

# Eliminating Abortion from Criminal Law in Colombia: A Just Cause

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## Abstract

The two main legal models governing abortion provision, indications for abortion and time limits on the number of weeks of pregnancy, both limit recognition of women's reproductive autonomy. Each model restricts the circumstances under which women can access abortion. Yet, in most of the world these have been the main political goals for the feminist movement in the fight to make abortion legal and safe. Other strategies have also been incorporated into these goals. But in each case, abortion remains a crime, causing pervasive and profound damage for the providers and for women, and maintaining abortion as a part of an exceptionality regime suspended in its own illegality. This article discusses such limitations. It then focuses on Colombia and the experiences of feminist collective La Mesa por la Vida y la Salud de las Mujeres, which is campaigning to have abortion removed from the criminal law. In particular, this article examines a double standard in Colombian law: while abortion has been declared a fundamental right, it remains a crime in the penal code.

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## Introduction

Most countries in Latin America and the Caribbean have partially liberalized abortion, with only a few maintaining absolute bans. Abortion laws vary widely throughout the region and include the following types of restrictions:

- the most restrictive model: total criminalization (for example, El Salvador and the Dominican Republic)<sup>1</sup>
- the narrow indications model: countries that permit abortion to save the pregnant woman's life (for example, Paraguay and Venezuela)
- the broader indications model (for example, Colombia), and
- the time-limit model: supporting abortion until a specific gestational age, without requiring a concrete reason for termination—that is, on request (for example, Uruguay and Mexico City).

In other words, liberalization has occurred through one of two models widely described in the literature: the indications model, which permits abortion on certain legal grounds, and the time-limit model, which allows abortion until a certain stage of pregnancy, regardless of the reasons, with the most common cutoff point being 12 weeks.<sup>2</sup> That said, the time-limit model usually applies certain grounds in cases where the time limit has passed, and the indications model allows abortion only up to a certain gestational age. Despite these advances, national penal codes across the Latin American and Caribbean region all classify abortion as a crime, including those in jurisdictions with the most liberalized abortion laws: Uruguay, Mexico City, and Cuba. It is within this contradictory and restrictive framework that progress toward liberalizing abortion has slowly been made.

While the indications model is the most common model in the region, there was no effective access for decades to legal abortion on the specified grounds; it was legal in name but not in practice, and prior to 2000, efforts to implement those grounds were almost nonexistent.<sup>3</sup> From 2000 on-

ward, feminist movements spearheaded advocacy efforts to broaden the interpretation and implementation of the grounds under which abortion could be accessed.<sup>4</sup> Each country's political context, feminist struggles, and legal battles between progressives (pro-abortion rights) and conservatives (anti-abortion rights) have influenced the type of regulations adopted.<sup>5</sup>

In 2006, Colombia's Constitutional Court issued Sentence C-355, partially decriminalizing abortion by permitting it on three specific legal grounds: 1) when a woman's pregnancy is the result of rape, non-consensual artificial insemination or transfer of a fertilized egg, or incest; 2) when the pregnant woman's physical or mental health is at risk; and 3) when the pregnancy involves fetal malformation incompatible with life. While the court ruled that these grounds all involve women's fundamental rights, it did not eliminate the crime of abortion from the penal code.<sup>6</sup> In various rulings since 2010, the court has emphasized that

*the right to the voluntary termination of pregnancy is a fundamental right per se, given that it is part of so-called reproductive rights and more specifically reproductive autonomy, whose fundamental status was recognized by the court in Sentence C-355 of 2006.*<sup>7</sup>

Although the court has generally linked this right to the three legal grounds established in 2006—meaning that abortion in other circumstances could legally constitute a crime—Sentence T-301 of 2016 refers multiple times to “abortion's nature as a fundamental right.”<sup>8</sup> Thus, since the court's ruling, these two legal categories—the crime of abortion and the legal right to abortion in certain circumstances—have existed alongside each other.

