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Colombia: Backlash to Abortion Law Fails to Emerge in the Midst of a Migrant Crisis

Legislative background of abortion in Colombia.

In 2006 the Constitutional Court of Colombia ("the CCC" or "the Court") issued its decision C-355, legalizing abortion in three circumstances: (a) when the health or life of the woman is at risk; (b) severe fetal impairment; and (iii) when the pregnancy is the result of a crime, such as rape or incest.ⁱ The CCC recognized that abortion is a right intimately related to the right to life, health, integrity, self-determination, privacy and dignity of women, and in turn, must be guaranteed by the Social Security Health System in all cases.ⁱⁱ

Despite legal advancements by the Court, access to legal abortion services in Colombia remains limited. According to the Colombian Ministry of Health and Social Protection, the official figures for legal abortions in the last five years do not exceed 1,000 in the country.ⁱⁱⁱ It is estimated that more than 400,000 abortions are performed every year in the country.^{iv}

Of the multiple barriers that exist for access to abortion in Colombia, the strongest barriers continue to be: (i) unawareness of the procedure and its legality; (ii) insufficient and limited application of the law, which leads to the unjustified denial of

services; (iii) the request for additional requirements not covered by the regulations; as well as (iv) the inadequate application of conscientious objection clauses.^v

Legal challenges to restrict access to abortion in the country.

In October 2018, the CCC reaffirmed women's right to abortion after a challenge filed to insert gestational limits and restrict abortion in the country. In a decision of 6 against 3 votes (SU-096/18), the Court rejected an attempt to impose restrictions on women's reproductive autonomy, upholding the 2006 decision that legalized abortion in certain cases.^{vi} Gestational time limits, such as those proposed in the case, are particularly problematic in Colombia as structural barriers and delays often force women to endure long waiting periods before receiving an abortion. Particularly in a country where many women still have difficulty accessing legal abortion services due to the lack of medical centers, especially in rural areas, lack of access to information on the legality of the procedure, and the shortage of trained medical providers.^{vii}

The barriers faced by Venezuelan migrant women to access reproductive health services in Colombia.

Venezuela is facing an appalling human rights crisis, with a disproportionate impact to women's right to reproductive health due to the lack of access to essential medicines, medical treatments, diagnostic systems, and deterioration of the hospital infrastructure.^{viii} According to the last epidemiological report in Venezuela, in just one year, maternal mortality figures showed a growth of at least 66 percent.^{ix} However, figures related to abortion and maternal deaths remain unknown.^x

Colombia faces multiple challenges securing a minimum standard of living and social security for migrant populations, including access to reproductive health services, and the protection of women at risk, including victims of gender-based violence. Neglecting reproductive health needs in humanitarian settings has serious consequences for migrant women. These can include: preventable maternal and neonatal morbidity and mortality; preventable consequences of unwanted pregnancies, such as unsafe abortion; increased transmission of sexually transmitted diseases (STIs) and HIV; as well as mental health conditions, including depression and anxiety.^{xi}

Recommendations.

1. Amend the three grounds of decriminalization of the voluntary interruption of pregnancy to:
 - 1.1. Allow a woman to access an abortion in all cases.^{xii}
2. Eliminate procedural barriers to accessing abortion services, including third-party authorization requirements and mandatory waiting periods, and regulate the use of conscientious objection to guarantee women's right to equality and allow them exercise their reproductive autonomy.
3. Generate mass dissemination and communication campaigns on the law and legality of the abortion procedure and the regulatory provisions on abortion by the State.^{xiii}
4. Urge Congress to follow the legal mandates of the Constitutional Court in accordance with Judgment SU-096/18 by regulating abortion.
5. Create national policies and actions to improve access to sexual and reproductive health services for migrant women in humanitarian settings, including safe abortion and emergency contraception.

ⁱ Constitutional Court of Colombia, Judgment C-355 of 2006, M.P. Jaime Araújo Rentería and Clara Inés Vargas.

ⁱⁱ *Id.*

ⁱⁱⁱ *Id.* P. 25.

^{iv} Annika Dalen, *La Implementación de la Despenalización Parcial del Aborto en Colombia*, Documentos 11, Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2013. https://cdn.dejusticia.org/wp-content/uploads/2017/04/fi_name_recurso_362.pdf; Ana Cristina González Vélez, Laura Castro, *Barreras de Acceso a la Interrupción Voluntaria del Embarazo en Colombia*, La Mesa por la Vida y la Salud de las Mujeres, 2017, http://www.despenalizaciondelaborto.org.co/wp-content/uploads/2017/05/Barreras_IVE_vf_WEB.pdf

^v Annika Dalen, *La Implementación de la Despenalización Parcial del Aborto en Colombia*, Documentos 11, Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2013. https://cdn.dejusticia.org/wp-content/uploads/2017/04/fi_name_recurso_362.pdf; Ana Cristina González Vélez, Laura Castro, *Barreras de Acceso a la Interrupción Voluntaria del Embarazo en Colombia*, La Mesa por la Vida y la Salud de las Mujeres, 2017, http://www.despenalizaciondelaborto.org.co/wp-content/uploads/2017/05/Barreras_IVE_vf_WEB.pdf

^{vi} Constitutional Court of Colombia, Communication No. 42, October 17, 2018: Case T6612909 - Judgment SU-096/18, M.P. José Fernando Reyes Cuartas, <http://www.corteconstitucional.gov.co/comunicados/No.%2042%20comunicado%2017%20de%20octubre%20de%202018.pdf>

^{vii} Oscar Javier, Maldonado, *The decriminalization of abortion in Colombia as cautionary tale. Social movements, numbers and socio-technical struggles in the promotion of health as a rights*, Global Public Health, 2018, <https://doi.org/10.1080/17441692.2018.1504101>

^{viii} Avesa, Asociación Civil Mujeres en Línea, CEPAZ, FREYA, *Mujeres al Límite: El Peso de la Emergencia Humanitaria: Vulneración de Derechos Humanos de las Mujeres en Venezuela*, pág., 21 (2017), <https://avesawordpress.files.wordpress.com/2017/11/mujeres-al-limite.pdf>.

^{ix} *Id.*

^x Evaluación de necesidades insatisfechas en salud sexual, reproductiva y materna infantil en la frontera colombo venezolana. IPPF, PROFAMILIA, 2018 [unpublished].

^{xi} *Id.*

^{xii} CRC, Concluding Observations: Bhutan, para. 35(c), U.N. Doc. CRC/C/BTN/CO/3-5 (2017); Cameron, para. 35(c), CRC/C/CMR/CO/3-5 (2017); Sierra León, para. 32 (c), U.N. Doc. CRC/C/SLE/CO/3-5 (2016); Benin, para. 57(c), U.N. Doc. CRC/C/BEN/CO/3-5 (2016); CEDAW, Concluding Observations: Micronesia, para. 37(b), U.N. Doc. CEDAW/C/FSM/CO/1-3 (2017); Niger, para. 33(c), U.N. Doc. CEDAW/C/NER/CO/3-4 (2017); Costa Rica, para. 31(a), U.N. Doc. CEDAW/C/CR/CO/7 (2017). *See also*: CCPR, Concluding Observations: Honduras, para. 17, U.N. Doc. CCPR/C/HND/CO/2 (2017).

^{xiii} CCPR, Concluding Observations: Ireland, para. 9, U.N. Doc. CCPR/C/IRL/CO/4 (2014); CEDAW, Concluding Observations: Hungary, para. 30, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013).