

Everyday Challenges Faced by Colombian Women: a Comparison of the Lives of Colombian and Australian Women

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Colombia is a country possessive of a violent and tumultuous history, that continues today to comprehend the effects of civil war, the drug trade and decolonisation. Subsequently it is a country in which women have experienced a multitude of human rights abuses, flowing from its conflicts and its entrenched patriarchal and classist systems. Conversely Australia is a nation at the forefront of women's liberation, where women's rights have not been overshadowed by conflict and women have access to government support and education. Although the promotion and protection of women's human rights in Australia requires improvement, the situation for Australian women is far less dire than that of Colombian women. This can be seen through a comparison of women's human rights issues in countries, with a particular emphasis on the feminisation of poverty, domestic and sexual violence and the reproductive right of abortion.

A Brief History of Colombia

Colombia was a Spanish colony for almost 300 years, until independence was secured in 1819.¹ Shifting borders and competing political ideologies led to a division between two major political parties, and this division characterised much of the violence from the 1870s up until the early 2000s.² It is estimated that in the periods of the 'War of a Thousand Days' and 'La Violencia' approximately 100,000 and 200,000 people were killed respectively.³

In the midst of this deep-rooted political conflict, organised crime began to thrive with drug trafficking into the United States and Europe, leading to the creation of wealth for many Colombians.⁴ Many of these drug cartels are or were connected to paramilitary or guerrilla groups that were using the drug trade to finance their political activities. From the 1970s onwards many of these groups began to use the tactics of kidnapping and forced displacement, to either finance their activities through extortion or prostitution and sexual slavery.⁵

After years of conflict, in 2016 a referendum was drafted to negotiate a peace agreement between the Colombian government and the most notorious guerrilla force, the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarios de Colombia* in Spanish); commonly referred to as the FARC. This referendum failed by a narrow margin with 50.2 per cent of Colombians opposed to the agreement, to 49.8 per cent in support of it.⁶ Subsequently

¹ David Bushnell, *The Making of Modern Colombia: A Nation in Spite of Itself* (University of California Press, 1993) 25, 46.

² Ibid

³ Ibid 151, 205.

⁴ Ibid 249.

⁵ Ibid.

⁶ Charlotte Mitchell, *Colombia: Fragile peace a year after FARC referendum* (3 October 2017) Al Jazeera <<http://www.aljazeera.com/indepth/features/2017/10/colombia-fragile-peace-year-farc-referendum-171002065629390.html>>.

a revised peace agreement was signed by each party and ratified by Congress in November 2016, thereby marking the end of the conflict.⁷ Despite the official resolution of conflict, there are still widespread instances of violence and human rights abuses daily, particularly against women.

Cultural Factors Leading to Discrimination

i. Machismo

A number of entrenched cultural factors have led to a general air of discrimination against Colombian women; one that is particularly difficult to erase much like in Australia. As Colombia was a Spanish colony it inherited many of its cultural traits alongside a distinct and enduring class system. 'Machismo' which can be likened to the concept of 'toxic masculinity', is a cultural trait most commonly associated with Latino men, in which males assert their masculine dominance within the family and the community, by adhering to a demarcated gender role.⁸ Machismo is accompanied by a culture of female submissiveness called 'marianismo', and these pervasive gender stereotypes still have remarkable influence in Colombian social culture today.⁹

The machismo culture leads to discrimination and even violence against women in every sector of society; whether it occurs in the family, in the workplace, in the legal system or in the education system. In the family it can be represented by various forms of physical and emotional violence but also the more subtle forms of economic violence. Discrimination in the workplace takes on a similar character to that in Australia, in that there is a significantly disproportionate level of men working in the more prestigious jobs than women.¹⁰ This is further exacerbated in Colombia however, by the extensive effects of the traditional patriarchal system that continues to exclude women from business and politics, as well as the effects of widespread poverty.¹¹ Poverty as it disproportionately affects women, ensures that disadvantaged women cannot afford access to education and are thus restricted to unskilled and low-waged labour.

ii. Enforcement Issues

Discrimination in the legal system typically encompasses a lack of facilitation of legal processes for affected women. Regarding domestic violence, there is not only a severe problem of underreporting but in many cases law enforcement authorities will be reluctant to interfere in what they consider private family affairs. Moreover it is not uncommon for authorities to further victimise or stigmatise victims of sexual violence who report incidents, as they conform to machismo ideas and even suggest that they are responsible for what

⁷ Ibid.

