



GÖTEBORGS UNIVERSITET

*“Framing and shaming”*

**Transnational networks and  
the decriminalization of abortion in Colombia**

**What enabled a partial decriminalization of abortion against all odds?**

A single case study

**Master’s Thesis 30 hp**

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## Sammanfattning

Mycket få människor trodde att ett nätverk bestående av kvinnorrättsaktivister skulle kunna ändra det totala förbudet mot abort i Colombia. Det colombianska samhället och politiken är starkt influerat av den katolska kyrkans värderingarna samt av den våldsamma interna konflikten. Alla tidigare försök att avkriminalisera abort hade misslyckats.

Trots detta lyckades ett nätverk av kvinnorrättsaktivister i Colombia delvis avkriminalisera abort i maj 2006, efter ett historiskt utslag i landets författningsdomstol. De som överklagat abortförbudet hävdade att en kriminalisering stred mot kvinnors internationella mänskliga rättigheter till hälsa och personlig frihet, som utgör en del i den colombianska konstitutionen. När domstolens beslut offentliggjordes innebar det en revolution för de som försvarar kvinnors rättigheter över hela världen.

För att förstå hur kvinnorrättsrörelsen i Colombia uppnådde en avkriminalisering av abort har jag intervjuat de representanter från kvinnorrättsorganisationer, statliga institutioner och från den katolska oppositionen som varit inblandade i processen. Jag har sedan använt mig av den konstruktivistiska modellen "the Spiral model of human rights change", som förklarar hur transnationella nätverk kan inkooperera internationella mänskliga rättigheter på nationell nivå i stater som kränker dessa rättigheter. Till skillnad från författarna till Spiral modellen har jag valt att tillämpa en kontroversiell mänsklig rättighet på modellen: rätten till säkra aborter, för att kunna se om modellen även kunde förklara resultatet i detta fall.

Jag fann att det var en kombination av faktorer som lett fram till att abort delvis avkriminaliserats i Colombia, bland dem att statliga institutioner är tillgängliga för medborgare samt att staten tidigare åtagit sig att följa internationella mänskliga rättigheter. En annan anledning till framgången var det stora utbyte av värdefulla kunskaper om sexuella och reproduktiva rättigheter som skedde inom det internationella nätverket för kvinnors rättigheter. Men framför allt innebar processen för att avkriminalisera abort att det uppstod en livfull och effektiv debatt inom i landet, vilket ledde till att en tidigare kritisk allmän opinion svängde i abortfrågan. Bortsett från en delvis avkriminalisering av abort resulterade även processen i en nationell diskussion om genus och sexualitet, samt till en större öppenhet i samhället.

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# 1. Introduction

## 1.1 Problem Statement

### 1.1.1 A conservative and violent society

Hardly any people believed a few women's rights activists would be able to change the law that prohibited abortion in Colombia. About 90 percent of the population is Catholic and even though Colombia was declared a secular state in the Constitution of 1991, there are still close ties between the state and the church. Catholic culture mirrors much of the society, influences the educational system and upholds a widespread male chauvinism in all parts of everyday life. (Brusco 1995:34-35) Abortion used to be such a sensitive issue that politicians were afraid to lose votes if they brought it up. All earlier attempts to change one of the world's strictest abortion laws (for example in 1975, 1989 and in 2002) were quickly archived, sometimes before voting.

The internal armed conflict in Colombia has made the country famous for being one of the most dangerous in the world. Murders, massacres and kidnappings are ways of getting rid of opponents and scaring others to silence. Human rights activists are extremely exposed and one of the most vulnerable groups is women's rights activists. The conflict has also absorbed the politics and the media and postponed debates about modernity, gender and sexuality. (Linton 2005:153) Taken all in all, the conservative society and the excessive violence have not presented the most favorable conditions for promoting women's rights in Colombia.

### 1.1.2 A modern human rights centered constitution

Colombia is a paradoxical society. Quite opposite to the difficult political climate, the country has one of the most modern Constitutions in Latin America. The Constitution of 1991 gives priority over national law to international human rights conventions ratified by Colombia.

In 2005 women's rights organizations in Colombia turned to the Constitutional Court with an appeal against the total ban on abortion. They pointed out the conflict between a criminalization of abortion and the international human rights, guaranteeing women's rights to health and personal freedom, which are incorporated into the Colombian Constitution. The complainants claimed that the abortion ban contradicted Constitutional rights and should therefore be declared invalid. (Women's Link fact sheet)

The abortion ban had the most severe effect on poor women which, unable to travel abroad, had to find a clandestine clinic or perform the abortion themselves. Approximately 250 000-450 000 illegal abortions were carried out every year in the country.<sup>1</sup> The Ministry of Social Welfare maintain illegal abortion as the third cause of maternal mortality in Colombia (interview with Lenis Urquijo Velasquez, Head of Public Health, Dec 27, 2006)

In Latin America the legal status of abortion has changed very little and no Latin-American country has liberalized its abortion law since the 1940s.<sup>2</sup> Consequently, in May 2006 when

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<sup>1</sup> Amnesty [www2.amnesty.se/andranheter.nsf/0/39eeac6b48907a9bc125702e00389eb9?OpenDocument](http://www2.amnesty.se/andranheter.nsf/0/39eeac6b48907a9bc125702e00389eb9?OpenDocument)  
La Mesa [www.despenalizaciondelaborto.org.co/contenido.php?id\\_noti=7](http://www.despenalizaciondelaborto.org.co/contenido.php?id_noti=7)

<sup>2</sup> With the exception of legal abortion upon demand in Cuba and the changes in the criminal code of Mexico City, where conditions for legal abortion were expanded to when the pregnancy threaten the health of the woman or when there is fetal abnormalities.

the women's rights movement in Colombia, despite of a conservative and violent society, succeeded in changing the abortion law by claiming women's international human rights; it was a revolution for women's rights defenders all over the world.

In order to analyze how the women's rights groups attained the decriminalization of abortion I use the Spiral model of human rights change, a constructivist model that explains how transnational networks can internalize and implement international human rights norms domestically in norm-violating states. (Risse et al. 1999:1-2) I have investigated if the resources in the Spiral model can explain the decriminalization of abortion in Colombia or if other factors have been more important for the outcome.

## **1.2 Objectives of the study**

This study has two main objectives; first I aim to analyze how the women's rights network in Colombia was able to overcome the many obstacles they faced in the society in order to partly decriminalize abortion. I am interested to know why the network succeeded against all odds in 2006, when no earlier attempts had been fruitful. The possibility to take the abortion issue to the Constitutional Court had been around since the court was founded in 1991, 15 years prior to the amendment. In spite of this the total ban on abortions remained until 2006.

The paradox of an extremely difficult political climate on one hand, and on the other a human rights centered constitution, was what first attracted me to this case. To understand the policy process and what was simultaneously going on in the Colombian society, I have interviewed different actors involved in the process.

The second objective of this study is to further develop the Spiral model of human rights change. I am applying a contested human right; access to safe abortion, on a model scrutinizing the impact of more universally accepted human rights. I believe that if the Spiral model proves to be effective under the conditions in my case it could be possible in other difficult cases as well. (compare Esaiasson et al 2005:180) Throughout this study I aimed to answer the following questions;<sup>3</sup>

### **1.2.1 Can the Spiral model of human rights change explain my case?**

To answer this question I traced the activities and the interactions among the involved actors in diverse stages, before and during the policy process that led to the partial decriminalization of abortion in Colombia. The key to process tracing is to find out the priority of events and how the most relevant actors were thinking at different stages of the process. (Esaiasson et al. 2005:142, George and Bennett 2005) I then compared each episode to the phases of the Spiral model of human rights change to see if it corresponds to the assumptions in the model. Nevertheless, it is worth noticing that Risse et al. do not presume evolutionary progress in the Spiral model. The model is a varied upward or downward spiral through which international norms can lead to changes in behavior. Individual countries may get caught in or skip certain phases of the model. (Risse et al. 1999:18-19)

### **1.2.2 What enabled a partial decriminalization of abortion against all odds?**

To explain how the women's rights movement succeeded in decriminalizing abortion in Colombia, despite of a conservative and violent society, I have developed the Spiral model by

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<sup>3</sup> More detailed questions can be found in the chapter discussing the Spiral model of human rights change.

dividing my findings into factors that either promoted or prevented the features in the model, and finally the outcome of my case.

### **1.3 Scope of the study**

I decided to focus on the period from December 2004 when the women's rights organizations started to prepare an application for a summons of the Constitution regarding the law on abortion, to May 2006, when the Constitutional Court gave its final decision. But since the struggle for abortion rights in Colombia hardly began in 2004, nor ended with the courts decision, I also present former attempts and difficulties. A short summary of the events since May 2006 can be found after my final conclusions. Additionally, at the end of this essay, there are suggestions for future research.

I am aware that the time that has passed since the Constitutional Courts' decision in May 2006 has been too short for me to completely examine the fifth and last phase of the Spiral model, which is the phase of implementation and rule-consistent behavior. The work to implement the new regulations is still in progress and there will be several years until we can comment on the final results.

## 2. Theory and previous research

### 2.1 Transnational networks and the LAICIA network

#### 2.1.1 The LAICIA network – a transnational advocacy network

On April 14, 2005 a complaint was filed to the Constitutional Court in Colombia, which petitioned the review of the constitutionality of Article 122 of the Penal Code. This article criminalized abortion without exception and classified it as a crime against life and personal integrity.<sup>4</sup> A pregnant woman or a person who performed an abortion could be sentenced to one to three years imprisonment.<sup>5</sup>

The complaint maintained that the criminalization of abortion, in cases such as when the pregnant woman's life or health is in danger, when the pregnancy is the result of rape and/or when the fetus has impairments incompatible with life outside the womb, violated several of the human rights in the Colombian Constitution. (Women's Link fact sheet) Behind the complaint was a network of several women's rights organizations and individuals working for a decriminalization of abortion in Colombia. A number of international human rights bodies and organizations were also part of the wider network. The project was called High Impact Litigation in Colombia: the Unconstitutionality of Abortion, or LAICIA, an acronym of the name in Spanish.<sup>6</sup> (Roa 2006:223) I will hereafter refer to the organizations and other partners behind the complaint as "the LAICIA network".<sup>7</sup>

The LAICIA network has many similarities with transnational advocacy networks: networks of activists that often exercise influence internationally and domestically in value-laden debates about for example women's rights. (Keck and Sikkink 1998:9)

Transnational advocacy networks are networks of national and international non-governmental organizations (NGOs)<sup>8</sup>, local social movements, academics, legal representatives, mass media, government officials and others working together to promote and implement international human rights. These actors are bound together in networks because of their shared values and a common discourse, as well as their creative use of information and the belief that individuals can make a difference. (Keck and Sikkink 1998:1-2, 9)

These networks work through production, exchange and strategic use of information in order to influence the political agenda, the debate or policies in issues important to them. They are challenging sovereignty via both national and international activism and sometimes they can use international law to prove their point. Domestic and international NGOs are often the

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<sup>4</sup> Colombian Penal Code 2000 Art. 343. (Center of Reproductive Law and Policy 1997:77)

<sup>5</sup> Due to a change in the law a woman who had an abortion after a rape could have her sentence reduced to between four months and a year. In the case of an abortion performed on a woman under the age of fourteen the sentence was three to ten years of imprisonment. Colombian Penal Code 2000 Art. 343, 344. (Center of Reproductive Law and Policy 1997:77)

<sup>6</sup> Litigio de Alto Impacto en Colombia: la Inconstitucionalidad del Aborto.

<sup>7</sup> The LAICIA network is a network of many different actors, among them lawyers specialized in sexual- and reproductive rights, international organizations such as Women's Link Worldwide, individuals and a multitude of Colombian organizations, for example the National Network for Women, Catholics for a Free Choice, The network for Women's Life and Health and many others.

<sup>8</sup> A NGO is a non-governmental, non-profit making, voluntary, service/development oriented organization.



driving force in advocacy networks, as they are the first to take action and to pressure more powerful participants to follow. (Keck and Sikkink 1998:9, 16)

Transnational advocacy networks were largely ignored and it was not until the late 1990's that political scientists began to understand the power of international networking. The advocacy networks strategic use of information can seem harmless compared to the economic and military institutions that govern the world politics, but transnational advocacy networks have proved to have leverage in many battles over human rights in different countries. When they succeed they are an important part of the explanation for changes in world politics. (Keck, Sikkink 1998: preface x, 1-2, 9)

Daniel C. Maguire, professor of religious ethics, points to the great influence of civil society, mainly women-led nongovernmental organizations, in the field of sexual and reproductive rights. These organizations have persistently worked for women's rights and health and have probably played the most important role in promoting change and a consensus with respect to sexual and reproductive health. The international women's health movement is a loose but effective network that has created public awareness and understanding, demanded accountability and greatly influenced the adoption of international agreements. There is less knowledge of the endorsement of other parts of civil society, a number of philanthropic organizations offering financial support for the institutional development of the network. (Maguire 2003:259)

### **2.1.2 Transnational networks no recent phenomena**

The history of transnational advocacy networks goes back to the campaign to end slavery in the United States in the mid 19<sup>th</sup> century and the international suffrage movement in the early twentieth century. These ancient transnational movements did not have the modern communication technology of nowadays, but their strategies were amazingly similar and sometimes just as successful as today. By this time the ideas of abolishing slavery or to gain the vote for women seemed almost unthinkable. It is precisely one of the core tasks of transnational advocacy networks to make the unimaginable possible, by framing problems so that their solution comes to appear inevitable. (Keck and Sikkink 1998:39-41)

### **2.1.3 Transnational advocacy networks frame their issues**

Transnational advocacy networks frame issues, meaning that they market an issue by giving it a new framework that will win leverage and make it concern other people. Framing is all about raising interests for an issue or to change focus in the debate by using symbolism or showing the impact in real people's life. (Keck and Sikkink 1998:16, 25) A good example of framing is the campaign on the practice of female genital mutilation. In the 1970's networks of women rights activists gave the phenomenon a new name: instead of female circumcision they called it female genital mutilation, a name associated with the torture this treatment involves to women. They spread information about this not being a harmless cultural custom, but instead containing violence and discrimination against women. The networks reframed the issue as a violation of women's human rights and the campaign generated action in many countries and within the United Nations. (Keck and Sikkink 1998:19-20)

What is taking place internationally can also be resourceful for advocacy networks, for example when the United Nations announced "the International Women's Decade". Transnational networks can also "shame" powerful authorities by holding them responsible internationally, until they do something about the issue at question. (Keck and Sikkink 1998:16, 25)

## **2.2 Social constructivism**

### **2.2.1 Social constructivism – an alternative theory of international change**

Until the debate on globalization emerged at the end of the 1980's, classical theories such as realism and liberalism had dominated the discussion on change in world politics. When these theories failed to recognize the end of the Cold War many theorists started to turn towards social constructivism, which focused on social and ideational factors of changes in international relations, rather than the material structures. In the 1970's the research on transnational relations was for most part about the Marxist vs. liberal controversy on whether transnational companies hindered or promoted world politics. (Risse 2002: 257, 259-62)

During the 1990's researchers started to concentrate on value-based advocacy networks and non-governmental organizations (NGOs). The debate was first centered on the actual influence of transnational networks and NGOs and if they could replace the nation states in world politics. Today the discussions focus more on the interaction between states and transnational advocacy networks, and under which conditions the latter influence decisions and outcomes in domestic and international politics. (Risse 2002: 257, 259-62)

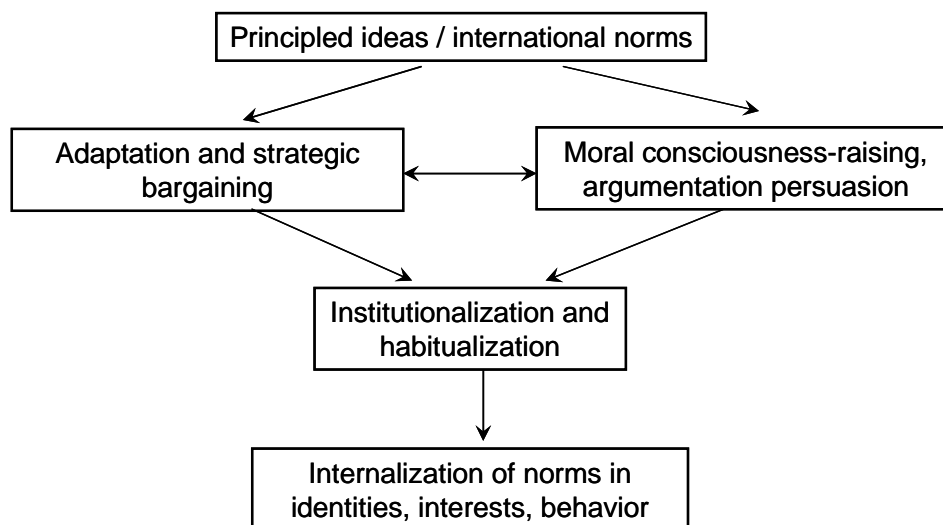
### **2.2.2 The process of norm socialization**

The process that makes it possible for transnational advocacy networks to nationally internalize and implement international human rights norms is understood as a process of socialization, which can be defined as induction of new members into the ways of behavior that are preferred in society. This presupposes a society, in this case the international society of human rights norms. In this process *individual* beliefs about right and wrong become *collective* expectations about proper behavior. This creates impetus for behavior consistent with the belief and influences the performance and domestic structures of the state. These behavioral effects of international human rights norms can be explained through social constructivism, a theoretical concept that relates interests of actors to their identities within the group. (Risse et al. 1999:7-9)

The political identity of a state does not emerge in isolation but in relation to other states and international non-state actors, so *the socialization process* may be useful to understand how norms are transmitted. The goal of socialization is for actors to implement the norms so no external pressure is needed to live up to them. The *socialization process* is actually three processes going on simultaneously: *adaptation, argumentation and institutionalization*. At first the state adapt to the international community by adjusting its human rights behavior, without necessarily believing in the norm. In the second process the state is engaged in an argumentative discourse of communication and pressure from the advocacy network, and in the third phase the norm is institutionalized. (see Figure 1.1) The more the state is engaged in

dialogue with networks, the more likely it is to accept the human rights norm and to start practicing it. (Risse et al. 1999:11-13, 16-17)

Figure 1.1 The process of norm socialization (Risse et al. 1999:12)



## 2.3 Norm socialization in Colombia

I consider that in 2005, when the LAICIA network filed its complaint to the Constitutional Court, Colombia was in a process of *adaptation*, meaning that the state had adjusted to the international human rights community by instituting a human rights centered Constitution in 1991. Due to the Constitution the State had also established new institutions and mechanisms for citizens to claim their fundamental rights. Risse et al. point out that many states wish to belong to the category defined as “liberal democratic states”. Therefore they change their norms and rules to be identified by others and themselves as liberal democratic states. (Risse et al. 1999:8)

### 2.3.1 New opportunities for women's rights movement

The adaptation of the Colombian state to international human rights represented new possibilities for the women's rights movement to demand full compliance with these rights. The opportunity for change depends not only on the mobilization of advocacy networks, but also whether these networks are able to “hook into” state institutions. The degree of success in achieving political goals depend on the opportunities that state institutions offer to social movements. The relationship between advocacy networks, the state and the church shapes the “fit” between the actors demanding change and the state agencies with the power to make changes. (Htun 2003:17)

### 2.3.2 The constitution of 1991

The Colombian Constitution of 1886 was very traditional and reflected the reality of the time. A hundred years later Colombia was a nation in deep political crisis with an internal armed conflict that violated the population’s most fundamental rights. Although the old Constitution

had gone through minor changes over the years, the country was in desperate need of a modern constitution that could give possibilities for political legitimacy and peace.

The new Political Constitution of Colombia became law on July 4, 1991 and it declares Colombia a secular state where all religions are proclaimed equal. In the early 1990's, when the Constituent Assembly was selected to write the new Constitution, more than half the seats went to non-traditional political parties, such as indigenous- and left-wing parties. However, the abstention rate to elect the assembly was extremely high at 74 percent, and the political party that had endorsed the process, the Alianza Democrática-M19, had been dissolved. Consequently the support for the Constitution is weak in the political establishment. Many conservatives believe the Constitution to be too liberal, while the guerrilla movement refers to it as mere window dressing.<sup>9</sup> (Livingstone 2003:80)

### **2.3.4 Human rights oriented institutions**

The Constitutional Court, which was founded to monitor the Constitution, consists of nine magistrates whom have among their obligations to study and issue a ruling in cases of unconstitutionality initiated by citizens (*acción pública de inconstitucionalidad*). Any citizen can make a complaint of a law before the court, if she believes the law to be contradictory to the Constitution. (Center for Reproductive Law and Policy 1997:72) Even before the establishment of the Constitutional Court citizens could appeal against articles of the Constitution, but there was no institution that specifically handled these complaints. (Interview with Karin Kuhfeldt, Human Rights Ombudsman, Dec 1, 2006)

A citizen does not need a lawyer to appeal to the court, nor to present a case of a specific person. Hence no person has to “borrow” its case to put it in the public eye. (Roa 2006:226) However, both the action of unconstitutionality and the *tutela*<sup>10</sup> have their limits. The power of the judges is limited and they can not order compensation to the complainant. (Cabal et al. 2003:55) In connection to the establishment of the constitution the State also founded the Human Rights Ombudsman (*la Defensoría del Pueblo*) whose task is to defend the citizens' rights in different areas such as women's, children's and displaced people's rights.

### **2.3.5 The Constitution gives priority to international human rights**

In Colombia international human rights conventions serve as a basis of interpretation of constitutional laws.<sup>11</sup> Every international human rights convention and treaty that the State has ratified<sup>12</sup> is an integrated part of the Constitution and is given priority over any other national law. (Center for Reproductive Law and Policy 1997:73) This is established in article 93 of the Constitution; “*international treaties and agreements that recognize human rights ratified by the Congress...take precedence over national laws.*” This article means that if any national law is viewed by the Constitutional Court to conflict with ratified international

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<sup>9</sup> In recent years a new political party, El Polo Democrático, which supports the constitution and got about 25 percent of the votes in the 2006 elections can be added to the political spectrum. (Livingstone 2003:80)

<sup>10</sup> A *tutela* is a less formal complaint that can be presented to any judge by a citizen considering that her fundamental rights have been violated.

