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Abortion Reform in Colombia:
From Total Prohibition to Decriminalization
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On February 21, 2022, the Colombian Constitutional Court decriminalized abortion up to the twenty-fourth week of gestation and, additionally, clarified that the grounds under which abortion had been allowed since 2006 should continue to apply in the remaining weeks of pregnancy.¹ This decision, more than any other, is the material manifestation of the strategic efforts of a broad sector of Colombian feminism grouped under the slogan *Causa Justa* (Just Cause) (La Mesa por la Vida y la Salud de las Mujeres 2022). This article briefly presents the history of feminist mobilization around abortion in Colombia, emphasizing its contributions for thinking about progressive reform in highly conservative environments: the importance of taking advantage of political opportunities, the appropriation of legal reform, and incremental change. Three different moments are discussed: political mobilization and the construction of meaning (1979–2004); progressive legal mobilization and appropriation of incremental reform (2004–2018), and feminist legal mobilization (2018–present).

Political Mobilization and Construction of Meaning (1979–2004)

This first period was marked by insistence on legislative reform through Congress and the gradual consolidation and visibilization of the feminist movement as an important participant in public debate. Between 1975 and

2006, at least eight bills were introduced to reform the Legal Code in relation to abortion.² Between 1979 and 1991, the bills were presented by the liberal party in an attempt to soften existing legislation on abortion, including exemptions for reasons widely accepted in other countries, such as rape or fetal malformation. However, none of those bills made it very far, nor was any progress made in the new constitution approved in 1991 (Buchely Ibarra 2014).

Feminists were largely absent from the political debate regarding abortion until 1988 (Viveros Vigoya 1997), when the debate over constitutional reform began (Quintero 2006). Abortion was not a priority among feminists until at least 1998 when La Mesa por la Vida y la Salud de las Mujeres [Panel for Women's Life and Health] was founded (González-Vélez and Jaramillo Sierra 2021). The literature points to at least three reasons behind this lack. First, the Colombian feminist movement in this period has been described as weak and fragmented. According to Sánchez Gómez (1995), in the 1960s and 1970s, feminist agitation in the country was led by middle-class youth inspired by similar movements in Europe and the United States, guided by radical ideas of cultural change and challenging structures. In the Colombian case, one significant milestone for these restless young women was the First Latin American and Caribbean Feminist *Encuentro* (Meeting). This kind of gathering, held every three years, served to exchange experiences, build alliances, and generate regional knowledge (Alvarez et al. 2003).³

However, those radical efforts demanding autonomy were quickly criticized and isolated, giving way to an institutionalized feminism in human rights organizations and universities (Jaramillo Sierra and Alfonso Sierra 2008). The process of the National Constituent Assembly in 1988 and later in 1991, however, provided the movement with an opportunity to consolidate its agenda, gain recognition, and learn to advocate (Viveros Vigoya 1997; Quintero 2006; Wills Obregón 2007). That is where the concept of desired motherhood first appeared as an objective that brings together different sectors, despite relative consensus regarding the enormous difficulties (Quintero 2006).

Second, it has been argued that as feminist movements started prioritizing the issue of peace in 1994 (Ibarra Melo 2011; Jaramillo Sierra 2018), a consensus emerged over not confronting the Catholic Church, but rather working to make it into an ally (Viveros Vigoya 1997). While the Catholic Church's position had been weakened as the sole actor in the Colombian religious scene with the 1991 constitutional reform (Arias 2003), its major role in peace negotiations and continuous humanitarian work were unquestionable until at the least the early 2000s (Plata Quezada and Vega Rincón 2015).

Finally, judicial passivity regarding women's rights and Colombian feminists' lack of training in strategic litigation were additional reasons for not insisting on legal reform in relation to abortion in sites other than the national congress (Jaramillo Sierra and Alfonso Sierra 2008). According to our data (Jaramillo Sierra and Cely 2021), between 1992 and 2001, when the first woman magistrate was elected, only eight percent of the Constitutional Court's total decisions were related to gender issues. That number reached 21 percent in 2005. In that period, the Court's decisions regarding abortion were indicative of feminists' caution. The Constitutional Court ruled on existing legislation regarding abortion four times and, each time, ruled that it did not violate women's rights and was justified by the imperative need to protect gestating life (Jaramillo Sierra and Alfonso Sierra 2008). None of the cases were presented by women or feminist organizations (Jaramillo Sierra and Alfonso Sierra 2008).