Since the 2006 Constitutional Court ruling, La Mesa por la Vida y la Salud de las Mujeres (La Mesa) has been working with other national nongovernmental organizations to support its implementation.<sup>9</sup> La Mesa is a Colombian feminist organization founded in 1998 to fight for the full decriminalization of abortion. It is composed of individual experts in health, law, and related fields, as well as organizations and other national feminist

networks, including health care providers and legal advocates.<sup>10</sup>

La Mesa's efforts in this regard have included the identification, classification, and documentation of barriers to access, as well as efforts to raise awareness of these barriers in order to influence abortion regulations; legal assistance for women who seek abortions and have had to confront these obstacles; and the production of expert knowledge aimed at supporting a broad interpretation of the three legal grounds, particularly the health legal ground, consistent with international human rights law.<sup>11</sup> Efforts by La Mesa and other social actors have resulted in the health legal ground being the principal reason recorded by health professionals for legal abortions in the two largest national hospitals providing care in this area.<sup>12</sup>

Nonetheless, nearly 13 years of sustained efforts to ensure the implementation of these grounds have not resulted in great advances. A recent La Mesa study shows that women in Colombia are still unable to make decisions about their bodies, due to the following facts:

1. abortion remains mainly illegal (less than 1% of all abortions are legal);
2. women continue to face many barriers when trying to access abortion through the public health system;
3. the provision of services is geographically limited and access deeply unequal;
4. committed providers are scarce and the provision of care is arbitrary; and
5. prosecutions of women have increased in spite of the legal framework and the favorable opinion of the general public of women's autonomy on abortion.<sup>13</sup>

The time has come for the feminist movement to propose our own rules and to use our own language in the debates.

For all these reasons, La Mesa is fighting for the crime of abortion to be eliminated from Colombia's penal code. Our analysis draws on the experiences of countries such as Canada, which

eliminated the crime of abortion based on a solid critique of its previous model (the indications model) and the inequalities it was perpetuating.<sup>14</sup> Analysis is also situated within the framework of a broader criticism of abortion models that are based on criminalization. As Erdman and Cook note, as a result of the many dysfunctions of current laws, "the human rights consensus has moved towards the decriminalization of abortion, that is, the repeal of criminal abortion laws and generally, the removal of abortion as a legitimate subject of criminal law."<sup>15</sup> Next, we outline why repealing the crime of abortion should be the next step toward liberalization of abortion in Colombia.

### A critique of current abortion models: Grounds and time limits

Criminalizing abortion undermines women's autonomy and citizenship and suggests that women must share their reproductive autonomy with others, usually doctors and judges. A woman can receive certain health services only if she has a certificate from a physician or a judge, or if she has complied with certain requirements that vary from country to country and which prevent her from accessing legal and safe abortion services in a timely manner.<sup>16</sup>

In this regard, the requirements outlined in the indications model function as restrictions that subject women's decision making to a medical referral, to service providers' interpretations of the legal framework, or to the suffering expressed through a victimizing story. Depending on how narrowly or broadly a doctor interprets the law, the doctor or the woman may or may not be considered criminal. Abortion becomes the decision of a third party who, the woman hopes, will consider the procedure her best option. This all stems from trying to "fit" abortion into one of the legal grounds, which in many cases means disregarding human rights standards.

The time-limit model is similar in that it requires third-party supervision of a woman's decision. Requirements such as mandatory waiting periods and pre-abortion and multidisciplinary counseling call a woman's judgment into question,

such as when women are forced to observe a reflection period before their decision is “accepted.” Nonetheless, this model is more protective of women’s autonomy—at least during the established time frame—even if it only partially recognizes women’s moral capacity. Even so, it is often the case that access barriers push women to miss relevant time limits, resulting in the denial of abortion. In certain regions of Uruguay, for example, more than 80% of gynecologists exercised abortion-related conscientious objection during 2013–2017, undoubtedly leading to delays throughout the process.<sup>17</sup>