<sup>11</sup> Political Constitution of Colombia, art. 93, 230.

<sup>12</sup> Ratification of an international convention by a state means that the state acknowledges the validity of the convention.

human rights conventions it can be declared unconstitutional and therefore invalid. (Cabal et al. 2003:57)

### **2.3.7 The Constitution gives citizens access to state institutions**

For transnational advocacy networks there are several resources that are important to succeed in the struggle for a political objective: national and international contacts, the willingness of powerful actors to cooperate, or the possibilities to affect them. This will give the networks access to information and the ability to handle it strategically. The more assets available (or that can be created) the bigger is the opportunity to reach ones goal. (Keck and Sikkink 1998:16, 25) According to Risse et al. this societal openness with responsive institutions, which is both a cause and an effect of human rights networks, facilitates network socialization and gives opportunity to reach out to the state. It is a very important key to human rights work. (Risse 1999:262-264)

Despite the lack of support for the Constitution within the political establishment in Colombia, many human rights advocates and civil society groups believe that the constitution has given rights to those people who did not use to have any; women, indigenous peoples and internal refugees, among others. (Livingstone 2003:80) According to Amnesty International the Constitutional Court has done much to promote the rights of women in Colombia, but there is still much that needs to be done; *“On a number of occasions, its jurisprudence has helped to affirm the principle of equality, the prohibition of gender-based discrimination and the protection of women’s human rights. (...) The Human Rights Ombudsman has also worked hard to promote issues relating to the situation of women. (...) These efforts are appreciated but they are in an early stage and lack resources. The State has failed to implement their international obligations to protect and promote women’s human rights.”* (Amnesty Report 2004:13-14)

### **2.3.8 The Constitution - a window of opportunity**

In 2004, Mónica Roa, a Colombian lawyer working for the international organization Women's Link Worldwide, and her partners saw the constitution of 1991 as a window of opportunity. The constitution was an accessible and powerful tool for human rights organizations and advocates to claim human rights within the society. (Roa 2006:226-227) The public action of unconstitutionality and the tutela have been key instruments to the advancement of sexual and reproductive rights in Colombia. These two mechanisms have permitted for a debate on issues of health and reproduction and have allowed citizens, and especially marginalized groups, to utilize the juridical system to precede their demands for justice. (Cabal et al. 2003:52)

The complainants claimed the criminalization of abortion violated several of the articles in the Constitution, articles that were based upon ratified international human rights. In the complaint it was argued that the criminalization of abortion went against women's right to equality and to non-discrimination<sup>13</sup>. The plaintiffs maintained the right to life, health and integrity<sup>14</sup> and advocated that if women are forced to carry unwanted pregnancies to term it

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<sup>13</sup> Political Constitution of Colombia Art.13

<sup>14</sup> Ibid Art. 11, 12, 43, 49

violates their right to dignity, reproductive autonomy and the free development of personhood<sup>15</sup>. (Women's Link fact sheet) Colombia had received multiple requests by international human rights bodies to review its strict law on abortion, and since no measures to liberalize the law had been taken by the State, a few of these recommendations were included in the complaint. (Women's Link Fact sheet)

## **2.4 The reality of human rights in Colombia**

Despite the human rights friendly Constitution of 1991 the women's movement had not succeeded in decriminalizing abortion in any of its earlier attempts. Even though the Constitution gave certain support to women's rights groups, the reality around them was far from encouraging. According to the Colombian anthropologist Mara Viveros the country's political culture with weak citizen participation, a strongly influential Catholic Church and a patriarchal society have presented many obstacles to the struggling women's rights groups. (Viveros 1997:11)

### **2.4.1 Difficult situation for women's rights defenders**

The overall situation for human rights activists is very difficult in Colombia and the most vulnerable groups are union members, lawyers, indigenous people and women's rights group. In addition, Colombia has one of the biggest rifts between high- and low income earners in Latin America, as the richest ten percent stand for almost half of all the consuming in the country. (Swedish Ministry Foreign Report 2006:1-2, 16)

For over 50 years a civil armed conflict has struck very hard on the Colombian society. The conflict is described as a "new war", characterized by many actors and systematic crimes against human rights that render possible through a criminalized economy and a weak state. (Kaldor 1999) The armed conflict has its origin in the 1950s when extreme violence broke out because of the murder of a popular political leader and consequently hundreds of thousands of people were killed. To seize the violence between political opponents a referendum decided that the Conservative and the Liberal parties should alternate the presidency every four years. This power-sharing was called the National Front, and it made formally that the political system only was accessible to the elite. The political exclusion led to the establishment of guerilla groups, and this in turn made landowners, with support of the government, to create paramilitary death-squads to wipe out the guerillas. In the 1980s and 90s Colombia was ruled by drug-traffickers, both from the paramilitary and the guerilla groups, and anyone who spoke out against them had to pay with their lives: thousands of judges, lawyers, political opponents and human rights activists were killed. (Livingstone 2003, Tate 2007:45)

The armed conflict has created about 3 million internally displaced refugees, referred to by the UNHCR, United Nations High Commissioner for Refugees, as a humanitarian catastrophe. The majority of the refugees are women.

### **2.4.2 Sexual violence and discrimination against women**

According to the Amnesty report "Scarred bodies, hidden crimes" girls and women are the unknown victims of the conflict in Colombia. All armed groups, illegal as well as legal, have

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<sup>15</sup> Constitution Preamble and art. 1, 16, 42

sexually abused and exploited women, both civilians and combatants, throughout the conflict. Women's bodies have become marked as military targets. (Amnesty 2004:17) Testimonies of survivors indicate that especially paramilitary groups have been using sexual violence<sup>16</sup> to punish people for perceived collaboration with guerillas, to "dishonor" the enemy or to make communities leave their land of military or economical interest. It is a battle among men fought over the bodies of women. A young woman who talks, who can express herself, is seen as subversive. (Amnesty 2004:17) Women are treated like they were minors when it is in fact a question about their own bodies and sexuality. Rape is heavily under-reported and very few perpetrators are ever brought to justice for any human rights violation, and even fewer for crimes of sexual violence. (Human Rights Watch website)

### **2.4.3 Access to sexual and reproductive health**

Unwanted pregnancies are very common in Colombia, especially among teenagers, where as many as 20 percent of girls age 13-19 are mothers or have been pregnant at some point. (Profamilia National Questionnaire on Demographic and Health 2005:26) The total ban on abortion has forced girls and women to find illegal clinics or to try to terminate the pregnancy by themselves. Many of these illegal "doctors" are nothing but quacks and the standards of hygiene are poor.<sup>17</sup> (Linton 2005:141)

Illegal abortion is the third leading cause of maternal mortality in Colombia. (WHO report) Almost 30 percent of Colombian women that undergo an illegal abortion suffer complications and 18 percent arrive to the hospital in an extremely severe condition. Among poor women about 50-60 percent experiences complications.<sup>18</sup> (Center of Reproductive Rights report 1998) Reproductive health services in Colombia are provided mainly by the private institution Profamilia (Colombian Family Welfare Association). Even though Profamilia does voluntary work in poor communities, most of its services are not free and the access is restricted, particularly for poor and/or internally-displaced women.

In cases of collective displacement, the state provides extremely limited emergency aid, which does not include reproductive health care. Public institutions do not provide the survivors of sexual violence with free services, not even emergency contraception. In areas under military dispute it has become increasingly difficult for women to gain access to sexual and reproductive health care services. Many are forced to travel long distances to obtain help. Women's organizations have tried to fill the gap left by the state to take care of victims of sexual violence, but have themselves been threaten and attacked because of their work. (Amnesty report 2004)

### **2.4.4 The Catholic Church**

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<sup>16</sup> According to the 1993 Vienna Declaration on Human rights sexual violence is understood to be murder, systematic rape, sexual slavery, sexual assault, forced pregnancy, forced contraception, sterilization or enforced abortion. "Scarred bodies, hidden crimes" Amnesty 2004:46-47

<sup>17</sup> According to disputed information about half of the illegal abortions in Colombia are carried out by skilled professionals in safe underground clinics run by different women's groups.

<sup>18</sup> El Tiempo: "Abortion something at style in the University" Oct. 6, 1998 and "Latin America aborting in masses" April 28, 1994. Both articles referred to in "Women's Reproductive Rights in Colombia – A shadow report" 1998 p. 9 by Center for Reproductive rights [www.reproductiverights.org/pdf/sr\\_col\\_1298\\_eng.pdf](http://www.reproductiverights.org/pdf/sr_col_1298_eng.pdf)

According to Elizabeth Brusco, specialist in religious movements and gender in Colombia, the Catholic Church in Colombia has a reputation throughout South America to be especially powerful and influential in national life. The state has been remarkably willing to hand over public authority over major areas of the lives of its citizens to the Catholic hierarchy. In 1887 the state signed a Concordat with the Vatican for complete Church - State integration which defined the church as “an essential element of social order”. Before 1973 children had to present a Catholic baptismal certificate to be allowed to enter public schools. To be Colombian meant to be Catholic. No other alternatives existed; the religious affiliation was as much a birthright as was citizenship. Excommunication from the Church meant not only damnation in the afterlife, but in the present life as well. (Brusco 1995: 15, 32)

The concordat went through small changes over the years, but not until 1992, as a direct consequence of the new Constitution, a new Concordat was signed. This took away the church’s right to decide over family law and abolished obligatory Catholic education in schools. (Brusco 1995:33) Since the Catholic Church has been very influential in many Colombians’ lives it has also deeply affected the way people think about gender roles, sexuality and abortion.

#### **2.4.5 The culture of machismo**

There is one term that is unambiguously associated with Latin American culture: the term “macho”. (Melhuus et al. 1996:14) The nature of the machismo culture is best summed up in a statement made throughout the region; “*la mujer es de la casa y el hombre de la calle*” (the woman belongs to the house and the man belongs to the street). Machismo is described as the biggest weight on the Colombian family, constantly present in the highest levels and the lowest, in the cultivated and in the illiterate. (Brusco 1995:82, 106)

Machismo emphasizes male strength and men’s right to control women, which contributes to polarization of gender roles and culturally legitimating the abuse of women. There are different views on the origin of machismo in Latin America, ranging from the humiliation suffered by indigenous men when the Spaniards conquered them and their women, to being a mean of structuring power relations *between men*; that drinking, fighting and the conquest of women are performed with two audiences in mind; other men and oneself, to whom one must prove one’s masculinity. It should not be forgotten that even among many Latin American women there are socialized expectations that their men should “act like men”. (Chant et al. 2003:13-16)

The armed conflict in Colombia puts additional pressure on men and boys to live up to a destructive machismo culture. Previous research has shown that during armed conflict domestic violence against women increases. (Amnesty 2004)

The Colombian state has been criticized by international human rights bodies and organizations for contributing to the cultural oppression of women. Although the state has an international obligation to combat gender-based discrimination and prevent and punish violence against women, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) noted “*that no systematic work has been carried out to confront discriminatory cultural traditions or to change sexist stereotypes. The state has instead often helped to perpetuate and strengthen gender stereotypes, for example through the media that continued to project stereotypical images of women.*” (“Scarred bodies, hidden crimes” Amnesty 2004:12)



#### **2.4.6 The holy motherhood**

The social outlook on motherhood is another very influential part of the gender and abortion debate in Latin America. Marianismo, the female equivalent to machismo, is a cult of the “Virgin Mary” within the Roman Catholic Church idealizing motherhood and decorous behavior in women. Marianismo offer a belief that women are morally and spiritually superior to men and that childbirth give women a unique opportunity to fulfill God’s will, which have legitimated their subordination in the public and political sphere. (Htun 2003:31-32)

In evangelicum vitae from 1995 the Pope acknowledges the tremendous costs the absolute ban on abortion has to Catholic women “*who devote themselves to their families without reserve (...), and who are ready to make any effort, to face any sacrifice, in order to pass on to them the best of themselves. (...) We thank you for the sacrifice of your life.*” (Kalbian 1995:123)

According to Mexican feminist Marcela Lagarde motherhood is deeply conditioned by men and patriarchal states and disrupting the link between women and motherhood, which is so strong that also women without children are affected by it, is very important in the gender struggle. (Chant et al. 2003:13)

Although over twenty years have past since the American sociologist Kristin Luker published her study “Abortion and the Politics of Motherhood” it has had a great importance for the abortion debate. According to Luker feminism has changed the way people think about abortion, as they started linking the availability of abortion to women’s opportunities in society. Abortion seized to be a strictly medical issue and became a women’s issue. When women accepted their primary role in society being a wife and a mother, control over one’s body meant little. But when women became part of the workforce they had different choices and they started to demand the right to abortion in order to control their own lives. Feminist mobilization against restrictive abortion laws consequently involves an attack on the assumptions on who women are and what their role in life should be. (Luker 1984:118)

In 1961, a representative of one of the first pro-choice organizations in the United States made the following statement; “*When we talk about women’s rights we can get all the rights in the world, the right to vote or to go to school, and none of them means a doggone thing if we don’t own the flesh we stand in (...), if the whole course of our lives can be changed by somebody else that can get us pregnant by accident, or by deceit or by force. So I consider the right to elective abortion (...) the cornerstone of the women’s movement. (...) Without that right we’d have about as many rights as the cow in the pasture that is taken to the bull once a year.*” (Luker 1984:97)

## **2.5 The theory of the Spiral model of human rights change**

### **2.5.1. The Spiral model of human rights change**

To explain under which conditions international human rights norms from the Universal Declaration of Human Rights<sup>19</sup> are internalized and implemented domestically, and how this affects processes of political transformation in norm-violating states, the political scientists

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<sup>19</sup> The United Nations General Assembly established the Universal Declaration of Human Rights in 1948. It is not a binding treaty but a statement of principles. (Risse et al. 1999:1)

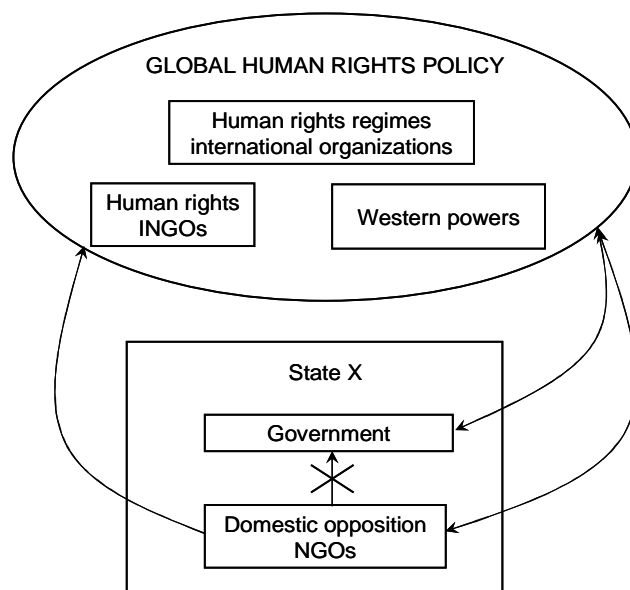
Thomas Risse, Kathryn Sikkink and Stephen C. Ropp have proposed a constructivist five-phase model; the Spiral model of human rights change. Risse and his collaborators have analyzed eleven norm violating states focusing on the influence of two human rights norms; the right to life and the right to freedom.<sup>20</sup> (Risse et al. 1999:1-2)

When I started to read about the campaign to decriminalize abortion in Colombia I saw the striking similarities between my case and the five different strategy levels in the Spiral model of human rights change. Without knowing very much about the activism in Colombia I could see that they had been using international human rights arguments and different communication tools to affect the court and the public, comparable to the methods described in the Spiral model. In order to analyze how the women’s rights groups attained the decriminalization of abortion in Colombia I decided to use the Spiral model of human rights change. In the following I present a description of the model and its theoretical framework.

### 2.5.2 The boomerang effect

Governments are the most important “guarantors” of rights, but also their primary violators. When a government declines to recognize certain rights domestic groups often have no option within the domestic political and judicial arena than to go past its own state apparatus and turn directly to allies in other countries. (Keck and Sikkink 1998:12) The network can then put pressure on the oppressing state from outside, both from “above” (accusations from international human rights organizations) and from “below” (activities by domestic NGOs) to achieve human rights change (Brysk 1993 in Risse et al. 1999:18, 129). Keck and Sikkink call this the Boomerang effect (see Figure 1.2), as the opposition's arguments and requirements “bounces” back into the national policy, now with the surrounding world's eyes on the oppressing state. (Risse et al. 1999:18)

Figure 1.2 The “boomerang effect” (Risse et al. 1999:19)



<sup>20</sup> The investigated states are Kenya, Uganda, South Africa, Tunisia, Morocco, Indonesia, the Philippines, Chile, Guatemala, Poland and former Czechoslovakia.

The women's rights movement in Colombia also got international support similar to that of the “Boomerang effect”. Due to strong conservative forces in society, all earlier attempts to decriminalize abortion in the Congress or in the courts, had failed.

In 2004, after many years of struggling, the women's rights groups got support from the Women's Link Worldwide, an international non-governmental organization promoting gender equality. Women's Link had developed a vision of how to work strategically with the courts to promote the implementation of international human rights law and the advancement of women's rights. Mónica Roa, a lawyer at Women's Link became the head of the initiative. Roa had carefully studied the Colombian case and because she had worked with similar cases of sexual- and reproductive rights in other countries she had many of the necessary international contacts. (Roa 2006:223) Women's Link International could also provide international economical support to the process.

### **2.5.3 Model builds upon socialization process and “boomerang effect”**

The Spiral model of human rights change builds upon the earlier theoretical framework of the norm socialization process and the Boomerang effect. The Spiral model is more dynamic because it is made up by several “boomerang throws” where each throw describes the actions of the state and the transnational advocacy network throughout the path towards possibly improved human rights conditions. The spiral model put in practice the process of norm socialization, identifies the form of social interaction in each phase; adaptation, arguing and institutionalization, and ultimately shows how international norms affect domestic human rights change. It is a theory of the stages and mechanisms under which the authors expect movement from one phase to another. Risse et al. do not presume evolutionary progress but identify an upward or sometimes downward spiral, through which international norms can lead to changes in behavior. Individual countries may get caught in or skip certain phases of the model. (Risse et al. 1999:18-20)

The model is further based on the social structure of international and regional institutions which regulate human rights norms, transnational networks and national governments promoting these norms. International institutions include for most part the human rights bodies of the United Nations and the different human right treaties that have been ratified under UN auspices. (Risse et al. 1999:19, 21)

### **2.5.4 The five phases of the Spiral model**

(Risse et al. 1999:22-35)

1. *Repression and activation of network.* The national opposition is too weak in order to constitute a threat against the government. This phase can last very long since many oppressions never are to be noticed by transnational advocacy networks (TAN) if the network cannot find out sufficient information about what is taking place. The levels of state repression can vary greatly among the norm-violating states but is defined as “*repression that is severe enough to disallow any serious opposition challenge to the state's violation of international human rights norms*”. This is also the phase where the domestic opposition, if it is not too oppressed, starts to connect with transnational advocacy networks.

2. *Denial of the state.* The repressive state has attracted attention on the international agenda due to TANs work. TAN work along with the opposition to present the information that they then use for lobbying, moral persuasion and "shaming" of the repressive state. The state usually denies all accusations and asserts its right to sovereignty. The fact that the state in this phase is feeling forced to refute the criticism shows that the norm socialization process has begun. But the denying can also be prolonged if the state is not depending on of economic aid or of the surrounding world's opinion. The more depending the state is, the greater is the possibilities for the network to succeed.
3. *Tactical concessions.* The state is making strategic cosmetic changes to pacify international criticism and the transnational network is trying to strengthen the national opposition. This is a critical phase, because despite some international protection the opposition can be more repressed and this would break the upward spiral process, but it could also be stronger and more active. The state often underestimates earlier commitments and thinks that "talk is cheap". They don't realize they are "entrapped" in their own rhetoric, and that they are actually strengthening the power of the opposition.
4. *Prescriptive status.* The arguments of the new norm are no longer controversial, but the state's behavior is still violating the norm. Internationally it is considered that the state has accepted the norm when it has ratified conventions that respect the norm and/or made it part of the national law, and if there are institutions where the citizens can report violations against the norm.
5. *Rule-consistent behavior.* This is the final stage in the socialization process where it is assumed that human rights norms are fully institutionalized and that norm compliance has become a routine practice by all actors. The socialization process in order to attain rule-consistent behavior takes a long time, since it requires communication between many different operators. It is also crucial to have an infrastructure that can detain new norms, for example functioning welfare institutions. (Risse et al. 1999:31, 33) Only a few months had passed between the establishment of partial decriminalization of abortion and my arrival in Colombia in order to do this study. Due to the fact that the decriminalization of abortion is still in its infancy, it is not possible to include this phase in my study at this stage.

### **2.5.5 Model for analysis based on the Spiral model of human rights change**

In this study I use the Spiral model of human rights change to trace the activities among involved actors before and during the policy process leading up to the partial decriminalization of abortion in Colombia. Can the different resources described in the model explain the partial decriminalization of abortion in Colombia? Are the resources in the model the only key to the achievement? Is there a unanimous testimony among the different actors in the process?

The original model operates on four different levels simultaneously; transnational actors, domestic society, the links between the two, and the national government of the norm-violating state. (Risse et al. 1999:17-18)


This works out well for the purpose of this study. But in order to sort out those aspects in the Spiral model that have been the most important for the outcome in my case, I have added two more features to the model: factors that have been either promoting or preventing for the outcome. What factors in the model suggested a partial decriminalization of abortion? Potential promoting factors can be the possibility for citizens to complain to state institutions. And what factors spoke against a decriminalization? One preventing factor might be the risks associated with being a political activist in Colombia.