Progressive Legal Mobilization and Incremental Reform (2004–2018)

In 2005, the organization Women's Link Worldwide (WLWW) initiated a strategic litigation process aimed at reforming the criminalization of abortion through the Colombian Constitutional Court (Jaramillo Sierra and Alfonso Sierra 2008). Using the acronym LAICIA (High Impact Litigation for the Constitutionalization of Abortion), WLWW weaved together three axes of intervention: communications, the legal process, and articulating organizations working on sexual and reproductive rights in Bogota and other regions of the country. Along with a favorable ruling in the Constitutional Court, it proposed to change public debate around abortion so that it was no longer dominated by religious narratives, but rather carried out in terms of human rights. It also sought to expand its allies to include liberal opinion leaders, to transform how law schools teach about abortion, to train organizations about opportunities for litigation before the Constitutional Court, and to define the actions necessary to implement the ruling. Two factors were decisive for choosing to wager on litigation before the Court at this conjuncture. First, due to the institution's constitutional design, between the last negative ruling on the issue in 1997 and 2005, all the Court's magistrates had changed.⁴ Second, the renewed Court had showed signs of being open to incrementally reform abortion's status, as shown by its posture toward the changes introduced by the new Penal Code.⁵

The Constitutional Court's decision in 2006 (C-355) was the outcome of the strategy concocted by WLWW and supported by numerous feminist

organizations and progressive leaders. In that ruling, the Court decided to decriminalize abortion in four circumstances: (1) rape or non-consensual artificial insemination; (2) incest; (3) malformations incompatible with extra-uterine life; (4) risk to the pregnant person's health. A series of precautions were also adopted to increase the ruling's effectiveness, such as the prohibition of institutional conscientious objection, a framework referencing the violation of women's dignity to avoid the imposition of exceptions, including that of gestational age, and the authorization of minors under the age of 14 to access services without their parents' consent. However, the decision granted much less than what WLWW had demanded and framed it differently than they had proposed, leaving out important arguments such as that of freedom of conscience and equal rights.

The relationships that WLWW consolidated in the legal process and through LAICIA were strengthened in the period following the ruling, thanks to the efforts of La Mesa por la Vida y la Salud de las Mujeres (hereafter, La Mesa) (González-Vélez and Jaramillo Sierra 2021). Between 2006 and 2021, La Mesa focused its efforts on ensuring that the legal framework created by ruling C-355 (Constitutional Court 2006) was implemented and, through its interpretation, would be broadened to cover most abortions practiced in Colombia. La Mesa developed a strategy of producing expert knowledge and training health care professionals that it called *estrategia de las causas* [causes/grounds strategy] (González-Vélez and Jaramillo Sierra 2017). This allowed it to gather legal expertise on abortion and to translate the technical content of the constitution into the language of human rights and bioethics. Furthermore, it was able to persuade health care professionals that the correct interpretation of the legal framework allowed women a broad margin of choice in relation to maternity (González-Vélez and Jaramillo Sierra 2021). La Mesa also designed and implemented a strategy for monitoring cases to identify the main barriers that the health system imposed on women. Indeed, it contributed to increasing the instances in which women were able to have their abortions attended to in the health care system (González-Vélez and Jaramillo Sierra 2021). Finally, La Mesa's advocacy strategy enabled it to, on the one hand, identify and resist the work of groups committed to hindering abortion access and, on the other hand, to develop regulatory frameworks for health authorities so that the Constitutional Court's decisions would take hold within the bureaucracies of the Colombian health care system (González-Vélez and Jaramillo Sierra 2021).

The Constitutional Court, for its part, was a key actor in developing the necessary legal framework for health care professionals and service providers.