⁸ Richard Basham, 'Machismo' (1996) 1(2) *Frontiers: A Journal of Women Studies* 126, 127.

⁹ See T W Julian, P C McKenry and M W McKelvey, 'Cultural Variations in Parenting: Perceptions of Caucasian, African-American, Hispanic and Asian-American Parents (1994) 43 *Family Relations* 30.

¹⁰ Workplace Gender Equality Agency, *Gender workplace statistics at a glance* (August 2016) Australian Government <https://www.wgea.gov.au/sites/default/files/Stats_at_a_Glance.pdf>; The World Bank, *Gender Data Portal: Colombia* (2016) The World Bank <<http://datatopics.worldbank.org/gender/country/colombia>>.

¹¹ See Elena Garcés, *Colombian Women: The Struggle Out of Silence* (Lexington Books, 2008) 223.

occurred.¹² This can also be seen in the context of women acquiring abortions, as despite the legality of abortion proceedings there are many instances where women are denied access due to a combination of bureaucratic impediments and traditional attitudes that shame and refuse the procedure.¹³ These issues really speak to the inadequacy of the legal system to respect and enforce the law regarding women's rights. This is in light of the fact that Colombia possesses a series of domestic laws pertaining to the protection of human rights and is a party to all significant international human rights treaties such as the United Nations Convention on the Elimination of All Forms of Discrimination against Women.¹⁴ Furthermore, the fact that a large proportion of the population does not agree with the premise of these basic human rights, is additionally detrimental to the protection of these rights.

iii. Intersectional Effects

Due to Colombia's existing class system it is important to recognise the disparagingly different experiences of women from different classes and social categories. Crenshaw's theory of intersectionality is particularly relevant when considering the diverse attributions of the Colombian population.¹⁵ Intersectionality refers to the overlapping nature of identity categorisations such as race, class and gender, as they apply to create disproportionate levels of disadvantage in application to a person.¹⁶ As such, Colombian women are already subject to disadvantage merely by being females, and are further disadvantaged by means of race, class, economic status, age, sexuality and place of residence. The United Nations Special Rapporteur for violence against women in Colombia affirmed the effects of intersectionality when stating:

Women from the indigenous and Afro-Colombian population suffer multiple/intersectional discrimination on the basis of gender, race, color and ethnic origin and as internally displaced persons...The [aforementioned] conflict reproduces and deepens discrimination between the different groups and women suffer intersectional discrimination on the basis of their gender, and their ethnic and cultural origin.¹⁷

Conversely, women of European descent who are usually born into wealthy, educated families are not subject to the same discriminatory experiences as these disadvantaged women. Also, by virtue of living in urban and more developed areas, women are less subject to general crime and have better access to the legal system as a recourse. Consequently it is far more likely that the case of a woman from a higher class will be heard and prosecuted by authorities than that of a lower class woman from a rural area. It is also relevant to consider

¹² Interview with Gabriela Pedraza, Casa de la Mujer (Bogotá, Colombia, 29 November 2017).

¹³ Bonnie Shepard, *Running the Obstacle Course to Sexual and Reproductive Health: Lessons from Latin America* (Greenwood Publishing Group, 2006).

¹⁴ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

¹⁵ See Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, And Violence Against Women of Color' (1991) 43 *Stanford Law Review* 1241.

¹⁶ *Ibid.*

¹⁷ Radhika Coomaraswamy, *Report of the Special Rapporteur on violence against women, its causes and consequences: Mission to Colombia*, UN Doc E/CN.4/2002/83/Add. 3 (11 March 2002) [28], [42].

that while the conflict is officially concluded in important urban centres, much of the violence continues outside of these areas, where corruption and lack of law enforcement is remains a significant concern.

Feminisation of Poverty

The widespread violence and economic uncertainty, in combination with culturally entrenched notions of patriarchy and class, has ensured that Colombian women suffer the full effects of the feminisation of poverty. Issues on this subject include the lack of educational opportunities, lack of reputable employment opportunities, lack of access of healthcare and education about sexual health and the overwhelming proportion of female-headed households. Although there are Australian women who are affected by these issues, they have not had to endure survival in such a violence-riddled country and their rights have not been violated in such systematic ways.

