New Narratives to Reconceptualize Abortion in Legal and Social Discourse: Colombia's Path to Liberalizing Abortion

Maria Rodriguez

Faculty of Law

McGill University

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Montreal, Quebec, Canada

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ABSTRACT

Abortion is, arguably, one of the most contentious issues in the Americas' modern politics. It is also one of the most fundamental rights claim issue for feminist movements in the world. While globally the trend is towards its liberalization, regressive attacks to abortion are relentless. In some countries restrictions to abortion are being further entrenched and protections to its access rolled back. The recent overturning of *Roe v Wade,* the seminal decision protecting abortion access for almost 50 years in the United States, is a prime and notable example. In sharp contrast, Latin America and the Caribbean (LAC), a region once considered the most restrictive for abortion access, is now the hurricane-eye of a feminist revolutionary force. *The Green Wave* (La Marea Verde), a transnational movement, is steadfastly fighting for legal, safe and free abortion throughout the region. Only in the last three years, progressive and ground-breaking normative developments have been achieved in Argentina (2020), Mexico (2021), and Colombia (2022).

This thesis focuses on the way abortion is framed in legal and social discourse and advances the claim that the narratives produced by normative framings have a significant *affective* impact in how abortion is understood, perceived and experienced in the social imaginary. Using as a case-study the paradigmatic example of Colombia, where as of February 2022 abortion is legal on request up-to 24 weeks, this thesis critically examines the discursive impact of the Colombian Constitutional Court (CCC)'s abortion jurisprudence since 2006. This thesis also traces and examines the crucial role played by social actors, with particular focus on *La Mesa por La Vida y la Salud de las Mujeres* and the Colombian feminist coalition *Causa Justa*, in constructing, advancing, and demanding new narratives to conceptualize abortion. As the thesis shows, the legal discourse of the CCC's jurisprudence and the new narratives' social actors have advanced are not only premised on women and transgender people's reproductive autonomy, but are framed as well in terms of equality, dignity, moral agency, and full citizenship.

This thesis' findings therefore challenge the primacy of the rubric of women's individual rights to privacy and autonomy and the narrative of "choice" characteristic of the global north's abortion debate. This thesis' analysis also makes the case that a claim for abortion access should be constructed not only with stronger legal resonance – as the broad constitutional rights framing of abortion in Colombia evidences. It should also be constructed in terms that capture and highlight women's real life experiences, that dignify the their moral capacity to command their life projects, and that ultimately challenge the patriarchal narratives that the criminalization of abortion creates.

Ultimately, as this thesis' findings illustrate, it is through the combination of both legal and social strategies that a real socio-normative transformation can be realized.

Key words: Abortion, Legal Discourse, Narratives, Feminist Movements, Latin America

RÉSUMÉ

L'avortement est, possiblement, l'une des questions les plus controversées de la politique moderne des Amériques. C'est également l'une des revendications légales les plus fondamentales pour les mouvements féministes dans le monde. Alors que la tendance globale est à sa libéralisation, les attaques régressives contre l'avortement sont incessantes. Dans certains pays, les restrictions à l'avortement sont renforcées et les protections à son accès supprimées. L'annulation récente de l'arrêt *Roe c Wade*, jugement fondamentale qui a protégé l'accès à l'avortement pendant près de 50 ans aux États-Unis, en est un exemple frappant. À l'opposé, l'Amérique latine et les Caraïbes, une région autrefois considérée comme la plus restrictive en matière d'accès à l'avortement, est aujourd'hui l'œil du cyclone d'une force révolutionnaire féministe. La *Vague verte* (« La Marea Verde »), un mouvement transnational, lutte sans relâche pour le droit à l'avortement légal, sûr et gratuit dans toute la région. Au cours des trois dernières années seulement, des avancées normatives progressives et révolutionnaires ont été obtenues en Argentine (2020), au Mexique (2021) et en Colombie (2022).

Cette thèse porte sur la façon dont l'avortement est encadré dans le discours juridique et social et avance le postulat que les narrations produites par les encadrements normatifs ont un impact significatif sur le plan *affectif*, et plus particulièrement sur la façon dont l'avortement est compris, perçu et vécu dans l'imaginaire social. En prenant pour cas d'étude l'exemple paradigmatique de la Colombie, où depuis février 2022 l'avortement est légal et libre jusqu'à 24 semaines, cette thèse examine de manière critique l'impact discursif de la jurisprudence de la Cour constitutionnelle colombienne (CCC) sur l'avortement depuis 2006. Cette thèse retrace et examine également le rôle crucial que joue les acteurs sociaux de la Colombie, avec un accent particulier sur l'organisation *La Mesa Por La Vida y la Salud de las Mujeres* et la coalition féministe colombienne *Causa Justa*, en construisant, avançant et exigeant de nouvelles narrations pour conceptualiser l'avortement. Comme le révèle cette thèse, le discours juridique de la jurisprudence

de la CCC et les nouvelles narrations avancées par les acteurs sociaux ne sont pas seulement fondés sur l'autonomie reproductive des femmes et des personnes transgenres. Ils sont également formulés et conçus en vertu des droits des femmes et personnes gestantes à l'égalité, la dignité, l'agence morale et la pleine citoyenneté.

Les résultats de cette thèse remettent donc en question la primauté des droits individuels des femmes à la vie privée et à l'autonomie et la narration relative au « choix » caractéristique du débat sur l'avortement dans le Nord global. L'analyse de cette thèse démontre également qu'une revendication pour l'accès à l'avortement ne doit pas seulement être construite avec une forte résonance juridique – comme en fait preuve l'encadrement large du droit à l'avortement par de nombreux droits constitutionnels en Colombie. Elle devrait également être construite dans des termes qui reflètent et mettent l'accent sur les expériences réelles des femmes, qui respectent leur capacité morale à diriger leurs projets de vie et qui remettent en question les narrations patriarcales créées par la pénalisation de l'avortement. En définitive, comme cette thèse l'illustre, c'est par la combinaison de stratégies à la fois juridiques et sociales qu'une véritable transformation socionormative peut être réalisée.

Mots clés : Avortement, Discours juridique, Narrative, Mouvements féministes, Amérique latine

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Undeniably this thesis is inspired by my passion for sexual and reproductive rights and, in particular, by my previous involvement with the reproductive rights movement. In that sense, I want thank the Center for Reproductive Rights and my former work colleagues at the Latin American & the Caribbean Program for everything they taught me and for allowing me to grow, which included me leaving to pursue my LL.M. I would not have focused my thesis on abortion rights without that experience in my backhand.

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Contribution of author

I am the sole author to all chapters of this thesis.

1 Chapter 1: Introduction

Abortion is, arguably, one of the most contentious issues in the Americas' modern politics. It is also one of the most fundamental rights claim issue for feminist movements in the world. While globally the trend is towards its liberalization,[1] regressive attacks to abortion rights are relentless. In some countries restrictions to abortion are being further entrenched and protections to its access rolled back. The recent overturning of *Roe v Wade,*[2] the seminal decision protecting abortion access for almost 50 years in the United States, is a prime and notable example. Other examples of regression include Poland, where in 2020 the Constitutional Tribunal declared unconstitutional one of the few legal exception to abortion's criminalization, leaving in practice a near-total ban on abortion.[3] Honduras is another alarming example, albeit an outlier in region as we will see next. In January 2021 the National Congress of Honduras amended the Constitution to enshrine an absolute prohibition to abortion that also curtailed any future progressive legislative attempts. This, although Honduras already has an absolute abortion ban.[4]

In contrasts to these painful and harmful retrogressions, Latin America and the Caribbean (hereinafter, "**LAC**"), a region once considered the most restrictive for abortion access, is currently the hurricane-eye of a feminist revolutionary force. The *Green Wave* (*La Marea Verde*), a feminist transnational movement born out of the Argentinian abortion contestation context,[5] is steadfastly fighting for legal, safe and free abortion, and its force is cresting through the region. While there

[1] See Center for Reproductive Rights, "Accelerating Progress: Liberalization of Abortion Laws Since ICPD", (2020), online: *Center for Reproductive Rights* <reproductiverights.org/wp-content/uploads/2020/12/World-Abortion-Map-AcceleratingProgress.pdf>.
[2] *Dobbs, State Health Officer of The Mississippi Department of Health et al v Jackson Women's Health Organization et al*, 597 US (2022) .
[3] See Center for Reproductive Rights, "Poland: A Year On, Abortion Ruling Harms Women", (19 October 2021), online: *Center for Reproductive Rights* <reproductiverights.org/poland-a-year-on-abortion-ruling-harms-women>.
[4] See "Honduras: UN experts deplore further attacks against right to safe abortion", (19 January 2021), online: *OHCHR* <www.ohchr.org/en/press-releases/2021/01/honduras-un-experts-deplore-further-attacks-against-right-safe-abortion>.
[5] See generally Barbara Sutton & Nayla Luz Vacarezza, *Abortion and Democracy: Contentious Body Politics in Argentina, Chile, and Uruguay*, 1st ed (London: Routledge, 2021) see specially chapters 1, 4, 8.

are six countries in LAC that still criminalize abortion with no exceptions,[6] there is an incredible momentum in the region for the regulation of abortion outside the criminal law framework.

Only in the last three years, there have been three historic normative developments for abortion access that exemplify the feminist transnational legal (and social) revolution that the *Green Wave* canalizes. First, in December 2020, Argentina passed a law legalizing the right to voluntarily terminate a pregnancy on request during the first 14 weeks of gestation and thereafter, allowing access under three legal grounds.[7] Second, in September 2021, the Mexican Supreme Court of Justice rendered a landmark decision establishing that the criminalization of abortion in the "early stages" of pregnancy was unconstitutional.[8] While each state in Mexico can regulate abortion differently, the decision creates immediate positive obligations on all lower courts and states' legislatures.[9] Lastly, on February 21, 2022, the Constitutional Court of Colombia (hereinafter, "**CCC**") rendered a ground-breaking decision – Judgment C-055/2022[10] – decriminalizing abortion on-request during the first 24 weeks of gestation; thereafter, abortion continues to be legal under the three exceptions recognized by the CCC since 2006.

With this important background in mind, I turn to the topic of this thesis. This thesis seeks to examine how abortion is framed in legal and social discourse and why that matters. As an initial premise, this thesis considers that there are constrains in using the liberal rights discourse – which anchors access to abortion on the right to privacy and autonomy – as the chief means to advance abortion access in LAC. A key question for me was, what is the social and legal impact of framing

[6] These are: El Salvador, Haiti, Honduras, Nicaragua, Dominican Republic, and Surinam. See Center for Reproductive Rights, "The World's Abortion Laws", online: <reproductiverights.org/maps/worlds-abortion-laws> [CRR, "World's Abortion Laws"].
[7] Ley 27610, *Acceso a la Interrupción Voluntaria del Embarazo*, Congreso de Argentina, (30 December 2020).
[8] *Acción de Inconstitucionalidad No 148/2017*, 2021 SCJN.
[9] See Comunicado de Prensa No 271/2021, "Suprema Corte Declara Inconstitucional La Criminalización Total Del Aborto" *Suprema Corte de Justicia* (7 September 2021), online: <www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6579>; CRR, "World's Abortion Laws", *supra* note 6 at Details on Mexico. Eight states have already decriminalized abortion at least in the first trimester, including Mexico City were abortion is legal since 2007.
[10] *Judgment C-055/22*, 2022 Constitutional Court of Colombia.

abortion a matter of "choice" – the globally predominant narrative on abortion as embodied by the well-established label of "pro-choice" for abortion supporters.

As the literature review in chapter 2 will show, there is quite a sizeable literature that has already addressed – from a feminist perspective – the limits of the rights discourse, in general, and in relation to the fight for abortion access, specifically. This thesis' inquiry, however, is not only geared at examining the normative limits of employing the liberal rights discourse to expand abortion rights. More specifically, this thesis seeks to analyze how particular framings of abortion in legal and social discourse have an impact in the construction of abortion in the social imaginary.

Some scholars[11] have already examined the impact of abortion's criminalization in the construction of abortion's social meaning. Others[12] have examined the costs of using the extreme-cases narrative in abortion litigation for the larger emancipatory goals of the reproductive rights movement. In general, there is a vast feminist legal scholarship that argues that the rights discourse, with its focus on individualism and the 'bounded' neo-liberal subject, is detrimental to reproductive justice (hereinafter "**RJ**") objectives and to the feminist objective of dismantling patriarchal economic, political, social structures and systems of thought.

Distinctively, this thesis' main claim is that the narratives produced by normative framings themselves have a significant *affective*[13] impact in how abortion is understood, perceived and experienced in the social imaginary. This thesis also advances the corollary claim that, for progressive normative framings of abortion to have legitimacy, they must be attuned the

[11] See e.g. Rebecca J Cook, "Stigmatized Meanings of Criminal Abortion Law" in Rebecca J Cook, Joanna N Erdman & Bernard M Dickens, eds, *Abortion Law in Transnational Perspective: Cases and Controversies* (University of Pennsylvania Press, 2014) 347 [Cook, "Stigmatized Meanings"].

[12] See e.g. Lisa M Kelly, "Reckoning with Narratives of Innocent Suffering in Transnational Abortion Litigation" in Rebecca J Cook, Joanna N Erdman & Bernard M Dickens, eds, *Abortion Law in Transnational Perspective: Cases and Controversies* (University of Pennsylvania Press, 2014) 303.

[13] The term is used here in the sense of the emotions-driven impact that the language of human rights has: the "pathos" of rights language. See Andreas von Arnauld & Jens T Theilen, "Rhetoric of Rights: A Topical Perspective on the Functions of Claiming a 'Human Right to …'" in Andreas von Arnauld, Kerstin von der Decken & Mart Susi, eds, *The Cambridge Handbook of New Human Rights*, 1st ed (Cambridge University Press, 2020) 34 at 39.

epistemologies of the particular context. The argument is, in other words, that normative framings influence the construction of abortion in the social imaginary, and that the relative success of framings deemed progressive, depends on the framing's legal social, economic and cultural resonance. This resonance, this thesis will show, is both informed and ensured by the advocacy and groundwork of social actors.

As the fight abortion access in LAC is incredibly textured and multifaceted, and as discourse and narratives are context dependant, this thesis uses **Colombia** as a case-study. The choice country responds to two crucial reasons. On one hand, because I am originally from Colombia and, over the last few years, I have been closely involved with the reproductive rights movement there. The fight for the expansion of abortion rights in Colombia is, in other words, a fight close to my heart. On the other hand, because Colombia's path to decriminalizing and liberalizing abortion is paradigmatic and unique on three fronts.

Frist, because abortion's progressive and expansive decriminalization has been achieved through the courts, and specifically through the CCC. This is relevant because judicial decisions constitute the culmination of a process that is principally informed by the way plaintiff organizations structure their claims. As the thesis will show, judicial decision are, therefore, also the materialization of an important socio-juridical dialogue.

Second, because from the moment abortion was partially decriminalized under three legal grounds in 2006 (Judgment C-355/2006[14]) to the moment abortion on request was decriminalized up to 24 weeks of gestation (Judgment C-055/2022), the CCC produced a considerable jurisprudential corpus on abortion. This corpus provides in turn fertile ground to analyze the legal discourse used to frame abortion rights since 2006 until 2022. Notably, this extensive period of

[14] *Judgment C-355/2006*, 2006 Constitutional Court of Colombia.

production of case-law on abortion allows the tracking of the discourse's changes and of the narratives that such discourse produced. Moreover, the time between the two ground-breaking judgments, as we will see, was deeply consequential as it allowed civil society organizations to assess, implement and ultimately challenge the model of the three legal grounds as being insufficient.

Third, because with Judgment C-055/2022 Colombia moved to the avant-garde of abortion rights protections, becoming one of the few countries in the world to protect abortion on request up-to the third trimester.[15] Examining Judgment-C-055/2022's legal discourse, the focus of chapter 4, is therefore of great significance as the decision in fact shifts the discourse around abortion in innovative ways. Bearing in mind that Colombia is a religious and conservative country, the *how* Colombia got to be at the forefront of abortion rights protections is fascinating and worth examining. Colombia' case-study can, in this sense, be illustrative to other countries facing retrogressions of the ways in which social actors articulated and the diverse strategies they employed to create the necessary legal and social resonance for their demands.

Finally, one cannot overlook the fact that Colombia is a country marked by vast socio-economic inequalities that are exacerbated – in compounded and intersectional ways – by different factors, such as gender, race, education level, indigenous status and rurality. A 2020 report from the National Statistic Administrative Department ("DANE", from its Spanish name) *et al.*,[16] provides a vivid example of the specific and cumulative ways in which the unequal access to reproductive health care services impacts women and girls from low socio-economic contexts, rural communities and/or with low or no access to education. The report shows that:

[15] CRR, "World's Abortion Laws", *supra* note 6.
[16] DANE, CPEM & ONU Mujeres, "Mujeres y Hombres: Brechas de género en Colombia" (2020), online (pdf): < oig.cepal.org/sites/default/files/mujeres_y_hombres_brechas_de_genero.pdf> [DANE, "Brechas de género en Colombia"]

- One (1) out of six (6) girls will have at least one child before being 18 years old;[17]
- Adolescents aged 10 to 19 years old are more likely to be mothers if they live in rural areas (9%) or small towns (8.5%) comparatively to those in urban settings (5.4%). The difference becomes starker when comparing the percentage in Bogota (3,8%), the capital, with the percentage in Vichada (12,8%), Guainía (12,5%) and Chocó (9,3%), three provinces ("departments") that have been historically neglected;[18]
- The percentage of adolescents aged 15 to 19 years having had at least one child is higher for those self-declaring belonging to an ethnic group, such as Indigenous (18.4%), Roma (19.5%), Palenquero (15.4%), and Black or Afro (14,95), than those not declaring belonging to any ethnic group (11,25);[19]
- The places where births are less likely to be cared by medical personnel, coincide with the departments where maternal mortality is higher – Vaupés (58.6%), Chocó (77.8%), Vichada (78.7%), Guainía (80.6%) and Amazonas (82.3%);
- Women aged 15 to 49 with no schooling have a fertility rate 2.4 times higher than women of the same age group with the higher schooling; [20] and
- Women of the poorest quintile are 2.2 times more fertile than women from the richest quintile.[21]

Analyzing Judgment C-055/2022's discursive impact is therefore also incredibly significant as the elimination of the threat of criminal sanctions for accessing an abortion during the first 24 weeks of pregnancy can really contribute to the fight for social and reproductive justice in Colombia. More concretely, the discursive value of Judgment C-055/2022 is relevant as it can become a tool to bridging Colombia's vast gender and socio-economic gap that is exacerbated by the unequal access to sexual and reproductive health care information, education and services.

[17] *Ibid* at 97.
[18] *Ibid* at 97.
[19] *Ibid* at 111.
[20] *Ibid* at 96.
[21] *Ibid* at 96.

The thesis proceeds in four main chapters (Chapters 2, 3, 4 & 5) followed by a conclusion (Chapter 6). **Chapter 2** sets the theoretical frameworks that inform the thesis. It provides a review of the literature on socio-legal feminist theory and critiques relating to the rights discourse and abortion narratives. This chapter also serves the key function of setting the stage for the analysis that will follow by explaining why the focus on narrative and discourse is crucial, particularly in the abortion context. The chapter concludes by explaining how the thesis's inquiry is different from this literature and suggests what the thesis' contribution to the scholarship will be.

Chapter 3 critically examines the CCC's abortion jurisprudence starting with Judgment C-355/2006 until before Judgment C-055/2022. The chapter provides sharp commentary on the discursive value of the legal framing of abortion in this case-law and aims to show how a particular framing and the language used in judicial decision can either reinforce or dismantle pre-conceived notions about abortion, women, motherhood, equality and beyond. This chapter also traces and examines the role played by key civil society organizations and social actors after the 2006 Judgment. In particular, this chapter examines the role played by *La Mesa por La Vida y la Salud de las Mujeres*[22] (hereinafter, "**LaMesa**") in implementing and monitoring compliance with the CCC's jurisprudential developments and in producing reputable and legitimized knowledge and evidence about abortion's (in)accessibility in Colombia.

Chapter 4 focuses on the innovative legal strategy of the Colombian feminist coalition *Causa Justa*[23] (*Just Cause*, hereinafter, "***CausaJusta****"*) that demanded for abortion's total decriminalization and on the judgment that followed it. Specifically, this chapter analyzes how *CausaJusta* constructed and advanced new narratives to conceptualize abortion and examines the significant discursive impact of the progressive framing of abortion in Judgment C-055/2022.

[22] "La Mesa por la Vida y la Salud de las Mujeres", online: <despenalizaciondelaborto.org.co> ["LaMesa"].
[23] "Causa Justa Por el Aborto", online: <causajustaporelaborto.org> ["CausaJusta"].

Chapter 5 documents and analyzes the complementary strategies to *CausaJusta*'s legal demand that were employed to build social-cultural resonance of the movement's demands. While the chapter is not focused on legal discourse, the chapter does examine the discursive value of *CausaJusta*'s communication, social media, social mobilization strategies with a particular focus on the social and literary narratives embedded within.

Finally, the thesis provides a **Conclusion** that ties together the four main chapters, summarizing the main findings and highlighting lessons that could be learned from the case-study. While I will conclude by mentioning some challenges for abortion access in Colombia post Judgment C-055/2022, I leave to others the judicious analysis of these challenges and of *CausaJusta*'s strategies to combat them. Unquestionably, for those interested in discourse, narratives and strategies to create socio-legal resonance, the Colombian context will continue to be fertile ground for future research.

2 Chapter 2: Abortion, the Rights Discourse and Narratives

2.1. Introduction

The Programme of Action[24] of the 1994 *International Conference on Population and Development* (ICPD) held in Cairo is often described as provoking "a 'paradigm-shift' for reproductive rights".[25] For McNeilly, the ICPD "lay[ed] the foundation for the […] human rights engagement with abortion".[26] Yamin & Bergallo describe the ICPD Programme as a "watershed, bringing into being a new paradigm of development based on women's choices and reproductive

[24] *Programme of Action*, UNFPA, Adopted at the International Conference on Population and Development, Cairo, 5–13 September 1994, Special Session of the Review and Appraisal of the Implementation of the Programme of Action of the International Conference on Population and Development (1994).
[25] Kathryn McNeilly, "From the Right to Life to the Right to Livability: Radically Reapproaching 'Life' in Human Rights Politics" (2015) 41:1 Austl Feminist LJ 141 at 144.
[26] *Ibid*.

rights".[27] Similarly, Morgan & Roberts,[28] and Shepard[29] refer to the ICPD as a turning point for framing abortion issues within the international human rights law (hereinafter, "**IHRL**") framework. Contributions by legal scholars particularly influenced this shift in the conceptual framing. Rebecca Cook's scholarship,[30] for example, is considered to have been instrumental to the conceptualization of women's rights and sexual and reproductive rights as human rights and for women's rights activists' engagement with IHRL as means to advance abortion access.[31]

The turn to rights-talk in the abortion debate is of great normative and symbolic significance. As von Arauld & Theilen explain, employing a rights discourse not only serves a rhetorical central function "in the triangulation of concepts, language and society"[32] but has "communicative value" too, engaging five rhetorical functions.[33] The use of rights discourse to talk about abortion can thus be construed as "a strategic move in the language-game of persuasion".[34]

However, as von Arauld & Theilen also note, the persuasiveness of this discourse is "audience relative".[35] The rights discourse's ability to mobilize and to connect[36] depends, in fact, on its *pathos* – on its *affective* effect.[37] For the rights discourse to effectively serve as a rhetorical tool and incite social and legal change, particularly in the context of abortion issues, it would follow, then, that

[27] Alicia Ely Yamin & Paola Bergallo, "Narratives of essentialism and exceptionalism: The challenges and possibilities of using human rights to improve access to safe abortion" (2017) 19:1 Health & Hum Rts J 1 at 3.
[28] Lynn M Morgan & Elizabeth FS Roberts, "Reproductive governance in Latin America" (2012) 19:2 Anthropology & Medicine 241 at 244.
[29] Bonnie Shepard, "The 'Double Discourse' on Sexual and Reproductive Rights in Latin America: The Chasm between Public Policy and Private Actions" (2000) 4:2 Health & Hum Rts 110 at 112.
[30] Cook has been an incredibly prolific scholar. Some of her earlier work women's reproductive health as human rights includes: Rebecca J Cook, "International protection of women's reproductive rights" (1992) 24:2 NYUJ Intl L & Pol 645; Rebecca J Cook, "International Human Rights and Women's Reproductive Health" (1993) 24:2 Studies in Fam Planning 73; Rebecca J Cook, *Human Rights of Women: National and International Perspectives* (Philadelphia, Pa.: University of Pennsylvania Press, 1994); Rebecca J Cook, "Human Rights and Reproductive Self-Determination" (1995) 44:4 Am U L Rev 975; Rebecca J Cook, "International Human Rights and Women's Reproductive Health" in Julie Peters & Andrea Wolper, eds, *Women's rights, human rights: international feminist perspectives* (New York: Routledge, 1995); Rebecca J Cook, "UN Human Rights Committees Advance Reproductive Rights" (1997) 5:10 Reproductive Health Matters 151.
[31] Isabel Cristina Jaramillo Sierra, *Address* (delivered at the online event "Homenaje a Rebecca Cook" of Departamento de Derecho Constitucional, Universidad Externado de Colombia, 5 November 2021), online (video): *Facebook* <www.facebook.com/watch/live/?ref=watch_permalink&v=412937913696967>, at 00h06m50s-00h08m50s.
[32] Arnauld & Theilen, *supra* note 13 at 35.
[33] *Ibid* at 39. These are the *appellative* function, the *contesting* function, the *connecting* function, the *triggering* function and the *jurisgenerative* function.
[34] *Ibid* at 36.
[35] *Ibid* at 37.
[36] *Ibid* at 44. Referring that "framing an issue as a human right has the potential to connect various local, regional, and global discourses across politics, law, and morality …".
[37] *Ibid* at 39, 41, 44.

its use and specific iteration should be attuned to the particular context. Put differently, how can rights claims for abortion rights and access be legitimatized and mobilize society's *pathos* if they do not have social, economic and cultural resonance? This is the kind of question that inspires this thesis' inquiry.

