

# LAW EXCEPTIONS AND THE CAUSE OF WOMEN

## The implementation of legal abortion in Colombia: Ten years deepening democracy



### EXECUTIVE SUMMARY

Ten years ago, in 2006, Colombia's Constitutional Court issued Judgment C-355, which decriminalized abortion in three circumstances. For the Court, who in its ruling acted in the framework of human rights and, more specifically, in the context of the sexual and reproductive rights of women, especially the right to self-determination and reproductive autonomy,

“(...) Abortion is not penalized when, **with women's will**, abortion takes place in the following cases: i) when the continuation of pregnancy endangers the life or health of the woman certified by a physician; (ii) when there is serious malformation of the fetus that makes life unviable, certified by a physician; and (iii) when the pregnancy is the result of conduct, duly reported, constituting rape or sexual intercourse without consent, abusive or artificial insemination or of a fertilized ovum without consent, or incest.” [Emphasis added]

Despite the strength of the judgment -a turning point in the history of sexual and reproductive rights of women not only in Colombia but also in Latin America-, its real implementation has required the constant work of different organizations and individuals who defend the right of women to freedom, autonomy and self-determination over their bodies and reproduction. Among them, La Mesa por la Vida y la Salud de las Mujeres, a working group comprised of feminist women and women's organizations whose goal is to achieve total decriminalization of abortion in the country, stands out. In the last decade, due to the issuance of Judgment C-355 of the Constitutional Court, La Mesa, as this group is known, has fought for the implementation of the judgment as a real right of women.

In developing its work around Judgment C-355 and the subsequent judgments of the Constitutional Court on abortion, La Mesa has proposed strategies to materialize the stipulations of the Court into tangible facts such as the provision of timely and safe abortions for any woman whose personal situation corresponds to the legal exceptions. La Mesa also works in the appropriation of this right by women, education of the justice and health sector operators, and the understanding of society as a whole of abortion as a decision in the exercise of their rights, that only women can make.

The strategies proposed by La Mesa, for the real implementation of the Constitutional Court's judgment, in

addition to rely on the approach of women's human rights, are based on the broad interpretation of the exceptions for legal abortion. These strategies are backed by meaningful consensus on their interpretation, achieved between organizations and human rights defenders worldwide.

One of the consensus -perhaps the most important of them for having set a precedent- is the "consensus on the health exception." This consensus has been followed by the "consensus on the rape exception" and "the consensus on the malformation of fetus exception", currently being discussed. These consensuses -and particularly the former- have allowed for an expanded interpretation of exceptions and, in the case of the health exception, not restricted to the consequences of a pregnancy on the physical health of women, but also on their mental, emotional and social health. The expansion of the legal and social interpretation of this and other exceptions is not only a breakthrough in the realization of the rights of women. It also has an educational effect in as much as it allows operators of health and justice services and society as a whole, usually quite uninformed and/or misinformed about abortion and women's rights, change their perspective on this right.

As evidenced by the texts included in *Law Exceptions and the Cause of Women...* The implementation of legal abortion in Colombia on the ground of women's right to terminate pregnancies when they deem it so ("with women's will) and in accordance with the specified exceptions, it is an unprecedented step forward in guaranteeing the rights of women. Therefore, La Mesa works tirelessly for the right of women to voluntary and legally terminate an unwanted, unplanned or problematic pregnancy. Political and legal advocacy, information, education, training, communication, and support to legal cases are the flags of this group of democratic feminists. For La Mesa, the right to interrupt a pregnancy must be real for women, despite the constant barriers they face: prejudices on abortion, advocacy by rightist and confessional government and society sectors, including justice and health officials, to name just a few.

In the work on abortion, La Mesa has accompanied over a thousand women applying for an abortion and facing obstacles. In general, La Mesa has been successful in this task (pregnancies have been terminated in most cases), but is also recognizes as its own the challenges for the country in this field in the near future. Among them, these challenges should be emphasized:

- The promotion of information programs, communication and health education at different levels and through different channels, integrating the approach of human rights and reproductive rights, including abortion, the provision of services and the corresponding allocation of resources.
- The issuance of regulatory frameworks and legal initiatives aimed at protecting the agenda of sexual and reproductive rights of women.
- The relevance of considering the personal and social reality of thousands of women and move the abortion debate beyond the absolutist positions of "for" or "against."
- The imperative of making society more egalitarian in terms of gender, guaranteeing democratization and peaceful coexistence, especially in the face of a peace agreement scenario like the one proposed presently.

In the words of La Mesa,

Judgment C-355 opened a door, and the following decisions reaffirming, clarifying or deepening this judgment have been key achievements in the protection and guarantee women's rights in Colombia. However, implementation remains a necessary battle so that women enjoy their rights in a daily basis. (...) From our perspective, based on experience and with the conviction that it is imperative to avoid suffering and to guarantee women's self-determination, this challenge involves (...) political will and full legalization of abortion in Colombia, eliminating the crime of abortion of the Criminal Code with no delay and no excuses.