The existence of specific grounds and time limits is arbitrary and lacks an evidence base, and it is difficult to find good reasons why such elements should be maintained in the law.<sup>18</sup> Why, for example, do some countries allow abortion up to 8 weeks, while others allow it up to 12 or 14 weeks? Why is autonomy only recognized for 12 weeks, and why is it still subjected to a third party’s opinion or counseling, or to a reflection period? Why do some laws, as in Colombia, allow abortion after “forced insemination,” given that no such cases have ever been documented and that this does not constitute a real risk to women? Why don’t these grounds instead include very young age, or the woman’s social and economic constraints? The exceptions to the crime of abortion often do not correspond to the concrete needs of women or to the multiple reasons—not always disease, health, or biologic life—why women want an abortion.

Furthermore, as we will see below, using criminalization to defend life in gestation is ineffective, for, as Undurraga writes, “the fierce defence of unborn life would only be consistent if at the same time it could be shown that criminalisation of abortion results in fewer abortions.”<sup>19</sup>

Under the indications model, doctors, administrators, and judges play a regulatory role. They are “moral entrepreneurs” who use their power to impose and normalize their personal judgments through discourse and practice—in other words, to impose their own moral views through the provision of services.<sup>20</sup> An example can be seen in the barriers that women face due to the denial of abortion services, such as drawn-out adminis-

trative procedures, court orders that fail to respect applicable regulations, and conscientious objection by health professionals who use this mechanism more as a way to prevent women from aborting than as a tool for respecting their own freedom of conscience. Above all, doctors, administrators, and judges use this mechanism to sidestep the stigma associated with the crime of abortion.<sup>21</sup> These erect an extensive scaffolding around the protection of prenatal life—which the state has enshrined—which encompasses the crime and its punishment, including prosecution and incarceration. It also leads to the provision of unsafe abortion services, the sale of overpriced medications on the black market, the provision of legal abortion services only in tertiary-level health facilities, and numerous other consequences for women, including the forced continuation of pregnancy, negative health impacts, and even risks to their lives.<sup>22</sup>

But in all these models, we can highlight the persistence of criminalization as the legal ground which, in the case of Colombia, clearly produces a double standard. This double standard permeates all spheres of social life and cultural imaginaries, including the provision of services, the providers, women, legislators, and politicians.

### Human rights standards and the use of criminal law: An unresolved contradiction

According to the Colombian Constitutional Court, the *nasciturus* (unborn) cannot claim a legal right to life and is thus not a “subject of rights”; rather, the constitution enshrines a “protection of life” that does not carry the same level of protection as the right to life.<sup>23</sup> Drawing on the principle of proportionality—a tool for evaluating state actions that might affect the enjoyment of fundamental rights, as well as the content of those rights—the court has signaled that the constitutional value of life is not absolute and must be balanced against other values, principles, and constitutional rights, and it is for this reason that in Colombia the fetus does not have a right to life.<sup>24</sup> As the court stated in Sentence C-355:

*If criminal punishment for abortion is based on the precondition of the supremacy of the legal right of the*

*life in gestation over other constitutional protections at play, in this specific hypothesis there is no equivalence whatsoever between, on the one hand, the mother's rights not just to life but also to health and, on the other, the safeguarding of the embryo.*<sup>25</sup>

The Constitutional Court also recognized women as subjects of the right to dignity, free development of personality, and reproductive autonomy, reminding lawmakers:

*We cannot ignore the fact that women are fully worthy human beings and should be treated as such, as opposed to being deemed mere reproductive instruments for the human race or being forced in certain cases, against their will, to serve as tools of procreation ... The right to be a mother—or, in other words, the right to opt for maternity as a “life choice”—is a decision of the utmost privacy for every woman.*<sup>26</sup>

The court also recognized the right to health, establishing that pregnant women and girls have the right to access abortion when their pregnancy poses a risk to their life or health, the latter of which must be understood broadly to include both mental and physical health.<sup>27</sup>

According to Colombia's penal code, “Punishment must comply with the goals of general prevention, just retribution, special prevention, and social reintegration.”<sup>28</sup> In other words, by classifying certain conduct as a crime and by applying punishment accordingly, the penal code should help prevent such acts from occurring, repair as far as possible the damage done to society, and “positively influence the future behavior of perpetrators of the offense”—that is, it should send a message to *criminals*, which will prevent them from committing the offense again.<sup>29</sup> Punishment is the tool by which offenders understand the fault in their behavior and modify their relationship with society.