Furthermore, the fact that discourse's ability to mobilize depends on its affective impact denotates that not only *what* is being claimed – access to safe and legal abortion, for example – but also *how* the claim is framed[38] is determinant of whether the claim can be successful in a given context. *How* a claim is presented – or, in other words, the language and narrative that is employed and that contains the claim – can not only be determinative of whether the claim is well-received by the immediate audience (judges, politicians, diplomats, etc.) and thus of whether it can achieve the proposed outcome. The *how* of a claim's framing can also determine the way that it is ultimately perceived by, and cemented in, the social imaginary. This latter point signals that a particular discursive framing upholds certain narratives that can reinforce[39] either desired or prejudicial values in society. As narratives' influence in the social imaginary is imperceptible but unconstrained, carefully attending to the narratives, stories, and metaphors that a discourse can evoke, particularly regarding the contentious issue of abortion, becomes an important endeavour.

On the basis of what has just been outlined, this chapter has two overall objectives. First, I provide a short overview and review of the literature on the power and limits of rights discourse as an emancipatory tool, generally (subsection 2.1.1), and as means to advance the feminist fight for abortion access, specifically (subsection 2.1.2). Second, I explain in more detail why *narratives*

[38] The concept of **framing** "as developed by social movement theorist to analyze what makes an idea persuasive in a social movement" denotates the ways in which ideas or concepts can be packaged and presented as to "generate shared beliefs, motivate collective action and define appropriate strategies of action. Sally Engle Merry, "Transnational Human Rights and Local Activism: Mapping the Middle" (2006) 108:1 Am Anthropologist 38 at 41.

[39] For example, von Arnauld & Theilen refer that framing an issue in human rights terms has the effect of creating "a kind of *discursive hub* which not only reinforces certain values and thus constrains discourse, but may also serve as a reference point for future (re)interpretations of international law" (italics in original), Arnauld & Theilen, *supra* note 13 at 47.

– meaning the language and stories that shape our perception and experiences and that serve as persuasive tools[40] – are the key "interpretative framework"[41] through which I will analyze the construction of rights-based claims for legal and safe abortion (subsection 2.2). Examining the existent literature on abortion narratives, I will pinpoint to how some narratives can have prejudicial effects for the broader goals of the reproductive rights movement and thus why narratives matter. The chapter concludes with a reflection on how this thesis' inquiry is different from and constitutes a valuable contribution to this scholarship (subsection 2.3).

2.1 The Power and Limits of the Rights Discourse

2.1.1 Is the Rights Discourse always Emancipatory ?

Kennedy's "incomplete and idiosyncratic list"[42] of the critical questions that have been raised about the human rights movement's potential, seek to address the not-so-rhetorical question of whether "the human rights movement might, on balance, […], be more part of the problem […] than part of the solution".[43] His list, comprised of ten overall critiques of the human rights movement, includes questions about whether human rights occupy the whole field of emancipatory possibilities; whether human rights promises more than it can deliver; and whether human rights promotion can be bad politics in particular contexts, among others.[44] His ten critiques starkly confront us with further questions about the value and purpose of IHRL and invite us to critically

[40] See Jennifer Sheppard, "Once upon a Time, Happily Ever After, and in a Galaxy Far, Far Away: Using Narrative to Fill the Cognitive Gap Left by Overreliance on Pure Logic in Appellate Briefs and Motion Memoranda" (2009) 46:2 Willamette L Rev 255 (saying that "narrative is a powerful tool for persuasion", at 257, that "[n]arratives, or stories serve as an interpretative framework" at 260, and that narratives or stories "are infused with social meaning, "supply a way of viewing events" and serve as 'recipes for structuring experience itself'" at 261).
[41] *Ibid* at 260.
[42] David Kennedy, "International Human Rights Movement: Part of the Problem?" (2002) 15 Harv Hum Rts J 101 at 101.
[43] *Ibid*.
[44] The ten critiques are: 1. Human Rights occupy the field of emancipatory possibility; 2. Human Rights views the problem and the solution too narrowly; 3. Human Rights generalizes too much; 4. Human Rights Particularizes too much; 5. Human Rights Expresses the Ideology, Ethics, Aesthetic Sensibility and Political Practice of a Particular Western Eighteenth-through-Twentieth-Century Liberalism; 6. Human Rights Promises more than it can deliver; 7. The Legal Regime of "Human Rights", Taken as a Whole, Does More to Produce and Excuse Violations than to Prevent and Remedy Them; 8. The Human Rights Bureaucracy is itself Part of the Problem; 9. The Human Rights Movement Strengthens Bad International Governance; 10. Human Rights Promotion can be Bad Politics in Particular Contexts. *Ibid* at 108, 109, 111, 112, 114, 116, 118, 119, 122, 123, respectively.

examine the benefits that ensue from using the human rights discourse vis-à-vis its limits. Others, like Ratna Kapur, have also questioned (and examined) how the human rights framework "may at times be hurting the very subjects for whose benefit [the legalization of human rights] is intended", particularly in the context of women and girls' human rights.[45]

This subsection deploys some of these critiques as a springboard to illustrate that the use of the human rights discourse frames an issue within a specific thought and value system with both advantages and disadvantages. In fact, while it is not a contested fact that the human rights movement has attained very real accomplishments,[46] this subsection makes the claim that academics and advocates utilizing the human rights discourse as a means to advance an abortion rights claim should be more cognizant of the consequences of this framing. As Cmiel aptly said, we should not take the term human rights for granted; instead, we should "carefully attend[…] to its different uses, and […] locat[e] those uses in local, political contexts".[47] This is especially true in the context of a disputed and contentious issue such as abortion as the next subsection will evidence.

2.1.1.1 The slippery slope of the rights discourse as a legitimizing idiom

A first main critique is that the human rights discourse occupies the whole field of emancipatory possibilities.[48] Emancipatory strategies that are not framed under a rights discourse tend, under the logic of this critique, to be delegitimatized, underfunded, or dismissed. In fact, the believe that human rights are the only emancipatory framing positions rights discourse as the only language through which "the good"[49] can be expressed. It is, in other words, a legitimizing

[45] Ratna Kapur, "Revisioning the Role in Women's Human Rights Struggles" in Saladin Meckled-García & Basak Çali, eds, *The Legalization of Human Rights* (Routledge, 2005) 93 at 94.
[46] Kennedy, *supra* note 42 at 102. See also Thomas Buergenthal, "The Normative and Institutional Evolution of International Human Rights" (1997) 19:4 Hum Rts Q 703 (referring that the normative consolidation of IHRL is now an irreversible process at 705).
[47] Kenneth Cmiel, "The Recent History of Human Rights" (2004) 109:1 Am Historical Rev 117 at 126.
[48] Kennedy, *supra* note 42 at 108, 111.
[49] *Ibid*.

language. In the context of women rights, for instance, the feminist movement utilized the human rights discourse, which had become an "accepted legal framework", as a means to make women's rights more "mainstream" and "provide legitimacy to [their] political demands".[50]

The legitimatizing power of the rights discourse means, however, that human rights language not only can be an "emancipatory vocabulary"[51] for people who are in vulnerable situations or at the intersection of multiple oppressions. The rights discourse idioms can also be appropriated by anyone, even by those who effectively oppose rights recognition and/or defend an unequal status quo.[52] This is what the wrongly called "pro-life groups" have done in the context of abortion. As Lemaitre and Sieder argue, by appropriating the rights discourse, the anti-rights groups have turned what were "faith-based invocations" into a religiously neutral defense of the right to life from conception.[53] The appeal to the right to life – one of the most supreme human rights – has exponentially legitimized the anti-abortion position as valid, or at least worth considering. In fact, academics, jurists, the judiciary and the feminist movement have had to engage seriously and address with argumentative rigour the arguments raised by these so-called "pro-life" groups.[54]

The slippery slope of the rights discourse legitimizing ability is certainly cause for pause. However, critically reflecting on the ways in which the rights discourse is being used to oppose abortion rights claims is not the same as stating that such discourse is not still a strategic and

[50] Elisabeth Jay Friedman, "Bringing Women to International Human Rights" (2006) 18:4 Peace Rev 479 at 480. See also Barbara Sutton & Elizabeth Borland, "Abortion and Human Rights for Women in Argentina" (2019) 40:2 Frontiers: J of Women Stud 27 (citing this same passage from Jay Friedman's text at 27).
[51] Kennedy, *supra* note 42 at 111.
[52] Arnauld & Theilen, *supra* note 13 (saying that the appeal to the rights discourse "is not a monopoly of those fighting against oppression or for the disenfranchised only: they can also be employed as a means of counter-contestation by those who seek to defend the status quo, to counter criticism based on human rights or to mask regressive agendas" at 43).
[53] See Julieta Lemaitre & Rachel Sieder, "The Moderating Influence of International Courts on Social Movements: Evidence from the IVF case against Costa Rica" (2017) 19:1 Health & Hum Rts J 149 at 157.
[54] See Julieta Lemaitre, "Catholic Constitutionalism on Sex, Women, and the Beginning of Life" in Rebecca J Cook, Joanna N Erdman & Bernard M Dickens, eds, *Abortion Law in Transnational Perspective* (University of Pennsylvania Press, 2014) 239 [Lemaitre, "Catholic"] (saying that while she does not "agree with the implications of Catholic arguments on sexuality and reproduction", she will "take these arguments seriously" at 239); Lemaitre & Sieder, *supra* note 53 at 157; Maria Isabel Niño Contreras & Juan Carlos Rincón Escalante, "Radiografía de los argumentos conservadores contra el aborto en Colombia: Sugerencias para un movimiento pro liberalización" in Paola Bergallo, Isabel Cristina Jaramillo Sierra & Juan Marco Vaggione, eds, *El aborto en América Latina: Estrategias jurídicas para luchar por su legalización y enfrentar las resistencias conservadoras* Derecho y Política (Siglo Veintiuno Argentina Editores), 1st ed (Buenos Aires, Argentina: Siglo Veintiuno Editores, 2018) (in which the authors set out to analyze the conservative arguments raised against abortion in the Colombian context).

rhetorical tool for reproductive rights advocates. As von Arauld & Theilen highlight, the use of the human rights discourse is in fact useful to: (i) garner social indignation and to mobilize people and "social movements"; (ii) provide the tools to contest "an unjust status quo"; (iii) "strategic[ally] engage with existing institutions"; and (iv) catalyze the "development of discursive hubs which in turn facilitate further *jursigensis* and contestation".[55]

In this sense, while the appropriation and use by anti-abortion groups of the human rights discourse lends them the legitimacy to participate in legal and political scenarios, abortion rights activist and advocates will not forego its use. On the contrary, as Sutton & Borland refer, abortion rights advocates "are not about to let the abortion opponents adopt [the human rights discourse] without a fight".[56] The idiom and its rhetorical power are still crucial in the fight for abortion, as this thesis' analysis will show. It is, nonetheless, important that we attend to the discourse drawbacks. The discussion in the following subsections highlights some of these crucial limits.

2.1.1.2 Rights discourse can reduce and essentialize

Another relevant critique of human rights discourse relates to its claim to "universality and neutrality".[57] From a language perspective, 'universality and neutrality' ignore that while human rights "may be presented as the common language of humanity, access to that language is clearly not equal, nor does it represent all humans equally".[58] Legal discourse, as Kapur argues, "does not in fact constitute all legal citizens in the same way. Rather, legal discourse constitutes individuals as gendered subjects".[59] This is particularly true in the context of women and girls' human rights.

An uncritical use of the rights discourse can thus obscure – rather than evidence – the differential impacts that people in vulnerable situations may experience, notably women and girls.

[55] Arnauld & Theilen, *supra* note 13 at 49.
[56] Sutton & Borland, *supra* note 50 at 48.
[57] Kennedy, *supra* note 42 at 110.
[58] Arnauld & Theilen, *supra* note 13 at 44.
[59] Kapur, *supra* note 45 at 96.

The rights framing of an issue can also essentialize people's lived realities by reducing them to a "singular or universal set of factors"[60] and can in turn obscure the ways in which the particular framing is detrimental to those people. To challenge this reduction and essentialization, Kapur invites us to employ a postmodern feminist lens over the rights discourse and to contest the dominant meanings of "equality and liberty" that inform human rights approaches.[61]

Using such a postmodern feminist lens in the context of reproductive rights activism and litigation is particularly necessary considering *how* progress for abortion rights, specifically, and reproductive rights, generally has been achieved so far. *Roe v. Wade* in the United States, decided in 1973, and both the 1994 ICPD Program and the Fourth World Conference on Women held in Beijing in 1995, evidence how abortion access has – at the local and IHRL levels – been framed mostly as a matter of individual choice related to the discrete individual rights of privacy and autonomy. In fact, as will be furthered explained in subsection 2.1.2, in the context of abortion access the rights discourse has foregrounded an individualist view of abortion access– and with that, the neoliberal conception of the rights-holder as a knowledgeable and capable individual with sufficient economic and social capital to enforce their rights.

However, left unattended from this feminist liberal rights discourse, were (and are) the socio-economic and cultural factors that greatly impact a person's ability to know about their rights – to have access to education and information – and to then have the socio-economic ability and support to "choose" to exercise those rights. As Norwood explains, "the dominant feminist narrative about the expansion of political rights is limited by its inattentiveness to race, class and sexuality […which constructs] 'women' and 'gender progress' […] narrowly on white middle-class

[60] *Ibid* at 95.
[61] *Ibid* at 96.

women's experiences".[62] Women of color from the RJ movement born in the United States and voices of Global South feminist advocates recognized, early on,[63] that the fight for abortion rights went beyond the discrete issue of autonomy. They argued it was also about "freedom from violence of racism and poverty"[64] and about "reproductive, gender and social justice".[65]

In the fight for abortion access it is thus crucial that reproductive advocates take an inward and grounded examination of the rights discourse and assess how particular rights framings represent and give voice (or not) to the lived realities of those who they seek to represent and protect. This is especially vital to avoid essentializing women and placing them in a socio-economic vacuum. Without this conscious and deliberate effort, the continued use of the liberal rights discourse, even from a feminist perspective, can lead to a patchwork approach to rights protection in the long run and even harm broader reproductive, gender and social justice initiatives.

2.1.1.3 Rights discourse needs local resonance

As Kennedy argues, historically and almost systematically, the human rights movement has ignored the "…sociological and political conditions that will determine the meaning a right has in a particular context […]".[66] Engle Merry's seminal work, "Transnational Human Rights and Local Activism: Mappin the Middle",[67] is perhaps the best illustration of how the relative resonance a discourse can have in a context depends on the effectiveness of the translation – the "indigenization" – of those ideas into the cultural local context.[68] Engle Merry's work also evidences that human rights concepts and institutions are created, circulated and translated "up

[62] Carolette Norwood, "Misrepresenting Reproductive Justice: A Black Feminist Critique of 'Protecting Black Life'" (2021) 46:3 Signs: J Women in Culture & Soc 715 at 718.
[63] Yamin & Bergallo, *supra* note 27 at 3.
[64] Norwood, *supra* note 62 at 717.
[65] Yamin & Bergallo, *supra* note 27 at 3.
[66] Kennedy, *supra* note 42 at 110.
[67] Merry, *supra* note 38.
[68] *Ibid* at 41.

and down", from a weaker language into a stronger one and conversely.[69] These processes, as she refers, are constrained by both the "human rights discourse" and the "cultural meanings" given to that discourse in a given context.[70] Engle Merry herself recognizes that this vernacularizing and indigenization process can be costly "because it may limit the possibility of long-term reform".[71] Yet, for her, "to be adopted, human rights ideas must be framed in indigenous cultural categories" and as such it is up to the translators to "assess to what extent they can challenge modes of thinking and to what extent they must conceal radical ideas in familiar packages".[72]

It is worth noting, however, that the resonance of a particular discourse and the relative success of a claim framed under this discourse is not the same.[73] A claim for abortion access framed in the rights discourse can be successful in the normative sense – at the level of a constitutional court, for example – but this does not mean that the claim resonates with the broader social context. The opposite could also be true, namely that a claim can be unsuccessful, formally, but can have garnered considerable social support. This is why, in attempting to understand the relative resonance of the rights discourse as a mechanism to advance abortion access, one must attend to the specific historical and contextual factors. As Sutton and Borland point out, "it is in the specific social, political and cultural settings that human rights principles are embodied, applied, formulated, and transformed in practice".[74] As the analysis of this thesis' case-study will evidence, these contextual factors have been crucial in the fight for abortion access in Colombia.

2.1.1.4 Conclusion

[69] *Ibid* at 42.
[70] *Ibid*.
[71] *Ibid* at 41.
[72] *Ibid*.
[73] Sutton & Borland, *supra* note 50 at 29.
[74] *Ibid* at 31.

Subsection 2.1.1 has considered how the rights discourse is a legitimizing language with great persuasive potential. It has also showed how, its idiom can be appropriated by those opposing rights claims and thus why a critical assessment of its uses is important. Moreover, this subsection has shown that while the rights discourse has operated to empower women and feminist movements, the irreflexive use of the liberal rights discourse as the central strategic tool in the fight to advance abortion access does not come without challenges and limitations. These limitations include essentializing the people whom the idiom purports to protect, as well as employing the rights discourse in dissonance with the local context. As we will see next, feminist scholars have flushed out quite comprehensively the particular constrains of framing a claim for abortion access within the liberal rights discourse. The forthcoming discussion will highlight in particular critiques with a LAC perspective.

2.1.2 The limits of the rights discourse for advancing abortion access

Some critiques of the human rights discourse have their specific iteration in the narrower context of abortion issues. Authors like McNeilly,[75] Brown,[76] and Stettner,[77] for example, have examined the limitations of the human rights discourse vis-à-vis the fight for abortion access. Although writing about and from different contexts, three important conclusions can be drawn from their valuable contributions: first, that human rights discourse is intimately interrelated with neoliberal notions of the "bounded"[78] individualized subject – placing the individual in a social-cultural vacuum; second, that the use of this discourse has led to the framing of abortion access "in the language of choice [which] is often inadequate […] to explain women's experiences"[79];

[75] McNeilly, *supra* note 25.
[76] Josefina Brown, "El aborto en cuestión: la individuación y juridificación en tiempos de neoliberalismos" (2016) 24 Sexualidad, Salud & Soc - Revista Latinoamericana 16 at 23, 27.
[77] Shannon Stettner, "The Unfinished Revolution" in Shannon Stettner, ed, *Without Apology: Writings on Abortion in Canada* (Edmonton: Athabasca University Press, 2016) 333 [Stettner, "Unfinished Revolution"].
[78] McNeilly, *supra* note 25 at 142.
[79] Stettner, "Unfinished Revolution", *supra* note 77 at 335.

and third, that overreliance on the human rights discourse (i) limits the scope of radical feminist approaches and RJ reform, and (ii) is unreflective of the relational aspects inherent to abortion issues and decisions.[80]

Crucially, these authors make compelling arguments about how the "pro-choice" narrative has led to the correlative assignment of responsibility for abortion decisions onto women. Through the "*juridification*"[81] of social claims like abortion access, women – who become bearers of (some) rights – also become socially accountable for their reproductive choices.[82] This narrative not only contributes to the shame and judgment passed on to women who chose to have an abortion – and the perceived and internalized stigma – but also obscures the complexity of the social-economic contexts where women make these decisions. This literature, in essence, rightly evidences that while having an abortion is "one life decision among many that women make",[83] it is not a decision taken on a vacuum by an "infallible"[84] subject.

From a discourse analysis perspective, Palacios' scholarly contribution exposes the discursive constrains of uncritically employing a liberal rights discourse in the fight for abortion access.[85] Similarly to McNeilly, Brown, and Stettner's criticism of the weight attached to the language of 'choice' in the rights discourse, Palacios argues that "[d]iscursively, the doctrine of privacy" – which underpins the "pro-choice" stance of reproductive rights advocates in the global north – does not stand on strong footing when confronted with the "pro-life" arguments developed by anti-abortions groups.[86] She clearly articulates:

[80] See especially McNeilly, *supra* note 25. See also Stettner, "Unfinished Revolution", *supra* note 777.
[81] Brown, *supra* note 76 at 22.
[82] *Ibid*; Stettner, "Unfinished Revolution", *supra* note 77 at 335; McNeilly, *supra* note 25 at 142.
[83] Stettner, "Unfinished Revolution", *supra* note 77 at 337.
[84] Brown, *supra* note 76 at 39.
[85] Patricia Palacios Zuloaga, "Pushing Past the Tipping Point: Can the Inter-American System Accommodate Abortion Rights?" (2021) 21:4 Hum Rts LR 899.
[86] *Ibid* at 906.

> "…in posing this narrative dichotomy (you are either pro-life or you are pro-choice) 'choice' is always a morally inferior option. Choice, as conceived by the anti-abortion discourse, is devoid of moral substance; it is about convenience. Furthermore, in narratively framing access to abortion as an issue about life, they ["pro-life" groups] are able to equate abortion with death".[87]

In short, Palacios' analysis shows that the false dichotomy of the life/choice paradigm allows anti-abortion groups to position themselves as morally superior. In this sense, the framing of abortion access under the right to privacy not only obscures that abortion decisions are mediated by contextual and socio-economic factors that escape a single individual's willpower, it also reduce abortion to an unrealistic and unrepresentative "life/choice paradigm".[88]

2.1.2.1 Particular challenges in the LAC region

The use of rights discourse in LAC poses further challenges for abortion rights advocacy. Various scholars[89] have stressed that the strong influence of conservative religious interests in LAC is a barrier for advancing abortion rights. Shepard, in particular, is well-known for coining the concept *double-discourse*, which encapsulates the hypocritical (moral) double stance of LAC societies where publicly repressive reproductive policies are maintained, while privately, sexual and reproductive practices are condoned and even expanded.[90] In fact, there is a consensus in the literature, that, in general, the LAC region is "socially conservative and that religious doctrine remains a strong influence for the generation that currently wields political and judicial power".[91]

This deeply conservative and religiously-influenced-context makes LAC a particular region when considering legal and social strategies to advance abortion access. As Baird & Millar have

[87] *Ibid*.
[88] *Ibid*.
[89] See Shepard, *supra* note 29; Morgan & Roberts, *supra* note 28; Richard Elgar, "Women's rights in transition: the collision of feminist interest groups, religion and non-governmental organizations in three Latin American countries" (2014) 14:3–4 J Pub Aff 359; Gabriela Arguedas Ramírez & Lynn M Morgan, "The Reproductive Rights Counteroffensive in Mexico and Central America" (2017) 43:2 Feminist Stud 423; Sutton & Borland, *supra* note 50; and Palacios Zuloaga, *supra* note 85.
[90] Shepard, *supra* note 29 at 114–115. Shepard also makes the point that "double discourse" is "fittingly non a judgmental label, as opposed to the term "hypocritical" at 116.
[91] Palacios Zuloaga, *supra* note 85 at 911.

said, "[t]he discursive production of abortion experiences depends on historically, specific national, regional and even local conditions".[92] In this sense, Palacios' call to consider the idiosyncrasies of LAC, including the predominant discourse around gender and motherhood, and to, in consequence, "deploy[…] legal arguments that have a stronger footing in the region"[93] is extremely opportune.

Sutton & Borland, for example, have made a significant effort of tracing those stronger footings in the Argentinian context.[94] They identified that the strategic use of the human rights frame by abortion activist in Argentina cannot be separated from the historical context of Argentina's dictatorship and the role that the rights discourse played then.[95] Through their research they identify five central strategic reasons that support the rights discourse framing of abortion demands in the Argentina.[96] Bearing in mind the socio-historic differences, four out of these five "advantages"[97] are certainly also strategic in the Colombian context, this thesis' case-study.

The inquiry of this thesis, however, extends beyond assessing the implications of the use of the rights frame in the fight for abortion's liberalization in Colombia. As mentioned in the introduction, this thesis will also examine the work of social actors in creating socio-cultural resonance for their progressive demands and will analyze the narratives that particular normative framings, albeit rights-based framings, create. It is to the power of narratives, as an interpretative and constitutive framework of the social imaginary, that I thus now turn.

2.2 The Power of Narratives

[92] Barbara Baird & Erica Millar, "More than stigma: Interrogating counter narratives of abortion" (2019) 22:7–8 Sexualities 1110 at 1113.
[93] Palacios Zuloaga, *supra* note 85 at 902–903.
[94] Sutton & Borland, *supra* note 50.
[95] *Ibid* at 28.
[96] *Ibid* at 39–46. These are that the rights discourse: (1) signals the relevance of international law to target demands; (2) facilitates alliances with national and international human rights organizations; (3) allows for both breadth and narrowness of focus; (4) connects with extensive used discourse in Argentina, particularly during 2003-2015; and (5) disputes the legitimacy of anti-abortion groups that use the human rights frame.
[97] These would be advantages (1), (2), (3), and (5). See *ibid.*

2.2.1 Narratives carry implicit connotations

Fulford, who delivered the 1999 Canadian Broadcasting Corporation Massey Lectures, has assessed the critical role that narratives play in shaping our understanding and experiences of concepts, events, situations, histories, and facts.[98] A crucial assertion Fulford makes is that "there is no such thing as a value-free story".[99] Arguably, this is true of *all* the stories that – through our telling of them – exist in the various dimensions of our individual lives and of our collectivity. The fact that stories convey implicitly symbolic and normative values is equally true for the story I tell about my path as someone who immigrated from Colombia to Canada and someone who labels herself as a feminist human rights lawyer, to the story that the *whereas* of a bill or resolution tell, or to the story that the facts of a case, as presented in a given context, convey. Humans are, in fact, "inveterate storytellers"[100] and all stories are "always charged with meaning".[101]

Understanding that stories have and convey particular symbolisms due to the way they are framed and told, a simple enough idea at a first read, is necessary for the kind of critical discursive engagement I will undertake in this thesis. Echoing Fulford's words, albeit in the context of history writing but applicable to the legal or academic field, "while certain facts and certain ways of emphasizing facts may be essential, the assembly of those facts involves a vast accumulation of choices".[102] Those choices are important because they create a particular narrative.