Accordingly, the tables below are based upon the original Spiral model of human rights change. The factors influencing the decriminalization of abortion in my case are the same factors presented in the original model. (Risse et al. 1999:20) My personal contribution to the model is the division of the factors in to either promoting or preventing categories.


Table 1.1 Model for analysis based on the Spiral model of human rights change (Risse et al. 1999:20 with modifications by the author of this study)

### Model for analysis based on the Spiral model of human rights change

Phase 1 <i>Repression and activation of network</i>					
Factors influencing decriminalization of abortion	<i>State repression</i>	<i>Weak opposition</i>	<i>Activation of network</i>	<i>Receive information from domestic opposition</i>	<i>Invoke international human rights norms</i>
Promoting factors					
Preventing factors					



Phase 2 <i>Denial of the state</i>			
Factors influencing decriminalization of abortion	<i>State denies validity of HR norms</i>	<i>Pressurize repressive state</i>	<i>Mobilize international organizations and liberal states</i>
Promoting factors			
Preventing factors			



Phase 3 <i>Tactical concessions</i>						
<b>Factors influencing decriminalization of abortion</b>	<i>Tactical concessions</i>	<i>Mobilization and strengthening of groups engaging human rights norms</i>	<i>Reduced margin of maneuver for the state</i>	<i>Normative appeals</i>	<i>Framing/Shaming (information)</i>	<i>Human rights assuming center stage in societal discourse</i>
<b>Promoting factors</b>						
<b>Preventing factors</b>						



Phase 4 <i>Prescriptive status</i>					
<b>Factors influencing decriminalization of abortion</b>	<i>State ratify international treaties</i>	<i>State institutionalizes norms in domestic law</i>	<i>State establishes institutional mechanism for complaints</i>	<i>Discursive practice, dialogue</i>	<i>Reduced network mobilization</i>
<b>Promoting factors</b>					
<b>Preventing factors</b>					

## 2.6 Alternative explanations and critique of the Spiral model

### 2.6.1 Realist theory

In international (neo-)realism the driving element of domestic human rights change is superior economic or military powers, such as hegemonic states or powerful economic institutions, for example the International Monetary Fund. According to this perspective the super powers intentions and actions towards less powerful states determine the states interest in human rights change. Whether norm-violating states respond to human rights demands from transnational advocacy networks will depend on if more powerful states enforce those human rights norms. (Krasner 1993:165-67, 140-41)

Risse et al. do not reject the neo-realist perspective but indicates that individuals and institutions within these superior powers already are to be found among the transnational actors in the Spiral model. Great power pressure towards norm-violating states is described in the boomerang throws of the model. Risse et al. claim that their case studies have proven that the pressure from great powers often originate from the lobbying and shaming of transnational networks. An example of this is the many years of pressures from transnational networks towards great powers such as the United States and Great Britain, for them to influence the South African government to stop the apartheid regime. (Risse et al. 1999:268-69) The authors of the model maintain that the neo-realist explanation would only be challenging the

Spiral model if super powers (and not transnational networks) were established to be the most significant factor to human rights change in domestic states. (Risse et al.1999:36)

### **2.6.2 Modernization theory**

Modernization theory stresses the primacy of domestic factors, such as economic growth, to determine political change in a state. According to this theory economic growth will create a middle-class with higher educational level, greater access to the media and more knowledge in political affairs. (Hadenius 1992:78) This will increase the people's demand for democracy, lead to political mobilization and stop human rights violations.

Risse et al. argue that the theory that economic growth will lead to the implementation of human rights has been proven weak in many cases. Argentina is one example: with one of the best-off middle classes in the developing world it experienced the most brutal violations against human rights in the 1960-70s. On the contrary, many of Risse et al's studies show how economical crisis in the norm-violating states turned to economic growth *after* the implementation of human rights. (Risse et al. 1999:269)

Most importantly, both neo-realist and modernization theories lack the independent causal significance of international principled ideas and norms about human rights, that the Spiral model is built upon. According to Risse and colleagues realism ignores international human rights norms as a condition of changing interests of powerful states, and modernization theory only sees to the interests of the middle-class. (Risse et al. 1999:270)

### **2.6.3 Critique against the Spiral model of human rights change**

The assumptions in the Spiral model imply that the model takes as given the relationship between international human rights norms and states, without exploring the reverse influence that the norm-violating state may have on human rights norms. Another point of critique has been the lack of discussion around what makes certain states pressure norm-violating states to comply with human rights norms (the boomerang effect). (Fleay 2005:40-41)

Yet another critique, also in focus in this study, is the fact that Risse et al. do not debate the universality of human rights. They touch upon the issue and the implications of focusing only on core human rights, but they never discuss it any further. (Fleay 2005:42-43) In the Spiral model Risse et al. have chosen to examine the core right of the international human rights, *the right to life*, defined by the authors as the right to be free from extrajudicial execution, disappearance, torture and arbitrary arrest. According to the authors the right to life is put to the test in the model because it is the most accepted among the universal human rights. It is assumed that these rights have reached an uncontroversial status and are not bound by any particular political system or ideology. The authors believe that if the highly accepted norms of the right to life have not made an impact on the practices of norm-violating states, they do not expect progress in less consensual areas of human rights. (Risse et al. 1999:2-3)

Risse et al. have been criticized for taking the easy way out as they have only studied more "traditional" human rights. Because the authors behind the Spiral model maintain that their model holds true for most of their country cases despite domestic differences, and because they have only examined core human rights, we do not know if the Spiral model is also applicable on other rights, for example women's rights. Caroline Fleay maintains in her study, using the Spiral model on human rights implementation in China, that further research of the model by applying other rights is needed. (Fleay 2005:41)

#### **2.6.4 Applying a contested human right at the Spiral model**

Women's international human rights have proven to be clearly more contested and culture-sensitive compared to the right to life, applied by the originators of the Spiral model. Within the traditional human rights discourse there has been a clear distinction between violations of rights in the public sphere and in the private sphere, leaving domestic violence, sexual assault and illegal abortion out of the picture, since they for most part are carried out in the household. Not until 1993 it was laid down in the Vienna Declaration on Human Rights that women's rights, including sexuality and reproduction, are part of the universal human rights and should not be subordinated to cultural or religious traditions.<sup>21</sup> (Bergman 2004:54-55, Keck and Sikkink 1998:180)

International human rights have for most part been established and interpreted by men and men have been the subjects of these rights. In addition, maintainers of women's rights are always at risk for being accused of cultural imperialism. All of this is especially true for abortion as a human right, which remains controversial even today. Thus, the socialization of women's human rights implies greater challenges for transnational and domestic advocacy networks. (Coomaraswamy 1997)

Unlike Risse and his colleagues I have chosen to go one step further and apply this much more controversial human right into their theoretical model: the right to access to safe abortion. By applying a not fully accepted human right norm into the Spiral model of human rights change I hope to innovate and further develop the model. The motivation of my choice is presented in section 2.7 below.

Many of the arguments used by advocates promoting abortion rights are based upon international human rights, including the right to life. Every year thousands of women lose their lives because of ill-performed illegal abortions. Moreover, many human rights advocates point to the development of international human rights. Due to a growing activism of women's rights groups and the increase of women in political office women's experiences now have a greater impact on laws and policies. Harmful practices that have not been acknowledged before because of ignorance, silence or political reasons are recognized as violations of human rights. Genital mutilation and rape as a war crime are examples that have been accepted as crimes against human rights in the last ten years. (Sjödahl 2004:25-26)

#### **2.7 Why is access to safe abortion a human right?**

Few other issues cause comparable moral outrage and political polarization as abortion. Accordingly, whether safe abortion<sup>22</sup> should be included in the international human rights is a burning question. (Bergman 2004:11, Htun 2003:142) International trends have shown a widespread, although not worldwide, evolution of abortion legislation from moralistic laws, to laws concerned with women's health, and recently laws based in human rights principles. (Cook et al. 2003:104-105) The international women's health movement has been very successful in seeking inclusion in their respective official country delegation at international

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<sup>21</sup> Vienna Declaration and Programme of Action, World Conference on Human Rights 1993, UN Doc.A/CONF.157/23. Articles 18 and 38.

<sup>22</sup> According to the World Health Organization unsafe abortion is defined as a termination of an unwanted pregnancy either by persons lacking necessary skills or in an environment lacking the minimal medical standards or both. (WHO/MSM/92.5. at [www.unfpa.org/swp/1997/box15.htm](http://www.unfpa.org/swp/1997/box15.htm))



conferences on reproductive health and therefore been able to facilitate the process of consensus between governments. (Maguire 2003:260)

The pro-life movement on the other hand is also using human rights arguments, maintaining that democratic states need to protect the innocent fetal life. Lobbyists from the Vatican and principally American pro-life organizations are present at every international meeting and they are not unexpectedly loud critics to many of the recent international recommendations. (Htun 2003:151-152)

### **2.7.1 Important international conferences and agreements about safe abortion**

Both the International Conference on Population and Development in Cairo in 1994 and the Fourth Conference on Women in Beijing in 1995 requested governments to address the public health issue of unsafe abortions and to give safe medical care to women with post-abortion complications. The Beijing Platform of Action includes an important recommendation to review laws that criminalize abortion. (Bergman 2004:56) UN Plans of Actions, although not legally binding, have a tremendous normative importance. (Htun 2003:150)

The Committee of the International Covenant on Civil and Political Rights has concluded that some restrictive abortion laws violate women's right to life and discriminate women. The CEDAW Committee, monitoring the Convention on the Elimination of All Forms of Discrimination Against Women, has requested states to evaluate restrictive abortion laws and to guarantee safe and accessible abortion *where it is legal*. (Bergman 2004:51-53) The Committee establishes that criminalization of a medical practice that only women need, such as abortion, is sexual discrimination and a violation of the right to equality. Besides, the Convention against Torture has discussed the withholding of medical care in detention, for example refusal to terminate a high-risk pregnancy, as a form of torture. (Bergman 2004:52, Cook et al. 2003:173, 351)

### **2.7.2 Important court cases and international decisions on abortion**

The case I am studying is a unique case because it is the first appeal against a total criminalization of abortion to successfully be lodge in a Constitutional Court. There have been previous cases of legal complaints against states where abortion is illegal, but those have all been cases of individual pregnant women. In 2005, an appeal against the Irish abortion ban was brought to the European Court of Human Rights by a pregnant Irish woman. In 2006, the court declared the case inadmissible due to the applicant's failure to exhaust domestic remedies. (Center of Reproductive Rights' (CRR) website)

Several women, who have been refused abortion, *even though it is legal within present circumstances in their country*, have had more luck in the courts. In 2001 a Peruvian woman, carrying a fetus with a fatal anomaly, was denied an abortion. A complaint was filed to the United Nations Human Rights Committee. In 2005, the Committee established that denying access to legal abortion violates women's most basic human rights. This decision marked the first time an international human rights body held a government accountable for failing to ensure access to legal abortion. (CRRs website)

In 2002, a Mexican girl that was raped and then denied a legally permitted abortion appealed to the Inter-American Commission on Human Rights, claiming violations of her legally guaranteed rights. In 2006 a landmark settlement was reached when the Mexican government

agreed to pay reparations to the girl and issue a regulation for access to abortion for rape victims. (CRRs website)

According to the African Charter of Human and Peoples Rights is the right to safe abortion, in the case of rape or a life-threatening pregnancy, a human right. (Bergman in Ottar No. 05/2006) Amnesty International and the Human Rights Watch also state equitable access to safe abortion to be a human right. (Human Rights Watch website)

### **3. Methods and Materials**

#### **3.1. Methods**

##### **3.1.1. A least likely case**

Despite the human rights oriented Constitution of 1991 the women's rights organizations had failed repeatedly to decriminalize abortion. As mentioned earlier, there are many obstacles for the advancement of women's rights in Colombia.

Firstly, the political history of the country is blood-stained and to work with politics or human rights in Colombia involves many risks. Political violence is used to ensure electoral outcome and to guarantee property right and economic power. During the last three decades the country has had one of the world's highest murder rates. Although no reliable statistics exists it is certain that thousands of human rights activists, often accused of being guerilla supporters, have been threatened or killed throughout the decades of the conflict. One of the most vulnerable groups is women's rights activists. (Tate 2007:31-33, 155)

Secondly, a strong domination of the Catholic Church and a widespread machismo culture has further complicated the work of women's rights groups in the country, especially in the sensitive field of sexual and reproductive rights. Since the Catholic Church has been very influential in many Colombians' lives it has also deeply affected the way people think about gender roles, sexuality and abortion. The Catholic culture honors motherhood and modest behavior in women. There has been a close relationship between the state and the Catholic Church also within the political sphere, making it difficult to overcome the conservative majority. Abortion has been such a sensitive issue that politicians were afraid to loose votes if they brought it up. (Brusco 1995:32-35, Htun 2003:31-32)

To summarize, the difficult political climate, the dangers for human rights activists and the conservative society have not presented the most favorable conditions for the promotion of abortion rights in Colombia. Accordingly, I consider the partial decriminalization of abortion to be a least likely case.

##### **3.1.2 Process tracing**

To establish a causal link between a certain movement and an observed change is one of the main methodological difficulties encountered by social- and women's movements researchers. (Špehar 2007:80) How can we prove if the partial decriminalization of abortion was a product of the LAICIA network's activities and international support or if it was the result of a modern legislation and an already present lax in the public debate?

In my study I work with process tracing to build a chain of evidence linking the participation of the LAICIA network in the policy process to the effects of that participation. The key to

process tracing is to find out the priority of events and how the most relevant actors were thinking at different stages of the process. (Esaiasson et al. 2005:142)

To develop a detailed analysis of the process I have worked with “process tracing”, which means “tracing the operation of the causal mechanism(s) at work in a given situation, by breaking down complex chains of events into smaller pieces and exploring the extent of which each coincides with prior, theoretically derived, expectations about the workings of the mechanism”. (George and Bennett 2005) That is to say, I scrutinized the activities of the LAICIA network before the decriminalization of abortion by breaking it down in particular episodes. I then compared each episode to the expected phases of the Spiral model of human rights change to see if it corresponds to the assumptions about networking and international support in the model. I do this by using both interviews and written documentation.

Andrea Špehar, author of the thesis “How Women's Movements Matter” describes three different levels of perception that she examines in her study. First, she asked the representatives within the women's movement about their self-assessments of their influence on the policy process (ego-perception). Secondly, she inquired the public authorities how they apprehended the impact of the women's movement in the policy change (alter-perception). Ultimately, Špehar analyzes the policy process by looking into written documentation about the activities of the women's movement leading up to the policy outcome (supra analysis). (Špehar 2007:82) By means of this methodology it is possible to evaluate the effectiveness of the activities and to what extent the women's movement attain their initial policy goals.

I have worked in a similar way, by interviewing participants in the LAICIA network about their self-assessments of their importance in the process, and by talking to state authorities and the conservative opposition about their perception of the LAICIA networks' influence. Additionally, I consulted written documentation to understand how the partial decriminalization of abortion came about in the contradictory Colombian society. All of this information was compiled and fed into the Spiral model of human rights change to see if the model can explain my case.

The process tracing goes from the end of 2004, when lawyer Mónica Roa and her partners first started working on the LAICIA project, until May of 2006 when the Constitutional Court gave its final decision.

## **3.2 Materials**

### **3.2.1 The importance of the interviews**

From the very beginning of my research it has been clear that traveling to Colombia was valuable to interview the LAICIA network and others involved in the process about their participation. Written documents can give detailed descriptions of the policy process in question, but they can not substitute insights from key participants. Information from interviews with concerned actors can go beyond the official version of events to find hidden elements such as disagreements or other complexities in political policy processes. (Kvale 1997) I first tried to contact the lawyer Monica Roa at Women's Link Worldwide in Bogotá, because I knew she had taken the initiative to file the complaint to the Constitutional Court. When I traveled to Colombia in October 2006 I also had a few names of other persons I wanted to talk to.

According to Andrea Špehar researchers that are examining the impact of the women's movement tend to rely too much on statements from representatives of the movement and overlook other actors in the process. Additional actors are a potential valuable source of information about the development in the process and about their perception of the women's movement's impact. (Špehar 2007:82) Consequently, I have apart from interviewing the LAICIA network, also talked to public authorities involved in the policy process and to political opponents such as the Catholic Church and representatives of pro-life organizations. My interviews were semi-structured in the sense that the questions were formulated in advance and I posed for most part the same questions to all of my interviewees. But to keep each interview dynamic I sometimes added questions depending on the experience and knowledge of the interviewee and I allowed room for the respondent to expound her view on the process.<sup>23</sup> (Kvale 1997:117)

### **Selection of interviewees**

The selection of interviewees was based on the following criteria; 1) the person must have been involved in the process of decriminalization of abortion in Colombia, 2) and had to be a key person either within the LAICIA network, the conservative opposition or at one of the involved public authorities.

At my first interviews I asked my interviewees for other people to contact and I soon phoned and emailed these people and organizations and asked if I could meet with them too. At every interview I continued to ask for others involved in the process, and this gave me a broad net of contacts within different groups. Women's rights groups gave me a list of all the important links among them, the pro-life organizations gave me a valuable contact in the Catholic Church and the state employees helped me contact their colleagues. After a few weeks of interviewing I stopped asking for more contacts because I discovered that many of the interviewees came with very similar responses about events or strategies, and at this point I felt that I had enough interesting material for my analysis. (compare Esaiasson et al. 2004:288)

I continued with my planned interviews, since some key persons had been hard to make appointments with. It was quite easy to schedule appointments with both the pro-choice and the pro-life organizations. Probably this was because they were keen to reach out with their message. But to interview state officials and priests, I tried to make contact multiple times, often through their secretaries who would ask me to call back again and again. Nonetheless I could meet everybody I contacted, except for a politician who said she lived in fear of being kidnapped for the third time.

I carried out a total of nineteen interviews. Since the women's rights organizations had initiated the process, drawn up the strategies and had experienced and studied earlier attempts I did the majority of my interviews with them. To balance the information I received from the women's rights network I interviewed the opposition: a Catholic priest and representatives of two pro-life organizations. In an attempt to verify facts and get the state's point of view I interviewed a judge at the Constitutional Court (that participated in the voting on the abortion issue) and the Head of Public Health issues at the Ministry of Social Protection (which is the

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<sup>23</sup> An interview guide can be found in appendix B.

person responsible for the regulation of the courts decision). In addition I met two employees at the Office of the Human Rights Ombudsman (Defensoria del Pueblo); the Ombudsman of Constitutional and Legal Affairs as well as with the secretary to the Ombudsman for Women's and Children's Rights. I also interviewed the responsible for women and gender issues at the Mayor's office in Bogotá. (Alcaldia Mayor de Mujer y Genero).

### **3.2.2 Consent and anonymity**

At the time of each interview every one of my interviewees knew who I was, as well as the purpose of my study. In addition I had with me a letter in Spanish signed by my supervisor at Göteborg university. This was a letter confirming my status as a student, as well as assuring them that their contributions would only be used in my academic paper. The letter was signed by my supervisor and had her contact information, in case they had further questions. Only one of my interviewees decided to remain anonymous and to leave out certain parts of the interview not to affect her work, and of course I respected this decision.

### **3.2.3 The interviews**

Most of the interviews lasted for about one hour, with the exception of one where the interviewed had to leave after only 35 minutes and half of the questions. I then learned to inform the interviewee before we met that the interview would take about an hour. A few of my interviewees talked for a very long time, about two hours, and because I wanted to know as much as possible I sometimes found it hard to know where to stop them. Some of the interviewed told me at the beginning they had very little time (30 minutes or less), and then while our talk progressed they seemed to be in no hurry and the interview ended up to be over an hour long.

At every interview I got permission to use a recorder to tape the interview. The majority of the interviews took place at the interviewees' workplace. Usually this was not a problem, but in a few occasions, constantly ringing phones or colleagues running in and out were disturbing during the interview, and even more so when I listened to the tape during the transcription. At three of the interviews I was invited home to the person in question and this was of course more quiet and pleasant, but also more time consuming as I usually ended up staying long to have coffee and to chat. Except for the two interviews with Mónica Roa, which were in English, all of the interviews were performed in Spanish.

### **3.2.4 Written material and other sources**

To obtain an accurate picture of the political history and the human rights situation in Colombia I consulted previous academic research, diverse country reports from the Swedish Ministry of Foreign Affairs and reports from a number of non-governmental organizations. For the theoretical framework I have used previous research within the field of transnational networks, human rights implementation and the Spiral model of human rights change. To explain the significant parts of the Colombian constitution and the relevant national and international legislation I have consulted previous research carried out by both independent academics and lawyers working in the field of reproductive rights. Finally, except for my interviews, I have traced the course of events in this case by reading press material, legislation

and regulations, strategies, lobbying material from both parties and a few letters and publications from different actors.

### **3.3 Review of sources**

I have kept four principles of source review in mind during this study: my sources should be true, independent, current and not biased. All of my interviewees have been with first hand sources involved directly with the process of the decriminalization. I tried as much as possible to avoid second-hand information, by confirming its source or asking the person directly involved. (Esaiasson 2004:287, 304, 309)

Even though all my interviewees met the criteria I had set up, the expert knowledge of the policy process varied among them. Depending on their occupation they had knowledge within a variety of areas: the judicial system, government administration, public opinion, gender issues and ethical matters. Consequently the interviewees gave rich answers to questions within their expertise while other answers lacked substance, or in a few cases proved to be incorrect.