If we accept this as the goal of punishment, we can see that classifying abortion as a crime is ineffective to the extent that:

1. it is not a *preventive measure*, since it does not prevent women from getting abortions, although it can be effective in telling women that

committing a crime is not only bad in itself but also carries a penalty;

2. it is not a measure of *just retribution*, since criminalization violates women's fundamental rights as enshrined in the constitution; and
3. it does not promote women's *reintegration into society*, since when a woman accesses an abortion, which is recognized as a fundamental right in connection with other rights, she is neither altering the social order nor breaking any rules of civic coexistence, except that which sees maternity as the only valid form of femininity and as women's destiny (which the court rejected).

In this way, the classification of abortion as a crime embodies a utilitarian approach to punishment without achieving the objective of imparting justice while creating harmful consequences. And it becomes a tool for controlling women's reproduction. According to the literature, this model fails to recognize women's liberty and moral autonomy, for, of all liberties, women's liberty is the one most intimately connected to the physical body and to reproduction. Laws that punish abortion have the effect of placing pregnant women at odds with the fetus instead of acknowledging that “the act of conception and even [a woman's] desire for it does not imply an intention and much less a desire for maternity.”<sup>30</sup> The issue is one of women's moral autonomy insofar as she is the one who determines the future of the fetus, namely whether it is “destined by the mother to be born.”<sup>31</sup>

### The indications model: Producing and reproducing inequalities and stigma

Colombia's progress in ensuring compliance with the grounds outlined in its abortion law—as well as its development of abortion-related jurisprudence by the Constitutional Court—has been significant compared to other countries in Latin America.<sup>32</sup> Nonetheless, the country's robust jurisprudence and generous policy and regulatory framework recognizing sexual and reproductive rights have failed to ensure that access to abortion services is

adequate, equal, and free of barriers.

Among the shortcomings of Colombia's current model is the failure to recognize the many reasons why a woman might decide to terminate a pregnancy. The indications model transmits the idea that some abortions are more acceptable than others—that is, that some reasons for having an abortion are more valid than others—and that all women are at the mercy of the personal interpretation of a professional who must certify that they meet the necessary legal conditions to be able to access an abortion. But women have the moral capacity and dignity to make decisions about their own bodies and to decide for themselves whether to pursue motherhood.

According to the Ministry of Health and Social Protection, 68,901 cases of treatment were recorded nationwide over the past decade (2009–2018) in relation to miscarriage and abortion, including the voluntary termination of pregnancy. According to data that La Mesa has collected from the country's local health departments, however, the actual number is far higher.<sup>33</sup> For example, data from the Secretariat of Health of Bogotá reveals an annual average of 9,000 abortions between 2015 and 2017, suggesting that the aforementioned national figure is greatly inaccurate.<sup>34</sup> Moreover, the Guttmacher Institute reports that as of 2008, the average number of abortions in Colombia each year was 400,400, and it was estimated that less than 1% of these abortions were legal.<sup>35</sup> While the number of legal abortions has increased in recent years, it is still nowhere near the number carried out illegally. In any event, the absence of accurate data, the fragmented manner in which it is gathered, and the low priority placed on this issue by the country's public policies reveal the stigma still surrounding the procedure.