As Osler and Zhu explain, the power of narratives – individual or collective – lies in the connections that people can make "between their own struggles and those of the subject of the narrative".[103] These connections can both, inspire the "recognition of our common humanity", and

[98] Robert Fulford, *The triumph of narrative: storytelling in the age of mass culture*, The Massey lectures series (Toronto, ON: House of Anansi Press, 1999).
[99] *Ibid* at 6.
[100] Audrey Osler & Juanjuan Zhu, "Narratives in teaching and research for justice and human rights" (2011) 6:3 Educ, Citizenship & Soc Just 223 at 227.
[101] Fulford, *supra* note 98 at 6.
[102] *Ibid* at 43–44.
[103] Osler & Zhu, *supra* note 100 at 225.

also "inspire action for justice and human rights".[104] However, while narratives, as "discursive constructions",[105] can be a tool to create empathy and incite collective action for social justice, they also have limits and present risks. Osler and Zhu note, in particular, that stories always present the perspective of the "story-teller"; a perspective that is never neutral.[106] They thus call for a reading of any narrative with "this consciousness" in mind.[107] Such consciousness is particularly necessary for assessing the impact of abortion narratives in the fight for reproductive rights.

Kelly's contribution, for instance, offers a remarkable analysis of the accumulation of choices that reproductive rights advocates have made in framing abortion as a human right in the context of transnational strategic litigation. Her work is an eye-opening illustration of the narratives that emerge from these framing decisions and of the unintended impacts that can derive from the underlying values that these narratives carry and reinforce.[108] In the next subsection, I will discuss the substantial impacts that one of the narratives Kelly identifies – the narrative of abortion deservingness – has for the construction of abortion in the social imaginary.

2.2.1.1 The abortion deservingness' narrative

Through her analysis of five of the most prominent cases on access to abortion at the UN and the Inter-American level,[109] Kelly identifies a "recurring narrative that invoke[d] sexual innocence, violation and parental beneficence".[110] This is the narrative that emerged because the story told by these five cases is, in essence, the same: it is the story of a young girl who becomes pregnant as a result of rape (a heinous act), and while the law in each of the cases allowed access to abortion in

[104] *Ibid*.
[105] *Ibid* at 228.
[106] *Ibid*.
[107] *Ibid*.
[108] Kelly, *supra* note 12.
[109] These are: *Paulina del Carmen Ramírez Jacinto v Mexico*, [2007] Inter-Am Comm HR, Petition No 161-02; *X & XX v Colombia*, [2007] Inter-Am Comm HR, Precautionary Measures; *KL v Peru*, [2005] Communication No 1153/2003, HRC, UN Doc CCPR/C/85/D/1153/2003; *LMR & VDA v Argentina*, [2011] Communication No 1608/2007, HRC, UN Doc CCPR/C/101/D/1608/2007; and *LC v Peru*, [2011] Communication No 22/2009, CEDAW Committee, UN Doc CEDAW/C/50/D/22/2009.
[110] Kelly, *supra* note 12 at 304 (emphasis added).

such circumstances (rape), public officials impeded or denied access to this reproductive health service, forcing the mother of the girl to seek access and accountability through the courts.

While the storyline of these cases reflects the reality of millions of girls and adolescents living in LAC,[111] advocates also sought, as Kelly says, to advance "sympathetic cases that bracketed the act of abortion from the contested terrains of wanted sex, non-procreative desire, and family discord".[112] Setting aside the fact that these cases constitute landmark decisions that served to advance reproductive rights and were a catalyst to create and strengthen access to abortion standards globally,[113] Kelly's analysis of the values that these cases' narrative (re)present and reinforce is crucial for understanding the pervasive effects that the framing of a case can have.

Notably, Kelly explains how that the narrative of *innocence* (a young defenceless girl that is raped)[114] and *suffering* (the pain – amounting to torture or cruel, inhumane and degrading treatment – caused by the rape and the denial of an abortion)[115] discursively frames abortion access under the heading of *abortion deservingness*.[116] This framing stands as particularly problematic because it implicitly "reinforc[es] narrow conceptions of the reasonable or deserved abortion".[117]

Concerningly, though not particularly surprising, the language of "deserved" or "reasonable" abortions is making a stark return to forefront of the public debate following the recent overturn of *Roe v. Wade* and the coming into effect of total or near-total bans on abortion in approximately twelve states[118]. As Pollitt explains, this "apologetic rhetoric" – which seeks arguments to justify

[111] See e.g. Center for Reproductive Rights, "They Are Girls: Reproductive Rights Violations in Latin America and the Caribbean", (30 May 2019), online (pdf): *Center for Reproductive Rights* <reproductiverights.org/wp-content/uploads/2020/12/20190523-GLP-LAC-ElGolpe-FS-A4.pdf>; Niñas, No Madres, "They are girls, not mothers", (29 October 2021), online (video): *Youtube* <www.youtube.com/watch?v=W7cgvgMMvlg>.
[112] Kelly, *supra* note 12 at 305.
[113] See Center for Reproductive Rights, "Across Borders: How International and Regional Reproductive Rights Cases Influence Jurisprudence Worldwide", (26 January 2022), online (pdf): *Center for Reproductive Rights* <reproductiverights.org/wp-content/uploads/2021/12/12012021_Across-Borders_How-International-and-Regional-Reproductive-Rights-Can-INfluencer-Jurisprudence-Worldwide.pdf>.
[114] Kelly, *supra* note 12 at 313–314.
[115] *Ibid* at 314–317.
[116] *Ibid* at 305 & 317.
[117] *Ibid* at 305.
[118] See Center for Reproductive Rights, "Abortion Laws by State", online: *Center for Reproductive Rights* <https://reproductiverights.org/maps/abortion-laws-by-state/>.

abortions – had been, in any case, the pro-choice's movement's unvarying 'lifeline' narrative in the United States even when *Roe* was good law.[119] Rarely had the movement framed abortion as a "good thing – for women, men, children, families [and] society".[120] The return to prominence of the abortion deservingness' narrative is thus only proof of its pervasiveness and, as we will see, of its constrictive impact on the reproductive rights movement's agenda.

In fact, early on, the reasonable and deserved abortions' narrative became for reproductive rights advocates at the IHRL level a sort of 'trojan horse' that has not fully materialized. Cognizant of the significant adversity that a claim for unconditioned reproductive autonomy had, and still has, advocates made an unstated but strategic compromise to focus, first, on the recognition of abortion access at least in the "extreme cases"; cases that not only warranted immediate protection but that, as Kelly argues, also produced the most sympathy.

Informed by this abortion deservingness' narrative, three specific circumstances became the minimum exceptions to abortion's criminalization under IHRL: (i) when the pregnancy is the result of rape or incest; (ii) when there are fetal malformations incompatible with extra-uterine life; and (iii) when the life or health of the women or girl is at risk. The 'trojan horse' stake proved successful, in this regard, as these three exceptions became a way to advance, incrementally, in the recognition of abortion access as a human rights issue both under IHRL and at national levels.

However, and perhaps consequentially, this legal grounds-based approach has now become a baseline human rights standard.[121] Regrettably, as these exceptions become commonplace they cement in our social imaginary two problematic ideas. First, that once a state implements the grounds-based system, the state is being compliant with its human rights obligations. Second, that

[119] Katha Pollitt, *Pro: reclaiming abortion rights*, 1st ed (New York: Picador, 2014) at 41.
[120] *Ibid*.
[121] See e.g. HRC, *General comment No. 36, Article 6: right to life* (UN Doc. CCPR/C/GC/36, 2019) at para 8.

women, girls or persons with capacity to gestate deserve to access an abortion only in *those* situations – making other abortions frivolous or inexistent in turn.

As Palacios argues, "there is a disconnect between the arguments used to successfully lobby for access to abortion in the most dire circumstances and arguments used to justify abortion on demand".[122] From a language perspective only, the use of the term "therapeutic abortion" to describe those abortions that fall within the minimum legal grounds, "suggests that all other forms of abortion are not acts of healthcare".[123] This terminology, as Palacios says, "establishes a false dichotomy that contributes to the understanding that most women don't actually need abortions and reinforces the stigma that surrounds them".[124] Concretely, this is the discursive danger of allowing the extreme-cases narrative to be the only pathway to abortion access.

Furthermore, with the grounds-based approach becoming the hallmark, making inroads for a broader IHRL standard of protection has become very difficult. Nothing exemplifies this best than the fact it was only in January 2022 that the World Health Organization (WHO) included for the first time in its official abortion guidelines an unequivocal call to states to fully decriminalize abortion.[125] Before 2022, the WHO had only recommended states to adopt a grounds-based approach, something that now is considered as a regulatory barrier that must be removed.[126]

The explicit call for full decriminalization in the WHO guidelines represents a significant shift in the narratives about abortion deservingness, at least at the IHRL level. This is crucial because "the discourses at the global, regional and national levels have an impact on the discourse and parameters for abortion advocacy" [127] and are in turn deeply consequential to local activism efforts.

[122] Palacios Zuloaga, *supra* note 85 at 911.
[123] *Ibid* at 917.
[124] *Ibid*.
[125] WHO, *Abortion care guideline* (Geneva: World Health Organization, 2022) at 21.
[126] *Ibid*.
[127] Yamin & Bergallo, *supra* note 27 at 9.

Yet, considering that the legal grounds approach had been entrenched as the minimum for decades, debunking the messaging perpetuated by the abortion deservingness' narrative will take time.

Finally, it is worth mentioning that the cementing in the social imaginary of the exceptions-based narrative has pervasive effects also in how women and girls understand their sexual and reproductive rights and liberties. For instance, as Kelly points out, "[t]he logic of rape exceptions disciplines women and girls to consent to heterosexual intercourse only when they can bear its potential reproductive consequences".[128] This logic reinforces two detrimental thought-values. On one hand, the narrative posits the lack of consent to sex as *the* justification for abortion access. On the other hand, the narrative places the responsibility of all and any reproductive consequences on the woman or person with reproductive capacity. These underlying 'metamessages'[129] ultimately reinforce patriarchal dynamics over sexuality and reproduction.

A consistent appeal to, and engagement with, the grounds-based approach to abortion, has, as such, significant consequences to the social understanding of abortion access and of the role and value of women in society. The implicitly narratives of suffering, deservingness, and lack of consent to sex, embedded within extreme-cases exceptions have, in turn, a "moderating effect"[130] on the reproductive rights movement and can "undercut […their] larger emancipatory goals".[131]

2.2.1.2 Conclusion

The foregoing discussion evidenced that certain narratives – even those that reproductive right activist advance – can translate into, and reinforce, patriarchal structures of thought. The above discussion also signaled that failure to attend carefully to the implicit messaging of the abortion

[128] Kelly, *supra* note 12 at 317.
[129] See Deborah Tannen, "The Medium is the Metamessage: Conversational Style in New Media Interaction" in Deborah Tannen & Ana Marie Trester, eds, *Discourse 20: language and new media* Georgetown University Round Table on Languages and Linguistics Series (Washington, D.C.: Georgetown University Press, 2013) 99 (*mutandis mutandis* in the sense that the metamessage in spoke interaction is the "overwhelmingly implicit" message derived from the relationship between speakers at 101).
[130] See Lemaitre & Sieder, *supra* note 53.
[131] Kelly, *supra* note 12 at 313.

deservingness' narrative, can limit progressive advocacy efforts and detrimentally constrains the social understanding of women, sexuality and reproduction. This is especially true with respect to the types of narratives that, as we will see next, are deeply cemented in our social imaginary as they operate through self-judgment and self-regulation.

2.2.2 Narratives shape judgments and felt experiences

As Fulford says, "stories teach us to think" and "…are the building blocks of human thought".[132] Narratives are thus foundational to how an issue can be conceptualized by society. In the context of abortion, Cook brilliantly encapsulate this: "[t]he language used to describe abortion […] contributes to the construction of various social meanings of abortion".[133] Her analysis is particularly useful to understand how the use of the criminal law as a normative framework to regulated abortion, "[…] implicates the social construction of those who actually and potentially seek abortion and those who provide and assist in its provision".[134]

After analysing how framing abortion as a crime creates and perpetuates stigma,[135] Cook makes two important assertions that support my claim that the conceptual contours of an issue – such as abortion – have direct consequences on how people will think of such issue and on their lived experiences. First, Cook shows how abortion's criminalization, regardless of whether legal exceptions exist, constructs the social meaning of abortion as something exceptional and deviant – a sin[136] – which ultimately "stigmatizes women, undermines their capacities and questions their sexuality and their roles".[137] Cook also explains how the stigma created by abortion's criminalization affects the lived experiences of women who choose or need to abort on three levels

[132] Fulford, *supra* note 98 (referring to Mark Turner's book "Literary Mind" at 83).
[133] Cook, "Stigmatized Meanings", *supra* note 11 at 352—353.
[134] *Ibid* at 348.
[135] For a detail analysis of how abortion stigma is produced and how its five components are materialized in the abortion context, see *ibid* at 354–356.
[136] *Ibid* (saying that "[t]hrough criminal prohibition, a state is signaling conditions in which abortion is criminally wrong, reflecting the historical origin of crime in sin that can and should be punished" at 347).
[137] *Ibid* at 349.

of stigma: perceived, experienced and internalized.[138] These levels of stigma, "particularly […the] internalized and perceived forms, might be endemic", Cook argues, which shows that "[s]tigma's cruelty works by enrolling stigmatized women into enforcing their discredited status".[139]

Second, Cook explains that beyond what the formal law establishes – which may include legal exceptions to abortion as a crime – informal and background rules premised on the negative social meaning of abortion operate pervasively in the social understanding of abortion, including in the minds of those supposed to provide or give information about this service.[140] These informal and background rules, as a result, negatively impact access to abortion services, even in cases that fall under a legal exception.[141] In other words, the narrative of abortion as a crime, a narrative that is created by the state but that is further perpetuated by society, "exceptionaliz[es] women", places "lawful abortion under a negative shadow of criminality", and has concrete consequences on the ontological position and construction of women "as individuals and [on] their worth in society".[142]

Numerous other scholars have also addressed the theme of abortion stigma in the literature, albeit from different perspectives.[143] The constant presence of this theme in the literature denotes the huge impact that the narrative created by abortion's criminalization has in the way abortion is understood and perceived. Baird & Miller's contribution singularly stands out because, in contrast to other contributions within this scholarship, their research focuses on the counter-narratives of abortion that proliferate within feminist networks and which aim to combat abortion stigma.

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[138] For a detailed discussion on these levels of stigma see *ibid* at 354–356.
[139] *Ibid* at 356.
[140] *Ibid* at 356–357.
[141] *Ibid* (referring for example that "[i]nformal (mis)interpretation and (mis)application of law by people and institutions in health care settings generate negative social meanings about those seeking and providing services" at 356–357).
[142] *Ibid* at 349.
[143] See e.g. Shannon Stettner, ed, *Without Apology: Writings on Abortion in Canada* (Athabasca University Press, 2016); Palacios Zuloaga, *supra* note 85; Stephanie M McMurtrie et al, "Public opinion about abortion-related stigma among Mexican Catholics and implications for unsafe abortion" (2012) 118 Int J Gynecology & Obstetrics S160.

In particular Baird & Miller examined, as instances of counter-narratives on abortion, the positive and unapologetic representations of abortion in the online sites of Australian abortion clinics and in the "widely-circulated pro-choice feminist commentary on abortion".[144] Baird & Miller's research is enlightening because it illustrates how the choice of a certain narrative, even one that is progressive and that feminist groups employ to combat stigma and shame around abortion, can be influenced by limiting parameters (i.e., the liberal rights discourse) and can "contain traces of the apologetic narrative"[145] that underpins an exceptional view of abortion.

Notably, Baird and Miller identify as problematic the foregrounding of choice as the key value in abortion's positive narrative and of the telling of *individual* experiences as the central element. These elements (choice and individualism), and their limiting effects to the emancipatory project of human rights vis-à-vis abortion access, were already discussed in subsection 2.1.2. At this point it thus suffices to say that even pro-abortion narratives of abortion can present, and thus construct in the social imaginary, abortion in unidimensional terms, excluding the "multidimensional experiences of subjects beyond the white middle-class woman with the resources to choose".[146]

While Baird & Miller recognize that the "scholarship on abortion has paid insufficient attention to […] positive representation[s] of abortion",[147] they caution against an uncritical acceptance of any progressive narrative. In fact, the authors call for the use of a critical lens over these positive storylines "to fully appreciate how they contribute to the ongoing struggle of reproductive justice and may also unwittingly reinforce assumptions that are ultimately antithetical to its goals".[148]

2.2.3 Narratives can empower too

[144] Baird & Millar, *supra* note 92, see abstract.
[145] *Ibid* at 1119.
[146] *Ibid* at 1122.
[147] *Ibid* at 1111.
[148] *Ibid* at 1119.

As a final aside, I must mention that the foregoing analysis does not overlook or neglect that the pursuit of these extreme-sympathy-inducing impact litigation cases led to the establishment of significant human rights standards for abortion access. The narrative of innocence, pain and suffering that these reproductive rights advocates constructed was indeed instrumental for the establishment of "new interpretations of well-enshrined norms" and led to the "recognition of the denial of abortion care as a violation off women's and girls' fundamental human rights".[149]

In LAC, as two advocates from the region recently stated, these transnational cases further yielded a paradigm change to the conceptualization of reproductive rights. Ona Flores specifically mentioned that "the most transformative result of this litigation" could be found "at the level of the narratives…of the legal discourse".[150] She complemented this idea in the following way:

> "[s]trategic litigation has fundamentally changed the narratives around sexual and reproductive health in granting legitimacy to the claims of women and other marginalized groups that have long been ignored. Impact litigation in Latin America has successfully articulated how sexual and reproductive health is rooted in human rights principles and norms. It has effectively claimed the human rights framework and its discourse and given meaning through the lived experiences of many women".[151] [Through the appropriation of the rights discourse, abortion] went from an ethical and moral problem, mainly concerning […] criminal law[…] and perhaps […] medical practices, to a human rights issue engaging state's obligations. And this is not something to be taken for granted".[152]

I agree. The paradigm change recognizing that abortion denial can constitute a violation of human rights and the materialization of reproductive advocates' ability to hold LAC states accountable for failing to guarantee access to abortion services, is not something that can be taken for granted.

[149] Yamin & Bergallo, *supra* note 27 (referring to the paper written by Johanna Fine, Katherine Mayall and Lilinana Sepúlveda published in the same volume at 4).
[150] Center for Reproductive Rights, "Using Litigation to Accelerate the Protection of Sexual and Reproductive Health and Rights Across the Globe" (2022) online (video): *Youtube* <youtube.com/watch?v=qizrBLwyX64> [CRR, "Using Litigation"] at 00h40m37s.
[151] *Ibid* at 00h40m37s-00h41m18s.
[152] *Ibid* at 41m30s-41m49s.

Moreover, the framing of reproductive rights has undergone a significant shift within Inter-American Human Rights System (I/AHRS) moving from "issues of cruelty and pain to those of autonomy".[153] With the Inter-American Court of Human Rights' jurisprudential developments in the last decade on issue of autonomy and sexual and reproductive rights,[154] we could argue that at the regional level there is now a more progressive, albeit liberal, vision of reproductive rights.

Yet, the predominant discursive strategy to expand abortion access has been, for many decades, one focused on the recognition or the broadening of legal grounds, which are exceptions to the crime of abortion. Echoing the words of Susana Chávez, a Peruvian advocate, it is time that reproductive rights advocates work to re-conceptualize women's reproductive rights *out* of the restrictive criminal framework "where women are seen as dubious characters that should not be trusted"[155] – a framework that, as Kelly argues, "ties abortion access […] to sexual consent"[156]. The argument, in other words, is that reproductive rights advocates should work to transform the narrative into one that projects women as subjects who – with the appropriate socio-economic supports and access to information – can make, and most importantly, should be trusted to make, the best decisions for themselves.

The three normative victories mentioned in the introduction that have crested up the LAC region – starting in Argentina, going all the way to Mexico and passing by Colombia – signify a crucial narrative shift regarding how abortion is to be understood. These historic normative developments in fact reject the narrative about abortion's exceptionalism (i.e., the believe that only in rare, extreme exceptional circumstances should abortion be permitted), and, instead, advance a

[153] *Ibid* at 42m50s.
[154] See *Case of Artavia Murillo et al (In Vitro Fertilization) v Costa Rica Preliminary Objections, Merits, Reparations and Costs*, [2012] I/A Court HR Series C No 257; *Case of IV v Bolivia Preliminary Objections, Merits, Reparations and Costs*, [2016] I/A Court HR Series C No 329; *Case of Manuela et al v El Salvador Preliminary Objections, Merits, Reparations and Costs*, [2021] I/A Court HR Series C No 441.
[155] CRR, "Using Litigation", *supra* note 150 at 50m20s-50m30s. [Translated by author].
[156] Kelly, *supra* note 12 at 317.

narrative that conceptualizes women as full subjects under the law with the moral agency to devise their life projects.

This shift, as this thesis' case-study will show, is discursively and symbolically significant. The message no longer is one premised on autonomy narrowly understood as the right to '*choose*' free from government intervention. Rather, this discourse shift posits a more holistic view of abortion where securing equitable, safe and legal access is understood as a social justice issue and something essential to women's full citizenship in a democracy.

2.3 Conclusion

This chapter has discussed the vibrant literature that exists on rights discourse, abortion, and narratives. Building on such scholarship, this thesis will contribute to it by wedding an in-depth legal discourse analysis – focusing on language and narratives – with a judicious study of the fundamental role that women and reproductive rights' organizations played in creating socio-legal resonance for their demands. In contrast to some of the literature that only focuses on feminist critiques of the rights discourse or only focuses on the normative or social effects of specific abortion narratives, this thesis will focus on the narratives created by normative framings and argues that the success of such framings depends on the strength and legitimacy of the dialogic relationship of the judiciary with civil society organizations.

By combining a careful legal discourse analysis of the narratives that emerge from constitutional abortion jurisprudence with a detailed account of social actors' advocacy strategies and discursive tactics, this thesis in fact will provide a unique discussion of the tremendous *translation*[157] work that goes into creating legitimacy and resonance to progressive normative and social developments. In other words, this thesis' discussion will show how, when strategic

[157] By translation I am echoing Engle Merry's work, that is, *how* human rights concepts and progressive narratives about abortion are "produced, circulated and how they shape everyday lives" Merry, *supra* note 38 at 39.

litigation is "rooted in, and driven by, a social movement", its ability to generate resonance increases exponentiality.[158] For this purpose, the thesis will give a significant account of the crucial role played by social actors in incorporating within the social fabrics of a country not only normative developments but also radical and feminist re-configurations of women's worth and place in society and of abortion's social meaning.

The value and impact of the narratives that emerge from jurisprudential framings of abortion and the specific workings of *translating* these from women's lived experiences and back into the social imaginary will be illustrated through the case-study of Colombia's path to decriminalizing and liberalizing abortion to which I now turn.

3 Chapter 3: Analysis of Colombia's Abortion Jurisprudence

3.1 Introduction

As discourse signifies, constitutes and constructs "the world in meaning",[159] how abortion is portrayed in *legal discourse* has normative, social, experiential, symbolic, and cultural implications. A particular legal framing, for instance, is determinative of the type of normative framework that will regulate abortion. Whether abortion is constructed in legal discourse as a right, a reproductive health service, a public health issue, a crime, or (and) a sin, also signals a particular social meaning and influences the lived experiences of women, girls and transgender people who gestate. Notably, a discursive framing will impact differently how women self-perceive when they seek to access abortion services and thereafter.[160] Abortion's construction in legal discourse will

[158] Open Society Justice Initiative, "Strategic Litigation Impacts: Insights from Global Experience", (2018), online: *PDF* <www.justiceinitiative.org/publications/strategic-litigation-impacts-insights-global-experience> at 82.
[159] Terry Locke, *Critical Discourse Analysis: Critical Discourse Analysis As Research Method* (London, UK: Bloomsbury Publishing Plc, 2004) at 5. Citing Norman Fairclough, *Discourse and Social Change*, (Cambridge: Polity Press, 1992) at 64.
[160] See Lora Adair & Nicole Lozano, "Adaptive Choice: Psychological Perspectives on Abortion and Reproductive Freedom" (2022) Women's Reproductive Health 1 (talking about the "social transmission of the normative expectations of motherhood and the systemic marginalization and stigmatization of departures from this norm" at 4 and that stigma involves perceiving a violation of a social expectation and as a result endorsing negative attitudes or beliefs about the individual that violate the expectation" at 5).

also define the roles and attitudes of activists, health services providers, women's rights defenders, prosecutors, judges, anti-abortion groups, and other actors involved around abortion, and will situate their actions within different 'legal' categories. Legal representations of abortion has an impact as well on the social and cultural representations of abortion and vice-versa, in an almost self-reinforcing and self-perpetuating cycle.