Although there is considerable opposition to the idea of the ‘feminisation of poverty’, it undeniable that women are disproportionately affected by the constraints of poverty as opposed to men on a global level. The term was first formally introduced amidst the 1995 Fourth United Nations Conference on Women, in which it was estimated that 70 per cent of the world’s poor are women.¹⁸ Thus in Colombia, where approximately 45.5 per cent of the country’s population are poor and a further 16.4 per cent are estimated to live under the extreme poverty line,¹⁹ it follows that the majority of that percentage should be represented by women. This is in stark comparison to Australian statistics which indicate that 13.3 per cent of the population live below the poverty line, with women represented by a higher poverty rate than men.²⁰

Single Mother Families

One of the most persuasive indicators of the feminisation of poverty is the increasing number of single parent families represented by female-headed households. A 2015 report indicated that in Colombia a staggering 84 per cent of all children were born to unmarried mothers.²¹ It can be noted that Colombia has experienced a significant decline in the proportion of marriages and a concurrent rise in cohabitation in the last few decades, so it cannot be assumed that all single mothers are solely supporting their children. However in many cases, Colombian men perpetuate the stereotypes of the absent father with regards to their lack of responsibility for unplanned children.²² There are many Colombian women who have been abandoned by their partners after becoming pregnant with their child and cannot access

¹⁸ United Nations, *Report of the Fourth World Conference on Women*, UN Doc A/CONF.177/20/Rev.1 (15 September 1995) 200.

¹⁹ Departamento Nacional de Planeación, *Resultados Cifras de Pobreza, Indigencia y Desigualdad de 2009* (April 2010) <www.dane.gov.co/files/noticias/MESEP_2009.pdf>.

²⁰ Australian Council of Social Policy and the Social Policy Research Centre, *Poverty in Australia 2016* (2016) <<http://www.acoss.org.au/poverty/>>.

²¹ Child Trends and Social Trends Institute, *World Family Map 2015: Mapping Family Change and Child Well-Being Outcomes* (22 September 2015) <<https://www.childtrends.org/publications/world-family-map-2015-mapping-family-change-and-child-well-being-outcomes/>>.

²² See Basham, above n 8.

abortion services. Consequently they are forced to raise their children alone, while attempting to earn a living to support them. This can also be tied to the lack of importance placed on sexual education and contraceptive methods. There are also the many instances of rape leading to unwanted pregnancies, where women either opt to or are forced to raise the child of their rapist.²³

While the rate of marriages in Australia has also been at a steady decline, the comparative rate of children born to unmarried mothers is at a significantly lower rate of 33 per cent.²⁴ This tends to suggest that Australians conform to more traditional family structures, but it can also be noted that Australian women have good access to sexual health services and contraception. With regards to single parent families, a report by the Australian Bureau of Statistics (ABS) showed that they represented 15 per cent of the population of Australian families in 2012.²⁵ Most significantly, a further 81 per cent of these single parent families were found to be single mother families.²⁶ This is why the payment of child maintenance is such an important part of family welfare in Australia. Under s 61C of the *Family Law Act 1975* (Cth), the parents of a child under the age of 18 are both subject to parental responsibility, whether financially or concerning their development.²⁷ Parents are thus entitled to receive child maintenance payments from the other parent so long as they can prove that the child is theirs or if they assumed parental responsibility over the child (legal adoption).²⁸ For divorced parents, the process of obtaining child maintenance can be much simpler as the other parent can be far more willing to oblige. However, in circumstances where the parents are unmarried and unco-operative the only recourse is to obtain legal services. This is in no doubt a contentious area of family law, as there are traditionally issues with unco-operative fathers.

Although the Australian Law Reform Commission has identified enforceability issues with regards to child support payments,²⁹ the situation is considerably more favourable for Australian women. The courts have the power to enforce such child maintenance agreements and make other beneficial orders,³⁰ and parents are more likely to be able to access services which will allow them to enforce this right. Furthermore, it is important to recognise that the State has an interest in enforcing child maintenance, in that less single parent families will require the support of social welfare if they can continue to be supported by the non-custodial partner. In contrast, while there is a child support scheme in place in Colombia the

²³ Radhika Coomaraswamy, *Report of the Special Rapporteur on violence against women, its causes and consequences: Mission to Colombia*, UN Doc E/CN.4/2002/83/Add. 3 (11 March 2002) 14 [3].

²⁴ Ibid 20.