Since it had already ruled on constitutionality, it had to defend the ruling, and women's rights, through *tutelas* decisions. It used each of the few cases that arrived, although they were fairly similar, to specify prohibited actions, draw officials' attention, and recall past decisions (Jaramillo Sierra 2019). All the cases studied already had an outcome: either an abortion had been performed outside of the health system or the woman had given birth. The Court developed the doctrine of continuing damage, arguing that there were reasons to suppose that health care service provider companies continued acting in the same way and imposing obstacles on women.⁶

Along with La Mesa and the Court, who were the main actors during these 15 years of legal mobilization, WLWW and the Center for Reproductive Rights initiated legal processes to further protect the right to abortion. Their strategy to silence the extreme rightwing Solicitor General of the Nation, Alejandro Ordóñez, whom the Constitutional Court forced to rectify his statement about emergency contraception and abortion sentences with ruling T-627 (Constitutional Court 2012), was especially important.

Feminist Legal Mobilization (2018 and, Hopefully, for Many More Years)

The third moment is inscribed in the experience accumulated by organizations such as La Mesa, which made it possible to demand the total decriminalization of abortion. The initiative, now movement, *Causa Justa*, began brewing in 2018 (González-Vélez, Melo Arévalo, and Martínez Londoño 2019) based on the argument that the model of *causales* was insufficient for guaranteeing the right to abortion in Colombia. This model not only created, but also deepened, inequalities among women in terms of access to legal abortion services and maintained a dualism between a fundamental human right in four circumstances and a crime in all other circumstances. Similarly, the implementation in the hands of private health care providers was plagued by multiple obstacles to women and, fifteen years after the adoption of the model, only ten percent of abortions were carried out within the health care system. *Causa Justa* was founded in Colombia in February 2020 (La Mesa por la vida y la Salud de las Mujeres 2022). Its strategy addresses twelve areas of action with a set of ninety arguments constructed from different perspectives that offer diverse views for debate and broadening the message (La Mesa por la Vida y la Salud de las Mujeres 2019).

Of the twelve fields of action, the following were prioritized: (1) producing arguments and evidence through research on criminalization, barriers to access for migrant women, and public opinion on abortion; (2) pedagogical

work with different audiences (conversations with political and opinion leaders, health care professionals, providers, academics, human rights organizations, among others); (3) mobilization (in the streets, on social media) and work with the media; (4) increasing spokespeople and “voices” beyond the movement (from artists to politicians, and working with movements beyond those focusing on sexual reproductive rights, such as those focused on peace and democracy); (5) working with women in different regions of the country; (6) the legal component (including designing a bill for a legislative route or a lawsuit claiming unconstitutionality for a judicial route); and (7) collective work. *Causa Justa* is made up of over 114 organizations and networks, including thousands of people who have joined, and with a presence in more than 20 cities. All the organizations and networks in the movement identify as feminist.

In 2018, the movement was not exclusively or even mainly oriented toward litigation before the Constitutional Court. However, several Court rulings in 2018 and 2019 showed that political opportunity might exist for taking that path. In particular, the mention of international standards related to the right to abortion and the repeated position of magistrates Alejandro Linares, Alberto Rojas, and José Fernando Reyes were indicative of openness to decriminalization by one sector of the court.⁷ Therefore, five of the organizations of *Causa Justa*—La Mesa, WLWW, Center for Reproductive Rights, Católicas por el Derecho a Decidir [Catholics for the Right to Choice] and Grupo Médico por el Derecho a Decidir [Medical Group for the Right to Choice]—with the support of people and organizations that were experts in the law and health, worked to elaborate a lawsuit aimed to eliminate the criminalization of abortion.