Moreover, La Mesa has verified that abortion services are not available consistently throughout the country—they are concentrated in the largest cities—and are barely available for second- and third-trimester abortions. As a result, women who live in rural areas or far from major cities must incur out-of-pocket expenses, travel long distances, miss work, and be away from their homes and sup-

port networks as they seek safe abortion services, which translates into unjustified delays and the need for a late-stage abortion.

Due to the way the legal grounds are interpreted, the current model of decriminalization based on certain limited legal grounds leads to the provision of abortion services in public facilities that generate greater costs for the health system. There is no timely or effective access to abortion care, abortions are carried out in more complex settings than is necessary (involving expensive, outdated, and invasive techniques, along with an excessive number of specialists, such as anesthesiologists and obstetrician-gynecologists), and service provision is delayed as a way to punish women.<sup>36</sup>

There are also other systemic barriers to women's access to legal abortion, which violate current regulations and constitute a form of violence against women according to the Convention on the Elimination of All Forms of Discrimination Against Women. La Mesa classifies these barriers as follows:

1. lack of knowledge of the legal framework, which results in non-compliance with regulations on women's abortion-related rights, such as the right to dignity, confidentiality, and to accurate and objective information;
2. restrictive interpretations of the legal framework, including additional requirements beyond those established by the Constitutional Court, such as authorization by a medical board or third parties, as well as a narrow understanding of the meaning of health; and
3. shortcomings in health service provision, such as failings at the administrative level and among health care professionals. Thus, for example, just 50% of Colombia's departmental secretariats of health have issued guidelines that are in line with the standards established by the Constitutional Court and national regulations, which help ensure the provision of abortion services.<sup>37</sup>

These barriers are aggravated by the stigma, stereotypes, and prejudices surrounding abortion, which

brand it as a morally reprehensible practice and label the women who have abortions as transgressing the feminine ideal that equates femininity with maternity and as straying from the sexual and reproductive behavior that is expected of them—all of which leads to finger pointing, censure, and ill treatment of women and abortion service providers.<sup>38</sup>

The continued criminalization of abortion has palpable consequences for the lives of girls, adolescents, and women. According to data published by the office of Colombia's attorney general, 2,290 women were criminalized—that is, involved in criminal proceedings—for the offense of abortion in 2017.<sup>39</sup> The age group most commonly involved in these proceedings was 15–19 years (25.2%), followed by 20–24 years (18.8%). Among the cases reported by the attorney general's office, three involved girls aged 11 and 12, meaning that rape should have been presumed and they should have been able to access abortion on sexual violence grounds. They should also have been allowed to initiate a process for the restoration of their rights, which seeks to guarantee the rights of girls and adolescents and prevent them from suffering future violations. In terms of educational attainment, only 39.3% of those being prosecuted had completed high school and 28.6% had completed only elementary school. We can thus see that adolescents and young women with little education are the ones most commonly experiencing criminal punishment, a fact that undoubtedly exacerbates social inequalities by compounding the violation of the rights of the youngest and least-educated women.

The departments of Santander (6.6%), Tolima (6.1%), Caldas (5.9%), and Valle del Cauca (5.9%) follow Bogotá (12.8%) in the number of criminal proceedings. These departments are among those most affected by the war between the state and illegal armed groups that began in the 1960s; the armed conflict involved significant human rights violations against women, such as sexual violence and the forced rejection of traditional models of femininity. These departments also have high rates of poverty and weak public institutions.

## The path to repeal the criminalization of abortion

Our call to eliminate the crime of abortion in Colombia hinges on the claim that no woman should be imprisoned or otherwise punished for having an abortion, and that no health care provider should be imprisoned or otherwise punished for providing safe abortion services at the woman's request, or for providing abortion-related information. Women in Colombia should be treated as full citizens whose life plans are guaranteed by the state—by conferring legitimacy to their lives and their biographies—and, in this way, given back the autonomy that has been taken from them through restrictive abortion laws.<sup>40</sup> We call this claim just cause.