²⁵ Australian Bureau of Statistics, *Labour Force, Australia: Labour Force Status and Other Characteristics of Families* (June 2012) <<http://www.abs.gov.au/ausstats/abs@.nsf/Products/6224.0.55.001~Jun%202012~Chapter~one%20Parent%20Families>>.

²⁶ Ibid.

²⁷ *Family Law Act 1975* (Cth) s 61C(1).

²⁸ Ibid ss 69P-T.

²⁹ See Australian Law Reform Commission, *Family Violence and Commonwealth Laws: Child Support and Family Assistance*, Issues Paper 38 (2011) 4 [18]-[22].

³⁰ *Family Law Act 1975* (Cth) s 70NEB.

enforcement practices are much weaker.³¹ Not only are lower class women unable to access legal services to enforce their parental rights but they are commonly met by stigmatised views about the responsibilities of unmarried mothers, and traditional notions about the role of women as the caregiver of children. There is a further issue with Colombia's social welfare system, as it ultimately favours the upper and middle classes. Family benefits are much harder to access for those who are unemployed or working informally, rendering it harder for disadvantaged mothers to receive support.³² Furthermore, the plight of disadvantaged mothers can be complicated by instances of continuing domestic violence.

Domestic Violence

In light of human rights abuses perpetrated under the machismo culture, domestic violence remains a significant problem in Colombian society. In July of 2016 the Attorney-General reported that a total of 62, 186 investigations for cases of domestic violence were opened, in which 86 per cent of the victims were women.³³ The data indicated that 64 per cent of instances of domestic violence they occur between partners, and a further 59 per cent of these instances occur in the home.³⁴ Law 294 which was designed to prevent intra-family violence and Law 1257 which encompasses general violence against women, identify five basic forms of violence against women.³⁵ They identify that of physical violence, sexual violence, psychological violence, economic violence and patrimonial violence. Whilst physical, sexual and psychological violence are more easily recognisable, the laws strive to acknowledge the other forms of hidden violence.³⁶

Economic violence generally takes the form of a partner withholding wealth from their counterpart, for the purpose of retaining their dependence and restricting them from autonomous capacity.³⁷ This is particularly detrimental in circumstances where the mother has given up a career to raise her children and has no independent income of her own. It is also highly debilitating for a woman who has her own source of employment and her income is controlled solely by her partner. Alternatively, patrimonial violence is a similar form of violence which involves the violation of a woman's right to her property. It is distinct from economic violence as it is concerned with a woman's ability to own and control the property to which she is entitled. Patrimonial violence may include destroying, stealing, managing and

³¹ See Laura Cuesta and Daniel R Meyer, 'The Role of Child Support in the Economic Wellbeing of Custodial-Mother Families in Less Developed Countries: the Case of Columbia' (2014) 28 *International Journal of Law, Policy and The Family* 60, 62.

³² Gabriela Dale, *Colombian Welfare: Family Subsidy by the Box* (20 May 2013) Colombia Politics <<http://www.colombia-politics.com/colombian-welfare-family/>>.

³³ Immigration and Refugee Board of Canada, *Colombia: Domestic violence, including legislation; state protection and support services available to victims in Bogotá, Santiago de Cali, and Medellín* (21 April 2017) The UN Refugee Agency <www.refworld.org/docid/591615304.html>.

³⁴ *Ibid.*

³⁵ Congreso de la Republica [Colombian Congress] Ley 294 de 1996; Congreso de la Republic [Colombian Congress] Ley 1257 de 2008; Immigration and Refugee Board of Canada, *Colombia: Domestic violence, including legislation; state protection and support services available to victims in Bogotá, Santiago de Cali, and Medellín* (21 April 2017) The UN Refugee Agency <www.refworld.org/docid/591615304.html>.

³⁶ *Ibid.*

³⁷ See Carmen Diana Ceere, Jacqueline Contreras and Jennifer Twyman, 'Patrimonial Violence: A Study of Women's Property Rights in Ecuador' (2014) 41(194) *Latin American Perspectives* 143, 144.

restricting a woman from utilising her property, whether it is owned individually or jointly with a partner.³⁸ These practices can be related back to the machismo culture, in which men are purported to be in control of the family and the finances and women are subject to their management.