The lawsuit argued that the Court should eliminate the law criminalizing abortion, since it is unjust (especially toward the most vulnerable), ineffective (it does not eliminate what it prohibits), counterproductive (women have abortions illegally and risk their lives, their health, and their dignity), and violates the rights of women and health care professionals. In other words, the lawsuit sought to abandon the use of criminal law and replace it with comprehensive policies and services in favor of early abortions, preventing women from being forced to carry out undesired pregnancies and motherhood, while respecting those who want to be mothers. 523 days after being presented, and after overcoming multiple procedural obstacles by people seeking to prevent the decriminalization of abortion, the lawsuit received a favorable ruling in C-055 (Corte Constitucional de Colombia 2022). The ruling accepts four of the arguments presented by the lawsuit: violation of the

right to health and sexual and reproductive rights of women, girls, and gestating persons; violation of the right to freedom of conscience; violation of the constitutional principle that criminal law only be used as the last resort; and violation of the right to equality of women in situations of vulnerability and irregular migratory situations.

With this ruling, *Causa Justa* put Colombia in the vanguard of Latin America and the Caribbean, and the whole world: there are only a handful of countries with similarly broad regulations (e.g., Canada, China, Singapore, and North Korea) (Center for Reproductive Rights 2022). It also inserted the movement's arguments into social media conversations (Linterna Verde 2021) and increased coverage in the media and street protests, in the capital and other regions (Trineo TV 2022). Finally, *Causa Justa* was able to increase alliances in all spheres of social and democratic life, including people with political power and decision-making capacity that will undoubtedly help consolidate the implementation of the ruling and the public policies requested by the Court in its decision.

Following the ruling, enormous challenges remain on three fronts: (1) implementation in a way that expands and consolidates services and formulating the comprehensive policy to protect desired motherhood mentioned by the Court in its ruling; (2) protection against legal and social attacks; and (3) social decriminalization. *Causa Justa* has taken on the challenge of working in all these areas and hopes to advance at the pace required by the urgency of the circumstances.

Conclusions

Here we have presented a short history of abortion reform in Colombia. Unlike other countries in the region, such as Argentina and Uruguay, where reform took place through legislative action accompanied by massive mobilizations in the streets, in Colombia reform was led by the Constitutional Court with only a modest level of agitation. This trajectory, common to causes for the defense of sexual rights, can be explained by several elements of the context. One of the most important, as mentioned above, is the role of the Catholic Church in national life. Not only has it been a key actor in the search for peace and protection of vulnerable populations, but it was also an ally of the national government in education and in recording acts of civil life through detailed documentation of the sacraments of baptism, marriage, and extreme unction (Arias 2003). Up until 2005, when the Catholic Church was definitively requested not to interfere in human rights debates (Jaramillo Sierra

and Alfonso Sierra 2008), ecclesiastical authorities were frequently asked by the media to share their opinions on abortion reform. We can also add the persecution of social movement leaders and use of force against peaceful protests (Martínez Jiménez 2021). Finally, it is important to note that the Constitutional Court has developed a doctrine that favors judicial activism, given the circumstances, and has not hesitated to adopt courageous decisions to order other branches of public power to fulfill their constitutional role (Albarracín Caballero 2011; Jaramillo Sierra 2021).

In this context, feminist organizations learned to recognize the political opportunities represented by litigation before the Constitutional Court and use them strategically to increase their impact. Thus, they have dedicated significant resources to monitoring cases, intervening against actions seeking to stop reforms, and shifting public debate. With this, they have shown that even incremental reform can be strategically and advantageously deployed to produce significant results.

Notes

- 1 See C-355 (Corte Constitucional de Colombia 2006) and C-055 (Corte Constitucional de Colombia 2022).
- 2 See Viveros Vigoya (1997) and González-Vélez (2005).
- 3 For an extensive reflection on the importance of transnational mobilization in the Colombian context, see González-Vélez and Jaramillo Sierra (2021).
- 4 Magistrates serve a fixed eight-year term according to Article 239 of the Constitution. The first magistrates were named in 1993.
- 5 Ruling C-198 (Corte Constitucional de Colombia 2002) accepting the constitutionality of the paragraph introduced in article 124 of the Criminal Code allowing judges to reduce the sentence of women in circumstances that the 2006 ruling had decriminalized.
- 6 A complete list of the rulings can be seen here: <https://derechoalaborto.com/>.
- 7 See rulings SU-096 (Corte Constitucional de Colombia 2018) and C-088 (Corte Constitucional de Colombia 2020).

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