The interviewee can be considered an informant, if it is an expert or a witness to a certain process, or the person can be a respondent, if he or she is an actor in the process. The interviewee is then the object of analysis. (Kvale 1997: 219-220) In this study the interviewees have both of these roles. When asked about their basic understanding of the course of events in the policy process or the most important actors, the interviewee is an informant. When the interviewed person is asked about her own participation (ego-perception) or the involvement of others (alter-perception) in the process, she is on the other hand a respondent. (Špehar 2007:84)

I arrived in Colombia a few months after the decision to partially decriminalize abortion had been taken and it was still a burning issue in society. By this time the campaigns had already been going on for about a year and a half, and seemed to be in fresh memory with all of the involved actors. (Esaiasson 2004:310-311)

#### **3.3.1 Important to avoid biased interviews**

Since the persons I interviewed are engaged in a sensitive issue and many of them have strong opinions, either in favor of or against legal abortion, I was careful not to put too much trust in possibly dependent or biased statements. Many of the interviewees may have their own agendas, deliberately or not, to describe an event in a certain way. It was important for me to keep this in mind. (Esaiasson 2004:309-310)

By selecting interviewees from different fields and trying to confirm doubtful information with other interviewees, I tried to avoid or to balance biased sources. I have been cautious not to rely solely on the LAICIA network, but to seek for additional potential valuable sources of information about the development in the process, as well as their perception of the LAICIA network's real impact. (Špehar 2007:82) By choosing to interview state authorities I wanted to balance the strong polarization between those in favor and those against legal abortion.

#### **3.3.2 Written material**

When I consulted different sorts of documentation I was attentive to understand who was behind each document. In such a polarized debate it is important to be aware of the fact that

information presented as evidence may be manipulated to speak for one part in the debate, or that important facts may be excluded for the same reason. I therefore used documentation from the LAICIA network and their opponents only to describe their strategies or views upon the process. The information about the legal system or about abortion as a human right that I included in my study has been confirmed with information from independent researchers or international institutions.

It has been difficult for me to gather drafts from meetings held by involved actors before the court gave its final decision. Before the LAICIA network made the complaint public all their preparations were confidential and very few notes were entered in the minutes. Although, I believe that the unanimous testimony from most of my interviewees about the different episodes in the process can make up for this deficient.

## **4 Analysis**

### **4.1 Phase 1: Repression and activation of network**

#### **4.1.1 State repression**

##### **4.1.1.1 State repression in my case**

According to the Spiral model of human rights change the degree of state repression determines whether or not transnational networks can acquire useful information about human rights violations. A very oppressive government sometimes never becomes a target for international advocacy if there are no possible channels the national opposition can use to give information to the transnational networks. (Risse et al. 1999:22)

A classical definition of state repression is “*state actions manifested through official regulatory measures designed to discriminate grossly against persons or organizations viewed as presenting a fundamental challenge to existing power relationships or key governmental policies, because of their perceived political beliefs*” (Robert Goldstein 1978:xvi). Risse et al. define state repression as “*repression that is severe enough to disallow any serious opposition challenge to the state’s violation of international human rights norms*”. The authors admit that the levels of state repression vary greatly among the countries they have investigated. In the Spiral model they apply a broad definition of state repression, including both severe repressions bordering to genocide in Guatemala, and milder restrictions in the freedom of expression and assembly during the Communist era in Poland. (Risse et al. 1999:22, 106) Following these definitions of state repression, I describe in the subsequent sections the restrictions in the freedom of expression, political corruption and oppression against women, which I found in my case.

##### **4.1.1.2 Discrimination against women**

Discrimination against women can be found at all levels both in the public and in the private sphere. Silvia Arias, secretary at the Human Rights Ombudsman for Women's and Children's Rights in Bogotá, confirms that the situation for women in Colombia is very difficult because of an existing machismo culture that promotes domestic and sexual violence against women. (Interview with Silvia Arias November 20, 2006) Other women's rights activists agreed;

*“In Colombia it is a problem to be a woman, and to be a **poor** woman is a double problem. And if you are a woman, poor **and black** it is the worst! It is triple discrimination!”* (Interview with Sandra Mazo, Catholics for a Free Choice, October 31, 2006)

Unwanted pregnancies are very common among Colombian women and girls, and due to the armed conflict sexual violence has increased. Despite this the state has not done much to prevent sexual abuse or to give proper care to victims of this abuse:

*“I think Colombia is a country of contradictions with two extremes; a very good legislation and a very bad compliance of the law. We make very good laws, but we are very alienated from what we are writing. The regulations about sexual and reproductive health are good and broad-minded. (...) The problems are at the level of execution.”* (Interview with a member of La Mesa por la Vida y la Salud de Mujeres)

*“I believe that many women in Colombia don’t think they have the right to their body because a lot of them are in a situation of discrimination where they have a weak position. And a problem for those women that do know their rights and want to report domestic and sexual violence is that it all depends on the judges’ sensibility towards the problems involved. The judges still have prejudices and when it is about sexual violence they will ask; (...) How was she dressed? Why was she at this particular street at this particular time? If the women’s movement in this country had not struggled for laws about domestic and sexual violence, there wouldn’t have been any, because the state doesn’t care. The Colombian state still believes that domestic violence can be resolved within the family, that it is a private matter and not a political or public issue.”* (Interview with Clara Elena Cardona, Woman’s House, December 6, 2006)

*“A few laws on sexual- and reproductive rights have been changed for the better, but many legal experts still talks about sexual abuse with erotic undertones”.* (Interview with Ximena Castilla, January 9, 2007)

Before the partial decriminalization of abortion pregnant women and girls that had been raped, or that were experiencing health problems, were silently suffering with the approval of the state;

*“This is all about a public health problem, women are dying. And it is a social problem as well, because it is the poor women who have to pay with their lives”* says Florence Thomas, professor of psychology, member of La Mesa and famous feminist debater in Colombia. (Interview with Florence Thomas, November 27, 2006)

#### **4.1.1.3 The abortion issue banned from the politics**

For a long time there was a repressive barrier to bring up the abortion issue on the political agenda in Colombia. Sandra Mazo at Catholics for a Free Choice<sup>24</sup> advocates that the patriarchal construction of the state, the legislation and the political identity of Colombia has always made it very difficult to recognize women’s rights:

*“In the 1950’s women’s groups struggled for women’s suffrage, so that women could have some access to political power. To break the cultural patriarchal paradigm in this country is very difficult.*

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<sup>24</sup> Catholics for a Free Choice (CFC) is an organization for Catholics who believe that the Catholic tradition supports a woman’s moral and legal right to follow her conscience in matters of sexuality and reproductive health. CFC works for the use of contraceptives and legal abortion. [www.catholicsforchoice.org](http://www.catholicsforchoice.org)



(...) *We have fought for a decriminalization of abortion for more than 20 years.*” (Interview with Sandra Mazo at Catholics for a Free Choice, October 31, 2006)

*“The government is concerned about the international criticism towards Colombia for the violations of human rights in the armed conflict. But the women's issues have always come in second place; it has not been a priority of the government.”*

According to Sandra Mazo the government has not legislated sexual and reproductive rights because of their fear of the abortion issue:

*“The government knows that if we start talking about sexual and reproductive rights, they have to do something about the abortion issue. For them, everything that touches sexual and reproductive rights is abortion. That has also been an obstacle in advancing the legislation.”*

Colombian anthropologist Mara Viveros wrote in the mid-1990s a brief report about why the abortion debate had stagnated and abortion had remained a crime in Colombia. According to Viveros a lacking interest from the state and an insufficient capacity of the civil society had prevented the state from acknowledging that the total ban on abortion violated human rights principles. The participation of the political elite (the Liberals and Conservatives) in the abortion debate has been limited, since the political elite in Colombia only have engaged themselves in social demand susceptible of giving benefits clientelistas<sup>25</sup> or altering more votes to them. Another reason for the low political interest has been that women from the elite and upper middle class always have had the possibility to have an abortion abroad or at an expensive private clinic. No political party has included the abortion issue in their agenda. (Viveros 1997:8, 11)

However, bills to decriminalize abortion have been presented in the Congress since the 1970s by individual parliamentarians.<sup>26</sup> These progressive parliamentarians have for most part been liberals, but although the liberal party is considered the most modern and secular, it has never been willing to take a stand for the decriminalization of abortion, afraid to fall out with the Catholic Church, other politicians or with the beliefs of their voters. (Viveros 1997:8)

Ximena Castilla, a feminist lawyer, gave me several examples of congressmen that have cooperated with women's rights groups to prepare bills for the decriminalization of abortion. But when the Catholic Church pointed accusations against them many of the politicians got scared and withdrew their propositions. Castilla gets support from Florence Thomas:

*“Really, all these bills were filed very rapidly, before a second debate, by pressure from the church and the right wing sector, the most conservatives in the country. By this time the public were absolutely not prepared and every time somebody talked about abortion it was an enormous scandal!”*

Previous attempts to liberalize the law on abortion by proposing bills in the Congress have all failed, since the majority in the Congress is conservative and Christian parliamentarians. Those prior experiences from the Congress convinced Mónica Roa and partners to turn directly to the Constitutional Court with their appeal. (Roa 2006:221)

#### **4.1.1.4 Difficult situation for women's rights activists**

The feminist movement has had to adjust itself to the difficult political situation in Colombia and to work in the shadow of disappearances and killings of social and political leaders and

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<sup>25</sup> El clientelismo is a system of favors and favors in return, also called corruption, which is very common in some spheres of the political elite in Colombia.

<sup>26</sup> A complete list of earlier attempts to liberalize the abortion law in Colombia can be found in appendix A.

activists. The general violence and the strong mobilization for peace in the women's rights movement have put the demands for abortion rights at the end of the list. It was the threatening situation in the country and the difficulty to “prioritize” among many different violations of women's rights, together with poor organization skills that stopped the women's rights movement from being an effective counterweight in the abortion debate. (Viveros 1997:10-12)

Clara Elena Cardona at the Women's House pointed out the political repression that makes it difficult to work for women's rights:

*“Every government in Colombia is more conservative and authoritarian than the one before. The civil society and the social movements are fragmented and there is a lot of insecurity about human rights. To protect these rights involves danger for many of its defenders.”*

In June 2005 the apartment where Mónica Roa lived and worked in confidentiality with the complaint to decriminalize abortion was broken into. According to Roa no other valuables were stolen but confidential documents and computers holding information about the complaint. About this incident the Centre of Reproductive Rights write:

*“It is an intimidation tactic aimed at silencing a lawyer who is working through Colombia’s legal system to secure women’s basic human rights.”*<sup>27</sup> (Human Rights Watch Webpage)

During their campaign to decriminalize abortion the participants in the LAICIA network became subject of insults and even death threats.

#### **4.1.1.5 Close ties between the State and the Church**

The close ties between the State and the Catholic Church in Colombia has been another obstacle to bring up the subject of abortion in the political sphere. The women's rights groups struggling for legal abortion have always had to work against the powerful Catholic Church and general societal expectations on men and women.

*“I believe that the only thing that the government is afraid of is the Catholic Church. And why all this fear of the Church? The Catholic priests are taking part in peace negotiations, negotiations that are still not terminated. In other words, the government is walking on quick sand. They were afraid of a negative response and for their diplomatic relations with the Vatican.”* (Interview with anonymous activist from La Mesa)

*“In the Congress there are a lot of politicians that believe that abortion is a sin. Colombia is supposed to be a secular state but the Catholic Church is strong and other churches are very influential, especially in the education of children and young women. What will happen to 16-year old girls if they need an abortion, when it has been almost obligatory with a conservative outlook on ones independence and sexuality and when there is no sexual education?”* (Interview with Clara Elena Cardona)

*“What I do believe is that the Catholic Church has, or had, because it is clearly in crisis now, a lot of political power. The fact that they were always mediating the peace conversations with the guerrilla for example and they were always compromising on “we help you with this issue that is important for you government, but issues that are important to us like abortion (...) will be untouched”. (...) I think that was why it was so hard before to stand up and ask for a debate without their participation”* confirms Mónica Roa (Interview October 18, 2006).

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<sup>27</sup> [hrw.org/spanish/docs/2005/06/22/colomb11205.htm](http://hrw.org/spanish/docs/2005/06/22/colomb11205.htm), [www.womenslinkworldwide.org](http://www.womenslinkworldwide.org),

#### **4.1.1.6 State repression could not prevent exchange of information**

Previously state repression had prevented a decriminalization of abortion in Colombia, but this time the repression was not strong enough to put a stop to the process. Information about the restrictive abortion ban could be transferred out of the country and gained international support. Despite this, abortion was still a very sensitive issue in the society. When Mónica Roa and her organization Women's Link Worldwide first arrived in Colombia in 2005, to exchange ideas and opinions with others working with the abortion issue, they had to meet in confidentiality. (Interview with Mónica Roa)

#### **4.1.2 Weak opposition**

##### **4.1.2.1 Women's rights movement no counterweight to the Church**

According to the Colombian anthropologist Mara Viveros the country's political culture has been an obstacle for the opposition to debate the abortion issue because Colombia lacks the tradition of citizen participation, mobilization and debate. It has been difficult for the women's rights groups to become a sufficient substantial force to be listened to and considered a counterpart to the official position of the church. (Viveros 1997:11-12)

Even when Latin American citizens came to accept divorce they remained deeply ambivalent to abortion. (Htun 2003:6) Colombia was no exception. A member of La Mesa reveals that the women's rights movement was forced to choose between the legalization of divorce and abortion:

*“When the constitution was created in 1991 there was a debate within the Constitutional Board, where all of the political parties were represented. I remember that there was a discussion to try to do something about abortion. There were two discussions, one about abortion and another about divorce. The Church let us know that it was more probable that they allowed divorce than abortion. So it was said, “okay, if we can't have both we try with divorce”, which was also easier to get because everybody was in favor of it. So we sacrificed the issue of abortion. We (the women's movement) had many meetings with the board and then in 1991 I remember that there was a feeling that new doors opened up and we said “let's do something about the abortion issue” and nobody believed us and they all said “like that will ever happen!” A lot of people needed divorce, in this country there was no divorce and no real civil marriage. Thus, we went with divorce.”*

According to Mónica Roa, before the LAICIA campaign the argumentation ruling the terms of the abortion debate in the court, as well as in the public sphere, was the fetus right to life and the courts obligation to comply with the moral code of the Catholic Church. The women's rights groups have reacted to the demands of the right wing, but their initiatives have not had any real impact. (Roa 2006:222)

Ana Maria Torres at La Mesa describes the Colombians strong ties to the Church;

*“We are in the habit of believing, it is part of our culture since we were indigenous. The Catholic Church has lost some of its credibility, but this is still mostly an urban phenomenon. In the villages you only have three persons to turn to, the priest, the mayor and the police. Consequently, in the provinces people very much believe in the parish priest and the priests continue to have a lot of power.”*

#### 4.1.2.2 Weak sympathy in earlier rulings by the Constitutional Court

The Constitutional Court has protected sexual and reproductive rights in many of its previous decisions, although before 2006 the court had always stated that the law criminalizing abortion complied with the Constitution. (Cabal et al. 2003:67) Earlier appeals had been rejected since the Court maintained that they had already decided on the issue on the basis of the presented argumentation. (Interview with Lenis Urquijo, Ministry of Social Protection, December 27, 2006)

*“Between 1994 and 2000 the Penal Code could not be changed, so not until the year 2000 when a new Penal Code was established it was possible to once again demand a decriminalization of abortion. But I also believe that the women's movement needed to gather courage to show that this was not settled yet.”* (Interview with Karin Kuhfeldt, Human Rights Ombudsman, December 1, 2006)

According to Mónica Roa, who carefully investigated the jurisprudence on the abortion issue, it could not have been worse for the women rights groups to work with. (Roa 2006:222)

In a decision in 1997 the Court maintained that abortion should be prohibited when the pregnancy resulted from a rape, but it recommended a lighter sentence for the pregnant woman if she practiced an abortion. The judges referred to papal encyclicals, among them the *Humane Vitae*, stating that *“giving life to a human being dignifies and exalts the mother”*.<sup>28</sup> (Cabal et al. 2003:54-55, 67) This is interesting, because when the Constitution of 1991 stated Colombia to be a secular state the Attorney General explained that all laws that derived from the papal treaty were unconstitutional. (Brusco 1995:34-35)

*“I was studying how to work with women's rights in the courts and I was traveling abroad and learned about other cases in other countries, and then I came back and realized that all the cases that had been brought up about abortion in Colombia were based on papal decrees. Even after the Constitution, when the state became secular it was still about Catholic papal decree, so I thought there is something wrong here, where are the real arguments?”* (Interview with Mónica Roa)

In 2001 the Court found that judges can decide not to impose punishment when a pregnancy is resulting from a rape.<sup>29</sup> Unlike previous decisions the court did not cite religious authorities. In each of the decisions maintaining a prohibition of abortion a minority of the judges has made vote reservations. These judges argued that to bring a pregnancy to term has important life consequences for the woman and *“objectifies her as a mere womb without consciousness”*.<sup>30</sup> (Cabal et al. 2003:67-68)

Even though the jurisprudence was conservative, the court's decision to reduce penalties in 2001, together with the vote reservations, encouraged Mónica Roa and the LAICIA network. The composition of the judges in the court by the time of the complaint, together with their obligation to comply with the jurisprudence and with international human rights agreements, made the LAICIA network confident to act in the Constitutional Court. (Roa 2006: 222, 227-229)

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<sup>28</sup> Constitutional Court, Ruling C-013 of 1997, presiding Judge José Gregorio Hernández.

<sup>29</sup> Constitutional Court, Ruling C-647 of 2001, presiding Judge Alfredo Beltrán Sierra.

<sup>30</sup> Constitutional Court, Ruling C-133 of 1994, Ruling C-013 of 1997, dissenting opinion Eduardo Cifuentes, Carlos Gaviria and Alejandro Martínez.

#### **4.1.2.3 Difficult to reach out to a polarized public**

The women's rights groups also had difficulties to reach out to the public with the implication of a partial decriminalization of abortion. Florence Thomas often travels around the country to talk about women's rights and she thinks much of the ignorance is due to the rift in education between different sectors of the population;

*“You have one sector that is very academic, that knows the law, that can travel, that believes in democracy and in human rights, and then you have the other sector were people went barely three years in primary school. Therefore it is very difficult to work in Colombia. When I start talking about abortion people understand legalization and they think all women will have abortions! Sometimes you feel hopeless, they do not understand what you talk about, and there are things they could easily understand with a bit more education.”*

According to Florence Thomas there is no sexual education in schools, despite the fact that it has been part of the legislation for about ten years; *“Little by little the sexual education in schools was taken over by the conservative sectors and the Opus Dei<sup>31</sup> until it stopped all together.”*

Women's rights groups indicate that it was hard to make people understand the consequences of the total ban on abortion.

*“Before, in the traditional polls the question was always the same; “are you in favor of or against abortion?” Consequently 80 percent answered they were against and 20 percent that they were in favor. The same polls with the same answers have been repeated over and over again for the last fifty years”,* says a longtime member of the women's movement.

To pose the abortion debate as a dichotomy of either being solely in favor or against is unhelpful in reaching a consensus, when in reality nearly everyone agree that there are too many abortions in the world today, but that under certain circumstances it is a necessary lesser evil. (Maguire 2003:266-267)

#### **4.1.2.4 Weak knowledge and conflicts within the women's rights movement**

According to a longtime member of La Mesa there was a clash of opinions and a bad knowledge of the legal system within the women's movement in Colombia;

*“There was an internal discussion and a division. One group said that we had to go through the Congress, not the court (with the abortion issue). (...) And I also think that there was partly weak knowledge of the how to use the legal system effectively through high impact litigation. That is not something that we have used very much before in Colombia.”*

Clara Elena Cardona from Casa de la Mujer (Women's House), a resource center for abused women in Bogotá, points to the lack of resources among women's organizations in the country:

*“We have too small financial resources for a legal investigation. Either we work with abused women in the field or we do legal work! Our priority is the work for the women.”*

Societal openness with responsive institutions facilitates network socialization and gives opportunity to reach out to the state. It is a very important key to human rights work. (Risse 1999:262-264) In Colombia any citizen can approach the Constitutional Court or any judge with a complaint. All of my interviewees believe that it is easy to file a complaint, although some legal knowledge and some money might be needed;

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<sup>31</sup> Opus Dei is an institution of the Roman Catholic Church.

*“To file a complaint does not cost anything but a poor citizen can not do it. Only to travel to central town costs money and to make copies costs money as well. And you need to have some knowledge of the legal system”* (Ana Maria Torres, La Mesa)

*“Colombia is a state governed by law and all citizens can participate in legal processes. The requirements to file a complaint are very modest; you can even send it to the Court by mail. But there is the issue of political insecurity. ”* (...) (Interview with Humberto Sierra, judge in the Constitutional Court, December 15, 2006)

### **4.1.3 Activation of network**

#### **4.1.3.1 Support from international organization – the “Boomerang effect”**

In 2004, after many years of struggling to decriminalize abortion, the women's rights movement in Colombia got support from the Women's Link Worldwide, an international non-governmental organization promoting gender equality through legal avenues. Women's Link had developed a vision of how to work strategically with the courts to promote the implementation of international human rights law and the advancement of women's rights. On the basis of compilation of previous experiences from national litigation in different countries they had systematized the lessons learned by promoters of social change. (Women's Link Worldwide website)

When Women's Link Worldwide contacted the national opposition with a fresh idea, and the necessary financial support, it meant a new beginning for the opposition. Women's Link and Mónica Roa had many contacts in the field around the globe, and through research they knew that the Colombian abortion ban was already recognized and criticized by international organizations and bodies working with human and reproductive rights. Women's Link could through their transnational network offer access, leverage and money to the national opposition. When the national opposition in Colombia got international allies it made it possible for them to put pressure on the state from outside, just like Risse et al. are suggesting in the “boomerang pattern”. (Risse et al. 1999:18)

To try their strategies and accumulated knowledge Women's Link Worldwide decided to bring the case of partial decriminalization of abortion in Colombia to the country's Constitutional Court as a pilot case. The objective was to declare the article 122 in the Colombian Criminal Code, that criminalizes abortion under any circumstances, unconstitutional. (Roa 2006:223)

#### **4.1.3.2 A process of strategic litigation**

The legal process initiated by the complaint to the Constitutional Court was a process of strategic litigation. Litigation in the public's interest means to give legal assistance to persons or groups to facilitate their access to the legal system. In strategic litigation lawyers work in the court with a special case with the objective to create effects that reach behind individual interest and make a broader social change. (Interrights 2004 in Roa 2006:224) The objectives of strategic litigation might be, among many others, to change law or politics that violate constitutional rights, assure that the interpretation of certain rights is adequate or to create pressure or public debate to obtain social change. (Rekosh et al. 2001 in Roa 2006:225)

Strategic litigation can be of high or low impact. When there are strong reasons to believe that the courts decision will be favorable or when the aim is not so much to win as to put the issue on the public agenda or to change the terms of the debate, high impact litigation is often the choice. In the case of the unconstitutionality of the abortion ban Women's Link Worldwide and partners chose high impact litigation because they had studied the character, the function and the jurisprudence of the Constitutional Court and the international law on abortion. They estimated their chances to decriminalize abortion under extreme circumstances to be very good. (Roa 2006:225)

#### **4.1.4 Receive information from domestic opposition**

It is crucial for the transnational network to gather sufficient information of the situation in the target state to be able to put the norm-violating state on the international agenda. (Risse et al. 1999:22) To do this Mónica Roa moved to Bogotá in the end of 2004 to work full time on the LAICIA project. All the work was confidential for the first ten months. Not until everything was in place and the complaint was presented did the network start to work publicly.