As explored in the previous chapter, the meaning a discourse can have is "historically and culturally situated as opposed to being eternal, absolute and essential".[161] Analyzing the legal discourse used to portray abortion in a particular historical and cultural context, and how such discourse constructs and constitutes meanings of abortion in a specific society, is thus a crucial first step for recognizing, more consciously, how abortion is established, understood, and experienced in that given context.

In this chapter I seek to engage critically with the legal discourse on abortion in **Colombia**, as a paradigmatic case study. Specifically, I will look at the legal discourse employed by the Constitutional Court of Colombia in its significant corpus of jurisprudence on access to abortion since 2006 – when abortion was first decriminalized under three legal grounds (also called legal indications model or "*causales*", in Spanish) – until February 21st, 2022 – when abortion on request was decriminalized up-to 24 weeks of gestation.

Methodologically, it is important to note that while the CCC's case-law on abortion access is quite vast, I only will examine closely the legal discourse of Judgment C-355/2006[162] (subsection 3.2) and Judgment C-055/2022[163] (subsection 4.3). The reason for this is that these two decisions represent not only ground-breaking moments in the CCC's abortion jurisprudence, but also the

[161] Locke, *supra* note 159 at 11.
[162] *Judgment C-355/2006*, *supra* note 14.
[163] *Judgment C-055/22*, *supra* note 10.

most significant normative changes of abortion's regulation in Colombia. I will, nonetheless, discuss in this chapter some of the jurisprudential developments brought by the CCC between 2006 and 2022 (subsection 3.3). Notably, in that discussion, I will highlight the discursive impact of the CCC's jurisprudence developments vis-à-vis the social meanings of abortion. In so doing, I will also examine how these jurisprudential developments have been informed by, but have also strengthened, feminist and social mobilization processes that seek abortion's legal and social decriminalization in Colombia.

This chapter's objective is thus twofold. First, I wish to contribute to the scholarly conversation highlighted in chapter 2 about the limits and potential of the rights discourse. Of course, this contribution will come from a very context-specific setting and relates to a specific issue: abortion. But this is exactly how I understand the need to conduct discourse analysis. Additionally, as the chapter will illustrate, while the inquiry is topic-specific, the analysis reveals that there is a myriad of issues that intersect within legal discourse on abortion. Second, I also aim to incite reflections on "the social effects of the meanings" that women, health professionals, activists, academics, jurists and other interlocutors in these specific normative contexts are "being positioned or called upon to subscribe to"[164] by legal discourse. In this regard, I seek to stimulate conversations about the abortion narratives and social meanings the legal discourse posits for those who experience abortion, for those who advocate for its access, and even those who oppose it.

Finally, a close engagement with the legal discourse is necessary to "engage in acts of dissent, to take issue with these constructions and to *resist* the *storied meanings* any text is *positioning* one […] to subscribe to".[165] The critical reflections that I pursue in this chapter also aims at setting up the scene for the following chapters where I will document and analyze the forms of contestations

[164] Locke, *supra* note 159 at 9–10.
[165] *Ibid* at 6. *Italics* in original.

that feminist collectives and women rights' organizations in Colombia have undertaken against these ascribed meanings and how *they* are *resisting* the *storied meanings* (or not) and *(re)framing* (or not) abortion issues.

3.2 Judgment C-355/2006: A landmark decision for abortion access in Colombia

3.2.1 Introduction

In 2005, Monica Roa, a young Colombian lawyer working in the organization *Women's Link Worldwide,*[166] sought to challenge the absolute criminalization of abortion in Colombia.[167] Inspired by her experience as an international human rights lawyer, she designed a comprehensive constitutional strategic litigation strategy named *Laicia* for its Spanish acronym.[168]. As a central action, among many other,[169] Roa filed before the CCC an action of unconstitutionality against sections 122 and 124 of Criminal Code of Colombia (*Law 599 of 2000*)[170] and against the expression "*or in a woman younger than fourteen years old*" of section 123 of the same law.[171] As a Colombian citizen, Roa had standing to present this legal demand because the Political Colombian Constitution enables any citizen to present an action of unconstitutionality to CCC against any law whether it be on the basis of the law's merits or procedure.[172]

[166] "Women's Link Worldwide", online: <womenslinkworldwide.org/> ["Women's"].
[167] Julieta Lemaitre, *El derecho como conjuro: fetichismo legal, violencia y movimientos sociales*, Biblioteca Universitaria Ciencias Sociales y Humanidades Colección Derecho y Sociedad (Bogotá, D.C.: Siglo del Hombre Editores, 2009) at 224–225 [Lemaitre, "El Derecho"].
[168] *Laicia* stands for "Litigio de Alto Impacto en Colombia por la Inconstitucionalidad del Aborto" which translates to "High Impact Litigation in Colombia for the Unconstitutionality of Abortion". See *ibid* at 225.
[169] The strategy included the creation of partnerships with the view of establishing alliances beyond the women's rights movement with a variety of stakeholders in the academia, health sector, and others. For this Roa mapped the relevant actors well in advance and presented the project at multiple locations. The strategy also included establishing a decisive media presence and having wide exposure. The idea was to have the opportunity to frame the project as a matter of public interest. This component of the strategy proved to be crucial. See e.g. Isabel Cristina Jaramillo Sierra & Tatiana Alfonso Sierra, *Mujeres, cortes y medios: la reforma judicial del aborto*, Biblioteca Universitaria Ciencias Sociales y Humanidades Colección Derecho y Sociedad (Bogotá, D.C.: Siglo del Hombre Editores, 2008) at chapter I (specifically pp. 44-89); Lemaitre, "El Derecho", *supra* note 167 at 225; Viviana Bohórquez et al, "La judiciarisation de l'avortement en Amérique Latine et les limites de la citoyenneté" (2019) 114:3 Problèmes d'Amérique Latine 53 at 61–62.
[170] *Código Penal de la República de Colombia (Ley 599 de 2000)*, Congreso de la República de Colombia, 2000.
[171] The action also impugned sections 32(7). Section 32, a general provision establishing situations of non-criminal responsibility, provided in subsection 7 that there would not be criminal responsibility for the acts performed for the purposes of protecting their own or another person's fundamental rights from a real or imminent danger, unavoidable through any other means – acts that would otherwise be a crime. For the purposes of this section, the arguments related to this impugned provision will not be analyzed.
[172] See *Constitución Política de la República de Colombia*, Segunda edición corregida de la Constitución Política de Colombia, publicada en la Gaceta Constitucional No. 116 de 20 de julio de 1991 arts 241(4), 242 (1).

At the time, section 122 criminalized abortion when performed with the consent of the woman – with no exceptions – establishing prison sentences of one (1) to three (3) years for both the woman and the person who provided the abortion.[173] Section 124 enumerated certain situations where the punitive penalties could be *attenuated*, including when the pregnancy was product of a crime such as rape or forced insemination.[174] Section 123 criminalized abortion when performed without the consent of the woman or when performed on "*a woman younger than fourteen years old"*,[175] implying that "women" 14 and under could never consent to having an abortion.

The claim of unconstitutionality maintained[176] that this normative framework violated the constitutionally protected rights of women and girls to dignity, life, personal integrity, equality and self-determination, free development of their personality, reproductive autonomy, and health.[177] Additionally, it argued that the existing legal framework violated Colombia's IHRL obligations. These obligations, the lawsuit argued, were of constitutional order by virtue of Article 93 of the Political Constitution of Colombia, which establishes that international human rights treaties ratified by Colombia are part of what is known as the *constitutional block* (*bloque de constitucionalidad*).[178]

In May 2006, in a 5-3 decision, the CCC found that the impugned provisions were, as they stood, contrary to the Colombian Constitution. However, the CCC did not declare the invalidity of section 122, the provision criminalizing abortion. Instead, the CCC read-in the following three situations where abortion would not constitute a crime under section 122: (i) when the pregnancy constitutes a risk to the life or health of the woman, as certified by a doctor; (ii) when there is a

[173] *Código Penal de la República de Colombia (Ley 599 de 2000)*, *supra* note 170 art 122.
[174] *Ibid* art 124.
[175] *Ibid* art 123. [Translated by author].
[176] For a summary of the arguments see *Judgment C-355/2006*, *supra* note 14, s III.
[177] See *Constitución Política de la República de Colombia*, *supra* note 172 at *preamble* and arts 1, 11–13, 16, 42–43, 49.
[178] *Ibid* art 93.

serious fetal malformation rendering life outside the womb inviable, as certified by a doctor; or (iii) when the pregnancy is the result of rape, incest or forced insemination, as demonstrated through a criminal complaint.[179]

Considering that three circumstances exempt from criminalization would now exist under section 122, the CCC declared section 124 invalid – the provision that provided for attenuating circumstances. This cemented, in turn, the new three legal grounds as the only instances of legal abortion access. Additionally, the CCC struck-down the impugned expression of section 123 that referred to "*in a woman younger than fourteen years old*", accepting the plaintiff's argument that girls 14 and under should be considered as having the capacity to consent to having an abortion, albeit, only in the cases of the recently-established three legal grounds.

After Judgment C-355/2006's release, some were skeptical about its concrete impact. Jaramillo and Alfonso argued that the practical effect could be nominal for two main reasons. On one hand, because women already had abortions in cases of imminent risk to life or health or in cases fetal unviability. This was so because the medical community's practice at the time "revealed an interpretation of the normativity" which allowed for exceptions under the aforementioned cases.[180] Notably since these cases could fall under the general exception of criminal responsibility of "state of necessity".[181] On the other hand, in light of medical professional secrecy laws, doctors could not disclose medical information about their patients and thus in practice prosecutors did not have information about the performance of illegal abortion.[182]

Jaramillo and Alfonso conversely feared that health providers and institutions that did not support abortion's decriminalization – who now had the explicit obligation to perform abortions,

[179] *Judgment C-355/2006*, *supra* note 14, see RESULEVE.
[180] Jaramillo Sierra & Alfonso Sierra, *supra* note 169 at 232. [Translated by author].
[181] *Ibid* at 234.
[182] *Ibid* at 232–234.

legally per Judgment C-355/2006 – would attempt to delay or deny providing this health service by creating unforeseen requirements or barriers, even within the three legal grounds.[183]

Independently of these fears or criticisms (some of which did materialize), what is certain, even for the skeptical, is that the CCC's judgment and the establishment of the three exceptions to abortion's criminalization constituted an important normative and symbolic step, even if only incremental.[184] There are three main reasons for this. First, the most evident, Judgment C-355/2006 literally established *legal* grounds for accessing abortion. While the crime of abortion continued to exist, the judgment modified the normative framework carving out situations in which abortion was now legal. This was undoubtedly a major achievement in women's fight for abortion access.

Second, the CCC embraced an expansive understanding of health based on IHRL standards. Using the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)'s definition of the right to health,[185] the CCC stated that health included considerations about physical and mental health. As such, the CCC held that the fact that "a pregnancy can cause situations of severe anxiety or physic disturbances [can constitute a reason] that would justify its interruption" under the health exception.[186] This wording meant that this *causal* was incredibly expansive and, indeed, one of the most progressive framings of a health ground in comparison to many countries in the region that had similar exceptions but were restrictively interpreted.[187] As we will see in subsection 3.3, this broad legal framing was instrumental for social actors that mobilized locally to ensure that healthcare providers would interpret, in practice, this health indication as expansively as possible.

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[183] *Ibid* at 261–265.
[184] *Ibid* at 265.
[185] *International Covenant on Economic, Social and Cultural Rights*, GA, Resolution 2200A (XXI) (16 December 1966) at art 12.
[186] *Judgment C-355/2006*, *supra* note 14 at section VI, subsection 10.1. [Translated by author].
[187] See "Americas: Women Face Restrictive Abortion Laws", (1 May 2005), online: *Human Rights Watch* <www.hrw.org/news/2005/05/01/americas-women-face-restrictive-abortion-laws> at 2; Paola Bergallo & Agustina Ramón Michel, "Constitutional developments in Latin American abortion law" (2016) 135:2 Int J Gynecology & Obstetrics 228 at 228.

Third, and the crux of subsection 3.2.2, Judgment C-355/2006 was also radical from a discourse perspective. The decision of the CCC was significant discursively because it re-configured abortion conceptually by establishing situations when abortion was legal. Judgment C-355/2006 is indeed considered to have "paved the way for recognition of women's reproductive rights through the courts"[188] and "inaugurated a line of precedents that have recognized and urged the enforcement of a right to abortion in specific circumstances".[189] However, Judgment C-355/2006 was also meaningful from a rhetorical perspective because of the CCC's affirmation of women's worth and value. Using notions of dignity and equality, the CCC made a case in favor of women's rights and their place in society.[190] Even if narrow normatively, abortion's partial decriminalization had the symbolic effect of affirming women's dignity and autonomy.

In the next few paragraphs, I will examine some of Judgment C-355/2006's particularly significant discursive structures and framings, evaluating their rhetorical implications and symbolic value. Echoing the words of Lemaitre, we will see that:

> "the pleasure of […reading the words used by the CCC] does not lie in their possible application. It is a pleasure produced by the words themselves, which insist on human dignity and justify for those who read or hear them the difficult decision taken by one in four women to: dare to reclaim the body as their own, refuse the sacrifices that having a child brings, reject the injustice in which they may find themselves, […affirm] their own existence rejecting the internal and external voices that order passiveness and sacrifice and that justify the annulation of their own free will"[191].

3.2.2 Discourse Analysis of Judgment C-355/2006

3.2.2.1 Dignity, the Right to Free Development of the Personality and Women's Autonomy

[188] Ana Cristina González Vélez et al, *Las Causales de la Ley y las Causas de las Mujeres*, Miriam Cótes Benítez, ed, La Mesa Por la Vida y la Salud de las Mujeres (Bogotá, D.C.: Gliphos, 2016) at 7. [Translated by Author].
[189] Bergallo & Ramón Michel, *supra* note 187 at 229.
[190] Bohórquez et al, *supra* note 169 at 60.
[191] Lemaitre, "El Derecho", *supra* note 167 at 235. [Translated by author].

One of the most interesting and novel aspects of Judgment C-355/2006 is that the CCC did not base its recognition of abortion's three legal grounds, and thus women's right to reproductive autonomy, through the privacy doctrine. The right to privacy had been, up to that point, the main and foundational basis for abortion's recognition in the liberal rights discourse, particularly in the United States[192] and in the early normative developments in IHRL.[193] Yet, instead of relying on this already-caved "pathway", the CCC used the foundational concept of human dignity as the constituting basis of the right to women's autonomy, recognizing that dignity included decisions related to women's life plan and reproductive autonomy.[194]

The logical reasoning to arrive at this conclusion is interesting. First, the CCC stated that human dignity had a threefold function in the Colombian normative framework: it was a foundational principle of Colombia's Political Constitution; it also was an axiological basis for the Charter of Rights contained in the Constitution; and it was a substantive *right*. This tripartite understanding of the concept of dignity embodies the textured ways in which dignity has been introduced into positive law within different jurisdictions. As McCrudden explains, dignity has sometimes been used "to explicate particular rights", other times it is only used as a "foundational principle", and in other places "human dignity is a right in itself (and in some systems, a particularly privileged right)".[195]

Considering these three qualities, the CCC then said that when human dignity is used argumentatively "as a relevant criterion" in a given case and as a normative source, the right to dignity implies the protection of:

> "(i) autonomy or the possibility of designing a life plan and to exercise self-determination [*living as one wishes*]; (ii) certain concrete material conditions for existing [*living well*];

[192] See e.g. Palacios Zuloaga, *supra* note 85 at 904.
[193] See e.g. *K.L v Peru*, *supra* note 93.
[194] *Judgment C-355/2006*, *supra* note 14 at section VI, subsection 8.1.
[195] Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights" (2008) 19:4 Eur J Intl L 655 at 675.

> [and] (iii) the intangibility of extra-patrimonial goods, including physical and moral integrity [*living free from humiliation*]".[196]

Understanding human dignity as foundational to an individual's basic living standards, the CCC held that respecting human dignity constituted a clear limit to the state's legislative abilities. In the context of abortion's criminalization, the CCC reasoned that women, as human beings deserving of dignity, could not be treated as "simple instruments for the human specie's reproduction" and that the state could not "impose on them the duty to serve as tools for procreation".[197]

To complement this analysis, the CCC considered the relationship between the concept of human dignity and the right to free development of the personality recognized in the Constitution.[198] The CCC considered that the interaction between dignity and this right meant that an individual should be able to make decisions over their own life plan and choose their preferred life model for personal realization. This echoes, in many ways, the Kantian idea "that to treat people with dignity is to treat them as autonomous individuals able to choose their destiny".[199] Under this dignity-and-free-development-of-the-personality umbrella, then, a person has "the right to [choose to] be a mother", or in other words, to "consider[…] motherhood as an 'option in life'".[200] For the CCC, such a decision is, indisputably, "a decision inherent to a woman's own and internal sphere of judgment".[201]

Taken together, these excerpts simultaneously signal a rejection of the motherhood mandate that society has imposed on women and clearly affirm women's value and worth as human beings well beyond their reproductive capabilities. This act of rejection and affirmation is not only

[196] *Judgment C-355/2006, supra* note 14 at section VI, subsection 8.1. [Translated by author].
[197] *Ibid*. [Translated by author].
[198] *Constitución Política de la República de Colombia*, *supra* note 172 art 16.
[199] McCrudden, *supra* note 195 at 659–660.
[200] *Judgment C-355/2006, supra* note 14 at section VI, subsection 8.2. [Translated by author].
[201] *Ibid*. [Translated by author].

grounded in, but enabled by, a rights discourse. As I will show in the next subsection, there is, additionally, discursive power in *how* the CCC used the rights discourse to advance women's status, value and rights.

Finally, it is worth noting that the use of dignity as a foundational concept for the recognition of women's right to terminate a pregnancy was very powerful because of what the concept represents. As McCrudden brightly elucidates, dignity enjoys of a particular *timelessness* by being adaptable to "changing ideas of what being human involves".[202] Dignity is also non-ideological, it is not constrained by geography while being "sensitive to difference", and it "places importance on the person" but also "places the individual within a social dimension".[203]

3.2.2.1.1 Women as active subjects

First, by framing the right to autonomy as being rooted in human dignity and the right to free development of the personality, the CCC constituted women as an active legal subject. This contrasts sharply with the framing of the right to autonomy as stemming from the right to privacy. Let me explain.

Reproductive self-determination, or reproductive autonomy, stemming from a right to live according to one's own wishes, to live a dignified life, and to have a dignified existence (how the CCC defined the concept and right to human dignity), places women, girls, or any person making decisions over their own reproduction or reproductive capacities, as the active subject. Women and girls are the ones who should actively forge, according to their own values and wishes, their own lives and life plans, including whether to become mothers or not. Conversely, the right to privacy, which entails the right to be free from arbitrary state interference into one's private life,

[202] McCrudden, *supra* note 195 at 677.
[203] *Ibid*.

places the state as the active subject and situates women, girls, and people who gestate as the objects of a state (in)action.

The CCC's legal construction of the right to reproductive autonomy in these terms echoes and finds textual support in autonomy's etymological origin. The word autonomy is composed of the words *autós* & *nomos*,[204] which in Greek mean self[205] and law,[206] respectively. In other words, autonomy means making one's own law and living by one's own rules, which is what Judgment C-355/06 evoked. The CCC was of course aware of the etymological origin of the word, as the CCC refers to a precedent where it had explicitly said that "etymologically [autonomy] means precisely the ability of a person to formulate its own rules".[207]

What is valuable is not (only) that the CCC is heeding what the actual meaning of a word is – though that should almost always be a good starting point in legal analysis. What is crucial and has a significant rhetorical value is that through such framing the CCC constituted women as agents in their own life. This re-signification of women, Pollitt would say, not only placed women "at the center of their own li[ves], but also constituted "a deep challenge to traditional views on women" and to "the social meaning of womanhood"[208] as we will see next.

3.2.2.1.2 Motherhood is not an inescapable fate

Second, framing autonomy as being rooted in the interaction of the concept of human dignity and the right to free development of personality, allowed the CCC to reject, almost effortlessly, the socially-imposed mandate of motherhood. As Bohórquez *et al* say, this rejection "is significant in so far as it goes against the deeply rooted, particularly in Latin America, traditional discourse which defines motherhood as an obligatory stage for all women, and not as

[204] T F Hoad, "*autonomy"* in Hoad, T F, ed, *The Concise Oxford dictionary of English etymology* (Oxford University Press, 2003).
[205] T F Hoad, "*auto-"* in Hoad, T F, ed, *The Concise Oxford dictionary of English etymology* (Oxford University Press, 2003).
[206] T F Hoad, "*-nomy*" in Hoad, T F, ed, *The Concise Oxford dictionary of English etymology* (Oxford University Press, 2003).
[207] *Judgment C-355/2006, supra* note 14 at section VI, subsection 8.2. [Translated by author].
[208] Pollitt, *supra* note 119 at 32–33.

something that can be chosen".[209] Interestingly, it is the use of the rights discourse in the constitutional law analysis that allows the CCC to discredit this deep-held belief. And that, without getting entangled in theological, ontological, or philosophical discussions nor in cultural or sociological considerations about Colombia's values as a society.

The CCC's recognition that women's value is not determined by whether they become mothers not only signifies that motherhood is not women's only role in life – a radical enough view for the time in a heavily religiously influenced country; it also, echoing Locke, "implies [new] ways of being and doing, as well as ways of signifying".[210] Indeed, the CCC's discursive framing allows women and girls to re-imagine themselves and conceptualize other ways – beyond maternity – of being and doing in their lives. For Bohórquez *et al.* this resignification "constitutes an element of the recognition of women's citizenship as subjects of rights".[211] As it will be shown further below, the claim for abortion's full liberalization in Colombia as a means to ensure women's full and equal citizenship became, 14 years later, a driving and central argument of Colombia's feminist movement.

3.2.2.2 Life, sacrifice and heroism

One cannot forget that the strongest claim against abortion's decriminalization comes from the Catholic Church's position that human life begins at conception, leading to the characterization of abortion as murder.[212] As was mentioned in chapter 2, religiously-influenced anti-abortion groups have honed an ability to "articulate religious and secular language in a kind of bilingualisms".[213] This bilingualism has in turn cemented the Catholic Church's position as

[209] Bohórquez et al, *supra* note 169 at 65. [Translated by author].
[210] Locke, *supra* note 159 at 7.
[211] Bohórquez et al, *supra* note 169 at 79. [Translated by author].
[212] Lemaitre, "Catholic", *supra* note 54 at 246.
[213] Juan Marco Vaggione, "Paradoxing the secular in Latin America: Religion, gender and sexuality at the crossroads" (2006) Dossier 28 Women Living under Muslim Laws 23 at 25.

legitimate within the constitutional and rights-based debate, evidencing the power of discourse, in general, and significance of rights discourse, in particular.

Considering the legitimizing strength of the secularly-cloaked argument about the right to life of the fetus, it is worth noting how CCC *reframed*[214] the conversation on this issue. Not engaging with discussions about when human life begins, the CCC framed 'life' as being both a "constitutionally protected interest" and a "subjective right of a fundamental character".[215] This framing allowed the CCC to find that while the protection of life from conception can be a legitimate state interest, this is not absolute and must be balanced against the rights of the woman or person who is pregnant. Through a proportionality analysis of the interests and rights involved, the CCC arrived at the conclusion that there should be at least three legal exceptions to abortion's total criminalization; the three legal grounds mentioned earlier. Yet, as the CCC itself notes these three *causales* represent the most extreme cases and the minimum scenarios when abortion must be allowed.[216] Put differently, these three legal exceptions represent those life-threatening and torturous situations where the state cannot force a pregnant woman to – in the words of the CCC – "assume heroic sacrifices and disregard her own rights for the benefit of a third party or a general interests".[217]

The use of the words *heroic* and *sacrifice* in this sentence is discursively noteworthy. First, *sacrifice* and more generally *suffering* figures prominently in Catholicism's rhetoric. As Lemaitre says, "Catholicism has a long history of valuing certain types of suffering as pleasing to God".[218] Living up to "the call of motherhood and family life in service and sacrifice" is, for instance,

[214] Bergallo & Ramón Michel, *supra* note 187 (referring that Judgment C-355/2006, among other three constitutional judgments in the region, "helped reframe the conversation" with regards to the argument of the right to life of the fetus at 229).
[215] *Judgment C-355/2006*, *supra* note 14 at section VI, subsection 5. [Translated by author].
[216] *Ibid*, s 11.
[217] *Ibid*, s 10.1. [Translated by author].
[218] Lemaitre, "Catholic", *supra* note 54 at 245.

important and almost necessary for women's salvation.[219] Interestingly, the Catholic Church's opposition to abortion's decriminalization is also partly premised on the idea that abortions "make women suffer".[220] In other words, in Catholicism's view suffering has two-fold nature;[221] some suffering is redemptive and some suffering is cruel and to be avoided.

The narrative of suffering features as well, and very centrally, in feminist discourses against abortion's criminalization.[222] The argument premises that forced pregnancies and motherhood causes physical or emotional suffering. The CCC's word choice of *sacrifice* and the statement that women should not sacrifice themselves for others carries, then, an undeniable significant symbolic weight. While echoing the feminist discourse of the suffering caused by forced pregnancy, the word *sacrifice* also counter-appeals the Catholic rhetoric that this suffering could have a redemptive value for women, especially so in those extreme scenarios.