Decriminalization means ceasing to treat an action as a criminal offense.<sup>41</sup> Specifically, decriminalizing a particular conduct removes it from the criminal sphere in such a way that it is no longer unlawful or deserving of punishment. In the case of abortion, decriminalization alone does not necessarily translate into effective access to abortion services, for even though the procedure would no longer be subject to punishment, there are other mechanisms of state control that could still be used to impede its free and legal exercise, such as restrictive measures established through other legal regimes but not part of the criminal code (time limits or legal grounds) or administrative means (health authority requirements).

But decriminalization is desirable both to decrease the rate of unsafe abortion and abortion-related morbidity and mortality and to protect women's rights. A country's legal framework and its access to abortion services are the two elements that determine abortion-related morbidity and mortality.<sup>42</sup> Thus, abortion is less safe in countries with more restrictive laws, which is why almost 77% of abortions in Latin America are unsafe or less safe, while a mere 23.6% are safe.<sup>43</sup> The harsh criminalization of abortion leads to unsafe abortions that are provided outside the health system and can have serious impacts on women's health, including death. Meanwhile, countries that have decriminalized abortion more broadly have seen

a significant reduction in (and even the absence of) serious health complications stemming from underground procedures. Put another way, criminalization does not prevent abortion, but drives it underground and causes negative health consequences for women, especially poor women and girls, who are most at risk of having to resort to unsafe illegal abortions.<sup>44</sup>

Thus, our just cause proposal for complete decriminalization has two distinct components: first, the removal of abortion from the penal code and from the state's use of punitive power in a broader sense, with the aim of preventing the curtailment of women's reproductive rights, normalizing the practice of abortion, and reducing stigma; and second, the subsequent legitimation of abortion services. In this way, it seeks to advance citizen empowerment for women, including those who choose not to pursue maternity.<sup>45</sup> Such recognition of citizenship should also involve the normalization of abortion as health care, and the possibility of women being able to choose their abortion method (including abortion pills for self-managed abortion) for personal reasons.

Colombia must move in this direction if the state is to uphold its commitment to women within the framework of the constitution and international and regional human rights instruments. In this regard, international treaties signed by Colombia (such as the Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women), as well as the constitution, have all outlined standards for the protection of women's sexual and reproductive rights, including abortion. These instruments have done this by acknowledging the direct relationship between the provision of this medical service and respect for women's rights to life, health, reproductive autonomy, free development of personality, to dignity and to freedom from cruel, inhuman, and degrading treatment, as well as their recognition as rights holders and equal citizens under the law.<sup>46</sup> Women's exercise of reproductive autonomy means being entitled to complete, accu-

rate, and timely information; having access to health services that are respectful of their confidentiality and privacy; being able to access abortion services under safe conditions that do not incur the risk of being reported to the police by health care workers; and generally being free from the various types of humiliation, distress, suffering, and poor treatment that stem from being powerless, from clandestine abortion services, and from the moral and criminal sanctions related to restrictive legal environments.<sup>47</sup> Indeed, the Human Rights Committee's 2018 recommendations on the meaning of the right to life in relation to abortion state that measures designed to regulate the procedure must not result in the violation of women's right to life.<sup>48</sup>

Along these same lines, the final report of Colombia's Advisory Committee on Criminal Policy (2012), notes that the Constitutional Court's sentence establishing the indications model is the *minimum* standard for rights protection with regard to abortion and that its adoption does not mean that the state cannot or should not seek more vigorous decriminalization.<sup>49</sup>

Meanwhile, recent events around abortion in Argentina, where more than 800 experts participated in a debate on decriminalizing abortion up to 14 weeks in 2018, and in Chile, where abortion was recently liberalized under some circumstances, led to massive mobilizations among young feminist women throughout most of the Caribbean and Latin America, including Colombia.<sup>50</sup> These mobilizations built on March 8 protests against gender-based violence, sexual abuse, and femicide, and were supported by politicians, lawmakers, health care professionals, lawyers, and various experts. They are a clear expression of the cultural change taking place.