*“Before that it was all private preparations, we prepared different kinds of strategies, met with people and did a lot of networking. La Mesa became our closed allied from the start, because that was the only forum that met regularly to discuss the abortion issue, and they helped us to reach out to other people. We first went to reproductive rights and women's rights groups, but we wanted to have a network as diverse as possible, so we talked to the academia, the medical experts, journalists and politicians from different fields both in different regions and internationally.”* (Interview with Mónica Roa)

Mónica Roa met secretly with influential lawyers and even the mayor in Bogotá. Juanita Barreto from Mayor's Women and Gender office explains;

*“There was a meeting with Mónica, Ximena Castilla (lawyer), the mayor and myself in June or July of 2004. Mónica explained her idea and the mayor was very supportive because her idea agreed with the health policies that our office was developing.”* (Interview with Juanita Barreto, the Mayor's Women and Gender Office, December 7, 2006)

La Mesa started to travel around different regions of the country to meet other interested in the campaign and to learn how de criminalization of abortion hit towards women in other parts of Colombia. (Roa 2006:237) From there the network decided to explore the possibility to make a complaint in the Constitutional Court. The Women's Link, La Mesa and some different groups in the extensive women's social movement in Colombia started to meet about twice a month to come up with a joint strategy. (Interviews with Florence Thomas, Sandra Mazo and Ximena Castilla)

However, not all women's rights organizations within the network agreed that they should only ask for a decriminalization of abortion under extreme circumstances. A network of organizations tied to the Campaign for an Inter-American Convention for Sexual- and Reproductive rights, supported the appeal to the court, but preferred a request for a total decriminalization of abortion. (Interview with Clara Elena Cardona, Women's House)

##### **4.1.4.1 Building a broad network**

In 2004-2005 the LAICIA network worked for over six months to identify and convince interested groups to connect to the campaign. They constructed the framework for

interrelations, information flows and diverse channels of communication, which combined digital communication with more conventional ways; events and personal contacts. Women's Link and other partners were trying to synchronize its agendas to do a joint campaign with the minimum in common that they all wanted to transform the article 122 in the Colombian Penal Code. Each participant represented his or her area of expertise in the campaign, both to cover all perspectives of the abortion issue and to separate the ongoing debate in each field. Women's Link Worldwide was responsible for the juridical part of the argumentation, Catholics for a Free Choice debated the moral and religious aspects and the medical community answered for the field of public health. (Roa 2006:239-240)

Besides from international support lawyer Mónica Roa also brought with her important connections, tells Ana-Maria Torres at La Mesa;

*“This will sound harsh but it is the truth; Mónica is a young woman from the upper middle class, with status in the society. She may have connections with powerful actors in this society, connections that are very important in this country. This is a country where such connections are the difference between being rich and being poor. So from her position of power she could speak about the abortion issue.”*

*“Mónica is a young, enthusiastic woman, and we could say, with good contacts within the Constitutional Court, because she is a lawyer from the Los Andes university, which is a very important university here. (Interview with Ximena Castilla, lawyer)*

The purpose of the network was an interchange of information on both a national and international level, but also to further elaborate a campaign of mutual definitions, actions and challenges. In the LAICIA network the different point of views and knowledge were transformed in to new initiatives and actions. Another of the initial objectives with the network was to show the civil society and especially the women's rights groups how to work strategically with the courts to endorse sexual and reproductive rights. (Roa 2006:240-242)

Mónica Roa describes how the LAICIA network kept growing bigger and bigger;

*“Some people we met with confidentially before and others jumped on board as soon as they heard that we filed the complaint. Some others were a little suspicious that I was very young; they didn't know who I was. But once they saw that my work was serious they came on board and it became really popular and everybody wanted to get on board. So it was like a snowball, really. It (the network) is actually huge, I couldn't count the people that are now in it, have heard about it and feels actually personally engaged in it.” (Interview with Roa)*

#### **4.1.5 Invoke international human rights norms**

##### **4.1.5.1 The complaint to the court**

The complaint was filed to the Constitutional Court on April 14, 2005. In the complaint it was argued that the criminalization of abortion went against the right to equality and non-discrimination (Political Constitution art.13). Roa and her partners argued that by criminalizing a medical practice that only women need and that can be necessary to save women's lives, women were deprived control over their bodies and their reproductive health. This discrimination disproportionately affected young, poor and rural women. (Women's Link fact sheet)

According to the complainants the abortion ban had also severe effects on women's right to life, health and integrity (Constitution art. 11, 12, 43 and 49). Liberalization of abortion laws



reduces the rate of maternal mortality and morbidity and it is the only totally preventable cause of maternal death. In countries where abortions are illegal women experiences anxiety of acting clandestinely and are more likely to be psychological traumatized. (Center of Reproductive Rights 2005, Women's Link fact sheet)

The plaintiffs further maintained that when women are forced to carry unwanted pregnancies to term it violate their right to dignity, reproductive autonomy and the free development of personhood (Constitution Preamble and art. 1, 16 and 42). When women can not have an abortion in the case of rape or severe fetal impairment or when the pregnancy goes against the women's physical or psychological well-being it means that women are treated as “reproductive machines” and deprived of the right to determine their own lives. (Women's Link fact sheet)

#### **4.1.5.2 Colombia ignored international recommendations**

In addition, Colombia had received multiple requests and recommendations by international human rights bodies to review its strict law on abortion. Since no measures to liberalize the law had been carried out by the state, a few of these recommendations were included in the complaint. In 1997 and in 2004 the Committee of Human Rights, which monitors the Political Rights Covenant (ratified by Colombia in 1969), called attention to the high mortality rate of women in Colombia resulting from clandestine abortions;

*“It is of special concern that women who have been victims of rape or incest or whose life is in danger as a result of their pregnancy may be prosecuted for resorting to such measures (abortion). The State party should ensure that the legislation applicable to abortion is revised so that no criminal offences are involved in the cases described above.”*

The Committee on the Elimination of Discrimination Against Women, which monitors CEDAW, also expressed their alarm in 1999;

*“The Committee believes that legal provisions on abortion constitute a violation of the rights of women to health and life and of article 12 of the Convention. The Committee calls upon the Government to consider taking immediate action to provide for derogations from this legislation.”*

In that same year the Inter-American Committee on Human Rights pointed to how

*“The criminalization of abortion, together with the inadequate technique and unhygienic conditions in which abortions are performed, make it a leading cause of maternal mortality in Colombia. According to the State 23 percent of maternal deaths in Colombia result from poorly administered abortions.”* (Zamudio, year unknown:13-14)

#### **4.1.6 Summary of phase 1**

##### **Preventing factors**

As we have seen the overall human rights situation in Colombia prevented the women's rights activists to decriminalize abortion. The struggle for peace has kept the women's rights movement busy, and persecution and killings of human rights activists have silenced many.

Another preventing factor has been that even though the state is secular since 1991, there is still a close relationship between the state and the Catholic hierarchy. State representatives have either refused to bring up the issue of illegal abortion or have withdrawn proposals because of fear for the political Establishment. Women's rights in general have low priority for the government. Due to poverty there is an enormous rift in education between people and the moral rhetoric of the Catholic Church have had a very strong influence on many Colombians. Consequently it has determined the public debate about abortion. In addition, within the women's rights movements the knowledge of the judicial

system has been low and it has been hard to weaken the cultural expectations on man- and motherhood.

### **Promoting factors**

When the international organization Women's Link Worldwide contacted the national opposition it opened up new possibilities for a decriminalization. It encouraged the national opposition to see that illegal abortion is a concern on the international agenda, and that the Colombian state has ratified international human rights related to the issue. The state offered citizen access to human rights institutions were the LAICIA network could file its complaint. In addition, the Constitutional Court had defended sexual- and reproductive rights, although not abortion, in earlier rulings.

Despite previous repression, the state did not prevent the spread of information about illegal abortions and the LAICIA network could create a broad network with many different experts. Women's Link Worldwide provided international contacts, legal knowledge and experience and the necessary economical support. The national opposition was now able to put pressure on the state both from inside and outside of Colombia.

## **4.2 Phase 2 Denial of the state**

### **4.2.1 Denial of the state**

This phase is characterized by the production of information about the situation in the target state, compiled by the transnational advocacy network in cooperation with domestic human rights organizations. The norm-violating government usually denies all accusations and asserts its right to sovereignty, i.e. refuses to accept the validity of human rights norms and that their violations are subject to international jurisdiction. The norm-violating government denies not just the charges, but the validity of the international human rights norms themselves and claims the principle of non-interference in domestic affairs. (Risse et al. 1999:237) The denying can be prolonged if the government is not depending on the surrounding world's opinion. The more depending the state is, for example by earlier commitments to human rights, the bigger is the possibilities for the network to succeed. (Risse et al. 1999:22-24)

#### **4.2.1.1 Initial denial by parts of the state**

Although, during the campaign, the Colombian state never denied the validity of international human rights, it had previously for many years denied any correlation between human rights and the total ban on abortion. According to Karin Kuhfeldt, Ombudsman of Constitutional and Legal Affairs at the Human Rights Ombudsman, abortion was seen as a national matter;

*“The country has always maintained that the issue of abortion is a national issue and an independent decision made by this country. From the Human Rights Ombudsman we have at all times presented statistics about abortion and how it is handled in other countries. But regardless of this we had to consider that here we had an independent decision that we had to be responsible for, without being hard on ourselves. At least we were one of very few countries that completely banned abortion.”*

When the LAICIA network first presented its complaint in April 2005, the initial reaction from some state agencies was denial, although a majority supported the partial decriminalization, at least to some extent. While studying the complaint the Constitutional court requested concepts about the abortion issue from a variety of state agencies. Among these were the Attorney General (la Procuraduría General de la Nación), The Human Rights Ombudsman (la Defensoría del Pueblo), The Ministry of Social Protection (el Ministerio de la Protección Social), The Ministry of Internal Affairs and Justice (Ministerio del Interior y de

Justicia), The Colombian Institute of Family Welfare (El Instituto Colombiano del Bienestar Familiar) and by the National Academy of Medicine (la Academia Nacional de Medicina). (Interview with Lenis Urquijo, Ministry of Social Protection).

The Ministry of Social Protection and the Institute of Family Welfare (ICBF) presented concepts against a decriminalization of abortion, maintaining the rights of the unborn child. (Interview with Ilva Hoyos, professor in law and chairwoman of the pro-life network the Future of Colombia., December 14, 2006)

#### **4.2.1.2 Mostly silence on the state's behalf**

When the complaint became public and the official campaigns around the abortion issue were initiated in April of 2005 President Alvaro Uribe and the government neither confirmed nor denied allegations that the abortion ban violated constitutional rights. The government kept silent.

*“Fortunately, the process itself had more of a judicial focus, consequently the state representatives were quiet and waited for the court to give its verdict”,* confirms Sandra Mazo.

*“The Ministry of Social Protection supported the decriminalization of abortion, but they did it silently, not to come in an open conflict with the Catholic priests.”* (Anonymous from La Mesa)

At a previous debate on the ratification of the *optional protocol* of CEDAW, Convention on the Elimination of all forms of Discrimination Against Women (eventually ratified in January 2007) President Uribe did not express his personal opinion of abortion. However, he did comment that the ratification of the protocol did not imply any international obligation for him as a president to decriminalize abortion. He stated such a change to be the duty of a court or the parliament. (Interview with Mónica Roa)

*“The government would have preferred if the complaint was never presented”* commented Juanita Barreto, consultant at the Mayor's office in Bogotá. (Interview with Juanita Barreto)

#### **4.2.1.3 The First Lady supported the complaint**

Interestingly, the President's wife Lina Maria Moreno was more talkative than her husband in the abortion debate. In October of 2005, in an interview for the Sunday edition of the national newspaper El Tiempo, the First Lady of the nation declared her support for a decriminalization of abortion within the three circumstances of the complaint. She criticized the fact that most of the women dying from illegal abortions are young and poor. In addition, she expressed her concern for the high teenage pregnancy rate and the suspended sexual education in schools. (El Tiempo Oct. 16, 2005).

According to Clara Elena Cardona at Women's House Lina Maria Moreno also contacted the organizations involved in the campaign and showed her support.

*“But we considered that she was too involved with the government. If she wanted to support us it was better that she did so in public. In the campaign we didn't receive any resources from her.”*

However, the statements made by the First Lady had a great impact on the general public and was of course very important for the LAICIA network. The pro-life network on the other hand was disappointed;

*“I think the government has been acting like a turncoat, the President expressed himself in favor of the right to life, but he didn't do it as upfront and clear as the minister with the contrary point*

*of view, or like the First Lady. We were surprised that the First Lady showed her support so direct in an interview”* said Ilva Hoyos from the pro-life network the Future of Colombia.

#### **4.2.1.4 Denial in the conservative sector**

Other parts of the state supported the conservative opposition. Within the church there were different views, some priests were completely against, while others were more open to a partial decriminalization. However, as an institution the Catholic Church declared itself against a decriminalization of abortion. (Interview with Juanita Barreto, Mayor’s office) Much of the Catholic Church’s and the pro-life movements’ arguments were characterized by denial and they were based on a rhetoric of nationalism and sovereignty. Non-governmental pro-life organizations saw legal abortion as a foreign threat;

*“There is a sector within the economy that has a strong interest that the world’s population does not continue to grow, so that the rich people stays rich. This is the depressing reality. So what is the idea? To abort! And who is deciding this? The Rockefeller Foundation and the United Nations. The Presidents has commitments with the International Monetary Fund and with the US, which all the time wants to see the Latin-American countries poor and inferior to them. (...) All laws that promote abortions are from abroad”* say Olga De Villa and Estela Orozco at the Colombian branch of the US-pro-life organization Human Life International.

This argumentation also occurred within the state;

*“There is a conservative organization that has one representative in the parliament and in all debates he has maintained that abortion is a demand from multinationals that wants to decrease the world population”* sights Karin Kuhfeldt, at the Human Rights Ombudsman.

The conservatives and the Catholic Church started to campaign against the complaint. Full-page advertisements about the importance to defend human life signed by several senators and legislators were published in *El Tiempo*. Behind the publication was Human Life International. (*El Tiempo* Oct 2, 2005) US pro-life organizations like Human Life International are affiliated in almost every Latin American country, including Colombia. (Htun 2003:152) Parts of the pro-life movement accused the LAICIA network of being financed by international death-agencies. (Sandra Mazo, Catholics for a Free Choice) Florence Thomas also indicates that the LAICIA network was insulted by parts of the pro-life network;

*“You cannot imagine the insults they said to Mónica and me, murderers and responsible of genocide and much more! Furthermore, because I am a foreigner that has moved to Colombia, it was worse and I was more exposed to this name-calling.”* (Interview with Florence Thomas)

#### **4.2.1.5 First complaint was turned down**

On December 7, 2005, after the LAICIA network had been campaigning for eight months, the Constitutional Court turned down the complaint. The court claimed that it was unable to pronounce a sentence. In their rejection the court considered it to be the task of the judges and not the complainants to suggest supplements to the existing law, for example to allow abortion in the case of rape, severe fetal malformation or when the life or health of the woman was endangered. The court also criticized a weak connection between the demands in the complaint and the real content of the law. Moreover, according to the court the international

arguments presented in the complaint failed to show why the Colombian state should change its policy on abortion.<sup>32</sup>

Mónica Roa believes that the first decline by the court might have been an attempt to win time or to distract the pressure on the judges;

*“But the decline was clearly not justified in terms of legal technically. And the proof is that when they gave the final decision they gave us exactly what we had asked for in the first place.”*

Only four days after the first complaint was denied, on Dec 12, 2005 the LAICIA network filed a second version to the court.

*“The court probably thought that it would take us about six months to correct the complaint, but we worked day and night to make the changes and presented it once more four days later!”* says Florence Thomas.

#### **4.2.1.6 No more room for denial**

The phenomenon that Risse and colleagues call “World time” implicate that the existence and strength of human rights institutions have steadily increased since the 1970’s. Within the period 1973-1985 the international human rights covenants came into effect, new institutions like the United Nations Human Rights Committee were founded and transnational human rights networks and NGOs emerged. The influence of human rights norms spread rapidly in the world after 1985. However, these normative changes did not take place in all countries or regions at the same moment. In Europe no state has denied the status of human rights norms since the Greek military junta in the late 1960’s, while in Latin America the historical limits of denial were reached in the mid 1990’s. (Risse et al. 1999:21-22)

The LAICIA network’s complaint was filed to the Constitutional Court in Colombia in 2005. The human rights norms referred to in the complaint had been institutionalized in the country already in 1991, when the new Constitution was created. The state had not only ratified the current conventions on human rights, but had also included them in the Constitution. (Cabal et al. 2003:57)

Risse and colleagues believe that states are less likely to maintain in a prolonged denial stage when human rights norms have become increasingly accepted or if they are already institutionalized in the structure of the state. (Risse et al. 1999:24)

Consequently, denying the validity of human right norms was not an alternative to the Colombian government, given the human rights commitments in the Constitution. The “denial of the state” phase was therefore short in Colombia. This time ratified human rights agreements were brought to the state’s attention by the LAICIA network, and due to their normative commitments the state became susceptible to persuasion from both domestic and international human rights network. (Risse et al 1999:24)

#### **4.2.1.7 Increasing support from state agencies**

When the LAICIA network presented its second complaint in December 2005 both the Attorney General (La Procuraduría) and the Human Rights Ombudsman (la Defensoría) supported the complaint. In their concept to the Constitutional Court they declared the total ban on abortion to be unconstitutional. They also stated that the total ban violated the human rights of women and girls and that a punishment was discriminating;

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<sup>32</sup> [www.despenalizaciondelaborto.org.co/contenido.php?id\\_noti=7](http://www.despenalizaciondelaborto.org.co/contenido.php?id_noti=7)

*“I think it was very important because for the first time ever the Attorney General and the Human Rights Ombudsman, which form the Public Ministry, asked for the total ban on abortion to be revised. At two previous opportunities they have maintained to the court that a total criminalization of abortion is constitutional, so this was a significant advance.”* (Interview with Karin Kuhfelt, Human Rights Ombudsman)

Other state agencies acted in a similar way. The Ministry of Social Protection and the Institute of Family Welfare (ICBF), that at first had presented concepts against a decriminalization of abortion, this time turned to the court and asked the judges to declare illegal abortion a public health issue and to decriminalize abortion under extreme circumstances.<sup>33</sup>

*“The Ministry of Social Protection and the ICBF first presented useless concepts with errors, but then they realized that not just any lawyer can manage these issues and that they needed lawyers that know sexual and reproductive health and rights, lawyers that are familiar with the CEDAW and the Cairo and Beijing conferences etc! And then they presented very useful concepts in favor. I think this happened because now with the Constitution of 1991 it is very difficult to say no to human rights.”* (Anonymous from La Mesa)

The opposition confirms this, but has a different opinion on the reasons for the change;

*“By the time of the first complaint they were positive to our point of view, but in the second they had change their minds because of the strategies that the feminists and the abortionists used!”* says Ilva Hoyos, the Future of Colombia.

#### **4.2.2 Pressurize repressive state**

Mónica Roa means that part of the strategy was to use international moral persuasion to some extent, both to show how abortion was dealt with on an international level and to make the court feel that the “human rights world” was watching. The roll of the international network affiliated with the campaign was to inform on a worldwide debate about sexual and reproductive rights that has been going on for more than 30 years, to point to the necessity to advance in the field at a national level. The national network on their part was encouraged to soak up the terms of the international debate, to investigate the state of the problems in Colombia and to look for solutions. (Roa 2006:242) The LAICIA network also published press releases in English and designed them to be of interest of the international media. (Interview with Mónica Roa)

#### **4.2.3 Mobilize international organizations and liberal states**

The LAICIA network contacted international non-governmental organizations and human rights bodies and these organizations sent interventions to the Constitutional Court in May-July of 2005;

*“We got a lot of amicus curies filed by international organizations. They were all very interested in what was happening here in Colombia, also because I was using many of the strategies that I had learned from them.”* (Interview with Mónica Roa)

Among the institutions sending amicus to the Constitutional Court in Colombia, asking them to comply with international human rights agreements, were very influential universities such as Harvard Law School Advocates for Human Rights and the Lowenstein Human Rights Clinic at Yale Law School, together with a multitude of organizations such as Human Rights

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<sup>33</sup> [www.despenalizaciondelaborto.org.co/contenido.php?id\\_noti=7](http://www.despenalizaciondelaborto.org.co/contenido.php?id_noti=7)

Watch and RFSU, Swedish Association for Sexual Education.<sup>34</sup> In no previous lawsuit had the Constitutional court received so many interventions.