Second, the word *heroic* evokes the narratives of literary genres. As Turner explains, albeit in the Canadian context but still related to legal discourse, "narrative genres are plotted around the hero or heroine's efforts to overcome the obstacles to their desire".[223] Heroes or heroines tend to be "exceptional beings" and the climax of the story is when they overcome said obstacles.[224] Reading Judgment C-355/2006 through this literary frame, I would argue that the CCC's choice of the word heroic signifies that – even if having a child can be conceived as something to desire – forcing a woman to bring to term a pregnancy that is the product of rape or one that risks her life or health is simply too much for us to ask of a heroine. The precedent that the CCC recalls when discussing the cases of rape illustrates quite clearly this point:

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[219] *Ibid* at 242.
[220] *Ibid* at 244.
[221] *Ibid* at 245.
[222] *Ibid* (saying that "[a] woman's right to access abortion is frequently framed as a right to avoid suffering" at 244). For an in-depth analysis of the discursive impact of the narrative of suffering in access to abortion cases see Kelly, *supra* note 12.
[223] Christina Turner, "The Comedic Governance of Indigenous Land Rights in Delgamuukw v. British Columbia and Marie Clements' Burning Vision" (2020) 32:3 L & Lit 375 at 383.
[224] *Ibid* (referring the characteristics of the Romantic hero or heroine at 280, 283).

"*…The normal and ordinary thing would be that [the woman] not be a heroine […]. Anytime a woman has been raped or instrumentalized to procreate, the exceptional and admirable thing would be that she decides to continue with the pregnancy and give birth. […S]he has the right to choose [to do that] if she has the courage to do so and her conscience guides her to that. But she cannot be obliged to procreate nor can she be object of a criminal sanction for vindicating her fundamental rights, nor for attempting to contain the consequences of the rape or subjugation*".[225]

Through these passages, the CCC is discursively signaling to women that their lives have value in themselves and that they do not need to sacrifice themselves or be heroines for the sake of another potential life. As a plot twist of the traditional story line, this narrative shift is incredibly powerful.

3.2.3 The limits of the rights discourse in Judgment C-355/2006

The above discussion, leads me to two questions: i) why did the CCC stop at three legal grounds instead of ruling for the total decriminalization of abortion? And ii) does the CCC's discursive framing have any undesired effects? I will briefly answer both.

3.2.3.1 Limited normative gain

With regard to the normative outcome of the judgment, the discourse examined in the preceding paragraphs suggested to me that forced motherhood is to be rejected always and not only in the extreme circumstances recognized by the *causales*. The framing and reasoning of the CCC in fact supports the claim that no woman should have to bring to term an undesired, unplanned or forced pregnancy, nor be forced to assume an unwanted motherhood. The judge writing for the majority CCC's decision, Judge Jaime Araújo Rentería, had indeed sought abortion's total decriminalization at first.[226] The fact that part of the rich legal reasoning of this

[225] *Judgment C-355/2006, supra* note 14, s 10.1. [Translated by author].
[226] *Ibid* at Aclaración de Voto, Magristrado Jaime Araújo Rentería (where Judge Rentería explains that in his first draft of the judgment he sought abortion's full decriminalization but that following the constitutional debate he change the opinion to a partial decriminalization model).

incremental normative expansion of abortion access can easily support a more liberalized framework is therefore not surprising. The final decision of the CCC was, however, more limited normatively than what the narrative framing suggested. This evidences that legal discourse – even if progressive – cannot always, on its own, produce the desired legal change. Social, political and cultural factors matter, too.[227] As we will see in chapter 4, those socio-political factors had changed by 2022 when the CCC had to reconsider the matter with *CausaJusta*'s legal demand.

3.2.3.2 The reminiscence of the liberal discourse

As highlighted in the preceding paragraphs, Judgment C-355/2006 opened the door for women to understand themselves as agents of their own lives, as subjects of rights, and as having value in society irrespective of whether they chose to become mothers. However, as was mentioned in chapter 2, some strong feminist critiques to the rights discourse object to framing abortion as a matter of choice and limiting abortion discussions to the sphere of the individual. McNelly, for instance, strongly critiques the supremacy of the bounded subject in the liberal rights discourse on abortion rights.[228] Pursuant to her critique, both the public health frame – that aims to prevent maternal mortality and morbidity – and the feminist liberal discourse – that focuses on women's bodily autonomy – focus on "biological individualism" and are grounded "in commitments to the liberal bounded subject".[229]

Judgment C-355/2006's framing of abortion as a decision pertaining to the pregnant woman and engaging the most intimate aspects of her life's project certainly echoes the liberal rights discourse in this regard. However, the CCC's reasoning also introduced significant and profound reflections – for the time – about women's dignity and value in society. Especially so, considering,

[227] See e.g., Open Society Justice Initiative, *supra* note 158, referring that "strategic litigation is best understood as a process, rather than as a single legal intervention" and that social and political contextual factors "matter greatly in the inherently unpredictable road of litigation" at 74.
[228] McNeilly, *supra* note 25 at 142.
[229] *Ibid* at 151.

as mentioned, that Colombia was (and is) a conservative and religiously influenced country. Even if the normative gain was limited and the rates of maternal mortality and women's criminalization linked to abortion did not change significantly (at first), the value of Judgment C-355/2006 lies more in the incremental but radical change of narrative. In fact, each time "the language used in the judgment is analyzed, reproduced, magnified by the media and made known [to women…]",[230] women's value is reaffirmed and the dial on abortion's social meaning might shift.

Of course, the path from a legal discourse that re-signified and re-constituted women's role and value in society, to the effective resignification of women and girls' experiences in practice in Colombian society remains a constant uphill battle. Nevertheless, the seeds were planted then for understanding abortion access not only in its narrow dimension of "non-interference" but as a matter of gender equality and a *sin-qua-non* condition of women's realization of their full potential as human beings. Women need not be *heroines*, but they do need to be equal and full citizens.

3.3 The making of a robust constitutional abortion jurisprudence in Colombia

Following Judgment C-355/2006, as early skeptics predicted, access to legal abortions was not easy. Challenges to access arose, in part, from the fact that Colombia was passing from an absolute prohibition of abortion to model of access based on legal grounds (the three *causales*). At the time, there were no protocols or guidelines, there was no clear route of access, and health providers were not trained in abortion practices and procedures.[231] But, even after a decree regulating access to abortion under the three *causales* was issued by the Social Protection Ministry[232] – a process that was in its own obstructed by anti-abortion groups[233] – impediments to access persisted. Some

[230] Lemaitre, "El Derecho", *supra* note 167 at 234. [Translated by author].
[231] Conducted by author, "Interview with Spokesperson of the Center for Reproductive Rights' Latin American and the Caribbean Program, 18 May 2022" (in file) [Conducted by author, "Interview with CRR"].
[232] *Decreto No. 4444 de 2006*, Ministerio de la Protección Social (13 December 2006).
[233] Conducted by author, "Interview with CRR", *supra* note 231.

obstacles came from within the establishment itself.[234] Others resulted from the combination of misinformation and ignorance about the legal framework, and the fervent and religiously-influenced opposition by some service providers to providing abortion services. As we will see in the discussion that follows, such context proved fertile ground for a wide-range of administrative and bureaucratic hurdles to sprout within the access-to-care route.

From the moment Judgment C-355/2006 was issued,[235] *La Mesa Por La Vida y la Salud de las Mujeres* (**LaMesa**),[236] a feminist collective founded in 1988 to fight for abortion's decriminalization,[237] made it its mission to ensure the *causales*-based framework was implemented with a human rights approach and in the most progressive manner.[238] While LaMesa's work is wide-ranging,[239] for the purpose of this section I will focus on La Mesa's documentation work of cases of women who have faced barriers when seeking abortion services (subsection 3.3.1). Such work has truly positioned LaMesa as a "a privileged witness" [240] of the existing barriers and led to their constitution as legal experts on the implementation of Judgment C-355/2006.[241] I will then turn to the jurisprudential developments brought by the CCC in the years following the 2006 decision, many of which address head-on the documented barriers (subsection 3.3.2). In this part,

[234] See Ana Cristina González Vélez & Isabel Cristina Jaramillo Sierra, "Legal Knowledge as a Tool for Social Change: La Mesa por la Vida y la Salud de las Mujeres as an Expert on Colombian Abortion Law" (2017) 19:1 Health & Hum Rts J 109 (explaining that following the appointment in 2008 of Alejandro Ordoñez as Attorney General of Colombia, resources of his office were used to "investigate[…], persecute[…], and sanction entities that performed [legal abortions]" at 115).
[235] *Ibid* at 110.
[236] "LaMesa", *supra* note 22.
[237] Ana Cristina González-Vélez, Carolina Melo-Arévalo & Juliana Martínez-Londoño, "Eliminating Abortion from Criminal Law in Colombia: A Just Cause" (2019) 21:2 Health & Hum Rts J 85 at 86.
[238] González Vélez & Jaramillo Sierra, *supra* note 234 at 110; Bianca M Stifani et al, "Abortion as a human right: The struggle to implement the abortion law in Colombia" (2018) 143:S4 Int J Gynecology & Obstetrics 12 at 115; González-Vélez, Melo-Arévalo & Martínez-Londoño, *supra* note 237 at 86.
[239] LaMesa has four main axis of work: 1. Provision of legal counseling to women that face barriers in accessing an abortion; 2. Development of strategic legal and advocacy actions to achieve better protections for the right to access an abortion; 3. Rigours monitoring and oversight of the adequate and technical implementation of the legal framework established by Judgment C-355/2006, which includes the training of operators of the health, judicial and social protection sectors; and 4. Creation of a wide national and regional network of organizations, advocates, and actors working for sexual and reproductive rights. LaMesa's communications work is transversal and its premised on the right to timely and truthful information relation to reproductive rights so that women can access abortion services. See "LaMesa", *supra* note 22; Conducted by author, "Interview with Spokesperson of La Mesa Por la Vida y la Salud de las Mujeres, 31 May 2022" (in file) [Conducted by author, "Interview with LaMesa"].
[240] 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 (Bogotá, D.C.: Gliphos, 2016) at 5.
[241] González Vélez & Jaramillo Sierra, *supra* note 234 at 110.

I will focus on the dialectic relationship I believe exists between social actors' work – like LaMesa's – and the progressive jurisprudential developments of the CCC.

Finally, I will turn to the discursive significance of the explicit recognition by the CCC of a constitutional right to the "voluntary interruption of pregnancy" (*el derecho fundamental a la interrupción voluntaria del embarazo*) (subsection 3.3.3). Specifically, I will argue that – although changing abortion's social meaning is an arduous endeavour that requires diverse strategies – the coming into existence of the right to the I.V.E was a first steppingstone to understanding abortion differently, outside of the dichotomies imposed by the criminal law.

3.3.1 La Mesa's careful systemization of the barriers to access legal abortions in Colombia

A central component of LaMesa's work was, and is, the provision of legal accompaniment to women who face barriers in accessing abortions services. The objective of this work is to help women overcome obstacles and to devise strategies so that women can have "effective and timely access to abortion services".[242] The accompaniment work led LaMesa to develop, in parallel, a case documentation system. Through the categorization and thorough analysis of the cases' data, LaMesa quickly garnered vast "technical knowledge and empirical evidence"[243] of the various barriers that impeded effective access to abortion in Colombia under the legal grounds model. While the barriers are multiple and sometimes overlapping, LaMesa has worked to classify them and proposes a categorization under the following three headings:[244]

Lack of knowledge of the existing legal framework

[242] González-Vélez & Castro, *supra* note 240 at 6.
[243] *Ibid* at 12.
[244] See González-Vélez & Castro, *supra* note 240. This report constitutes an important effort of categorization and knowledge dissemination of the barriers.

A first significant barrier is the lack of knowledge of the legal and regulatory framework of abortion.[245] Many women and/or service providers were unaware that abortion was legal under certain grounds or did not know the standards regulating its access. This includes, unfamiliarly with the jurisprudential standards established by the CCC[246] and the contravention of the normativity established by the National Health Superintendency' guideline[247] or the Health and Social Protection Ministry's protocol.[248] Among others, the barriers under this heading comprise ignorance of the eligibility requirements to have an abortion under any of the three *causales* or non-compliance by service providers of their legal obligations for the adequate provision of abortion services and reproductive health information.

Narrow interpretations of the legal framework

Another significant barrier identified by LaMesa is the narrow interpretation of the legal framework. This encompasses a myriad of different obstacles arising from the "limited, biased or wrong interpretation of the judicial precedents or the normativity".[249] The four main categories of barriers under this heading are: (1) the restrictive interpretation by health providers of the *causales*, particularly of the health ground; (2) the imposition of additional (illegal) requirements to qualify under a given legal ground, such as requiring third-party authorizations; (3) limiting access to an abortion on the basis of the gestational development (even though the CCC did not establish any gestation limits on any of three legal indications); and (4) the unconstitutional use of conscientious objection, which involves its invocation by health institutions, its collective invocation by a group of providers, and/or the lack referral of the patient to an available, qualified and willing provider.[250]

[245] For a comprehensive description of the barriers in this heading see *ibid* at 22–31. Notably, LaMesa identified three sub-headings that encompass ten different types of barriers overall.
[246] These will be briefly mentioned below in the subsections 3.3.2 & 3.3.3.
[247] Superintendente Nacional de Salud, *Circular Externa No. 000003* (2013).
[248] Ministerio de Salud y Protección Social, *Prevención del aborto Inseguro en Colombia: Protocolo para el Sector Salud* (Bogotá, D.C., 2014).
[249] González-Vélez & Castro, *supra* note 240 at 32.
[250] For a complete account see *ibid* at 32–39.

Failures in the provision of the health service

Lastly, LaMesa has categorized structural barriers of two different types. On one hand, those resulting from attitudes and practices of services providers, which include mistreatment and violence in the provision of care, the arbitrary provision of care, and the stigma, shame and fear of criminalization passed on to women or also experienced by service providers. On the other hand, those resulting from the deficiencies of the health institutions and networks, including the lack of trained professionals, the geographically unequal distribution of health centers and services, and the lack of internal protocols and guidelines.[251]

LaMesa's careful documentation of these barriers is significant for three reasons. The barriers' categorization is important, first, as a means to organize the data so that it can expose the obstacles women continued to encounter when seeking an abortion. Second, a detailed account of the barriers and their different iterations also allows for the identification of "where the barriers originate, the actors that cause them, and the forms they take in practice".[252] Through its careful organization, LaMesa got to the root-cause of most barriers and was able to engage in political activism through the proposal of strategies to "eliminate them".[253]

Finally, the categorization of the barriers also enabled the production of new knowledge based on data and evidence. Notably, the transformation of such knowledge into concrete technical and advocacy outputs and materials, cemented LaMesa's position as a leading legal expert in Colombia on the interpretation of the normative framework[254] and as a key reference figure for women, healthcare providers and judicial operators.[255] As we shall see next, this knowledge amalgamation

[251] See *ibid* at 39–46.
[252] *Ibid* at 6. [Translation by author].
[253] *Ibid*.
[254] González Vélez & Jaramillo Sierra, *supra* note 234 at 110; Stifani et al, *supra* note 238 at 15.
[255] González Vélez & Jaramillo Sierra, *supra* note 234 at 110, 111, 116.

– which does not come without its pitfalls[256] – has allowed for the legitimization of LaMesa as a credible social actor and has allowed women's organizations to influence policy-making on the basis of women's experiences.

3.3.2 A jurisprudence in dialogic relationship with social actors and the evidence

The different barriers referred to above were challenged, time and again, by women and civil society organizations. Challenges were brought through administrative processes within the health sector and through the courts. Many court challenges reached the CCC and this led to the consolidation of an incredibly robust constitutional jurisprudence on access-to-abortion.[257] Between Judgment C-355/2006 and Judgment SU-096/2018[258] – called the unifying decision – the CCC in fact issued over 20 different decisions that strengthen the right to access an abortion under the *causales* model and addressed many of the documented barriers.[259] This case-law created around 15 robust constitutional standards about how abortions services should be provided.[260] Though these normative developments are wide-ranging, there are three main dimensions to highlight.[261]

First, and the focus of subsection 3.3.3, the CCC recognized and enshrined within Colombia's constitutional law a fundamental autonomous constitutional right to "voluntarily interrupt the pregnancy*"* (**I.V.E,** for its Spanish name). Second, the CCC established clear standards on the legal use of conscientious objection in the context of abortion services. Notably, the CCC held that

[256] On the cost on expert legal knowledge see *ibid* at 115–116.
[257] See La Mesa Por La Vida y la Salud de las Mujeres, "Marco normativo y línea jurisprudencial del aborto en Colombia", online *El derecho al aborto en Colombia*: <derechoalaborto.com> (where a detailed, informative and interactive overview of this jurisprudence line and the normative framework regulating abortion in Colombia can be found).
[258] *Judgment SU-096/18*, 2018 Constitutional Court of Colombia.
[259] These are: T-171/2007, T-636/2007, T-988/2007, T-209/2008, T-946/2008, T-009/2009, T-388/2009, T-585/2010, T-363/2011, T-841/2011, T-959/2011, T-636/2011, T-627/2012, T-532/2014, T-301/2016, T-697/2016, T-731/2016 (Jugments from *tutelas*); and C-754/2015, C-274/2016, C-327/2016, C-341/2017 (Judgments of Constitutionality). See La Mesa Por La Vida y la Salud de las Mujeres, "Conoce las sentencias", online *El derecho al aborto en Colombia*: <derechoalaborto.com/conoce-las-sentencias> (where futher details can be found).
[260] La Mesa Por La Vida y la Salud de las Mujeres, "15 estándares del derecho al aborto en Colombia", online *El derecho al aborto en Colombia*: <derechoalaborto.com/15-estandares> [LaMesa, "15 estándares"]
[261] The three dimension are taken from Mauricio Albarracín & Christy Crouse, "Quienes piden despenalizar el aborto tienen mejores argumentos en la Corte", *Dejusticia* (9 November 2021), online: <www.dejusticia.org/column/quienes-piden-despenalizar-el-aborto-tienen-mejores-argumentos-en-la-corte>.

conscientious objection cannot be invoked collectively or by an institution and that its invocation can never imply the denial of the service to the women (if, for instance, there are no available and qualified providers) or the imposition of additional barriers.

Third, the CCC developed "a strong anti-barriers constitutional doctrine"[262] aimed at protecting all aspects of women's right to access an abortion. This constitutional doctrine includes crucial standards relating to the state's duty to provide adequate, timely and sufficient information on women's reproductive health and rights, including the right to access an abortion; the obligation of service providers to respect, guarantee and protect the right to privacy and confidentiality in the provision of abortion services; the obligation of health providers to respond to a request to access an abortion under any legal ground within a maximum of five (5) days; among many others.[263]

This jurisprudential corpus, undoubtedly, strengthened the right to access an abortion in Colombia, if only normatively. In fact, before the ground-breaking Judgment C-055/2022 – discussed in chapter 4 – Colombia's legal framework on abortion had already become an exemplary legal framework for "its focus on human rights, its provisions on conscientious objection and its lack of gestational limits".[264] The very real limitations in the implementation of this progressive jurisprudential corpus were nonetheless significant. And indeed, those limitations led to the social and legal mobilization for abortion's full decriminalization in 2020.

For the purposes of this subsection, however, I want to focus on *how* the jurisprudential developments came about. Many of the CCC's judgments on these issues came as a response to actions brought under the writ of protection of *tutela*[265] – a writ introduced into Colombia's constitutional law framework with the adoption of the 1991 Political Constitution which can be

[262] *Ibid*.
[263] See LaMesa, "15 estándares", *supra* note 260 (where a detailed and an interactive summary of the standards can be found).
[264] Stifani et al, *supra* note 238 at 17.
[265] González Vélez & Jaramillo Sierra, *supra* note 234 at 110.

presented by any citizens as a means to protect their fundamental rights in a speedy, informal and accessible manner.[266] Certainly, the *tutela* allows for greater access to the courts and thus gives the courts more opportunities to refine the constitutional law standards. But, as González-Vélez and Jaramillo have pointed, the vast case-law on abortion suggests that "the [CCC] has had a political will to develop and enforce legislation regarding the rights of women [given that] its interventions in *tutela* are selective…".[267] Moreover, the jurisprudential developments evidence that CCC has aggressively selected cases that "not only redressed the violation of a right", but also "develop[ed] [the legal framework on abortion]".[268]

This purposive selection of *tutelas* as a means to establish more robust standards for the access-to-abortion-care-route, exemplifies, in my view, Schneider's theory of dialectic of rights and politics.[269] In light of the legislative branch's inaction to pass a law regulating access to abortion under the legal grounds,[270] women and reproductive rights' organizations used rights claims – in the form of *tutelas* – to push the courts to develop protections for the right to access an abortion within the legal indications model and to combat the multiple and persistent barriers. Social actors in Colombia, in other words, used *tutelas* to "reshape the law in women's terms".[271]

Further, while the CCC's political will was certainly there, the work of organizations such as LaMesa was instrumental to foster an important socio-judicial dialogue.[272] The legal accompaniment and the cases documentation work of LaMesa – which is one of its *sui generis* traits[273] – was in fact not only a crucial tool to raise awareness about the barriers and the impacts

[266] *Constitución Política de la República de Colombia*, *supra* note 172 art 86.
[267] González Vélez & Jaramillo Sierra, *supra* note 234 at 110–111.
[268] *Ibid* at 111.
[269] See Elizabeth M Schneider, "The Dialectic of Rights and Politics: Perspectives from the Women's Movement" in Katherine T Bartlett & Rosanne Kennedy, eds, *Feminist Legal Theory: Readings in Law and Gender* (Boulder, Colorado: Westview Press Inc, 1991) 318.
[270] Conducted by author, "Interview with CRR", *supra* note 231 (even though the CCC called on the Colombia Congress multiple times to regulate access to abortion service as long as the three legal grounds would be respected, Congress has failed to pass any law regulating abortion. As a spokesperson of the CRR said, "Congress has had many opportunities to pass laws – both progressive and restrictive – and has not done so").
[271] Schneider, *supra* note 269 at 330.
[272] *Cf ibid* (while Schneider refers to a "political dialogue" I see it more as a "socio-legal" or "socio-judicial dialogue").
[273] Conducted by author, "Interview with LaMesa", *supra* note 239.

of these barriers in the lives of women and girls.[274] It was also an instrumental means to support advocacy and legal strategies to achieve protections for women and girls through the courts. Notably so because it gave judges deciding an individual rights claim the evidence-based data to, at the same time, develop the law further to address the structural barriers women faced.

Inspired by Klein's arguments about the "unique way of knowing" that distinguish drug harm reduction practices in Canada, I see the discussion above as illustrating how civil society organizations like LaMesa are "generators and stewards of evidence to form essential human rights-based policy".[275] Indeed, "seiz[ing] upon […its] status as [a] legitimate source of authority", LaMesa has "simultaneously resist[ed] and educate[d] state and public actors *by demonstrating through self-generated empirical evidence* that they know better than government what do to".[276]

The value given to this self-generated empirical evidence can be seen, for instance, as early as in Judgment T-388/2009, a case concerning the denial of an abortion to a woman carrying a fetus with multiple malformations and osseous dysplasia.[277] With the intent of taking a more informed decision, the CCC requested government entities and LaMesa, as the only civil society organization included, to provide reports on the barriers related to delays or denials of legal abortion requests that these entities and LaMesa had been able to document.[278] The evidence provided by LaMesa was instrumental – and indeed transcribed *in extenso* in the judgment[279] – as it allowed the CCC to address more holistically the overarching obstacles present in the access-to-abortion-care-route. In fact, in Judgment T-388/2009 the CCC: i) clarified the scope of Judgment C-355/2006, recalling that the decision had biding immediate effects on all service providers; ii)

[274] See González-Vélez, Melo-Arévalo & Martínez-Londoño, *supra* note 237 at 87. See also González Vélez & Jaramillo Sierra, *supra* note 234.
[275] Alana Klein, "Harm Reduction Works: Evidence and Inclusion in Drug Policy and Advocacy" (2020) 28:4 Health Care Analysis 404 at 411.
[276] *Ibid* at 408–409. *Italics* in original.
[277] *Judgment T-388/2009*, 2009 Constitutional Court of Colombia.
[278] *Ibid*, s 7.4.
[279] *Ibid*, s 7.4 & 7.4.3.

stressed that any additional administrative or bureaucratic hurdles beyond the conditions established in Judgment C-355/2006 were prohibited; and iii) established strong standards on the exercise of the right to conscientious objection in the context of abortion requests.[280]

As I see it, two key conclusions can be made from the above discussion. First that the jurisprudential developments between 2006 and 2018 are the product of the articulation of "[feminist] political activists and lawyers" who explain and translate women's experiences into evidence-based knowledge[281] and then into rights-based legal claims.[282] Second, and as a consequence of the first, that the constitutional safeguards established by the CCC to guarantee the right to access an abortion evidence a dialectic relationship between the work of civil society actors in producing evidence-based knowledge – notably organizations like LaMesa – and the CCC, as the maximum judicial body charged with the protection of fundamental rights.