In Australia only some of the states and territories include economic violence or ‘economic abuse’ in their definitions of family violence.³⁹ The *Crimes (Domestic and Personal Violence) Act 2007* (NSW), as the core piece of legislative framework for NSW tending to family violence, does not even possess a definition of family violence, let alone specifically include economic abuse.⁴⁰ In fact at present Tasmania is the only jurisdiction to specifically criminalise economic abuse,⁴¹ though as yet there are no reported prosecutions for this offence.⁴² Despite the lack of clarification on the issue of economic abuse it remains a relatively common form of intimate partner abuse. Research shows that on average 15.7 per cent of women of all age groups have experienced economic abuse, and this form of abuse is more frequent among women who have experienced physical and psychological violence.⁴³

Proportionally, reported domestic violence statistics in Australia are not dramatically lower than that of Colombia. In 2016, the ABS reported that 16 per cent or roughly 1.5 million women have experienced partner violence.⁴⁴ In New South Wales alone there were 65, 120 domestic violence related incidents reported to authorities between 2014 and 2015, with a total of 264, 028 incidents recorded for the whole of Australia.⁴⁵ This does not compare proportionally however, as Colombia’s population easily doubles that of Australia. Thus there are more women suffering at the hands of domestic violence in total than there are in Australia. Australian statistics also present the issue of underreporting which plagues the prosecution of domestic violence, as it was shown that 80 per cent of women who had experienced domestic violence from a current partner had never contacted the police.⁴⁶ The most common reason cited for this phenomenon was fear of retaliation and further violence from the partner.⁴⁷

³⁸ Ibid.

³⁹ Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC Report 114 (2010) 196 [5.31].

⁴⁰ *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

⁴¹ *Family Violence Act 2004* (Tas) s 8.

⁴² Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC Report 114 (2010) 196.

⁴³ Jozica Kutin, Roslyn Russell and Mike Reid, ‘Economic abuse between intimate partners in Australia: prevalence, health status, disability and financial stress’ (2017) 43(3) *Australian and New Zealand Journal of Public Health* 269.

⁴⁴ Australian Bureau of Statistics, *Personal Safety, Australia, 2016* (November 2017) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4906.0~2016~Main%20Features~Key%20Findings~1>>.

⁴⁵ Clare Blumer, ‘Australian police deal with domestic violence every two minutes’, *ABC News* (online) 21 April 2016 <www.abc.net.au/news/2016-04-21/domestic-violence/7341716>.

⁴⁶ Australian Bureau of Statistics, *Personal Safety, Australia, 2012* (December 2013) <www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/25AF91125718ADF1CA257C3D000D856A?opendocument>.

⁴⁷ Ibid.

The most significant difference between Colombian and Australian responses to domestic violence is that the Australian legal system possesses operational mechanisms in which to remove women from family violence, particularly if there are children involved.⁴⁸ Significant funding has been allocated to address domestic violence issues by means of specialised response agencies, behavioural programs for offenders and housing for victims.⁴⁹ Also, absent from many sectors of Australian society is the belief that domestic violence is a normalised and accepted occurrence, and additionally the stigmatised practice of victim blaming from legal authorities. In fact, under-prosecution issues include the many instances of domestic violence victims who do not want to press charges after police are called to the scene. Australia's stance on domestic violence is largely supported by its established legal and political frameworks, whilst Colombia's main struggle is with real implementation of their policies. This can also be seen through the issue of sexual violence.

Sexual Violence

Sexual violence can be both a form of domestic violence and a generalised form of violence against women. Colombia has a particularly disturbing record of sexual violence against women, as much of the violence has occurred in the context of the armed conflict. According to a publication from the prominent women's right organisation Casa de la Mujer, between 2001 and 2009 approximately 489,687 women were victims of sexual violence.⁵⁰ As with domestic violence there are significant occurrences of underreporting, and the publication goes on to note that 82.15 per cent of these victims did not report the abuse.⁵¹ What is most alarming is that these overwhelming statistics do not even account for acts of sexual violence outside of the designated time period, or acts committed independently of the conflict.

In both the civil and narcotics war contexts, human rights organisations have identified that sexual violence is used by political and criminal groups as a strategy of war; largely as a weapon of social control and terrorisation.⁵² Further, reports have indicated that there is a direct correlation between the presence of the military, police forces, paramilitary and guerrilla groups and the perpetration of sexual violence in an area, particularly in rural areas in which the abuses are committed by and large against Indigenous women.⁵³ As such it is clear that an increased military presence does not mean safety or security in an area. Additionally in some areas, the establishment of mining projects has led to an increase in the

⁴⁸ See Australian Law Reform Commission, *Family Violence – A National Legal Response*, ALRC Report 114 (2010).