The opposition used similar methods. Any Colombian citizen can make a written intervention to the Constitutional court. Thus, the opposition compiled interventions and signatures by citizens and send them to the court to protest against a possible decriminalization of abortion;

*“We were surprised because when we introduced the possibility for people to send interventions we expected about 10,000 and we ended up with more than 1.5 millions! (...) It was so many boxes that we had to figure out how to transport them all to the court”* says Ilva Hoyos at The Future for Colombia.

Since the human rights norms referred to in the complaint were not denied by the Colombian state, the LAICIA network did not try to influence Western governments to put pressure on the state. Still, the international support and interest was important parts of the process, since much of the arguments in the complaint were taken from international law and recommendations. (Interview with Sandra Mazo, Catholics for a Free Choice)

#### **4.2.4 Summary of phase 2**

##### **Preventing factors**

At all the earlier attempts by the women's rights movement the Colombian state had denied women the right to legal abortion even under extreme circumstances. In April of 2005 when the LAICIA network filed the first complaint a few state agencies sent negative concepts to the court where they defended a total criminalization of abortion. In addition, the government replied to the complaint by silence. This first complaint was turned down by the court. Conservative politicians and the pro-life movement, supported by the Catholic Church, also intensified their campaign against a decriminalization. A few state representatives dismissed abortion as a threat from abroad, although during my interviews this opinion was mostly expressed by non-governmental pro-life organizations.

##### **Promoting factors**

When a second complaint was presented just a few days later, in December 2005, the LAICIA network got more support. It became difficult for the state to deny the international human rights they had previously committed to in national legislation. A majority of state agencies supported the idea that illegal abortion was a serious public health issue. Already in the first process the President's wife openly supported the complaint in the media. International organizations sent supporting interventions to the Court. The LAICIA network never had to make liberal states to put pressure on the Colombian state, because Colombia already accepted international human rights.

### **4.3 Phase 3 Tactical concessions**

#### **4.3.1 Tactical concessions**

##### **4.3.1.1 Colombia in the phase of tactical concessions**

In the third phase of the Spiral model of human rights change the norm-violating state seeks cosmetic changes to pacify international criticism. By making tactical concessions, and by that means no longer denying international human rights norms, the state hopes to gain international recognition. This phase is the most critical in the model because the process can

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<sup>34</sup> Appeals to support the decriminalization of abortion in Colombia were sent to the Constitutional Court from a multitude of international organizations and institutions. A full list is available at [http://www.womenslinkworldwide.org/proj\\_laicia.html](http://www.womenslinkworldwide.org/proj_laicia.html)

either strengthen the opposition and continue the change of human rights conditions, or lead to a backlash of the movement due to weakness and/or repression. (Risse et al. 1999:25)  
Occasionally states ratify human rights norms without fully accepting them or trying to comply with them. But if the norm-violating state has made this kind of tactical concessions at this point, it is more vulnerable to allegations by the growing domestic opposition. (Risse et al. 1999:248)

As we know by now Colombia has ratified almost every international human rights agreement, but despite this the country is known to be one of the worst human rights criminal in the world. I therefore consider that according to the Spiral model of human rights change Colombia found itself in the tactical concessions phase when the LAICIA network presented its complain to the Constitutional Court.

### **4.3.2 Mobilization and strengthening of groups**

At the beginning of the third phase the domestic opposition is often small and dependent on just a few key leaders. During the third phase of the model the international attention has strengthened and legitimated the domestic opposition. The activities are now transferred from the transnational level to the growing domestic opposition. (Risse et al. 1999:25)

To succeed with the high impact litigation, aiming to influence the public opinion, it was crucial to include a communication strategy to go along with the legal process. (Roa 2006:225)

*“The only people I had to persuade with constitutional arguments were five of the nine judges. But of course we also wanted to take the opportunity to change public opinion.”* (Interview with Mónica Roa)

The communication campaign towards the public was lanced through both manifestations and through the mass media. The aim was to present abortion from a perspective of public health, human rights, gender equality and social justice and to procure an answer to the high maternal mortality. (Roa 2006:237)

At the beginning of the campaign it was difficult to reach out to the Catholic majority of the population. People were very influenced by the Church and they were negative to the networks proposal. Sandra Mazo at Catholics for a Free Choice believes that many people through the network were promoting free abortion and that most Colombians could not accept this;

*“To them abortion was a moral issue, the woman who practice an abortion was committing a sin, she was a murderer and had to be excommunicated from the Church. During the process people started to understand little by little that our objective was to allow abortion only within these three circumstances. They also understood that illegal abortion was an issue of public health and social justice. We succeeded to transform abortion from a religious matter to a political issue, which I believe to have been the most valuable change in this process.”*(Interview with Sandra Mazo).

### **4.3.3 Reduced margin of maneuver for the state**

#### **4.3.3.1 The state entrapped in its own rhetoric**

When a domestic NGO networks is fully mobilized and linked to the global human rights polity it can be activated at any time. A state that starts making tactical concessions often underestimate the impact of them and think they have greater control over domestic and



international processes than they actually have. States authorities believe that “talk is cheap” and do not understand that they can get “entrapped” in their own rhetoric. (Risse et al. 1999:26, 21)

Again, the concept of “World time” can explain much of this setup; Colombia followed the “World time” cycle and the state made most of its tactical concessions during the international “human rights norm cascade”, from 1985 and ahead, when international human rights spread rapidly. (Risse et al. 1999:27)

Already in the late 1960’s Colombia ratified their first human rights covenants. During the 1980’s the state continued by ratifying international agreements about the human rights of women. But the real change came about in 1991 when the human rights-centered Constitution was settling. When ratifying these agreements the Colombian state, like many other states, could not know then the extent of pressures they would face and the impact their actions would have in a new world context. (Risse et al. 1999:27)

Mónica Roa believes that the court and other state institutions were taken by surprise when the LAICIA network filed the complaint and started its campaign;

*“I think they were mostly surprised because they didn’t know how clear and specific the international arguments were, not even the judges, I believe. The development of abortion as a human right has been so big in the last ten years that I am not sure many people knew about it. (...) They (the state) knew what they had ratified, but they knew it from the male perspective, like when you talk about the right to life for men. But how about the violation of the right to life when it comes to women? (...) What happens to women is that they die because of illegal abortion.”*(Interview with Mónica Roa)

#### **4.3.3.2 Tactical concessions become real dialogue**

In the later stages of the tactical concessions phase the norm-violating state starts to take its critics more seriously and discusses human rights with them. This further strengthens and empowers the opposition. What began as rhetoric concessions have now become real dialogue between the parties. Faced with a fully mobilized domestic and international opposition the state no longer has many choices left. (Risse et al. 1999:28)

In the complaint and during the campaign the LAICIA network argued that the court had to be consistent in their use of international human rights agreements. The network pointed to that if the state was going to take all the legitimacy that praising human rights gave them, that also implied obligations that were very clear. In addition, the court had used international human rights to decide on other cases and now the LAICIA network believed it was time to be consistent and to use them for the issue of abortion as well. (Interview with Mónica Roa)

However, at this stage there was not so much dialogue between the state parties and the LAICIA network. The Constitutional court could not enter into dialogue before they had made a decision and the other state institutions were silent, waiting for the court’s decision (although they did send petitions to the court). (Interview with Sandra Mazo)

#### **4.3.4 Normative appeals**

##### **4.3.4.1 “Shaming” the state**

The LAICIA network started to expose the state to a normative process of “shaming”. Mónica Roa describes how the vanity of the state became one of the network’s assets;

*“Something we had to try to get on our side is that Colombia is a very “snobbish” country, meaning that we really care about our international image. We had the pressure of the international world looking at us and saying that this (the total ban on abortion) is a violation of women’s social justice and a public health issue. We were trying to use it here to show that the debate was already solved in other parts of the world.”*

Roa also believes that the Colombian state thinks of itself as belonging to a community of liberal states;

*“I think Colombia likes to see itself as protective of human rights, even if it is completely different what happens in reality. But at least on paper the decisions of the Constitutional Court are some of the most progressive in the world. The court is very well known internationally for being progressive and protective of human rights. Again, at least on paper.”*

The network started to portray the Colombian state both internationally and nationally as a reactionary norm-violating state that was not willing to comply with the human rights agreements they had previously ratified. The total ban on abortion was described as both uncivilized and hostile to women’s basic rights. It was brought to attention by the network that Colombia had one of the most restrictive abortion laws in the world and that authorities like the Committee on Human Rights had recommended its legislation to be revised. (Women’s Link fact sheet)

Florence Thomas writes a column in the national newspaper El Tiempo and as a member of the LAICIA network she frequently brought up the abortion debate.

*“I often use international arguments, for example that a majority of the world’s population lives in countries where abortion has been prescribed in the law. Colombia has clearly fallen behind the rest of the world!”* (Interview with Florence Thomas)

With these sorts of statements made by the LAICIA network Colombia was expelled to an out group and not seen as a liberal and democratic state, something that most states resent. (Risse et al. 1999:27) Sandra Mazo at Catholics for a Free Choice reveals that La Mesa had complained before to the Colombian state, that it was slow and old fashion and had a legislation that did not correspond to the reality in Latin America. The state had ignored these appeals, but when they were publicly discovered not to comply with international agreements they suddenly became concerned. (Interview with Sandra Mazo)

#### **4.3.5 Framing information**

##### **4.3.5.1 Public manifestations**

The 28<sup>th</sup> of September is the day for the decriminalization of abortion in Latin America and the Caribbean. When the LAICIA process started the Colombian branch of the 28<sup>th</sup> of September campaign was reactivated and manifested publicly on the 28<sup>th</sup> of every month, from May 2005 until the courts final verdict. (Interview with Sandra Mazo) The campaigners went out on the streets in different parts of Colombia distributing information about their work and wearing t-shirts with the following messages: *“We are all citizens and have a saying in the destiny of our nation, why can’t we have a say about our own bodies?”* Other slogans were *“Neither the state nor the Church decide, my body is mine”* and *“For a free choice of motherhood”*. (Campaign brochures)

Clara Elena Cardona at Casa de la Mujer reveals that not everybody was happy with the open manifestations of the LAICIA network;

*“We had t-shirts that said “I have had an abortion” and in an interview for Caracol (Colombian broadcasting cooperation) I told my experience and then I received threatening letters. But that is all part of the process.”*

*“When we went out on the streets with posters people yelled at us; “Murderers!” The taxi drivers for example, they were furious! But I said “Take it easy Mister, because you will not get pregnant by having sex!” says Ximena Castilla with a laugh. (Interview with Ximena Castilla, )*

The work of the national women’s movement, which operated from all corners of Colombia, was crucial for the spreading of the LAICIA network’s message. Different women’s organizations and individuals manifested to make visible the need for a decriminalization of abortion and to make political institutions understand the importance of the public debate. (Sandra Mazo)

Clara Elena Cardona at the Women’s House wants to emphasize the courage of many of the women manifesting for the cause around the country;

*“The process was not easy and it was not just to approach the Constitutional Court. There was a great difference in the campaign between educated women in Bogotá and uneducated rural women. It was very difficult to talk about abortion for women from popular movements, for poor women influenced by religion and for displaced or abused women. It had a high price both socially and economically speaking for them, some of them were rejected by their husbands. For women that had never been able to make their own decisions, to one day stand up in their neighborhood and say: “Look, I am in favor of abortion, I wear this t-shirt!” was not easy.”*

Despite all of the manifestations from both the LAICIA network and the opposition, one of the judges in the Constitutional court, Humberto Sierra, denies that the court felt pressure;

*“The Court was the object of many manifestations from both camps, but we didn’t feel any pressure.” (Interview with Humberto Sierra)*

#### **4.3.5.2 The mass media campaign**

The information about abortion that had circulated in the media during the last twenty years was in general presenting moral or criminal aspects of the issue, because the journalists were often consulting their sources within the Catholic Church. When doctors or politicians were asked about abortion they brought up the public health aspect, but without consistency or without ever taking position for a decriminalization. The LAICIA network wanted to diversify the voices authorized to speak about abortion in the mass media and to change the terms of the abortion debate. (Roa 2006:235-236) With Mónica Roa’s new proposal there was a chance for people to look at the abortion issue fresh again;

*“We framed the debate differently and not with a few options of you agree or you disagree a hundred percent, but with the possibilities to pick within a different type of positions.” (Interview with Mónica Roa)*

In 2004, Women's Link Worldwide turned to a communication agency in Bogotá called Brújula (compass) Comunicaciones, and the agency put together a general strategy of how to create a positive image of a the complaint to the Constitutional Court among the public.<sup>35</sup>

From the first moment of the process the LAICIA network had prepared a broad network representing a wide range of their arguments related to public health, psychology, national law and international human rights. When they eventually presented the appeal and let the

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<sup>35</sup> [www.brujula.com.co/paginas-brujula/experiencias.php](http://www.brujula.com.co/paginas-brujula/experiencias.php)

media know about the content and the arguments, their point of view was already known in the public sphere. The mediation was planned at an international, national, regional and local level, trying to have a constant dialog with national and international organizations, academics in the field, the medical community and with influential people in the public debate. (Roa 2006:235-236)

There were several important challenges linked with the media strategy, to make abortion an issue of high impact on the national agenda, to be able to handle the permanent and always risky public exhibition and its repercussions that media coverage will involve, and to know how to act towards the profound diffusion of ideas and positions around the issue of abortion. Already a couple of weeks after the first appeal was presented the media coverage had been constant and overwhelming, with columns, articles and interviews and the publishers opinions on the issue had been generous and approving. (Roa 2006:235-236)

Both the LAICIA network and the pro-life movement used the mass media to reach out with their message. Women with different experiences of abortion told their personal stories in the media, often anonymously. Depending on the purpose behind the media coverage the story emphasized either the damage a certain woman had suffered from being denied an abortion, alternatively how much she regretted having an abortion. Clara Elena Cardona at the Women's House tells how the media chased stories;

*“When we first started the campaign the media called us and asked if we had women that had had abortions or that had been victims of sexual violence. But the Women's House has an ethical position not to expose these women, because they trust us.”*

Two human fates especially affected people. One of them was Marta, a single pregnant mother that had fatal cancer. The pregnancy had to be interrupted in order to give her treatment, but the doctors refused to perform an abortion referring to the current prohibition. Marta eventually passed away, leaving four children behind. Another story covered by the media was about an 11-years old girl that became pregnant when she was raped by her stepfather. This young girl became the first person to have a legal abortion in Colombia. The girl's fate captured many Colombians, and even though her case was known after the court's decision it sky rocked the public opinion in favor of a partial decriminalization. The Catholic Church reacted by excommunicating everyone that had been involved in the decision to make the abortion, including the doctors, the girl and even her grandmother. (Interview with Mónica Roa)

#### **4.3.6 Human rights assuming center stage in societal discourse**

The campaigning paid off and the issue of abortion became more accepted in the public sphere.

*“As the issue became more and more popular, more and more people from the government or from the Congress and different political parties decided to support us. I thought it was going to be harder and I never expected so much support. (...) But on the other hand we also knew that of the many abortions that take place in Colombia every year, 95 percent of those are Catholic women and 95 percent of those are men that have know that either their partner or their daughter have had an abortion. So there was this double standards that I think helped to...I think they were somehow convinced in private but what we helped them to do was to feel more at ease to come out publicly and say “Yes, I support abortion in this cases.” (Mónica Roa)*

*“The Colombian society is very liberal in its actions, but very conservative in its hearts and minds.”* (Humberto Sierra, judge at the Constitutional Court)

Daniel Maguire, professor in religious ethics, also refers to this double standard in his study; He points to that in no South American country is the Catholic population less than 70 percent. Yet despite the Catholic Church’s ban on contraception, sterilization and abortion, the average fertility per woman has dropped from over six children in 1960 to just over three children in 2003. As Maguire argues, it is difficult to believe that this development is due to voluntary continence from sex. (Maguire 2003:70-71)

### **International pressure versus national debate**

All throughout their study Risse et al. emphasizes transnational activism. In this third phase the Spiral model presupposes that international attention has strengthened and legitimated the domestic opposition. (Risse et al. 1999:25) Although the opposition in Colombia was strengthened it is difficult to say if this was because of international pressure or due to the active debate within the country. Among the interviewees the opinion was divided;

*“The international influence was important. It was not enough only with the domestic women’s groups having an interest in the abortion issue. When the Congress started to discuss the CEDAW protocol it stimulated people and they became aware that we had in fact signed the CEDAW.”* (Juanita Barreto)

When I speak to Mónica Roa a year after the decriminalization of abortion in Colombia she says;

*“Actually, international attention was not as important for the outcome as we first thought. The idea was that international attention would give us attention in Colombia, but instead it was the other way around. The abortion issue provoked a huge debate in Colombia, and then the international actors became interested. (...) Of course without international human rights agreements or the financial support our organization would not even exist, but that is not relevant, what is relevant is what we managed to do with the resources we had.”* (Mónica Roa)

### **4.3.7 Summary of phase 3**

#### **Preventing factors**

In this phase most of the indicators promotes a partial decriminalization of abortion in Colombia, even if there still is severe mobilization from the conservative sector. They too are using all the means they have, the media, their contacts and intense lobbying. For the LAICIA network it is difficult to convince those segments of the population that are close to the Catholic Church, and poor rural women are under pressure for joining the campaign.

#### **Promoting factors**

In this phase the effectiveness of the strategies used by the LAICIA network becomes apparent, partly because of the state’s vulnerability to earlier normative commitments. The network is aware that the state cares about its international image. They also know that the Constitutional court has a good reputation of being respectful of human rights. The LAICIA network takes advantage of this and in their communication campaign they point to that the state is hostile to women’s basic human rights. The network also has good contacts within the media, although the pro-life movement also uses the media for its purposes. The LAICIA network argues that the court has used international human rights to decide on other cases and that this is the time to be consistent. The state finds itself entrapped in its human rights rhetoric. It seems like the state did not realize what ratified human rights conventions

would mean in a new world context. The communication campaign is successful and more politicians and parts of the public are joining.

## **4.4 Phase 4 Prescriptive status**

### **Criteria for prescriptive status**

“Prescriptive status” implies that the actors involved in the process on a regular basis refer to the human right norm to explain and comment on their own behavior and that of others. The state is accepting the human rights norms, even though their actual behavior still violates the norm. Risse et al. emphasizes that this is the phase where argumentative behavior matters the most. As discussed earlier, national governments may in their contacts with international human right bodies refer to human rights norms for purely instrumental reasons, for example to receive Western goodwill. Because of this the Spiral model has come up with the following indicators for when governments are considered to have recognized the validity of human rights norms, i.e. attained prescriptive status. (Risse et al. 1999:29);

- When the government has ratified the respective international human rights conventions, including the optional protocols
- When the norms are institutionalized in the constitution and/or in national law
- When there is an institutionalized mechanism for citizens to complain about violations of human rights
- When the government acknowledge human rights norms irrespective of the audience, do not reject criticism as “interference in internal affairs” and engage in dialogue with critics.

If we return to the concept of “world time” we can see that most countries in Risse et al’s study, despite their many internal differences, attained “prescriptive status” during the “international norm cascade” between 1985-1995. Virtually all Latin American states joined the “norm cascade” in just a few years at the turn of the decade (1987-1992). There is no evident reason for this, because most of the main human rights treaties have been in force since the mid-1970’s. Risse et al. believe that this synchronized achievement of prescriptive status and the ratification of human rights treaties may be less linked to a country’s domestic structure and history than to global and regional normative development. The authors also suggest another possible explanation; that norm socialization takes time. Not only shall all international human rights institutions be in place, but it is also a communicative process that requires engagement. (Risse et al. 1999: 31, 191)

### **4.4.1 The State has ratified international human rights conventions**

#### **4.4.1.1 “Prescriptive status” in Colombia**

I consider that by the time Mónica Roa and her partners presented the complaint to partially decriminalize abortion in April 2005 Colombia had already reached “prescriptive status” regarding universal human rights. Colombia belongs to the big group of countries that went with the “international norm cascade” and “prescriptive status” was formally reached in 1991

when ratified human rights norms<sup>36</sup> were institutionalized in the national constitution and the state began to establish a few human rights institutions. Colombia has also ratified some, but not all, of the optional protocols belonging to already ratified conventions.<sup>37</sup> A few optional protocols have caused a heated discussion, especially the one belonging to the CEDAW, Convention on the Elimination of all forms of Discrimination Against Women;

*“Conservative groups in the Congress, supported by priests and the Opus Dei did not want the government to ratify the optional protocol of CEDAW because they said it was the same as legalizing abortion. The women’s movement had to work very hard for the government to finally ratify the protocol”* tells Sandra Mazo at Catholics for a Free Choice.

The optional protocol of CEDAW was not ratified by Colombia until January 2007<sup>38</sup>, after the partial decriminalization of abortion took place. Still, like many other norm-violating states in the prescriptive status phase, the government in Colombia continues to violate human rights on a daily basis. Accordingly, there is a big gap between prescriptive status and rule-consistent behavior in Colombia. (Risse et al. 1999:30, 163) Sandra Mazo at Catholics for a Free Choice explains;

*“The Constitution is good, it is well drawn up. The problem is that the structure of the state, that violates human rights, is ignoring the Constitution. If Colombia would live up to what is written in the Constitution, Colombia would be the ideal of a country, the best democracy in the world.”*

Clara Elena Cardona from Casa de la Mujer directly points to how the government has been using the ratification of international human rights to make tactical concessions;

*“The ratification of international treaties before the international community is one of state’s “tools” used by the current government to somewhat manipulate international aid. They say “look, we are supporting and respecting human rights in our Constitution.” But in reality that is not true. It is always like that, in reality it is not the case.”*

Thus, looking at the general human rights situation in Colombia one can say that universally accepted human rights have been *formally* institutionalized in the country. But this was not true for the more controversial right to access to safe abortion, not even under extreme circumstances. In 2005 when the LAICIA network started to prepare their complaint, human rights had no meaning for pregnant women in Colombia with a risky pregnancy, those carrying a fetus with abnormalities or women that had been raped. The life and well-being of the pregnant woman was sacrificed for that of the fetus. As we have seen, this was picked up on by the LAICIA network who argued that the state violated constitutional rights by denying women abortion even under these extreme circumstances.