3.3.3 The Right to the I.V.E: a legitimizing catalyst for the social resignification of abortion

While the CCC issued a number of decisions after 2006 and before 2010 on abortion access, it is in Judgment T-585/2010 when the CCC first held that:

> "[i]t is undeniable that, following Judgment C-355/2006, women in Colombia who find themselves in one of the three decriminalized situations have a real right to the voluntary interruption of the pregnancy. Indeed […] in this judgment the Court concluded that the protection of the fundamental rights of women to human dignity, to the free development of personality, to life and to physical and mental health – all comprised in the 1991 Constitution and in the constitutionality block (*bloque de constitucionalidad*) – entails recognizing women's autonomy to freely decide whether to interrupt or continue gestating in the three precise circumstances already mentioned, which in turn meant that the criminal sanction [in such cases] was disproportionate. In other words, from the content of the aforementioned

[280] La Mesa Por La Vida y la Salud de las Mujeres, "Sentencia T-388/2009", online *El derecho al aborto en Colombia*: <derechoalaborto.com/conoce-las-sentencias/sentencia-t-388-de-2009>.
[281] See Klein, *supra* note 275.
[282] Schneider, *supra* note 269 at 330 & 327.

fundamental rights, the Court derived the right to the I.V.E for pregnant women who find themselves in the above-mentioned circumstances."[283]

Since then, the CCC has reaffirmed multiple times that the I.V.E was a fundamental and autonomous constitutional right.[284] The recognition and reaffirmation of this right has an evident normative significance. Not only because the CCC enshrined a new constitutional right. Also because, as the CCC explains, the right to the I.V.E is inscribed within women's reproductive rights and is thus also part of women's human rights.[285] In fact, in Judgment T-585/2010 the CCC also recalled that the protection of reproductive rights included the protection and guarantee of the right to reproductive self-determination and to access reproductive health services, education and information.[286] In essence, from 2010 onwards a robustly protected constitutional and fundamental right to the I.V.E. was cemented into Colombia's legal framework.

The creation of an explicit right to the *voluntarily interruption of the pregnancy* has, additionally, significant discursive value. The wording, which does not include the word abortion at all, is meaningful because it framed abortions performed under the three decriminalized circumstances independently from abortion's criminalization. Alternative framings that come to mind like "the right to a legal abortion", "the right to an abortion under the legal indications" or "the right to the legal interruption of the pregnancy", would have evoked, by an inverse association, that abortion is otherwise illegal. Even if the CCC did not consider consciously this discursive effect, the existence of a fundamental right to the I.V.E displaces abortion's (il)legality from the focus of the conversation and thus places abortion access beyond the criminal law mentality.

[283] *Judgment T-585/2010*, 2010 Constitutional Court of Colombia at para 19. Underlying added. [Translated by author].
[284] See *Judgment SU-096/18*, *supra* note 258 at para 44, n 202.
[285] *Judgment T-585/2010*, *supra* note 283 at paras 20 & 21.
[286] *Ibid* at para 20(ii).

From a rights discourse perspective, the establishment of an autonomous constitutional *right* to the IVE, which was held to be part of women's human rights, is also deeply consequential. The wording places access to abortion within the legitimatizing language of human rights – "a language of entitlement"[287] that is devoid of any moral judgments and that is respected by the whole state apparatus (if only in principle). Further, the right to I.V.E., even if confined to the legal grounds model, makes visible what had been invisible for a long time: that women voluntarily seek to interrupt their pregnancies for a myriad of reasons. As Williams put it, rights are "the magic wand of visibility and invisibility, of inclusion and exclusion, of power and no power"[288] Being able to *say* that women have the right to the I.V.E is thus "deliciously empowering".[289]

Finally, the explicit recognition of a right to the I.V.E seems to underpin two significant narratives that are counterhegemonic, at least in the context of Colombia. The more obvious one is that by establishing the right to the I.V.E., women's value and human dignity is reaffirmed and the socially-imposed motherhood mandate is rejected – the crux of the Judgment C-355/2006's rationale. An equally important, but a less evident narrative is that the right to the I.V.E denaturalized the debate about abortion "by discursively situating [abortion's illegality] as something that can be changed".[290] The recognition and reaffirmation of the right to the I.V.E. thus provided a first steppingstone to change the narrative about abortion in Colombia.

In fact, the "codification" of abortion's dual nature in the Colombian context – being both a right and a crime, depending on the circumstances – allowed social actors and activists to anchor their tactics in the specific wording of the right to the I.V.E to create a new consciousness about abortion as a fundamental right and to combat negative framings of abortion. By enshrining a new

[287] Arnauld & Theilen, *supra* note 13 at 40.
[288] Patricia J Williams, *The alchemy of race and rights* (Cambridge, Mass.: Harvard University Press, 1991) at 164.
[289] *Ibid*.
[290] Arnauld & Theilen, *supra* note 13 at 43.

constitutional vocabulary, the CCC gave advocates, activists and other social actors more tools to "express a fundamental critique of present politics",[291] to continue mobilizing and strategizing to further liberalize abortion, and to ignite a change in the social imaginary. This discussion clearly evidences that while the rights discourse can sometimes limit or distort social claims, "it can [also, as Schneider says,] help to affirm human values, enhance political growth, and assist in the development of collective identity".[292]

Transforming the conceptualization of abortion in the collective imaginary is nonetheless a difficult endeavour. The persistent presence of multiple barriers illustrates that even with progressive normative developments and a new constitutional vocabulary, access to abortion remained difficult, if not impossible, for many women and girls. This is so because a normative change does not translate into a narrative change from one day to another. In the case of Colombia, the work of LaMesa and other civil society organizations became pivotal for reframing abortion as well in the social imaginary and to "decriminalize people's consciences".[293]

Some of the social strategies that these social actors have employed to advance in this endeavour will be examined in chapter 5. Before that, however, I will closely examine in the next chapter the discursive impact of both legal action led by the movement *CausaJusta* and Judgment C-055/2022, the recent landmark decision that followed *CausaJusta*'s unconstitutionality claim.

4 Chapter 4: Causa Justa and the historic Judgment C-055/2022

This chapter will examine the discourse and legal argumentation used in *CausaJusta*'s innovative unconstitutionality demand (subsection 4.2) and will analyze the discursive shift in

[291] *Ibid* (citing Martti Koskenniemi, "The Effect of Rights on Political Culture", in The Politics of International Law [Oxford: Hart, 2011] at 42).
[292] Schneider, *supra* note 269 at 319–320.
[293] The decriminalization of the consciences is a central part of the work and publications of the organization Catholics for the Right to Choose – Colombia. See "Quiénes Somos", online: <cddcolombia.org/quienes-somos>. See especially Católicas por el Derecho a Decidir, *Despenalizar las conciencias: Argumentos Socioculturales y Religiosos para hablar del Aborto Inducido* (Bogotá, D.C.: Alternativa Gráfica Ltda, 2017); Católicas por el Derecho a Decidir, *Aborto legal y seguro: Una deuda pendiente con las mujeres*, Tejiendo Saberes Boletín No. 31 (Bogotá, D.C.: Alternativa Gráfica Ltda, 2018).

Judgment C-055/2022, the recent ground-breaking constitutional decision that decriminalized abortion in Colombia up-to 24 weeks of gestation (subsection 4.3). Prior to embarking on that analysis, this chapter will delve into how *CausaJusta*, a social justice and feminist movement for abortion's liberalization, emerged in Colombia, and sketch out the movement's ambitious objectives and innovative strategies (subsection 4.1).

Most of the chapter's analysis is based on *CausaJusta*'s unconstitutionality demand,[294] the CCC's February 21, 2022 decision[295] and online sites, documents and reports. However, as a methodological note, it is worth underlining that some reflections and considerations are also drawn from two semi-structured interviews I conducted with two spokespersons of *CausaJusta*.[296]

4.1 *Causa Justa*: a social justice and feminist movement for abortion's liberalization

As mentioned in the previous chapter, social actors' work around the implementation of Judgment C-355/2006, led to the accumulation of vast empirical knowledge about the limits of the legal grounds model. After 14 years of sustained efforts to ensure the most progressive interpretation and application of the normative framework regulating abortion in Colombia, the data collected by social actors exposed dark realities of abortion's (in)accessibility and active criminalization in Colombia; realities that while long-known by civil society organizations, like LaMesa, and non-governmental organizations that had become the main abortion providers in Colombia, like Oriéntame[297] and Profamilia,[298], were now "provable" realities. Four of these realities stand out, as these would become a catalyst for the national conversation that the feminist movement *CausaJusta* sought to ignite.

[294] Causa Justa Por el Aborto, "Demanda de inconstitucionalidad artículo contra el artículo 122 del Código Penal" (2020), online: *Corte Constitucional* <www.corteconstitucional.gov.co/secretaria/archivo.php?id=19678>. [Causa Justa Por el Aborto, "Demanda de inconstitucionalidad"].
[295] *Judgment C-055/22*, *supra* note 10.
[296] Conducted by author, "Interview with CRR", *supra* note 231; Conducted by author, "Interview with LaMesa", *supra* note 239.
[297] "Oriéntame", online: <orientame.org.co>.
[298] "Profamilia", online: <profamilia.org.co>.

First, the statistics collected from different sources revealed that even after 14 years of progressive and expansive constitutional jurisprudence on the right to the I.V.E, only between 1% and 9% of abortions in Colombia were performed within the public health system, meaning that the vast majority of abortions were performed outside the ambit of public regulation.[299] While these non-regulated abortions are not necessarily unsafe, official data estimated that in Colombia around 70 maternal deaths and around 132.000 health complications were due to unsafe abortion.[300] These statistics evidenced the clear limits of the *causales*-based model, both in terms of accessibility and also with respect to its public health implications.

Second, the evidence collected by social actors showed that the partial criminalization of abortion, and particularly the barriers women continued facing when accessing abortion services, disproportionately impacted women and girls in vulnerable situations, such as girls and women experiencing violence or living in armed conflict zones, rural women, and migrant women.[301]

Third, data from the Office of the Prosecutor obtained by social actors through an access-to-information request demonstrated that the crime of abortion was not merely symbolic. To the contrary, women and girls in Colombia were actively being prosecuted, even in cases that would fall under a protected legal ground. Alarmingly, the data showed that girls younger than 14 had been subject to prosecution, that nearly half of all those persecuted were adolescents between 15 and 19 years, and that the vast majority of judicial proceedings involved rural women.[302] This evidence corroborated the disproportionate impact of abortion's inaccessibility and the active State prosecution of the crime of abortion in cases involving women and girls in vulnerable situations.

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[299] La Mesa Por La Vida y la Salud de las Mujeres, *Causa Justa: Argumentos para el debate sobre la Despenalización Total del Aborto en Colombia*, Ana Cristina González Vélez & Carolina Melo-Arévalo, eds (Bogotá, D.C.: Gliphos, 2019) at 117 [La Mesa, *Causa Justa: Argumentos*]. See also Elena Prada et al, "Embarazo no deseado y aborto inducido en Colombia: Causas y Consecuencias" (2011) Guttmacher Institute, online: <https://www.guttmacher.org/es/report/embarazo-no-deseado-y-aborto-inducido-en-colombia-causas-y-consecuencias>.
[300] Ministerio de Salud y Protección Social, *supra* note 248 at 19.
[301] See Women's Link Worldwide, "Cifras - Aborto en Colombia", (2020), online (pdf): <www.womenslinkworldwide.org/files/3132/cifras-aborto-en-colombia.pdf> [Women's, "Cifras"]. See also La Mesa, *Causa Justa: Argumentos*, *supra* note 299 at 115.
[302] Women's, "Cifras", *supra* note 301; La Mesa, *Causa Justa: Argumentos*, *supra* note 299 at 48–49.

Fourth, the documented illegal barriers that third-parties (doctors, judges, etc.) imposed on women and girls to deny or impede access to the I.V.E. exemplified the fact that women's decision about whether or not to end a pregnancy was in reality not their own but subject to the oversight, validation and approval of others.[303] In other words, the barriers documented illustrated that the *causales*-based model undermined women's moral capacity to decide about their bodies, their reproduction and their life plan.

Confronted with these sobering facts and evidence, Ana Cristina González Vélez – co-founder of LaMesa[304] – fervently believed that the ongoing criminalization of abortion lay at the root of these realities and barriers. She was convinced that the total elimination of the crime of abortion from the Criminal Code was the *cause* the women's right movement needed to pursue. A *cause* that LaMesa believed was *just* and necessary and that, in the words of LaMesa's spokesperson, was "a return to the origins of LaMesa's mission": the decriminalization of abortion in Colombia.[305] To advance on their renewed mission, LaMesa called on civil society organizations, women's rights defenders, feminists collectives, activists, service providers, academics and other social actors to come together to fight for women's liberty, equality and full citizenship.[306]

This call led, in 2017, to the founding of *CausaJusta*,[307] a feminist movement and collation, now composed of over 100 civil society organizations and more than 130 activists.[308] At its core, *CausaJusta* sought to ignite a public debate about abortion on the basis of well-researched and evidence-based arguments. As González-Vélez consistently reiterates, *CausaJusta* wanted to "change the terms of the debate about abortion" and "create a national conversation on [women's]

[303] La Mesa, *Causa Justa: Argumentos*, *supra* note 299 at 85–86.
[304] Causa Justa Por el Aborto, "Pioneras", online: *Causa Justa Por el Aborto* <causajustaporelaborto.org/pioneras>.
[305] Conducted by author, "Interview with LaMesa", *supra* note 239.
[306] "Quiénes Somos", online: *Causa Justa Por el Aborto* <causajustaporelaborto.org/quienes-somos-2>.
[307] "CausaJusta", *supra* note 23.
[308] See Causa Justa Por el Aborto, "Causa Justa por el Aborto (@causajustaco)", online: *Twitter* <twitter.com/causajustaco> at bio.

own terms"; a conversation that would allow society to question the appropriateness of the criminal law to regulate abortion and that would also advance abortion's social decriminalization.[309]

To generate this public debate, *CausaJusta* sought, foremost, to thoroughly craft arguments that demonstrated why the continued existence of the crime of abortion was inefficient, disproportionate and unjust.[310] Through the work of an inter-disciplinary group of professionals, *CausaJusta* assembled over 90 evidence and human rights-based arguments.[311] Importantly, these arguments were not only of legal nature. *CausaJusta* knew that the persuasiveness of an argument depended on the audience and so the arguments developed also related to issues of public health, bioethics, democracy, the role of the laic State, the purpose of the criminal law, and the human rights framework.

In addition to the construction of new arguments, *CausaJusta* devised an ambitious and holistic strategic plan. *CausaJusta* sought to produced new knowledge in support of its innovative arguments; aimed to construct political messages and communication campaigns; planned to engage in pedagogy to position *CausaJusta*'s mission within different audiences; worked to analyze the political context and map the treatment of sexual and reproductive rights within the main political and judicial bodies; and worked to advance a legal and advocacy strategy.[312] In other words, although *CausaJusta* knew that having a more progressive normative framework was a first important step in achieving social change, pursing a legal action was never the only objective.[313] At the start, *CausaJusta* did not even know which legal forum would be the best one to advance a claim for the total decriminalization of abortion, nor *when* this should be done.

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[309] La Mesa, *Causa Justa: Argumentos*, *supra* note 299 at 9 & 13; El Lunes, Mesa Capital, "Despenalización del aborto", (15 November 2021), online (video): *Youtube* <youtube.com/watch?v=qlwDkUGdcSU> at 00h16m50s.
[310] La Mesa, *Causa Justa: Argumentos*, *supra* note 299.
[311] *Ibid*.
[312] Conducted by author, "Interview with LaMesa", *supra* note 239. As LaMesa spokesperson explained, these are the 5 prioritized areas of work out of the twelve areas of work of *CausaJusta* .
[313] Conducted by author, "Interview with CRR", *supra* note 231.

However, in 2019, the strategic legal path became clearer. An anti-abortion rights lawyer brought a constitutionality demand requesting that Colombia's abortion framework return to an absolute criminalization model. While the CCC dismissed the demand for lack of compliance with form and procedural requirements, there were signs that some judges were, contrary to what the demand sought, inclined to issue a decision that would liberalize abortion further.[314] Such an opening within the bench, coupled with the reality that Congress remained an unviable and unwilling forum to pursue a progressive abortion bill, even 14 years after Judgment C-355/2006,[315] positioned the constitutional litigation process as a promising course of action to ignite the legal and social mobilization *CausaJusta* sought.

The legal strategy and how *CausaJusta* mobilized around such legal action, was exceptional. In the discussion that follows, I will explain why, highlighting the discursive impacts of the legal demand (subsection 4.2) and then of the CCC's Judgment C-055/2022 (subsection 4.3).

4.2 *Causa Justa*'s innovative legal demand

Having decided on the legal forum, LaMesa and four other allied organizations – the *Center for Reproductive Rights*,[316] *Catholics for the Right to Choose*,[317] *Women's Link Worldwide*,[318] and *The Medical Group for the Right to Choose*[319] (hereinafter, "**plaintiff organizations**") – got together to conceive and draft an action of unconstitutionality that would liberalize abortion in Colombia. On September 16, 2020, after a year or more of work, twelve of *CausaJusta's* spokespersons presented before the CCC an unconstitutionality claim.[320] On the basis of strong,

[314] González-Vélez referred that it was in that moment that CausaJusta realized an unconstitutionality demand could be the means to advance the cause. See "Las duras detrás de la demanda que despenalizó el aborto hasta la semana 24", *El Espectador* (27 February 2022), online: <elespectador.com/judicial/las-herederas-de-una-lucha-por-los-derechos/?fbclid=IwAR2XoHsD_IMIUrGCYURC7LKPVa-yRHbTIp42gdKy3cMVA8JS901XnNMDO4s> ["Las duras"].
[315] Conducted by author, "Interview with CRR", *supra* note 231. As the CRR spokesperson said, Congress showed no political will to ever regulate abortion outside of the criminal law.
[316] "Center for Reproductive Rights", online: <reproductiverights.org>.
[317] "Católicas por el Derecho a Decidir", online: <cddcolombia.org>.
[318] "Women's", *supra* note 166.
[319] "Colombia (Grupo Médico por el Derecho a Decidir)", online: *Global Doctors For Choice* <globaldoctorsforchoice.org/colombia>.
[320] Causa Justa Por el Aborto, "Demanda de inconstitucionalidad", *supra* note 294.

diverse, innovative and empirically-based arguments, the demand sought a declaration of invalidity of Article 122 of the Criminal Code.

As with the legal demand presented by Roa in 2006, *CausaJusta*'s spokespersons, who were Colombian citizens 'in exercise', had standing to present this legal demand since the Political Constitution of Colombia enables any citizens to challenge the constitutionality of any law before the CCC.[321] However, since Article 122 was the same provision that had already been subject to constitutionality review in 2006, the plaintiff organizations needed to demonstrate to the CCC, firstly, that the principle of *res judicata* did not apply. To achieve this, the plaintiff organizations had to establish that (i) the norm challenged was not the same, and/or (ii) the constitutional "charges" – the constitutionally protected rights argued to be infringed – where different. The plaintiff organizations presented arguments on both prongs, as I will highlight in turn.

4.2.1 The normative re-signification of abortion's regulation in Colombia

On the first prong, the plaintiff organizations contended that while the text of Article 122 had not changed, the provision was no longer the same given the normative framework in which it was now inserted. The starting point of this claim was that the right to the I.V.E was recognized by the CCC after 2006 and that, since then, this right had been substantially developed both with respect to its content and the corresponding State obligations. To this end, the demand highlighted that in the 14 years following Judgment C-355/2006, a vast number of laws, regulatory measures, public policy documents and constitutional and administrative decisions developed, protected and guaranteed this right, all of which now co-existed with the criminal provision.[322] This, the plaintiff organizations argued, meant that the normative framework regulating abortion in Colombia had changed from a "partial decriminalization based on a legal indications model as established by

[321] *Constitución Política de la República de Colombia*, *supra* note 172 arts 241(4), 242(1).
[322] Causa Justa Por el Aborto, "Demanda de inconstitucionalidad", *supra* note 294 s V.1.1 at p. 10.

Judgment C-355/2006", to a "partial legalization of the right to voluntarily interrupt a pregnancy" where accessing an abortion under the legal indications was now considered a fundamental right.[323]

It is worth noting that the plaintiff organizations explicitly highlighted the normative significance of the difference between *decriminalization* and *legalization*. Notably, the plaintiff organizations emphasized that the latter not only implied that a conduct was legal but also required active State interreference, through laws and regulations, to protect and guarantee the specific conduct, in this case access to the I.V.E.[324]

I believe this subtle but important differentiation also has significant discursive value. Particularly, the association of the word *legalization* to the voluntary interruption of pregnancy places abortion access under the light of *legality* as opposed to *criminality.* The difference is clearly normative, but under a discourse analysis, the fact that this differentiation, or rather explicit clarification by the plaintiff organizations, is made within in the constitutional litigation process also signifies a purposive step to deconstructing the negative social meaning of abortion as crime.

In fact, even if the CCC had not liberalized abortion further in Judgment C-055/2022, but had, at least, acknowledged that the normative framework in Colombia was now one of partial legalization, the discursive gain would have been significant. As state by Lawrence Lessig, "[t]he more [the framings of an issue] appear natural, or necessary, or uncontested, or invisible, the more powerful or unavoidable or natural social meanings drawn from them appear to be."[325] In the case of abortion, the more abortion access is uncontestably understood and accepted as legal, the more

[323] *Ibid.*
[324] *Ibid.*
[325] Lawrence Lessig, "The Regulation of Social Meaning" (1995) 62:3 U Chi L Rev 943 at 960–961.

abortion's social meaning will shift. In this sense, from their first arguments, the plaintiff organizations already aimed to renew the understanding of abortion's framework in Colombia.

4.2.2 The construction of innovative constitutional law arguments

On the second prong, the plaintiff organizations presented six "constitutional charges" which they argued were new or substantially different from those raised in the 2006 legal action. The premise of all arguments was that the continued existence of the crime of abortion under Article 122, despite Judgment C-355/2006's conditioning of the provision's applicability, violated specific dimensions of rights that had not been analyzed before by the CCC or infringed rights that the CCC had all together not considered before. These six "constitutional charges" argued the violation of:

(i) the right of women, girls, adolescents and people with reproductive capacities to access the I.V.E, as demonstrated by the countless barriers that had been documented which effectively impeded access to reproductive health information and abortion services under the *causales*-based model. This right was argued in connection with the right to equality (Article 13 of the Constitution), given the disproportionate impact that abortion's inaccessibility has for those persons in situation of vulnerability, as was also demonstrated by the evidence;[326]

(ii) the right of women, girls, adolescents and people with reproductive capacities to health (Article 49 of the Constitution), including their sexual and reproductive health, considering that the continued existence of the crime of abortion and the multiple barriers women encounter in the access-route dissuaded women from seeking care at health institutions putting their lives and health at risk. This right was argued in connection to the right to equality as well, given that, as the data showed, the rates of maternal mortality and

[326] Causa Justa Por el Aborto, "Demanda de inconstitucionalidad", *supra* note 294 s VI.1 at pp 39ff.

complications due to unsafe abortions or lack of access to care impacted, disproportionately, women in vulnerable situations;[327]

(iii) the right to equality (Article 13 of the Constitution), to the I.V.E, and to health (Article 49 of the Constitution) of women in an irregular migration status, considering the massive migration of Venezuelans to Colombia and the lack of protections afforded to them;[328]

(iv) the right of healthcare workers to freedom of profession (Article 26 of the Constitution), considering that the persistent threat of criminalization and/or of doing something that was illegal, inhibited practitioners from offering access to the I.V.E., especially in cases where they were unsure about the legal ground.[329]

(v) the right of women, girls, adolescents and people with reproductive capacities to freedom of conscience (Article 18 of the Constitution) and the principle of the Laic State insofar as the partial decriminalization model not only impeded women from taking an informed decision about their reproductive capacities, but more crucially, imposed a moral decision on them that was not in accordance with their own conscience and beliefs;[330] and

(vi) the constitutional principles of criminal law's purpose insofar as the evidence demonstrated that the crime of abortion was inefficient (it did not prevent abortions), disproportionate (it impacted disproportionately women in vulnerable situations) and unjust (the sanction on women's life and rights was disproportionate to the harm the sanction sought to prevent).[331]

While the CCC did not accept all six charges, this overview of *CausaJusta*'s legal argumentations shows that the need to devise constitutional arguments different from those argued in 2006 led to the broadening of the legal rationale. The traditional rights to privacy, autonomy,

[327] *Ibid* s VI.2, at pp 69ff.
[328] *Ibid* s VI.3, at pp 91ff.
[329] *Ibid* s VI.4, at pp 100ff.
[330] *Ibid* s VI.5, at pp 109ff.
[331] *Ibid* s VI.6, at pp 116ff.

and reproductive health, while still present, were not the center of the claims. Rather, *CausaJusta*'s legal arguments were innovative in two main dimensions that I believe are also discursively radical and noteworthy: (1) they employed *equality* as a main framework of analysis, and (2) they argued for the recognition of women's *moral* capacity, a novel framing of this right. Although, as discussed in subsection 4.3.2, the CCC develops both dimensions in Judgment C-055/2022, I will briefly analyze *CausaJusta*'s specific framing first.

4.2.2.1 The equality-based framework

Four of the six claims of *CausaJusta*'s demand heavily focused on the inequities of abortion access that persisted in Colombia even after 14 years of having progressive jurisprudence and a legal grounds model. Armed with reliable data and evidence – both official and self-generated – *CausaJusta's* showed that accessing abortion services, even within the *causales*, was extremely difficult for women and girls in vulnerable situations, such as rural and migrant women; women of low socio-economic backgrounds; women with no schooling; women trapped in cycles of violence; women living in areas affected by the armed conflict; and, notably, women at the intersection of many of these vulnerability factors.

This focus on the (in)equality dimension of abortion access in Colombia echoes the feminist critiques of the liberal rights discourse discussed in chapter 2 (subsection 2.1.2), and brings a RJ approach within Colombia's constitutional process. Indeed, by constructing legal arguments that do not give primacy only to the narrative of individual choice, privacy and autonomy, but that rather situate women's capacity to make such choices within their socio-economic context, *CausaJusta*'s demand advanced three feminist and RJ ideas.

First, the demand makes clear that, despite having a somewhat progressive framework – such as the *causales*-based model Colombia had – the spotlight must be placed on the functioning of

the whole state apparatus which is what effectively operates to impede access to the I.V.E. The radical turn of this approach is that it showcases, through evidence of the multiple barriers, that, in practice, women's capacity to make a real and informed choice – even under a framework deemed progressive – is practically nullified when there are no minimum socio-economic safeguards.