⁴⁹ Emma Partridge, 'Baird government's \$60m package targets domestic violence', *The Sydney Morning Herald* (online) <www.smh.com.au/nsw/specialist-police-squads-target-domestic-violence-offenders-20151012-gk7h0q.html>.

⁵⁰ Casa de la Mujer, 'First Survey on the Prevalence of Sexual Violence against Women in the context of the Colombian Armed Conflict 2001-2009' (January 2011) <www.peacewomen.org/assets/file/Resources/NGO/vaw_violenceagainstwomenincolombiaarmedconflict_2011.pdf>.

⁵¹ Ibid.

⁵² Organización Indígena de Colombia (ONIC), *Mujeres Indígenas, Víctimas Invisibles Del Conflicto Armado En Colombia La violencia sexual, una estrategia de guerra*, Report presented to Margot Wallström, Special Representative of the Secretary-General on Sexual Violence in Conflict during her visit to Colombia, 16 May 2012.

⁵³ Ibid.

prostitution business.⁵⁴ These illegal businesses will often prostitute children and in particular young women or girls who have been bought as sexual slaves from Colombia's cities.⁵⁵ Therefore it has been estimated that between 20,000 and 35,000 children have been forced into performing commercial sexual work; the majority of these exploited children being young girls.⁵⁶

Whilst Australia does not have these issues of widespread and systematic sexual abuse of young girls, the ABS has reported a rise sexual violence among young people. The data for 2014 indicated that persons aged 19 or under accounted for up to 60 per cent of the recorded total of victims of sexual assault. Furthermore, 83 per cent of the sexual assault victims were women, with the majority of victims aged between 15 and 19 years old.⁵⁷ Young women are therefore the sector of Australian society most at risk of experiencing sexual violence; a statistic which is much the same in Colombia.

As such there are two significant issues with the prosecution of sexual violence in Australia. The first is that of underreporting. The Australian Institute of Criminology estimates that less than 30 per cent of sexual assault and other acts of sexual violence are actually reported to the police.⁵⁸ Reluctance to report instances of sexual violence is similar in nature to that of domestic violence but a particularly distasteful practice that sexual violence victims fear is the occurrence of victim blaming. Victim blaming or 'slut shaming' as it is conventionally known, is a product of rape culture in which people shift blame from the offender to the victim and essentially hold them responsible for the act of sexual violence that was committed against them.⁵⁹ Slut shaming will often involve blame being assigned by virtue of a victim's sexual history, choice of attire, whether they were engaged in flirtatious behaviour or whether they were affected by alcohol. Although the law typically prevents evidence of this kind from being heard in court,⁶⁰ reporting an incident will nonetheless bring a victim's history into the spotlight and they could be subject to all kinds of criticism.

The second significant issue in this area is in the overwhelmingly number of unsuccessful prosecutions. Out of the 30 per cent of incidents that are reported to police, only 20 per cent of these are likely to have resulting criminal proceedings instigated by police. Most unfortunately out of this small percentage, only 10 per cent of incidents are likely to result in a guilty outcome.⁶¹ With statistics such as this victims of sexual assault are often persuaded

⁵⁴ ABColombia interviews conducted in 2012 in Tolima near Anglo Gold Ashanti mine; Jineth Bedoya Lima, El Tiempo, Campamentos de explotación de niñas en zonas mineras, May 2013.

⁵⁵ Ibid.

⁵⁶ Watch List on Children and the Armed Conflict, Colombia's War on Children, February 2004.

⁵⁷ Australian Bureau of Statistics, *Recorded Crime – Victims, Australia, 2014* (July 2015)

<www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4510.0~2014~Main%20Features~Sexual%20Assault~10>.

⁵⁸ Australian Institute of Criminology, *Guilty Outcomes in Reported Sexual Assault and Related Offence Incidents* (December 2007) <aic.gov.au/publications/current%20series/cfi/161-180/cfi162.html>.

⁵⁹ Christine L Hackman, Sarah E Pember, Amanda H Wilkerson, Wanda Burton and Stuart L Usdan, 'Slut-shaming and victim-blaming: a qualitative investigation of undergraduate students' perceptions of sexual violence' 17(6) *Sex Education* 697, 698.

⁶⁰ See *Criminal Procedure Act 1986* (NSW) pt 5.