Risse et al. indicates that the first steps toward “prescriptive status” are usually taken earlier in the spiral model, but then instead as tactical concessions. Just ratifying this or that human rights norms does not qualify a state for the phase of “prescriptive status”, but almost all of the countries examined by Risse et al. have moved from tactical concessions to full

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<sup>36</sup> With the year of ratification indicated in parenthesis; The International Covenant on Political and Civil Rights (1969), the International Covenant on Economical, Social and Cultural Rights (1969), Convention on the Elimination of all forms of Racial Discrimination (1981), Convention on the Elimination of all forms of Discrimination Against Women, CEDAW (1982) and the Convention against Torture (1987), Convention on the Right of the Child (1991) and the Inter-American Convention on the Prevention of Violence against Women (1995). (Women’s Link fact sheet)

<sup>37</sup> For example the optional protocols of the International Covenant on Political and Civil Rights in 1997 and that of the Convention on the Right of the Child Rights in 2005.

<sup>38</sup> [http://www2.ohchr.org/english/bodies/ratification/8\\_b.htm](http://www2.ohchr.org/english/bodies/ratification/8_b.htm)

acceptance. Through treaty ratification states ensnare themselves in legal processes where they can no longer escape. (Risse et al. 1999:248)

In this fourth phase of the model Risse et al. expects a dialogue of argumentation and justification between the national government and the domestic- and international opposition. But it is also in this phase where the state starts to institutionalize new institutions to protect human rights. (Risse et al. 1999:30) The economically weakest countries are not the ones most sensitive to pressure, but those that care about their international image. Tactical concessions made by the norm-violating state in previous phases will probably lead to either a regime change or a process of controlled liberalization, moving towards the phase of prescriptive status. (Risse et al. 1999: 37-38, 247) As far as Colombia is concerned the state went with a process of controlled liberalization of the abortion ban.

#### **4.4.2 State institutionalizes norms in domestic law**

##### **4.4.2.1 The Constitutional Court's final decision**

After another five months of campaigning the final verdict of the Constitutional Court came down on May 10, 2006. Five of the nine judges had voted in favor of a partial decriminalization. The ruling C-355/2006 held that abortion must not be considered a felony under three circumstances: when the life or health (physical or mental) of the woman is in danger; when pregnancy is a result of rape or incest; or when grave fetal malformations make life outside the uterus unviable. It was established in national law that the state had to provide women within these three circumstances with voluntary access to safe abortion. The LAICIA network and their supporters were of course overwhelmed with joy over the court's decision;

*"All Latin-American countries are in this struggle, or a similar struggle, to decriminalize abortion. But the achievement here in Colombia has not happened in any other Latin-American country like we experienced it here. It is really a historical conquest, because we have managed to leave the countries that criminalize abortion under all circumstances"* says Sandra Mazo at Catholics for a Free Choice.

But there were also some critical voices within the women's rights movement;

*"We consider this decision a big historical advance for women, an acknowledgement for women's freedom and independence, but we believe that abortion is a **right**. Most women do not have abortions because they are experiencing any of the three circumstances that permit legal abortion. Most women have abortions because they don't want to have children, because they can't afford to have children or because the father-to-be is married and wants to keep the relation hidden. These women will continue to seek up illegal clinics and they will continue to die!"* (Interview with Clara Elena Cardona, Women's House)

*"I believe that if the court hadn't felt all the pressure from the conservative sector they would have taken the decision to decriminalize abortion in **all** cases. I think that, in accordance with sound political and judicial logic, the court chose to decriminalize abortion within the three extreme cases because it allowed them to stay friends with both God and the "Devil", by saying to the women "look, up to now we have succeeded within these three cases" and to the opposition "we cannot continue to force women to carry deformed fetus, fetus that result from rape or that women die because they can't have an abortion, that is not corresponding to human rights." In other words, the court gave something to both parties."* (Interview with Clara Elena Cardona, Women's House)



During the campaign for a decriminalization the LAICIA network had welcomed everybody to join, as long as they wished for some sort of decriminalization of abortion. But later in the implementation process conflicts between the urban middleclass lawyers and the rural or alternative women's movement came up. Accordingly, the fact that the network was a mix of persons of different nationalities and from various socio-economic backgrounds can be both a strength and a weakness.

*“It is very important for us to tell that behind this achievement are all women. At May 10<sup>th</sup> when the final decision came we felt a bit of frustrated because the celebrations took place with Mónica Roa and people around her at certain reunions, at clubs and discotheques. We went with them and congratulated, but we also had some reflections that the celebrations should be for all women, especially for those that had a hard time when they chose to participate in the campaign. This is not our celebration, it is theirs. We have some differences there. The celebrations took place at Parque 93 (a famous park in Bogotá surrounded by expensive clubs and restaurants), so obviously no invitations reached women in poor neighborhoods. And those were the ones that protested the 28<sup>th</sup> of every month outside the court, those were the ones that came hungry. We have to give these women an historic recognition.”* (Interview with Clara Elena Cardona, Women’s House)

#### **4.4.2.2 A process of controlled liberalization**

When I was visiting Colombia during the winter of 2006 the LAICIA network was proud and optimistic, while the opposition of course was disappointed. But there was also a general confusion in society about what was going to happen after the verdict. There was no information about exactly which conditions that permitted an abortion, the methods that should be used to perform it, which institution(s) that were responsible for the procedure and so on. The opposition tried to stop all institutionalization of the decision, while the LAICIA network waited impatiently for a regulation to be set up by the Ministry of Social Protection;

*“I think the government totally respect the decision and will try to implement it. The only thing that I still don’t understand is why the Minister of Social Protection hasn’t published regulations on how the law will be implemented. I have been away, but I know that at the beginning he was totally willing to put in place a regulation, and then I came back and he said he was not going to do it, and then, yes I am going to, and then no again... I really don’t know, I am trying to figure out what is happening.”* (Interview with Mónica Roa)

*“Healthcare providers are not sure about their obligations, what they can and can not do and how they can do abortions and women don’t know exactly what their rights are. There has been confusing speculations about the regulations in the media since the court’s decision.”* (Interview with Lenis Urquijo, Ministry of Social Protection)

*“After the Court gave its judgement the pro-life network continued its campaign, although less intensively, and they tried to influence us not to establish any sort of regulations according to what the court had decided. The pro-choice movement also put pressure on us, trying to make us implement the decision as soon as possible because they started to see violations against women entitled to abortions.”* (Interview with Lenis Urquijo, Ministry of Social Protection)

The 11-year old girl, who became pregnant after she was raped by her stepfather, and whose case became known to the media shortly after the decriminalization of abortion, was the first person ever to have a legal abortion in Colombia. However, the LAICIA network and the

Ministry of Social Protection had to contact several state agencies before the state was confident enough to go through with the abortion;

*“The court’s decision is legally binding since May 16<sup>th</sup> 2006 and it states that no regulations are necessary for the decision to be acted upon. But without a clear regulation we will have problems like in the case with the 11-years old girl that was denied abortion by the hospital. The Public Prosecutor and the Attorney General had to intervene and order the abortion. The case ended up to be a public affair, when it should have been only between the girl, her doctor and the parents.”* (Interview with Lenis Urquijo, Ministry of Social Protection)

*“In the case of the 11-years old girl I had to work all the way via supporters in Sweden to give her the abortion she was entitled to at the Simón Bolívar hospital in Bogotá!”* (Interview with lawyer Ximena Castilla)

#### **4.4.3 State establishes institutionalized mechanism for complaints**

According to the courts’ decision all public and private health care facilities in the country must provide safe abortion within the three circumstances established by the court. No health care institution can refuse to provide an abortion due to moral objection. An individual staff can maintain moral objection, but is then obliged to refer the woman in need to a colleague or facilitation that are willing to perform the abortion.<sup>39</sup> Most of my interviews took place before the regulations from the Ministry of Social Protection had been released and it was still unclear where a woman entitled to an abortion could turn to if she was not provided with the procedure. A number of Catholic hospitals refused to perform abortions. Even though Colombia has established several institutions where citizens can report violations of human rights, for example the Human Rights Ombudsman, nobody seemed to know which one was responsible for complaint regarding abortions. From my interviewees I got a variety of answers; some suggested the Human Rights Ombudsman, the Attorney General, or the Office of the Public Prosecutor (Humberto Sierra, judge in the Constitutional Court), while several organizations within the LAICIA network, in the absence of a clear regulation, referred women to come to them or to directly seek out a judge that could adjudge an abortion in an hospital;

*“One of the reasons why a regulation is important is because now women don’t know where to turn if they need an abortion. It is not clear where they can complain. What is clear, and actually you can use it because there is no regulation, is that you can pay a claim by going to a judge and say “I am not provided with an abortion even though I am entitled to it”. And then the judge can make a decision and say that they have to provide it. Of course, this is a judicial procedure (...) and it is somehow scary for women sometimes. Hopefully, when the regulation is in place, there will be some kind of institution.”* (Mónica Roa)

*“I recommend that a woman who is experiencing this legal process turn to the women’s organizations so that we can defend her and follow her case, make it visible and help her.”* (Interview with Sandra Mazo)

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<sup>39</sup> Norma técnica por la interrupción voluntaria del embarazo IVE p. 13

#### 4.4.3.1 Prescriptive status reached

In December 2006, five months after the decision, a regulation was issued by the Minister of Social Protection. The regulation describes all technical details around a legal abortion within the three circumstances, everything from the psychological treatment of the woman to the different methods of abortion. The regulation builds upon the World Health Organization's guide to safe abortion and emphasizes that the health care system in Colombia, in accordance with ratified conventions at the Beijing conference in 1999, has to provide women with safe abortion in the cases where it is legal.<sup>40</sup> With that, Colombia meet most of the indicators for prescriptive status put up by Risse and colleagues in the Spiral model of human rights change, including some institutional mechanisms for complaints;

*“Except for the women's rights organizations, that are monitoring this issue, a woman can turn towards her social security provider. The Secretaries of Health in every state or town are obliged to supervise the issue (...) and other institutions that have on their table to observe the respect for rights, for example the Human Rights Ombudsman and the municipality. What we have to do in a near future is to see how all of these institutions can handle requests for abortions in an effective way. Because of course it is not the same thing if a woman requests a voluntary operation that she can wait for five months or a year to have, or if she needs a decision about abortion within hours or a few days. The pregnancy will develop further and increase the risks for the woman.”* (Interview with Lenis Urquijo, Ministry of Social Protection)

#### 4.4.4 Acknowledgement of the human rights norms in discursive practice

Most of my interviewees believed that the state respected and tried to implement the partial decriminalization of abortion. Many within the LAICIA network considered the Ministry of Social Protection an allied in the implementation process, although some were more critical;

*“Ha! Absolutely not. Eh...No, if the government took this seriously the Ministry of Social Protection should have made the regulations by now. (...) but I think it will come little by little and that is normal. In France, where I come from, it was the same thing, women that wanted abortions thirty years ago were treated like prostitutes, but that is not the case anymore, and the same thing will happen here and it is happening right now! (...) Here is this let-go mentality, while the Ministry is doing nothing people think they can refuse to do abortions. But this will change! This is like an earthquake for this country!”* (Interview with Florence Thomas in the end of November 2006)

*“We can see that the Ministry of Social Protection is very engaged in the work to produce a regulation. They have done it silently, which I believe is the right way to do it. The Ministry can not go into an open conflict with the priests. This is a Catholic country where you can not do that”* says a member in La Mesa.

*“The state waited silently for the court's decision and when it came they just accepted it. The state in general said that safe abortion is a right and that we shall follow the international commitments we have made. But one part of the state did not accept the decriminalization and started a legal process where they tried to declare the decision invalid”* explains Sandra Mazo.

La Mesa had a dialogue with the government via the Ministry of Social Protection and they monitored their actions to implement the decriminalization.

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<sup>40</sup> Norma técnica por la interrupción voluntaria del embarazo IVE p.10  
[www.womenslinkworldwide.org/pdf\\_programs/es\\_prog\\_rr\\_col\\_legaldocs\\_normatecnica.pdf](http://www.womenslinkworldwide.org/pdf_programs/es_prog_rr_col_legaldocs_normatecnica.pdf)

*“I try to talk to the Minister of Social Protection every now and then, but it is not that easy. I also talk with the first lady. I provide them with information about the issue”* explains Mónica Roa.

*“We have had a dialogue with representatives from both camps. (...) In general both of them understood that the role of the Ministry was not to promote or to oppose the decision, but that we are obliged to implement the court’s decision and establish and guarantee these rights. No matter what personal opinions our representatives have regarding abortion we are doing this and that is something that we explained in the discussions with both parties.”* (Interview with Lenis Urquijo, Ministry of Social Protection)

#### **4.4.5 Summary of phase 4**

Because this is the phase where the final decision is made I am not dividing it by promoting and preventing factors, instead I look at each of the indicators for prescriptive status put up by Risse et al. to check if my case corresponds to them.

##### **1. The government has ratified the respective international human rights conventions, including the optional protocols.**

Already fifteen years prior to the complaint by the LAICIA network the state in Colombia had institutionalized the respective international human rights (indirectly) referring to illegal abortion in the national constitution. Despite this the state denied women the right to access to safe abortion even under extreme circumstances. Colombia had not ratified all pertinent optional protocols, for example the CEDAW optional protocol.

##### **2. The norms are institutionalized in the constitution and/or in national law.**

When the state was brought before its obligation to comply with international human rights in their own constitution, it chose a process of controlled liberalization. In May 10<sup>th</sup> 2006 the Constitutional court gave its final decision, ruling C-355/2006 that is decriminalizing abortion under all circumstances demanded by the complainants.

##### **3. There is an institutionalized mechanism for citizens to complain about violations of human rights.**

Despite the state’s acceptance a national regulation with current rules and instructions was a quite long time in coming. This causes general confusion among health care givers and women and forces the women’s rights network to fight hard for the first abortions to be performed. The Ministry of Social Protection that issued the regulation experienced a lot of pressure from both complainants and the opposition before the regulations was published in late December 2006. Although no clear institutional mechanism is set up for entitled women to complain if they are not provided with abortion, instead women are directed towards a variety of previously established human rights institutions, insurance companies or women’s rights organizations.

##### **4. The government acknowledge human rights norms irrespective of the audience, do not reject criticism as “interference in internal affairs” and engage in dialogue with critics.**

The state acknowledges the new norm and manages a dialogue with its critics. A part of the conservative sector starts a legal process to declare the court’s decision invalid.

## **5 Discussion and Conclusions**

### **5.1 Can the Spiral model of human rights change explain my case?**

In the beginning of this study I posed a number of questions regarding if the Spiral model of human rights change could explain the outcome of my case. Despite the state's appraisal of international human rights within the Constitution, Colombia was far behind most countries in the world regarding the general human rights situation and the right to access to safe abortion. I found it especially interesting to examine the partial decriminalization of abortion in Colombia using the Spiral model, because the human right I am applying to the model, the right to access to safe abortion, is not a universally accepted human right (although there is an international tendency towards that direction). I wanted to see if the Spiral model would still work when applied to a more controversial human right.

#### **Model of analysis based on the Spiral model of human rights change**

The model for analysis below is based upon the Spiral model of human rights change and each phase illustrates the development leading towards the partial decriminalization of abortion in my case. The factors that are described in each phase are ideal types and therefore it can be difficult to establish exact boundaries between them. In addition to identifying the occurrence of factors I have above all identified them as either promoting or preventing to the final outcome. In a few cases the same incidents in the process have been both promoting and preventing for the final outcome.

I summarize each phase and compare the course of event in this particular case to the predicted course in the Spiral model. In the end I discuss my final conclusions.

#### **Phase 1 – State repression and activation of network**

Table 5.1 summarizes the most important factors of Phase 1 (see below). A characteristic for the first phase of the Spiral model is that the opposition is too weak and oppressed. This is a good description of the opposition in Colombia before 2005. The women's movement did not stand a chance to decriminalize abortion because of the conservative violent state and the cultural climate in the society. The state refused to bring up the abortion issue at the political agenda. But the repression was not strong enough to stop the opposition from reaching out to international allies, a prerequisite for a continuing development. (Risse et al. 1999:22) However, to avoid sabotage because of the sensitiveness of the abortion issue in society, the initial LAICIA meetings and preparations had to be confidential.

According to the Spiral model the domestic opposition in Colombia is strengthened by the international support. They become part of a transnational network, the LAICIA network, offering knowledge, valuable contacts and financial support. Thanks to the knowledge and experience in the network, the domestic opposition discover another advantage; the access to national institutions where they can file their complaint. According to Risse et al. this societal openness with responsive institutions facilitates network socialization and gives opportunity to reach out to the state. It is a very important key to human rights work. (Risse 1999:262-264)

Table 5.1 Model for analysis based on the Spiral model of human rights change (Risse et al. 1999:20 with modifications by the author of this study)

Phase 1 <i>Repression and activation of network</i>					
Factors influencing decriminalization of abortion	State repression	Weak opposition	Activation of network	Receive information from domestic opposition	Invoke international human rights norms
<b>Promoting factors</b>	<p><b>Existing network</b></p> <ul style="list-style-type: none"> <li>• Loose national network</li> <li>• International support</li> </ul> <p><b>No extreme repression</b></p> <ul style="list-style-type: none"> <li>• Free flow of information</li> <li>• Access for citizens to human rights institutions</li> </ul>	<p><b>Court's earlier decisions</b></p> <ul style="list-style-type: none"> <li>• Defended reproductive rights</li> <li>• Reservations to abortion ban, lowered punishment</li> </ul>	<p><b>Support from international organization – “boomerang effect”</b></p> <ul style="list-style-type: none"> <li>• Legal knowledge, experience</li> <li>• Economic prerequisite</li> <li>• Created a broad network</li> <li>• Mónica Roa was unknown to the public. Mónica R. had powerful contacts</li> </ul>	<b>Free flow of information</b>	<p><b>Could refer to human rights norms in the complaint</b></p> <ul style="list-style-type: none"> <li>• International HR norms institutionalized since 1991</li> </ul>
<b>Preventing factors</b>	<p><b>Discrimination</b></p> <ul style="list-style-type: none"> <li>• Poverty</li> <li>• Sexual/domestic violence</li> <li>• Neglecting state</li> </ul> <p><b>Political barriers</b></p> <ul style="list-style-type: none"> <li>• Difficult to break patriarchal culture</li> <li>• Low interest</li> <li>• Fear among politicians for the Catholic church or to lose votes</li> <li>• Abortion taboo</li> <li>• Conservative congress</li> <li>• Dangerous to be human rights activist</li> <li>• Catholic church has strong political power</li> <li>• Mobilization for peace a priority</li> <li>• Restricted access to court for poor people</li> </ul>	<p><b>Catholic domination</b></p> <ul style="list-style-type: none"> <li>• In the media and the public debate</li> <li>• Low citizen participation</li> <li>• Earlier court rulings based on religious values</li> </ul> <p><b>Difficult to reach out</b></p> <ul style="list-style-type: none"> <li>• Rift in education</li> <li>• No sexual education</li> <li>• Polarization of debate</li> </ul> <p><b>Within women's movement</b></p> <ul style="list-style-type: none"> <li>• Bad knowledge</li> <li>• Conflicts</li> <li>• Not able to profit on state's HR commitment</li> </ul>	<p><b>Risk for personal safety or sabotage</b></p> <p><b>Mónica Roa was unknown to the public</b></p>		<b>Human rights ignored in practice</b>

## **Phase 2 – Denial of the state**

Table 5.2 summarizes the most important factors of Phase 2 (see below). The denial phase was the shortest phase in my study, since former tactical concessions made it difficult for the state to deny international human rights. Neither the state agencies nor the conservative opposition denied international human rights, although quite a few did not consider the access to safe abortion under extreme circumstances to be a human right. When the first complaint was presented by the LAICIA network a few state agencies denied that unsafe illegal abortion was a serious health problem, and the Constitutional Court rejected the complaint. When the second complaint was filed almost all state parties supported the complaint. Accordingly, compared to many of the countries in the study carried out by Risse et al. the denial phase in this case was very brief.

Some conservative politicians and the pro-life movement, supported by the Catholic Church, on the other hand acted like Risse and colleagues foresaw and dismissed the demand for legal abortion as foreign threat to national sovereignty and culture.

Risse et al. also point to how the vanity of norm-violating states can make them eager to comply with human rights. The Constitutional Court received many petitions from famous international universities and human rights organizations supporting the demand for legal abortion. Many of my interviewees meant that the Colombian state saw itself as liberal and human rights oriented and that a total ban on abortion especially affecting sick, poor and raped women did not agree with that image. When the LAICIA network started to put both international and domestic pressure on the oppressing state their arguments and requirements "bounced" back into the national policy, now with the surrounding world's eyes on the state. Here we can see the Boomerang effect: as anticipated it was an important part of the process as it made the Colombian state institutions eager to comply with international human rights.