Second, since the issue is therefore not (only) a matter of individual choice, the demand transfers (back) to the state the responsibility to ensure that abortion services are in fact available, accessible, appropriate and of quality. Importantly, the demand uses the empirical knowledge accumulated by social actors to make the case that the legal grounds model is insufficient and thus that the elimination of the crime of abortion is the first and necessary step for the State to truly fulfill this responsibility.

Finally, the demand showcases that the criminalization model not only produces negative impacts on maternal mortality rates and women's health (the public health discourse), but has, as well, a pervasive socio-economic effect in society. The demand highlights, on one hand, the impacts of the stigma associated with accessing an abortion, which, by the fact of still being a crime, continues to be perceived in the social imaginary as socially reproachable. On the other hand, the demand also emphasises the socio-economic consequences that ensue from being forced into an undesired motherhood. Not only does maternity curtail women's life plan, but also hinders their socio-economic and political participation. In essence, *CausaJusta's* demand positions within the constitutional law framework what Palacios has described as "the social and economic sanctions placed upon pregnancy and motherhood that are not contemplated in the life/choice paradigm".[332]

4.2.2.2 New frames to advance abortion's liberalization

[332] Palacios Zuloaga, *supra* note 85 at 906.

Two of *CausaJusta*'s constitutional charges were based on rights not typically invoked in abortion cases, at least not from the pro-abortion rights position. These are the claim relating to the healthcare workers' freedom of profession and the claim relating to women's right to freedom of conscience. While the former was not accepted by the CCC for not having been sufficiently specified or substantiated,[333] the claim based on women's freedom of conscience was accepted and developed extensively in Judgment C-055/2022. In subsection 4.3.2.2 I will discuss in great detail the discursive significance of the recognition by the CCC of women's *moral* capacity to make decisions regarding whether to interrupt a pregnancy and on how motherhood as a life choice engages women's most intimate moral mandates. At this point, however, I will only note that *CausaJusta*'s framing of the freedom of conscience argument was innovative and radical insofar as this right is normally invoked by healthcare providers as a means to oppose to or deny the service.[334] This irony is not without implication as it signifies the reappropriation by women of a right previously used to hinder access to a reproductive health service that is essential to women.

4.2.3 The production of new knowledge in support of *Causa Justa*'s demand

As a final aside on *CausaJusta*'s demand, it is worth noting that the progressive legal argumentation provided by *CausaJusta* is characterized by the judicious and sustained use of evidence-based studies and official data. Building on 14 years of experience and on the dialogic relationship formed with the CCC that was discussed in the previous chapter, the plaintiff organizations produced *new* knowledge[335] demonstrating that the continued existence of the crime of abortion was inefficient, had negative impacts on women's rights and for public health, and was used to criminalize women.

[333] See *Judgment C-055/22*, *supra* note 10 at paras 146–150, 154–156.
[334] This "irony" was noted by the CRR's Spokesperson during the interview. Conducted by author, "Interview with CRR", *supra* note 231.
[335] Conducted by author, "Interview with LaMesa", *supra* note 239.

Of particular significance is the in-depth research that LaMesa did in partnership with renowned feminist academic Isabel Cristina Jaramillo regarding the state's criminal abortion policy and practice. The research revealed, as mentioned in subsection 4.1, that women and girls in Colombia were being criminalized for the voluntary termination of their pregnancies and that these criminalization practices disproportionately impacted women in the most vulnerable situations, such as rural women or girls who were victims of sexual violence.

The findings of the research were so astonishing and of such public importance that they not only served as the basis of several claims in *CausaJusta*'s demand, but they subsequently became the substance of a publication.[336] This publication sought to confront Colombia's society with the disquieting reality of an active state criminal policy and aimed to foster a deep questioning about the use of criminal law to regulate abortion – one of the chief objectives of *CausaJusta*. Beyond challenging the belief that the crime of abortion in Colombia was only symbolic, this research and publication represent a critical means to combat the "information deficit" that abortion's criminalization creates, as people do not speak about abortion when it is a crime. Crucially, it also shows the "distortion of public understanding and perceptions of abortion"[337] that the crime of abortion perpetuates.

All in all, supporting the now "provable" realities with data and evidence – the use of which the CCC had already legitimatized – and making human rights claims about those realities within the constitutional law language of the CCC – an institutional framework that is highly respected in Colombia – constituted a brilliant means of creating the necessary cultural resonance for

[336] See Isabel Cristina Jaramillo Sierra, Nicolás Santamaría Uribe & Wilson Forero Mesa, *La Criminalización del aborto en Colombia*, La Mesa por la Vida y la Salud de las Mujeres (Bogotá, D.C.: Gliphos, 2021).
[337] Joanna N Erdman & Rebecca J Cook, "Decriminalization of abortion – A human rights imperative" (2020) 62 Best Practice & Research Clinical Obstetrics & Gynaecology 11 at 18.

CausaJusta's radical demand of abortion's total liberalization in Colombia. The relative success of this strategy is reflected in Judgment C-055/2022, to which I now turn.

4.3 Discourse analysis of Judgment C-055/2022

On February 21, 2022, the CCC issued Judgment C-055/2022[338] holding that abortion would no longer constitute a crime during the first 24 weeks of gestation. With this decision women, adolescents, girls, and people with reproductive capacities in Colombia can now access abortion services on request legally, freely and without fear of criminal prosecution up to 24 weeks of gestation. At least in theory, as that is what the Judgment C-055/2022 mandates. The CCC also held in its judgment that the three exceptions established in its 2006 landmark decision would continue to apply *after* the 24-week gestational limit. This means that after those 24 weeks abortion should still be accessible when: (i) the pregnancy constitutes a risk to their life or health; (ii) there is a serious fetal malformation making inviable life outside the womb; and (iii) the pregnancy is the result of rape, incest or forced insemination.

This historic judgement came 523 days after *CausaJusta*'s demand had been presented. Before analyzing the merits and discursive impact of the decision, it is worth taking stock of this case's extensive procedural process[339] as it evidences the normative magnitude of the final decision.

4.3.1 The meaning of the lengthy process

The constitutional process in an unconstitutionality demand is normally meant to be realized in a maximum of 120 days.[340] In this case, the process was delayed almost by a factor of five given the numerous requests presented by anti-abortion groups seeking either the dismissal of the

[338] *Judgment C-055/22*, *supra* note 10.
[339] See *Ibid* s III.
[340] The term of 120 days is composed of: 30 days for the National Prosecutor's Office to give its concept, 30 days then for the Judge to present a draft decision, and then 60 days for the Court to adopt the decision. See *Decreto 2067 de 1991*, Presidencia de la República (4 September 1991) arts 7–8.

demand,[341] or the recusation of various judges, and even the whole Chamber.[342] Of note is the recusation against Judge Alejandro Linares presented in November 2011, a year and two months after the presentation of the demand and at a moment when the CCC was ready to deliberate on the merits of case. This recusation was successful which meant that an *ad hoc* judge had to be named to replace him in the deliberations of merits the case, all of which ended up delaying the process by an additional four months.[343]

While the purpose of this subsection is not to analyze the procedural history of this case, I present the aforementioned highlights to show the fervent opposition and the visceral reactions that abortion, in general, and its liberalization, in particular, still ignite in Colombia. Being an issue tethered to a deep sense of morality, it is unsurprising that a vast number of resources and time were levied against *CausaJusta*'s demand. *CausaJusta*, in turn, vigilantly accompanied the legal process, expending, as well, significant time and human, technical and economic resources to combat the delays and opposition.

To mount and defend its case, *CausaJusta* used various legal and non-legal tools. For instance, *CausaJusta* developed a rigorous legal strategy, responding in due course to each dismissal or recusation request and amassing a robust *amicus curiae* strategy with submission in favour of the demand presented by renowned organizations and United Nations Special Rapporteurs. In fact, the CCC received multiple third-party interventions, both in support of and against *CausaJusta*'s demand.[344] These interventions, as the CCC says in the judgment, "evidence a widespread public

[341] *Judgment C-055/22, supra* note 10 s III.4.
[342] *Ibid* s III.5.
[343] Linares was known for being in favor of abortion's liberalization and he was accused of having advanced his position on this specific case in an interview with the media. After having to name an *ad hoc* judge to untie the Chamber's vote on the recusation, Linares was ultimately deemed to be impeded in the process. See *ibid* at paras 73–78.
[344] *Ibid* s IV.

discussion and reflect the pluralism and diversity of approaches to the criminal regulation of voluntary abortion in Colombia".[345]

CausaJusta also accompanied the constitutional process with massive mobilizations and demonstrations ("plantones", in Spanish) in front of the CCC, social media campaigns and a constant presence on the media. These non-legal strategies are the topic of chapter 5. Before analyzing the significance of those strategies, I turn to the analysis of Judgment C-055/2022.

4.3.2 Judgment C-055/2022: the avant-garde turn of Colombia's abortion framework

After having established that the *res judicata* principle did not apply because, as argued by the plaintiff organizations, "the normative content of Article 122 of Law 599 of 2000 ha[d] changed",[346] the CCC turned to the merits of the claims. As mentioned, the CCC did not accept all six of *CausaJusta*'s constitutional charges. In fact, it reformulate some of the charges and ultimately accepted and addressed the following four main claims:[347]

(i) the disregard for the obligation to respect the right to health and the reproductive rights of women, girls and persons with the capacity to be pregnant (Articles 49, 42 and 16 of the Constitution);

(ii) the violation of the right to equality of women in situations of vulnerability and in an irregular migratory situation (Articles 13 and 93 of the Constitution);

(iii) the violation of the freedom of conscience of women, girls and persons with the capacity to be pregnant, especially with respect to the possibility of acting according to their convictions vis-à-vis their reproductive autonomy (Article 18 of the Constitution); and

[345] *Ibid* at para 86. [Translation by author].
[346] *Ibid* at para 109.
[347] See *ibid* at paras 170, 258. [Translation by author]

(iv) the incompatibility of the crime of abortion with the preventive purpose of criminal law and the failure to satisfy the constitutional requirements respecting the *ultima ratio* nature of criminal law (preamble and articles 1 and 2 of the Constitution).

While the Judgment C-055/2022 as a whole constitutes one of the most progressive normative statements for abortion access not only in LAC, but also in the world,[348] in the discussion that follows I will focus on two specific aspects of the decisions that I believe have significant discursive value: first, the recognition that the crime of abortion creates social harm and exacerbates social inequality, a transversal theme within the CCC's reasons; and, second, the recognition of women's moral agency and the paramount importance of respecting their decisional autonomy in the context of the right to the I.V.E., the third constitutional charge.

4.3.2.1 From the public health frame to a reproductive justice paradigm

There are many instances in Judgement C-055/2022 where the CCC progressively reframes abortion access in line with international human rights developments. In this part, I will analyze particularly what I see as a discursive shift from "an exclusive focus on saving women from unsafe abortion[s]"[349] – the public health frame present in the 2006 decision – to the "recogni[tion of] the broader social effects of criminalization that endanger [women]"[350] – a frame that considers the social effects of criminalization and that I believe echoes the RJ paradigm.

This discursive shift does not happen abruptly in the decision, nor does it imply that the CCC foregoes of the public health frame altogether. On the contrary, from the start of its analysis of the first constitutional charge (the right to health and reproductive rights), the CCC re-acknowledges

[348] Colombia now stands with the most progressive countries but even within this group (blue-colored in the map), Colombia is one of the few that ensures abortion on request up to the 24 week of gestation. See CRR, "World's Abortion Laws", *supra* note 6.
[349] Erdman & Cook, *supra* note 337 at 18.
[350] *Ibid*.

the public health impacts that ensue from abortion's criminalization. Recalling that access to the I.V.E, at least under the legal indications model, "is indispensable to the ensuring the dignified life of women, girls and people capable of gestating" (as established in the 2006 decision), the CCC also reiterated that "abortion's criminalization […] pushes women to unsafe and clandestine abortions, which translates into a serious public health problem with incidence on the maternal mortality and morbidity rates".[351] On this basis, the CCC restates that the partial decriminalization model – as the only means chosen by the State to protect the life in gestation despite there being other alternative means to achieve this objective – constitutes a violation of the right to health and women's reproductive rights.[352]

The recognition of the public health impacts of abortion's criminalization as "a factual reality that intensely impacts fundamental rights",[353] is not only important because it corroborates what was said in Judgment C-355/2006 and what social actors have documented for years. It is also meaningful because it validates women's experience in the context of unsafe and clandestine abortion and pays tribute to those who have died. Additionally, the re-acknowledgment of the public health frame is significant because, following the 2006 decision, conservative anti-abortion groups questioned the factuality of the data presented by social actors about the incidence clandestine abortions. The endorsement of the CCC of the actualized data presented by *CausaJusta* and by government entities such as the Health and Social Protection Ministry, also negates the view that the criminalization of abortion produces no harms to women.

From its public health analysis, the CCC moved to the equality constitutional charge, where it evidenced a significant advancement in the rights discourse employed. Relying on the data,

[351] *Judgment C-055/22, supra* note 10 at 288. [Translation by author].
[352] *Ibid* at para 289.
[353] *Ibid*. [Translation by author].

evidence and studies presented in the process,[354] the CCC turned its focus to the disproportionate impacts that the *causales*-based model has on women and girls who are in vulnerable situations. Concretely, the CCC recognized that the population most affected includes women and girls who have "less probabilities of accessing state-provided sexual and reproductive health services, whether this be sex education, family planning [services], or [services] for the voluntary interruption of their pregnancies in the circumstances established in Judgment C-355/2006".[355] More crucially, the CCC also acknowledged the compounded ways in which discrimination of marginalized women and girls operates. In the words of the CCC: "[the] women denounced for the crime of consensual abortion and those who suffer the most serious health consequences due to the irregular practice of this procedure are [those] exposed to intersectional factors of discrimination that increase their vulnerability".[356]

Within this framing, the focus clearly moved away from the narrow understanding of abortion as a matter relating exclusively to the woman's individual choice, to an understanding of abortion as a fundamental health service that is only and truly an "option" for women and girls when a multitude of factors and conditions are properly aligned. Indeed, through this discursive shift the CCC recognizes that depending on their socio-economic context women and girls may not have access to the necessary reproductive health education, information and services to exercise "responsibly their sexual and reproductive rights or to access the I.V.E".[357] Put differently, the CCC is acknowledging the systemic ways in which the state apparatus and its failures operate to perpetuate discrimination, oppression, marginalization and violence.

[354] See *ibid* at paras 350–361.
[355] *Ibid* at para 368. [Translation by author].
[356] *Ibid* at para 349. [Translation by author].
[357] *Ibid* at para 364. [Translation by author].

As I will show next, this reframing of abortion (in)accessibility and its impacts is discursively significant because it employs an equality approach to abortion rights, on the one hand, and because it incorporates, albeit not explicitly, the RJ framework as a means to approach abortion in Colombia, on the other hand.

4.3.2.1.1 The substantive equality approach and indirect discrimination analysis

The shift to seeing abortion through the equality framework is realized through the employment of an indirect discrimination and a substantive equality analysis. As seen in chapter 3, the CCC had already recognized, and sought to remedy, the multiple barriers that women faced when seeking abortion services. Yet, in Judgment C-055/2022 the CCC directly acknowledges the differential impact that a partial criminalization model has on women and girls "who are exposed to more than one factor of vulnerability".[358] Importantly, the CCC "pauses" in its judgment to name all these women, girls and pregnant people, saying that those most affected are the ones:

> "…who live in the rural sectors or remote communities; those with disabilities; minors who are out of school; those who are forcibly displaced, refugees, irregular migrants or those who are homeless; those institutionalized or in detention; indigenous women, Afro-descendants or members of the Roma population; and those who have already had a pregnancy and are heads of households."[359]

Through this intersectional focus, the CCC sought to correct the exacerbation of "underlying inequities associated with access to health services and treatments" that can occur with the "judicialization of health rights",[360] which is how the right to the I.V.E came to be. In fact, as Yamin argued in 2019, "absent in the expansive structural approach[, adopted by the CCC in health rights reform generally, was] a gender perspective regarding the failures of the health system to

[358] *Ibid* at para 339. [Translation by author].
[359] *Ibid*. [Translation by author].
[360] Alicia Ely Yamin, "The Right to Health in Latin America: The Challenges of Constructing Fair Limits" (2019) 40:3 U Pa J Intl L 695 at 720.

respect and protect reproductive health…".[361] With Judgment C-055/2022, the CCC attuned itself to the social justice impacts of the unequal access to reproductive health, generally, and to the voluntary interruption of pregnancy, in particular.

4.3.2.1.2 The incorporation of a reproductive justice paradigm

While using the equality-based and intersectionality approach clearly echoes a foundational premise of the RJ paradigm,[362] Judgment C-055/2022 also incorporated the RJ framework in another crucial way. As it must be recalled, in addition to advocating for women's right *not* to have children, the RJ framework also advocates for: (i) the right to bear children and the conditions where to have these children, including culturally attuned birthing plans and ensuring birth justice; and (ii) the right to raise children in safe and healthy environments, free from state, socio-economic, or other forms of violence.[363]

Judgment C-055/2022 materialized the essence of these two latter pillars through the CCC's recognition of the broader societal implications of forced motherhood, especially for those women who are in dire socio-economic situations. In the powerful words of the CCC:

> "…criminalization increases the vulnerability of those whose human dignity is already affected or threatened by this situation (of vulnerability). And the impact not only is [felt in relation] to the criminal sanction, but also [with regard to] the decision to assume [a] motherhood for socioeconomically vulnerable women[. The impact of this decision] is not only felt by these women as individuals, but also by their families, who, in many cases, must take charge of feeding, raising and educating a new member of the family, given the decrease in the woman's labor force in proportion to her new responsibilities as a mother".[364]

[361] *Ibid* at 724.
[362] Loretta Ross et al, *Radical reproductive justice: foundations, theory, practice, critique*, 1st feminist press ed (New York, NY: The Feminist Press at the City University of New York, 2017) at 20 (saying that "RJ is an inherently intersectional approach based on universal human rights"). See also pp 16 & 19.
[363] See UNFPA, "What's Next? ICPD Through the Lens of Reproductive Justice", (14 October 2020), online (video): *Youtube* <youtube.com/watch?v=qEma4fPUeFA> (where Loretta Ross, a co-mother of the RJ framework, explains what the RJ entails at 00h14m56s).
[364] *Judgment C-055/22*, *supra* note 10 at para 365. Underlying added. [Translation by author].

In my view, this passage evidences the consequences of what these two latter pillars seeks to prevent: an unwanted maternity under undignified conditions and the added socio-economic burden and prejudicial impacts that such a motherhood will have for the children, the mother, the family and the community as a whole.

By coupling *CausaJusta*'s social justice claims with the reproductive rights constitutional framework, the CCC seems to embrace the RJ paradigm "radicall[y] shifting 'choice' to 'justice'" and locating "women's autonomy an self-determination" beyond "the limited concepts of individual rights and privacy".[365] Of course it must be noted that the United States constitutional landscape – where RJ first originated – is widely different from the Colombian constitutional framework and, indeed, the first expansion of abortion access in Colombia was not premised exclusively on the privacy doctrine but rather was based on the purposive interpretation of the inherent right to human dignity. However, Judgment C-055/2022 clearly proposes a more RJ attuned framing of abortion' (in)accessibility; a framing where marginalized communities are at the center of the analysis and where a link is made between the individual and the community, two foundational components of the RJ framework.[366]

This overall shift in discourse is powerful and important in a country with vast social and income inequalities.[367] In sharp contrast with how in the past "what women need and want with regard to reproduction [had been] assumed, interpreted on the basis of insufficient evidence, and disregarded",[368] Judgment C-055/2022 uses concrete data and evidence, which for the most part

[365] Ross et al, *supra* note 362 at 18.
[366] See *ibid* at 19.
[367] See e.g. "Colombia - Overview", online: *World Bank* <https://www.worldbank.org/en/country/colombia/overview>; Arturo Chang & Laura García-Montoya, "Colombia's 'Progress' Leaves Millions Behind", (18 July 2021), online: *Foreign Policy* <foreignpolicy.com/2021/06/18/colombia-protests-inequality-black-indigenous-citizens-progress>; Martiza Serrano, "Despite economic growth, Colombia continues to be one of the most unequal countries in the world", (13 February 2018), online: *Periódico UNAL* <unperiodico.unal.edu.co/pages/detail/despite-economic-growth-colombia-continues-to-be-one-of-the-most-unequal-countries-in-the-world/>.
[368] Alisa Sánchez, "Population Discourse, Family Planning Policies, and Development in Colombia, 1960–1969" in Tanya Saroj Bakhru, ed, *Reproductive Justice and Sexual Rights* (New York: Routledge, Taylor and Francis Group, 2019) at 60.

was collected by social actors on the basis of women's real experiences and thus recognizes these women's lived realities. What is more, the CCC acknowledges the differential impacts of a partial criminalization model and uses the evidence to call on the State to, "[r]ather than resorting primarily to criminalization, […] "promote and guarantee a public policy with a gender focus and an intersectional scope".[369] Of course, the concrete success of such a discourse shift is intimately tied to the social mobilization supporting the change[370] and to that I will turn in in chapter 5.

4.3.2.2 Freedom of conscience: a recognition of women's decisional and moral autonomy

The third constitutional charge accepted by the CCC relates to women's right to freedom of conscience. This right is enshrined in Article 18 of the Political Constitution of Colombia, which reads as follows:

> *Freedom of conscience is guaranteed. No one shall be molested on account of his [or her] convictions or beliefs, or compelled to reveal them, or compelled to act against his [or her] conscience*.[371]

In Judgment C-055/2022 the CCC explains that this right encompasses "the freedom of thought and of individual, voluntary and conscious action", allowing for every person to act and "regulate their life in line with their believes and convictions" that are not necessarily of a religious order.[372] The CCC highlights that in this context conscience refers to an individual's moral conscience, protecting the individual from having to act against their own moral judgment or own system of beliefs, always within the limits of the rule of law.[373] Whether an interference with this right is justified or not will depend, says the CCC, on the relative connection of the action concerned to "the bodily, physical and emotional integrity of the person claiming its protection and with his or

[369] *Judgment C-055/22, supra* note 10 at para 339.
[370] *Cf* Yamin, *supra* note 360 (making the claim that health justice can be a key tool in democratic processes if it is anchored in broader social struggles at 734).
[371] *Constitución Política de la República de Colombia*, *supra* note 172 at art 18. [Translation by author].
[372] *Judgment C-055/22, supra* note 10 at para 377. [Translation by author].
[373] See *ibid* at 378, 384.

her human dignity".[374] The more intense this connection, "the greater will be the protection of freedom of conscience".[375]

Turning to the specific conduct at hand – the voluntarily interruption of a pregnancy (or the continuance of such pregnancy) – the CCC explains that this decision is very personal and individual and is non-transferable. In the words of the court:

> "The decision to assume maternity, therefore, is (i) highly personal, because it impacts the life project of the woman, girl, adolescent or pregnant person who decides to continue and carry a pregnancy to term, not only during the period of gestation, but also beyond it; (ii) individual, because of the physical and emotional impact that the development of the pregnancy has on her life experience and her own existence; and (iii) non-transferable, because the autonomy of the decision to assume maternity cannot be transferred to a third party, except in exceptional cases....".[376]

Discursively, this passage is powerful because it highlights two crucial, but often neglected, considerations about pregnancy, childbearing and motherhood. First, the CCC recognizes that pregnancy and childbirth are experiences that not only alter significantly a woman's body, but also compromise women's physical and emotional health and expose them to grave risks of health complications or even death. Second, the CCC highlights that motherhood impacts a woman's life project *beyond* pregnancy and childbirth, deeply influencing her own experience in the world.

These realities – or rather the *drive* to avoid these life-altering experiences when not desired or in a woman's life plan – are the reasons why women have had abortions since ancient times. From a psychological evolutionary perspective, in fact, abortion has been considered "a natural and adapting choice" given its potentiality to "increase women's survival and success in a given

[374] *Ibid* at para 372. [Translation by author].
[375] *Ibid*. [Translation by author].
[376] *Ibid* at para 394. See also para 373-374. [Translation by author].

environment".[377] By holding that maternity is an intimate decision "closely linked to the system of personal values and ethical and religious convictions of those who can bear children and constitutes one of the main expressions of human nature",[378] the CCC emphasizes not only women's capacity to make such decisions but also the importance and inherent value of being able to choose the option that will benefit them the most in their context and environment.

After establishing that accessing an abortion or continuing with a pregnancy is a decision intimately dependent on a person's moral compass and life plan, the CCC turned to examining whether, in the case at hand, the crime of abortion constituted an unjustified interference with women's freedom of conscience. In its analysis, the CCC recognized, firstly, that "the possibility of being criminally and socially punished or sanctioned" for certain conduct was undeniably a factor that heavily interfered with a person's decision-making process.[379] The CCC then held that forced maternity as a result of the threat criminal sanction infringed a "woman, girl, adolescent or pregnant person's intimate and profound convictions, and even those of their partners, and, for the most part, substituted their right to choose who to live with and to define their life plan".[380] On the basis of these findings, the CCC finally held that "[t]he fact that the State categorically coerces a woman, girl, adolescent or pregnant person to carry a pregnancy to term at the risk of committing a criminal offence and, eventually, being subject to a criminal sanction…" is in clear "constitutional tension" with women's freedom of conscious notwithstanding the legitimate interests the criminal provision seeks to protect: a *potential* life.[381]

With the analysis of this constitutional claim, the CCC went beyond rejecting motherhood as an inescapable fate for women – as it did in Judgment C-355/2005. It also recognized the physical,

[377] Adair & Lozano, *supra* note 160 at 6.
[378] *Judgment C-055/22*, *supra* note 10 at para 395. [Translation by author].
[379] *Ibid* at para 390. [Translation by author].
[380] *Ibid* at para 399. [Translation by author].
[381] *Ibid* at 397. [Translation by author].

psychological and emotional labour of pregnancy, childbirth and motherhood, the impacts to a women's life experience beyond the point of childbirth, and how these processes – when unwanted – negatively disrupt on women's life project and even their partners and communities. These *new* considerations extend beyond the reproductive autonomy paradigm (the right to choose over one's own reproductive capacities). As I will elaborate next, these new considerations echo, in my view, a decisional and moral autonomy framework as well.