⁶¹ Australian Institute of Criminology, *Guilty Outcomes in Reported Sexual Assault and Related Offence Incidents* (December 2007) <aic.gov.au/publications/current%20series/cfi/161-180/cfi162.html>.

that there is no point in instigating criminal proceedings, as they will experience the trials of the criminal justice system without a positive result. Thus the criminal justice system in Australia is failing victims of sexual violence, as perpetrators of this kind of violence are going largely unpunished, much like in Colombia. A critical difference however, is the way in which Australian women can deal with the consequences flowing from sexual violence.

Reproductive Rights: Abortion

Reproductive rights and abortion in particular, continues to be a subject of controversy in Colombia. Prior to 2006, abortion for any reason was strictly prohibited until it was legalised under three specific circumstances by a judgment in the Constitutional Court.⁶² Firstly a pregnancy can be terminated if it represents a danger to the health or life of the mother. It can also be terminated if there are foetal-malformations that are threatening to the life of the child. Lastly, if the pregnancy has resulted from instances rape, incest or non-consensual artificial insemination it can be validly terminated.⁶³ As Colombia is a republic and the law is a decision of the Constitutional Court, it is applied consistently across all departments of Colombia.

In comparison, abortion law in Australia differs between states as based on common law rulings. In New South Wales, abortion is still listed as a crime under division 12 of the *Crimes Act 1900* (NSW) but it is regulated by a number of important cases,⁶⁴ which allow abortion to be performed under certain situations. The most important case is that of *R v Wald*,⁶⁵ which in combination with the 'Levine ruling' holds abortion to be legal if the medical professional had an honest and reasonable belief that the procedure was necessary to 'preserve the woman involved from serious danger to her life or physical or mental health which the continuance of the pregnancy would entail'.⁶⁶ In a number of states abortion is legal on request but the common law appears to have put little constraint on New South Wales' legal conditions. In the present day, broad interpretations of the Levine ruling have accepted an unwanted pregnancy as detrimental to the mental health of woman and subsequently it is relatively easy to get an abortion.⁶⁷

In Colombia however, the process has proved far less simplistic. Despite the presence of legal grounds for abortion, Colombian women have been prevented from safe access to abortion by way of refusals by medical professionals and institutions, refusals by judges to grant access to procedures and the difficulty of proving that they meet the medical requirements to qualify for the procedure. Therefore women in dire circumstances are forced to procure clandestine abortions, often in unsafe and unqualified situations. While women of middle and upper incomes can generally afford to access relatively safe services for these clandestine abortions, women of a lower socio-economic background are frequently unable to access such

⁶² Corte Constitucional [Colombian Constitutional Court] *Sentencia C-355/06*, 10 May 2006.

⁶³ *Ibid.*

⁶⁴ *Crimes Act 1900* (NSW) div 12.

⁶⁵ (1971) 3 DCR (NSW) 25.

⁶⁶ *Ibid.*

⁶⁷ See *CES v Superclinics (Australia) Pty Ltd* (1995) 38 NSWLR 47.

services.⁶⁸ The Guttmacher Institute estimates that in 33 per cent of clandestine abortions, affected women will seek medical attention for resulting complications, and this percentage is even higher for poor women in rural areas at a disturbing 53 per cent.⁶⁹ This is particularly concerning considering many of these poor rural women cannot afford proper medical treatment. Thus it is imperative that Colombia begins to address access issues in terms of abortion and medical services, so as to properly facilitate the promotion and protection of women's human rights.

Conclusion

In consideration of the enduring human rights issues of Colombia and Australia, it is clear that both countries are in need of effective policy and legislative framework to fully facilitate the recognition of women's rights. In comparison with Australia, Colombia has a great many more issues to comprehend in the aftermath of years of political conflict. It must address deeper social problems preventing the realisation of women's rights in order to give effect to existing legislative provisions. Finally, Colombia must nationally recognise the value of women in society and depart from pervasive notions of traditional gender roles.

⁶⁸ Bonnie Shepard, *Running the Obstacle Course to Sexual and Reproductive Health: Lessons from Latin America* (Greenwood Publishing Group, 2006) 21.

⁶⁹ E Prada et al, *Unintended Pregnancy and Induced Abortion in Colombia: Causes and Consequences* (2011) Guttmacher Institute <<https://www.guttmacher.org/report/unintended-pregnancy-and-induced-abortion-colombia-causes-and-consequences>>.