Table 5.2 Model for analysis based on the Spiral model of human rights change  
(Risse et al. 1999:20 with modifications by the author of this study)

<b>Phase 2</b> <i>Denial of the state</i>			
<b>Factors influencing decriminalization of abortion</b>	<b>State denies validity of HR norms</b>	<b>Pressurize repressive state</b>	<b>Mobilize international organizations and liberal states</b>
<b>Promoting factors</b>	<p><b>No room for denial</b></p> <ul style="list-style-type: none"> <li>• International human rights part of Constitution since 1991</li> <li>• Human rights institutions</li> <li>• Many state agencies supported complaint</li> <li>• President's wife supportive</li> </ul>	<p><b>International recommendations</b></p> <p><b>Supporting interventions to the court from international organizations and universities</b></p>	<p><b>Published press releases in English</b></p> <p><b>Supporting interventions to the court</b></p> <ul style="list-style-type: none"> <li>• From international organizations, universities</li> <li>• No mobilization of liberal states was needed</li> </ul>
<b>Preventing factors</b>	<p><b>State agencies silent, afraid of Church</b></p> <p><b>Initial denial by two state agencies</b></p> <p><b>Conservative denial</b></p> <ul style="list-style-type: none"> <li>• Conservative politicians denied</li> <li>• Conservative opposition started campaign</li> </ul> <p><b>First complaint turned down</b></p>		<p><b>Interventions to the court from conservative opposition</b></p>



### **Phase 3 – Tactical concessions**

Table 5.3 summarizes the most important factors of Phase 3 (see below). According to the Spiral model this is the most critical phase in the model because it can either strengthen the opposition or lead to a backlash of the movement due to repression. But if the norm-violating state has made tactical concessions in earlier phases it is more vulnerable to allegations by the growing domestic opposition. (Risse et al. 1999:25, 248)

Colombia found itself in the third phase when the process to decriminalize abortion first started, and just as Risse and colleagues predict the Colombian state was vulnerable because of earlier normative commitments. The LAICIA network was aware of this vulnerability and used a lot of normative appeals in their communication campaign, by “shaming” the state both within and outside of the country. They were also careful to frame the issue of illegal abortion as a public health problem. The communication campaign was successful and consequently, the state found itself entrapped in its own human rights rhetoric.

Argumentation and justification are the most important modes of action in this phase. The activities are now transferred from the transnational level to the growing domestic opposition, as predicted by the model. (Risse et al. 1999:25) But unlike most cases in the Spiral model (with apartheid in South Africa as the most evident example) the activity to decriminalize abortion in Colombia was relatively limited on an international level, although a number of international petitions were sent to the court. From the start this was above all a national issue and the debate was very vivid within the country, even though international human rights were a substantial part of the debate. But outside of Colombia, especially among people that are not directly involved in sexual- and reproductive health issues, there was little knowledge of what was going on.

Table 5.3 Model for analysis based on the Spiral model of human rights change  
(Risse et al. 1999:20 with modifications by the author of this study)

<b>Phase 3</b> <i>Tactical concessions</i>						
<b>Factors influencing decriminalization of abortion</b>	<b>Tactical concessions</b>	<b>Mobilization and strengthening of groups engaging human rights norms</b>	<b>Reduced margin of maneuver for the state</b>	<b>Normative appeals and “Shaming”</b>	<b>Framing information</b>	<b>Human rights assuming center stage in societal discourse</b>
<b>Promoting factors</b>	<b>Vulnerable state</b> <ul style="list-style-type: none"> <li>• Earlier human rights commitments</li> </ul>	<b>Increased awareness of state’s earlier HR commitments</b>	<b>Self-entrapment</b> <ul style="list-style-type: none"> <li>• State believes talk is cheap</li> <li>• State don’t realize what HR commitments mean in new world context</li> <li>• State only knew human rights from a male perspective</li> </ul>	<b>Effective because;</b> <ul style="list-style-type: none"> <li>• State cares about its international image</li> <li>• State sees itself as respectful of HR</li> </ul> <b>Shaming</b> <ul style="list-style-type: none"> <li>• LAICIA network describe state as hostile to women’s HR</li> </ul> <b>Court has used HR arguments in earlier rulings</b> <ul style="list-style-type: none"> <li>• LAICIA argue court has to be consistent</li> </ul>	<b>Framing</b> <ul style="list-style-type: none"> <li>• Present abortion as matter of public health, HR, equality issue</li> <li>• Answer to high maternal mortality</li> </ul> <b>• Media</b> <ul style="list-style-type: none"> <li>• Good contacts within the media</li> <li>• Changed debate in media</li> <li>• Effective communication campaign led by advertising agency</li> <li>• Real life stories affect people</li> </ul>	<b>Growing network</b> <ul style="list-style-type: none"> <li>• More people join network</li> <li>• Double standards in population</li> <li>• Politicians become more supportive</li> </ul>
<b>Preventing factors</b>			<ul style="list-style-type: none"> <li>• Limited dialogue with state parties, everybody had to wait for court decision</li> </ul>	<b>Opposition also maintain normative appeals</b>	<b>Opposition also put pressure on state</b>  <b>Are also using media to some extent</b> <ul style="list-style-type: none"> <li>• appeals</li> <li>• stories</li> </ul>	<b>Difficult to make people join</b> <ul style="list-style-type: none"> <li>• Think network support free abortion</li> <li>• Still heavy Catholic influence</li> <li>• Poor rural women had to pay high price for joining</li> </ul>

#### Phase 4 – Prescriptive status

Table 5.4 summarizes the most important factors of Phase 4 (see below). At the end of the process the state was subjected to normative pressure both from the LAICIA network and from other state parties. The court chose to partially decriminalize abortion and consequently began a controlled process of liberalization, which is one of the alternatives that Risse et al. expect in this phase.

Because abortion was partially decriminalized in national law, the decision was respected by most of the state parties, a detailed regulation was eventually published and the state maintained dialogue with its critics, I consider that prescriptive status was obtained at the end of this process. (Compare Risse et al. 1999: 29) Although, there is one possible exception; there was no clear institutionalized mechanism for women to complain if they were not provided with an abortion they were entitled to. At least this was still the case by the time I finished my study in January of 2007.

Table 5.4 Model for analysis based on the Spiral model of human rights change (Risse et al. 1999:20 with modifications by the author of this study)

Phase 4 <i>Prescriptive status</i>				
Factors influencing decriminalization of abortion	State ratify international treaties	State institutionalizes norms in domestic law	State establishes institutional mechanism for complaints	Acknowledgement in discursive practice, dialogue
<b>Promoting factors</b>	State has ratified all treaties and some optional protocols	Legal abortion within three cases since May 2006		State accepts the decision  State engages in dialogue with all parties
<b>Preventing factors</b>	Heated discussion about CEDAW optional protocol	Opposition tries to declare decision invalid	No regulations before December 2006 Leads to confusion about current rules	

#### The main findings of my study

Researchers like Radikha Coomaraswamy means that the socialization of women's human rights implies greater challenges for transnational and domestic advocacy networks. (Coomaraswamy 1997) I have not seen any major difficulties in applying a contested human right like the right to access to safe abortion to the Spiral model of human rights change. The process of decriminalizing abortion in Colombia has been similar to the process of human rights change described in the Spiral model.

In each of the phases the LAICIA network used many of the techniques that are suggested in the Spiral model, for example international networking and normative appeals to influence the

state. It seems like Risse and his colleagues have a good point when they maintain that the Spiral model can be applied to different countries going through human rights changes, regardless of the political or structural situation in the individual country.

Despite this I believe that the LAICIA network was met with more resistance by the public when they promoted legal abortion, than they would have if they were endorsing a stop to torture, a recognized human right. It was not until the end of the campaign, or even after the court's decision came down, when the cruel fate of the 11-year old girl and the dying mother of four became known, that the public opinion swung drastically towards a decriminalization.

### **The short denial phase**

I have also found a few other interesting differences between my case and the Spiral model. The first thing that strikes me is the short denial phase. Because Colombia already found itself in the third phase of the Spiral model the state had made tactical concessions by acknowledging international human rights. There was no room for denial at this stage. More surprisingly, there was not very much denial among the representatives from the conservative opposition either. I believe that the LAICIA network made a tactical choice when they pointed to that Colombia is a secular state and that religious arguments did not belong to the debate. This consequently cut off the oppositions' chance of denial.

Another thing I must take into consideration is the timing of my interviews. When I did my interviews the court had come down with its decision and some of my interviewees may, in the light of this new situation, have changed their argumentation. The representatives of the pro-life organizations I talked to expressed some of the denial that Risse et al. expect in the model. The Catholic bishop I interviewed had a much more humble attitude, saying that neither the church nor the state could decide if a woman should have an abortion, but that each person had to listen to its own heart. (Interview with Bishop Marulanda) According to lawyer Ximena Castilla this is a new rhetoric by the church;

*“This attitude that the church has now is very interesting. Now they are saying that “we are not speaking on this issue because it is an issue for the citizens”. With this attitude they are much more dangerous. And much more intelligent, of course.”* (Interview with Ximena Castilla)

### **Accessible human rights institutions**

Risse et al. point to the importance for accessible state institutions for successful human rights work. There is no doubt how important the access to the Constitutional Court was for the LAICIA network. Without that possibility they would have once again been dependent on the conservative Congress. But the opinions are divided whether the Constitutional Court is really accessible to everyone in Colombia. The judge at the court and several of the lawyers I spoke to maintain that it is very easy to access the court, while other interviewees point to the fact that, even though it is free of charge, in reality means for covering expenses is a need, as well as a knowledge of how the judicial system works.

### **Domestic opposition was more important for the outcome**

Many of my interviewees emphasized that this process would not have been possible without the knowledge and the support, both financial and other forms of support from international organizations. They also pointed to the importance that international human rights

conventions had in this process, and how earlier commitments made the state understand their obligations to protect women from the consequences of illegal abortion.

All throughout their study Risse et al. stresses transnational activism. However, among my interviewees opinions were divided about whether transnational activism was the key to the LAICIA network's success. The conservative opposition emphasized above all the support that was given to the LAICIA network by foreign organizations and institutions. They were very critical to the financial support and they denied that they had themselves received any such support from international pro-life organizations. Among the authorities and within the LAICIA network a few persons considered that the international support had been crucial, while others said that there were enough arguments within the country for most people to understand that a partial decriminalization of abortion was necessary.

I believe this is because Colombia already found itself in the third phase of the Spiral model, where Risse et al. expect that the activities are now transferred from the transnational level to the growing domestic opposition. (Risse et al. 1999:32) This is also supported by the fact that it was never necessary for the LAICIA network to contact foreign liberal government to put pressure on the Colombian government.

From the beginning of the process the issue of illegal abortion was already on the international agenda, and according to many of the women's rights activists I talked to, the real challenge was to reach out to the national public and to put the abortion issue on the domestic agenda. During the process it was above all the change within Colombia; in the state institutions, in the mass media and among the public that was remarkable. Several persons within in the LAICIA network, as well as among the authorities, maintained that they had never expected the attention, the media coverage and the lively debate that the campaign for a decriminalization of abortion led to within the country. The LAICIA network conducted a successful communication campaign that put the issue on the national agenda and this brought as a result that the public opinion swung in favor of a decriminalization. I therefore conclude that the domestic opposition in Colombia had a greater importance for the outcome of this case, than what Risse et al. presuppose in the Spiral model of human rights change.

### **The socialization of the abortion issue**

The Spiral model of human rights change is a model of the process of norm socialization. The ultimate goal for the LAICIA network is to make people believe in and behave according to the partial decriminalization of abortion, which is the final step in the process of norms socialization. A successful trial and an effective communication campaign have taken the network a great deal closer to their goal, although there are still parts of the public that do not agree with a decriminalization of abortion. The society is in end of the socialization process, institutionalization and habitualization. The issue of abortion has gone from being a taboo to being talked about in the media and among people. Another of the initial objectives with the LAICIA network was to show the civil society and especially the women's rights groups how to work strategically with the courts to endorse sexual and reproductive rights. The success of the LAICIA network has been an inspiration to many people, above all women, and ratifies that it is possible to promote women's rights by demanding compliance with international human rights.

## **5.2 What enabled a partial decriminalization of abortion against all odds?**

In an attempt to further develop the Spiral model I have divided the actions and interactions among the involved actors in each phase of the model into either promoting or preventing for the partial decriminalization of abortion in Colombia. Despite the fact that my interviewees expressed many different views on the development, their role and the role of others, this division within the model has helped me to clearly see the circumstances and actions that have been the most promoting for the final outcome. I have been able to narrow it down to a few central points that I conclude have been decisive for the success of the LAICIA network in Colombia;

### **Networking was their starting point**

When Women's Link Worldwide started to work in Colombia their first priority became to connect with as many interested partners as possible. They first connected with La Mesa and together they traveled all over the country to meet women, lawyers, doctors and organizations that wanted to decriminalize abortion. In the LAICIA network the different point of views and knowledge were transformed in to new initiatives and actions. When they started the campaign they had a large group of expertise, both to cover all perspectives of the abortion issue and to separate the ongoing debate in each field. This made the LAICIA network strong, trustworthy and well-known within their field of expertise.

### **Access to human rights oriented institutions**

Without the Constitution of 1991, that laid the foundation for the possibility of any citizen to file a complaint in the Constitutional court, the LAICIA process would never have been possible. The conservative Congress was constantly blocking any attempt to decriminalize abortion and the women's rights groups should probably have had to wait for many years to come before it would have been possible in this forum.

### **The state was entrapped**

The state found itself entrapped in its human rights rhetoric. It seems like the state did not realize what ratified human rights conventions would mean in a new world context. The LAICIA network was always one step ahead and the complaint surprised both state representatives and the conservative opposition. The network was well prepared and has studied each of the judges in the Constitutional court and earlier sentences about abortion and other reproductive rights matters. They knew that the Constitutional court has a good reputation of being respectful of human rights and they argued that this was the time to be consistent.

### **The debate was effectively framed**

For many years the debate about abortions had been ruled by the Catholic Church and it had always evolved around the unborn child and the holy motherhood. The LAICIA network carefully framed the issue of illegal abortion as a public health issue. They also framed it to be a matter of social equality, human rights and women's self-determination. The network

refused to discuss religious arguments and referred to that Colombia is a secular state. In the end of their campaign the public opinion had changed dramatically.

### **A successful communication campaign**

To create a positive image of a the complaint to the Constitutional Court among the public Women's Link Worldwide turned to the communication agency Brújula Comunicaciones, and the agency designed the general strategy.

Before the LAICIA network made their complaint to the court public they had carefully prepared their arguments related to public health, psychology, national law and international human rights. When they eventually presented the appeal and let the media know about the content and the arguments, their point of view was already known in the public sphere. The campaign was planned at an international, national, regional and local level, trying to have a constant dialog with national and international organizations, academics in the field, the medical community and with influential people in the public debate. During the process the LAICIA network was always visible, both in the media and on the streets.

### **Valuable knowledge, connections and financial support**

Since Mónica Roa, the initiator of the project and the principal figure of the campaign, had worked abroad with cases of sexual- and reproductive rights, she had a good knowledge of the argumentation and the strategies that were used. In addition, Roa had valuable international contacts within the field and she knew who she could ask for support. A few of the interviewees within the LAICIA network have pointed out that in order for the network to be listened to it was a great advantage that Roa belongs to the upper-middle class and have had the opportunity to study abroad, as well as at one of the most prestigious universities in Colombia. Because of this she had a network of key people working within the judicial system, the media or other influential institutions in the society, and this facilitated the network's possibilities to reach out to public institutions and to the mass media. Mónica Roa herself believes that the fact that she was not a famous person in Colombia or known to belong to a certain political group, made people more open-minded to what she had to say. Like many other non-governmental organizations Women's Link Worldwide, has both private and international donors that help financing their projects. Without these donors it would not have been possible to run the effective communication campaign.

## **6 Suggestions for future research**

I believe that the final implementation of the decriminalization of abortion in Colombia is a very interesting area for future research. One possible idea is to follow up on the detailed regulations to see if they are complied with and if the service is available in all parts of Colombia. This is especially important now that the case is no longer covered by the media or by international organizations.

Another possible area of research is the Spiral model of human rights change. For a better understanding of how different international human rights can be incorporated into a variety of domestic contexts further research on the model is needed. It can also be explored what

makes certain states pressure norm-violating states to comply with human rights, or the reverse influence that norm-violating state may have on human rights norms.

This study has shown a wide range of possibilities for both international and domestic human rights groups to influence the adoption of human rights within the state. I believe that the success of the LAICIA network can inspire researchers to look closer at the interesting combination of law, politics, networking and lobbying that has proved to be effective to promote human rights, especially within the field of sexual and reproductive rights. In order to understand the power and weaknesses of these working methods, and how they can be developed, researchers should pay more attention towards transnational advocacy networks.

## **Epilogue**

In May of 2007, six months after my interviews in Colombia and a year after abortion was partially decriminalized, I talked again to Mónica Roa, the initiator of the LAICIA project. Many problems still need to be solved for abortion to be accessible for all women in need, but the full implementation of the partial decriminalization goes in the right direction, according to Roa. The state has now implemented all legal regulations in compliance with the court's decision. From May 2006 to May 2007 a total of 60 women have had legal abortions in the country. Many of them did not have health insurance and the state paid for the procedure.

For some time before the decision of the court became legally binding the conservative opposition, led by Ilva Hoyos from the pro-life organization The Future of Colombia, started a legal process to declare the court's decision invalid. Objection was raised against three of the judges that had voted in favor for a decriminalization. But in December, 2006 the opposition's request was rejected and the original decision was declared valid by a unanimous Constitutional Court.

Now that the legal battle is over, experts on policy implementation have taken over. The LAICIA network continues to monitor the implementation, to support women in need of abortion and to communicate the court's decision to all women. Both the network and the Colombian government have invested in campaigns for advertising and education to let all citizens know about the implications of the partial decriminalization of abortion.

Mónica Roa emphasizes that the LAICIA-project was a good example to show the country that it is possible to attain social change by working within the state institutions. But to change cultures and traditions takes time. Still, in the beginning of this process it was taboo to talk about abortion, today people discuss it openly. Before politicians were afraid to touch this sensitive subject, but at the 2006 elections political parties asked Mónica Roa to join their campaign.



## **Appendix A**

### **Earlier attempts to liberalize abortion laws in Colombia (all denied)<sup>41</sup>**

#### **In the Congress**

The following congressmen have proposed bills to allow therapeutic abortion, i.e. abortion in the case of rape, to save the life or the health of the pregnant woman and when the fetus has defects incompatible with life. The propositions from 1989 and forward also suggest allowing legal abortion due to socio-economic circumstances.

- 1975 Iván López Botero, senator Liberal party
- 1979 Consuelo Lleras de Samper, Liberal party
- 1987 Eduardo Romo Rosero, Liberal party
- 1989 Emilio Urrea Delgado, Liberal party
- 1993 Vera Grabe, Alianza Democrática-M19
- 1993 Ana García de Petchalt
- 2002 Piedad Córdoba, senator Liberal party

#### **Proposals to reform the Penal Code**

1998 Margarita Londoño proposed an exception to the abortion ban in case of therapeutic and socio-economic reasons.

2000 (approx.) Alfonso Gomez Mendez proposed that the judge can chose not to impose the penalty for a woman who has had an abortion under extraordinary circumstances.

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<sup>41</sup> La Mesa por la Vida y la Salud de Mujeres [www.despenalizaciondelaborto.org.co/](http://www.despenalizaciondelaborto.org.co/)

## Appendix B

### Interview guide

My interviews were semi-structured in the sense that the questions were formulated in advance and I posed for most part the same questions to all of my interviewees. But to keep each interview dynamic I sometimes added questions depending on the experience and knowledge of the interviewee and I allowed room for the respondent to expound her view on the process. (Kvale 1997)

#### Phase 1

##### Repression

- Which organizations have opposed a decriminalization of abortion?
- How is the general situation for women's rights organizations in Colombia?

##### Activation of network

- Do you remember when the process to decriminalize abortion first started in Colombia?
- Who were the main actors?
- When did your organization first start to work on the issue?
  
- Have your organization worked on similar issues of reproductive rights before?
- Have your organization worked with the Colombian legal system before?
- Who are your main allies today?

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#### Phase 2

##### Put the issue on the international agenda

- Do you think there was anything in particular that happened, in the beginning of the campaign, which raised people's attention to the issue of abortion?
- What did your organization do to call attention to the issue at a national and international level?
- Have there been any personal stories about abortion that have influenced people on the issue?
- Did your organization ask other countries or international organizations for support of the issue?

##### "Framing"

- What difference do you think it made when the network presented abortion as a health issue and not a moral issue?
- Was it difficult to convince the Colombian public about this way of looking at abortion?

##### Denial of the state

- How did the state representatives reacted on the criticism by the transnational network during the campaign?
- What would you respond to the Catholic priest who says that "the new abortion law is a fruit of international pressure that disrespect the Colombians"?

##### "World time"

- Is it important to the Colombian government what other countries think about abortion or women's rights in Colombia?

##### Normative commitments

- Do you think the international conventions on women's rights and health that the government previously ratified posed a moral problem to them, when they did not want to change the law on abortion?
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### Phase 3

#### Tactical concessions

- The Constitution of 1991 has a much bigger focus on human rights than previous constitutions, do you think this is due to international or national pressure?
- Did the Constitutional Court try to do any kind of compromise with your organization instead of changing the law?

#### The states self-entrapment and “controlled liberalization”

- What did the Constitution of 1991 mean to Colombian women and women’s rights?
- Do you think the state knew that the decision to include so much in the Constitution of 1991 could come back and hunt them in the abortion issue?
- Does your organization have a dialogue with the government on the abortion issue?

#### “World time”- A new world context

- What is the role of the courts to promote women’s rights in Colombia?
- Are some women’s rights more appropriate to take to the courts than others?
- Why do you think the state went so far as to include international conventions in the Constitution?
- Why do you think that this time the women’s organizations decided to act in the court and not the Congress?
- The possibility to do this has existed since 1991, why do you think that the women’s group didn’t think about this earlier?

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### Phase 4

#### Prescriptive status

- Do you feel like the government respect the new law and try to implement it?
- Does your organization have a dialogue with the government?
- If a woman needs an abortion today in Colombia, what can they do?

- What do you think the law will mean for women in rural areas or women with very limited economical resources, for example in the informal work sector?
- Is there any institution where women can object the decision if they are denied an abortion according to the law?
- What do you think about the possibilities for women to get information about the new law and the option of abortion?

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