-de-10-anos-1374543.html>

[15] See newspaper note: <http://www.abc.com.py/nacionales/nina-de-11-anos-dio-a-luz-hoy-1397642.html>

[16] See press release available at: <http://cnnspanol.cnn.com/2015/11/12/activistas-paraguay-tiene-una-deuda-pendiente-con-victimas-de-abuso-sexual/#0>