This cultural change is also expressed in the upsurge of a conservative counter-mobilization, both against abortion law reform and against "gender ideology," which is a campaign against equality and rights that is based on lies and fear and which has emerged largely in Latin American countries, some European ones, and the USA.<sup>51</sup> Colombia has been no stranger to this campaign, which revealed the extent of its reach when it managed to



connect the country's peace agreement—signed in 2016 between the Santos administration and the Revolutionary Armed Forces of Colombia—to the supposed erosion of family values and transformation of traditional gender roles (including recognition of the right to abortion).

Nonetheless, and despite these attacks, public opinion in Colombia has changed for the better with regard to abortion. This shift is evidenced in the results of the first Encuesta de Percepción sobre Interrupción Voluntaria del Embarazo, carried out in 2017 by La Mesa with the assistance of the polling company Cifras y Conceptos.<sup>52</sup> The survey was representative and polled 2,277 people in 31 capital cities of Colombia (44% of respondents were women aged 18–44 and 56% were men aged 18–55). The questions addressed sexual and reproductive life, the decriminalization of abortion, the grounds for decriminalization, unsafe abortion, the right to information, and the role of the women's movement and presidential candidates.

The survey's results reveal a favorable public perception of women's reproductive autonomy and a general rejection of criminalization. When asked about who should be able to influence a woman's decision to terminate a pregnancy, 62% of respondents answered “no one,” believing that it was the woman's decision alone; and 47% believed that it should be a free decision of the woman. In response to the question “How much do you agree or disagree with the idea that women who have abortions should go to jail?” 61% of respondents indicated disagreement—in other words, the majority of the Colombian public rejects criminalization of women who have abortions. Furthermore, 40% of respondents said that it was important for their presidential candidate to defend the right to abortion, repositioning safe, legal abortion as politically important and connected to women's citizenship.

## Conclusion

At its core, the indications model embraces a set of restrictive rules that reflect the lesser legitimacy afforded to women's lives within contemporary politics when it comes to abortion—that is, when

women decide not to continue a pregnancy.<sup>53</sup> As a regulatory model, it places a greater value on prenatal life (biological life), thereby upholding the need for the crime of abortion. This superior status awarded to the fetus's biological life circumscribes the very essence of the protection of women's lives, which are both biological and biographical.<sup>54</sup> For one, the legal grounds are associated with biological conditions, such as a risk to the pregnant woman's health or life and/or the presence of a fetal malformation or anomaly. Second, this centrality of fetal life devalues women's lives, dispossessing them of their liberty and, in turn, their enjoyment of other rights, including social, cultural, and political ones.

As Didier Fassin argues, we are facing an era in which the recognition of the right to life is intertwined with the biological dimension of the legitimacy afforded to it.<sup>55</sup> This notion of “life itself,” he says, pushes out biographical life and, with it, aspirations for justice. He writes

*I have proposed the term “biolegitimacy” for this recognition of life as the highest of all values—life that must be understood in the sense of being alive ... among all the possible meanings we could ascribe to the human condition, the one we have placed at the summit of our system of values is that which relates the most restricted but also the most unarguable definition of life...<sup>56</sup>*

Biolegitimacy thus offers an innovative alternative in the struggle to liberalize abortion by placing women's lives front and center—not just their biological lives but also their biographical lives—recognizing all types of life plans, suffering, and health needs that this particular reproductive event implies, and providing to women for the first time the autonomy that has been snatched away by criminal laws.

Therefore, the total decriminalization of abortion, elimination of the crime, and regulations to secure care provision would attain women's biolegitimacy for the first time in the debate on abortion: it would make their lives valuable as biography and as biology—in a comprehensive way. Without the

crime of abortion, without the legal grounds, without the stigma, without legal coercion or regulation, and with the normalization of abortion care as a regular health service, we can begin to transform the terms of the debate and to conquer our right to abortion and, by extension, our right to full gender equality.

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