4.3.2.2.1 Respect for decisional and moral autonomy: ensuring women's own success

Friedman explains that decisional autonomy, or as she calls it the "procedural conception of autonomy", means the ability to make decisions or engage in "the right sort of reflective self-understanding or internal coherence" free from coercion or manipulation by others.[382] In the context of abortion decisions, "research has consistently demonstrated that women have strong decisional certainty, including relief and belief that they made the right decision after abortion".[383] Generally, the negative impacts of having an abortion come instead from the stigma and shame associated with the procedure and/or the belief that abortion is a sin or a crime.

Judgment C-055/2022 explicitly recognizes that the mere threat of the criminal sanction in the abortion context constitutes a form of coercion for women or pregnant capable persons. While the negative impacts that ensue from the crime of abortion is something that feminist activist and scholars had made known for a long time,[384] it is incredibly significant that the CCC acknowledges that the existence of the crime abortion hinders women's reflective and decision-making capacities and in turn interference with what can be considered women's decisional autonomy.

[382] Marilyn Friedman, "Autonomy, Social Disruption and Women" in Catriona Mackenzie & Natalie Stoljar, eds, *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (New York: Oxford University Press, 2000) 35 at 40. [Friedman, "Autonomy"].
[383] Adair & Lozano, *supra* note 160 at 9.
[384] See e.g. Cook, "Stigmatized Meanings", *supra* note 11.

Relatedly, personal autonomy, or as Friedman says, "something best defined by reference to moral autonomy[, …] involves acting and living according to one's own choices, values, and identity within the constraints of what one regards as morally permissible".[385] By articulating and supporting women's moral capacity to make decisions in the context of a life-altering process, such as pregnancy and motherhood, that align with women's personal life plan, beliefs, moral compass and convictions, the CCC gives pre-eminence to women's moral autonomy to choose their life path. In many ways, the CCC's reasoning is recognizing that the I.V.E is "a human universal and success-promoting strategy"[386] that women, as "empowered decision-makers",[387] assume as a means to ensure their own self-realization and which allows them to continue participating in society in their own terms. Considering these reflections, the CCC's development of women's right to freedom of conscience in the context of abortion, pregnancy and motherhood decisions clearly gives life to the decisional and moral autonomy paradigm within Colombia's constitutional law framework.

Furthermore, this development represents, as referred by *CausaJusta* spokespersons, a "symbolic reparation" to all those women who "accessed abortions in an undignified manner", meaning all those who had to subject their decision to the authorization of *others*.[388] By recognizing not only women's reproductive autonomy, but – as argued by *CausaJusta* – the importance of giving primacy to women's "biographic lives", as opposed to only their biological existence and capacities,[389] women no longer will need to justify their decision to access the I.V.E before a judge or a health professional.

[385] Friedman, "Autonomy", *supra* note 382 at 37.
[386] Adair & Lozano, *supra* note 160 at 10.
[387] *Ibid*.
[388] Conducted by author, "Interview with LaMesa", *supra* note 239.
[389] La Mesa, *Causa Justa: Argumentos*, *supra* note 299 at 87.

Finally, as mentioned in subsection 4.2.2.2, it is worth recalling that the right of freedom of conscience had been invoked consistently by those opposing abortion as means to curtail or difficult access. Astutely, *CausaJusta* reframed this right so that it would become an extension of a wider autonomy paradigm. The development of this claim in Judgment C-055/2022 undoubtedly constitutes a reconfiguration of the significance of freedom of conscience in the abortion context. The right to freedom of conscience now protects women's decisional and moral capacity to choose what is best for them. And that, is a radical shift.

4.3.2.3 Conclusion

While the holding of Judgment C-055/2022 fell slightly short of *CausaJusta*'s demand (that is, the complete repeal of the crime of abortion from the Criminal Code), the CCC's decision is incredibly progressive and places Colombia at the forefront of reproductive rights protections in the world.[390] Four crucial gains flow from the decision and reflect the advancements examined in the discourse analysis presented above.

First, as highlighted by *CausaJusta*'s spokespersons, it is notable that the CCC decriminalized abortion until week 24 of gestation. This generous timeframe puts Colombia at the avant-garde with respect to abortion's protection in the world, becoming one of the few countries allowing abortion on requests up to 24 weeks.[391] The broad gestational limit will also contribute greatly to diminishing the negative effects of the crime of abortion, notably: barriers to access, stigma and sanctions.[392]

Second, this expansive gestational limit, while chosen by the CCC on technical considerations about the fetus' "viability",[393] represents a countermeasure to the social injustices and inequities

[390] Conducted by author, "Interview with CRR", *supra* note 231; Conducted by author, "Interview with LaMesa", *supra* note 239.
[391] CRR, "World's Abortion Laws", *supra* note 6.
[392] Conducted by author, "Interview with CRR", *supra* note 231.
[393] See *Judgment C-055/22*, *supra* note 10 s 13.2 at paras 613-642.

the CCC recognized in its judgment. Considering the socioeconomic inequities within Colombia, the gestational limit aims at ensuring that women, girls and other pregnant capable people in situations of marginalization and at the intersection of different vulnerability factors have *enough time* to access this reproductive health service on request and without fear of criminalization. This substantive equality outlook, coupled with the examination of the negative social impacts of abortion's criminalization, produced – as mentioned above – a legal discourse shift and gives resonance to the RJ paradigm.

Third, *CausaJusta* spokespersons explain that the new legal framework also improves access to abortion especially with regard to the elimination of illegal barriers and obstacles.[394] As there is no longer a need to demonstrate the fulfilment of the conditions of a legal ground during the first 24 weeks of gestation, access to the I.V.E should only depend on the will of the woman or person with capacity to gestate. The removal of the authority of *others* – doctors, judges, etc. – to verify legal grounds, reaffirms, in the words of *CausaJusta* spokesperson, "the moral validity of women's decisions" over their own bodies, reproduction, lives and futures.[395] As explored above, this is most clearly embodied through the recognition – for the first time ever in Colombian constitutional law – that women's right to freedom of conscience is engaged when the State chooses to criminalize abortion. Echoing Erdman and Cook, through "the adoption of state measures on abortion that are designed to acknowledge and support the decisional autonomy, the dignity, and personhood of people when pregnant",[396] such as Judgment C-055/2022, Colombia's *new* abortion framework reflects and respects the most progressive IHRL standards.[397]

[394] Conducted by author, "Interview with CRR", *supra* note 231.
[395] Conducted by author, "Interview with LaMesa", *supra* note 239.
[396] Erdman & Cook, *supra* note 337 at 20.
[397] *Ibid*.

Fourth, *CausaJusta* spokespersons highlight the urgent call the CCC makes not only to Congress but also to the National Government to develop and implement, as soon as possible, a comprehensive public policy on sexual and reproductive health.[398] Notably, the CCC's call to the National Government evidences the frustrating reality that even though Congress has been called on since 2006 to regulate abortion, in particular, and sexual and reproductive health rights, in general, through a public policy, Congress has never had the will to do so.

The call to implement such integral policy further underscores the urgency of combating inequity in access, thus ensuring women, girls and other pregnant capable people can access abortion and other sexual and reproductive health services in conditions of equality and dignity. Moreover, the call evidences that the CCC understands abortion to be one service – albeit an overwhelmingly important one – within the full spectrum of sexual and reproductive health services that must be guaranteed so that women and pregnant capable people can make informed choices.

Overall, through the "legal [re]formulation of [women's real] experiences", including the conceptualization of innovative legal claims that reflected women's moral and decisional autonomy, *CausaJusta's* unconstitutionality demand was able to, as Schneider would say, "reshape theory based upon experience and experience based on theory" and ultimately assert a demand for change.[399] In line with the progressive feminist understanding of abortion as a social justice and democracy-impacting issue, Judgment C-055/2022 in fact restores women's decision-making capacity and recognizes them as full and equal citizens with sovereignty not only over their own bodies and reproduction, but also over their own lives, history, biographies and future.

5 Chapter 5: *Causa Justa* – a social and cultural revolution

[398] See *Judgment C-055/22*, *supra* note 10 s 13.3 at para 643-644.
[399] Schneider, *supra* note 269 at 321 & 327.

This final chapter focuses on *CausaJusta*'s innovative advocacy and social movement-building strategies. The objective is to examine *CausaJusta*'s tactics, beyond legal strategy and Judgment C-055/2022. I will seek to uncover how *CausaJusta* broadened its audience and supporters' base; how they generated sustained social pressure for a progressive normative change and specifically for the CCC to issue a decision on the merits; and how, overall, they worked to change public opinion about abortion and advanced in its social decriminalization.

Methodologically it is worth mentioning that, on one hand, this chapter draws on the information and reflections of the two semi-structured interviews I referred in the previous chapter. On the other hand, this chapter is built on the basis of the social media and alternative strategies that *CausaJusta* employed and that I was able to document and analyze. The account that I will present in this chapter, therefore, is by no means a comprehensive description of the diverse advocacy and social actions deployed by the movement. Moreover, there is a bias in my selection of strategies as I analyzed mostly those that garnered national coverage, such as mobilizations and public interventions that occurred in Bogotá (the capital), and social media strategies. The reason for this is twofold. First, I see these strategies as having wider audience-reach, though this does not mean that strategies developed at local levels or in regions other than Bogota were not impactful or crucial to creating resonance for *CausaJusta*'s demand. Second, these measures were most accessible to me. As a result, a more comprehensive analysis of the wide range of *CausaJusta*'s local strategies would be needed to truly understand their full depth and reach.

This chapter is organized in four parts. Each relates to an outstanding feature of *CausaJusta*'s advocacy and movement-building strategies that I identified as innovative and/or significant. These features, as will become evident, are not isolated from each other, but rather interrelate and depend on one another. First, I will talk about *CausaJusta*'s work and deep determination to keep

on the public agenda the demand for abortion's total decriminalization (subsection 5.1). This part will look, on one hand, at the communication and advocacy strategies. On the other hand, it will examine how *CausaJusta* created resonance for their demands with public opinion leaders and key figures in Colombia, something that had not been done before.

Second, I will analyze the use of social media and new mediums to reach diverse audiences. In particular, I will discuss the discursive value of the reggaeton song *CausaJusta* created that became a viral dance challenge on TikTok (subsection 5.2). Third, I will analyze the use of first-person testimonies and women's real stories as a means to "put a face to the women who face barriers"[400] and to connect emotionally with reticent audiences (subsection 5.3). Particularly, I will look at the literary narratives these stories employ and at how abortion is constructed in these stories. Finally, I will examine *CausaJusta*'s movement-building and social mobilization strategy (subsection 5.4). Here, I will delve into the use of symbolic performances and how *CausaJusta* repurposed the public space. I will also note how these mobilizations and the use of the green kerchief – a symbol of sorority and resistance – denote the transnationality and *transversality*[401] of the *Green Wave* movement.

5.1 A two-year sustained national conversation about abortion

The litigation experience of Judgment C-355/2006 taught civil society organizations in Colombia that "the media is an essential forum of intervention and public debate".[402] In this sense, *CausaJusta* knew, well before they presented the unconstitutionality demand, that "an argumentative battle would take place in the media".[403] This meant that as a collective they had to

[400] Conducted by author, "Interview with LaMesa", *supra* note 239.
[401] See Cecilia Palmeiro, "The Latin American Green Tide: Desire and Feminist Transversality" (2018) 27:4 J Latin American Cultural Stud 561–564.
[402] Niño Contreras & Rincón Escalante, *supra* note 54 at 403.
[403] *Ibid*.

be ready to "present arguments that neutralize[d] the conservative positions and that position[ed] favourable framings for [abortion's] liberalization".[404]

CausaJusta's communications strategy was thus crucial and, as *CausaJusta*'s spokespersons explain, it was transversal to all other strategies, not an independent arm. However, since the unconstitutionality demand became the driving force of the movement's work, the communications strategy became the foremost means to amplify *CausaJusta*'s legal work.[405] Nonetheless, *CausaJusta* also used its communications strategies to strengthen and position their advocacy work, including the publication of new reports, or their social mobilizations actions.[406]

CausaJusta's communications work was so rigorous and sustained that they were able to maintain a national conversation about abortion, in general, and *CausaJusta*'s demands, in particular, on the public arena for almost two continuous years: from the presentation of the unconstitutionality claim (September 16th, 2020) until the issuance of Judgment C-055/2022 (February 21, 2022), and even beyond this date as the decision and its implementation became a key issue in the June 2022 presidential elections.[407] Outstandingly, *CausaJusta* and their demands appeared multiple times in all national newspapers and in national radio and television.[408] More

[404] *Ibid*.
[405] Conducted by author, "Interview with CRR", *supra* note 231.
[406] *Ibid*.
[407] See e.g. Diana Bernal, "Aborto: un tema para las elecciones presidenciales" *Razón Pública* (30 January 2022), online: <razonpublica.com/aborto-tema-las-elecciones-presidenciales>; Vanessa Daza Castillo, "¿Qué se viene para las mujeres en el próximo cuatrienio?" *Volcánicas* (10 May 2022), online: <volcanicas.com/que-se-viene-para-las-mujeres-en-el-proximo-cuatrienio>; "Petro quiere acabar con la 'sentencia social' a las mujeres que abortan", (3 June 2022), online: *Agencia EFE* <www.efe.com/efe/america/politica/petro-quiere-acabar-con-la-sentencia-social-a-las-mujeres-que-abortan/20000035-4820264>.
[408] See e.g. "Los argumentos de la nueva demanda contra la penalización del aborto", *El Espectador* (16 September 2020), online: <elespectador.com/judicial/los-argumentos-de-la-nueva-demanda-contra-la-penalizacion-del-aborto-article> ["Los Argumentos"]; "Feministas pondrán ante la Corte nueva demanda para despenalizar el aborto", *Caracol Radio* (16 September 2020), online (audio): <caracol.com.co/radio/2020/09/16/politica/1600268894_132649.html>; "'Criminalización del aborto va en contra de los derechos de las mujeres': abogada Cristina Rosero", *Blu Radio* (15 September 2021), online (audio): <bluradio.com/judicial/criminalizacion-del-aborto-va-en-contra-de-los-derechos-de-las-mujeres-abogada-cristina-rosero>; "Cristina Rosero es la voz de las mujeres que piden la eliminación del aborto del código penal", *Caracol Radio* (8 November 2021), online (video): <youtube.com/watch?v=eeQbNh3rrVI>; El Lunes, Mesa Capital, *supra* note 309; "¿Qué pasará con la despenalización del aborto en Colombia?", *Canal Institucional* (24 January 2021), online (video): <youtube.com/watch?v=IFqtwrz-7H0>.

than once, *CausaJusta* was on the cover of the biggest national newspapers,[409] and all national media reported on the historic win of February 21, 2022.[410]

While *CausaJusta*'s communications strategy was incredibly comprehensive, including having a dedicated branch for news and media outlets and a separate digital activism wing,[411] there are three overall features of *CausaJusta*'s approach that I wish to highlight in this subsection.

5.1.1 Audience segmentation, message simplification, spokesperson's specialization

The first feature is what *CausaJusta*'s spokespersons refer as "audience segmentation", meaning the mapping and understanding of the type of audience *CausaJusta* was reaching to or would be speaking to. Based on this mapping, *CausaJusta* adapted and simplified their messaging.[412] This did not mean a banalization of the subject matter; rather *CausaJusta* constructed concise yet strong claims about the topic that could resonate more easily with particular audiences. A *CausaJusta* spokesperson relates as an example the simple but clear claim: "abortion should not be a crime".[413] Other examples can be seen in various Instagram post which included claims such as "we are not second-class citizens"[414] and "when abortion is a crime, human rights are violated".[415]

Audience segmentation also led to the careful "targeting" of *CausaJusta's* spokespersons to the specific audiences and contexts.[416] As *CausaJusta* is a movement composed of members with

[409] See e.g. El Espectador, "La #PortadaEE de hoy es: Condenadas Por Eliger. Según un informe publicado por la @mesaporlavida y la Salud de las Mujeres, en los últimos 15 años ha crecido la persecución del delito de aborto y han aumentado las condenas por este delito", (26 August 2021 at 9:19), online: *Twitter* <twitter.com/elespectador/status/1430882527225417739>.
[410] See e.g. "Las duras", *supra* note 314; "'Mujeres, a celebrar ¡Lo logramos!': Causa Justa sobre despenalización del aborto", *El Espectador* (21 February 2022), online: <elespectador.com/judicial/mujeres-a-celebrar-lo-logramos-causa-justa-sobre-despenalizacion-del-aborto>; "Causa Justa celebra la decisión de la Corte sobre el aborto como un avance", *El Tiempo* (22 February 2022), online (video): <youtube.com/watch?v=kG7_4MIeJ2c>; Valeria Arias Suárez, "Las cinco mujeres detrás de la gran causa justa", *Publimetro Colombia* (8 March 2022), online: <publimetro.co/noticias/2022/03/08/las-cinco-mujeres-detras-de-la-gran-causa-justa>.
[411] Conducted by author, "Interview with LaMesa", *supra* note 239.
[412] *Ibid*; Conducted by author, "Interview with CRR", *supra* note 231.
[413] Conducted by author, "Interview with LaMesa", *supra* note 239.
[414] Causa Justa por el aborto (@causajustaporelaborto), "Nuestros derechos no pueden estar sometidos a interpretaciones que hagan terceros de las leyes! ...", (18 August 2021), online: *Instagram* <instagram.com/p/CSuFpVSLyIL>.
[415] Causa Justa por el aborto (@causajustaporelaborto), "Hoy, en el #DíadelosDerechosHumanos, le recordamos a la @CorteConstitucional que...", (10 December 2021), online: *Instagram* <instagram.com/p/CXUSWfwpPYu>.
[416] Conducted by author, "Interview with LaMesa", *supra* note 239.

different professional backgrounds, *CausaJusta* had the strategic foresight to designate, depending on the audience and specific questions to be addressed, either a lawyer, doctor, sociologist, social media influencer, young activists, or service provider, to represent the movement.

For instance, *CausaJusta* had specific spokespersons designated to speak about the constitutionality process (the legal aspects of the demand and of the process before the CCC). Other members, instead, addressed bioethical and medical questions regarding abortion. Similarly, some spokespersons were designated to address the audiences of the national media, while others were designated as regional spokespersons. Notably, the regional spokesperson played a crucial role in adapting *CausaJusta*'s messaging to the local context. Finally, there were also some younger activists' spokespersons who were dedicated to reaching young audiences through social media challenges, Instagram *lives*, and more.[417]

5.1.2 The data is what tells the story

The second, crucial feature of *CausaJusta*'s communications strategy was their reliance on incontrovertible evidence they had collected, procured and/or published. The data were useful to move the conversation away from the moral or religious argument-trap.[418] Indeed, as Niño and Rincón recommended in 2018, *CausaJusta*'s spokespersons were prepared to "present arguments that changed the framing of the issues in the most clear and concrete way".[419]

For instance, the data about abortion's active criminalization in Colombia were fundamental, as a spokesperson says, to "show how the crime of abortion operated in an unjust and discriminatory manner".[420] With this data in hand *CausaJusta* moved the conversation away from the false moral dichotomy of the protection of a fetus's life versus women's rights. The evidence

[417] Conducted by author, "Interview with CRR", *supra* note 231.
[418] Conducted by author, "Interview with LaMesa", *supra* note 239.
[419] Niño Contreras & Rincón Escalante, *supra* note 54 at 403.
[420] Conducted by author, "Interview with LaMesa", *supra* note 239.

pointed to a crucially different question: why are women and girls actively criminalized for accessing the I.V.E. even under recognized legal grounds and what can be done to change this?

This alternate framing of the "abortion issue" allowed *CausaJusta* to reach different audiences and present to it their main argument, namely, that the crime of abortion needed to be repealed from the Criminal Code because it was unjust and discriminatory. Instead, *CausaJusta* argued, any regulation of this reproductive health service should be done from a health-law perspective. Relatedly, the public health data about maternal mortality or abortion complications, while less crucial than in the 2006 constitutionality process and public debate, were still useful to illustrate why the *causales*-based model was indeed insufficient to ensure women's access to abortion.[421]

It is worth noting that for both the public health and criminalization data, *CausaJusta* leveraged the 15-years' experience and knowledge that social actors had accumulated to bring legitimacy to their claims. *CausaJusta* in fact disengaged their demand for abortion's total decriminalization from the negative framing of being only a "feminist tantrum" by anchoring their demands on the basis of social actors' own experience working with the legal grounds model. Put differently, *CausaJusta* was not demanding abortion's total decriminalization on a whim. Rather, they were making this demand because their experience had taught them that the crime of abortion was a structural barrier that hindered access, generated inequality and had prejudicial effects in society. As González-Velez, pioneer of *CausaJusta*, said in a television interview:

> "[social actors in Colombia] followed 'the rules of the game' that the CCC proposed with the [2006] *causales*-based model, which is what we believe should be done in a democracy. [But,] 15 years of experience have showed us that women face enormous barriers to access the service; that the *causales*-based model produces and reproduces inequalities between women […] And it allowed us to confirm – because it is not that we did not know it, but we used these

[421] *Ibid.*

years' experience [to document it] – that the crime of abortion is in the structure that supports these barriers [and that produces its prejudicial effects]."[422]

Furthermore, given that the data showed that abortion's inaccessibility and criminalization impacted disproportionately the most marginalized women and girls of the country, *CausaJusta* judiciously used such data to shift the focus of the conversation to *those* women and to *those* regions where access was most dire. This shift of focus strengthened, evidently, their argument about the crime's discriminatory effect. But, more crucially, it was a point of entry to connect with different audiences – including those that were outraged by the fact that the crime of abortion was actively prosecuted or those that were shaken by the fact that girls, adolescents, and rural and migrant women were the most affected demographic of the legal indications model's failures.[423]Notably, to clearly and powerfully feature these realities, *CausaJusta* consciously designed their infographics, social media posts, and other imagery to be representative of the diversity of women, girls and people that gestate that were the most impacted under the partial decriminalization model of the time.[424]

Finally, *CausaJusta* also used so-called "positive" data about abortion to highlight "positive images about abortion" and thus change the narrative and understanding of abortion in Colombia.[425] This meant giving prominence in their messaging to key facts about safe abortion access, including that after accessing an abortion most women begin using a contraceptive method of their choice; that the frequency of abortions decreases substantially when sexual and reproductive health services and information are legally and safely available; and that if women and girls who are victims of intrafamilial and/or sexual violence can promptly access abortions

[422] El Lunes, Mesa Capital, *supra* note 309 at min 00h15m24s&ff.
[423] Conducted by author, "Interview with CRR", *supra* note 231.
[424] *Ibid*.
[425] Conducted by author, "Interview with LaMesa", *supra* note 239.

services without fear, stigma or recrimination, they can also be directed to the specialized route of care for sexual violence survivors.[426] In other words, *CausaJusta* sought to redirect the abortion conversation to showing that when women can legally and safely access abortion services, women also have the opportunity to access a vast range of services that improve their health, prevent unwanted pregnancies and protect women and girls from cycles of violence.

This "positive data" approach is an interesting tactic. In contrast to Baird & Millar's findings, albeit in the Australian context, *CausaJusta* was not over relying on "positive individual experience [that] can support rather than challenge an individualised and ultimately reductive abortion politics".[427] Rather, *CausaJusta* was highlighting positive outcomes of abortion access that evidenced broader social positive effects about abortion. These are positive effects based on data correlations long known by social actors and reproductive activists everywhere. Yet, in the context of Colombia, as an overall conservative country, using data to show how abortion promotes good health outcomes[428] was in fact a valuable tactic to begin constructing abortion as a *positive social good*[429] and to changing the understanding of abortion in the social imaginary.

5.1.3 Mobilizing public opinion leaders

The third feature of the communications strategy that stands out as truly decisive in creating resonance with *CausaJusta*'s social and legal demand relates to the interaction of the advocacy and communications work. I am referring specifically to *CausaJusta's* conscious effort to mobilize public opinion leaders to take a public stance in favour of *CausaJusta*'s demand.

As a spokesperson explains, traditionally the abortion debate had been between the usual suspects: feminist and women's rights organizations, on one hand, and few political leaders,

[426] Examples listed by LaMesa's spokesperson. *Ibid*.
[427] Baird & Millar, *supra* note 92 at 1120.
[428] See Adair & Lozano, *supra* note 160.
[429] See Pollitt, *supra* note 119. See also Stettner, "Unfinished Revolution", *supra* note 77 (referring to Pollitt's call to "redefine abortion" at 340).

mostly with strong religious bases, and religious figures, on the other hand.[430] This time around, *CausaJusta* sought to change – not only the terms of the conversation – but also the actors' part of the conversation. To achieve this, the movement mapped out key public figures whose socio-political ideologies seemed to align with *CausaJusta*'s positioning on abortion and they reached out to them asking for their support.

Through this process *CausaJusta* learned that many of these public opinion figures did support abortion's total decriminalization but had never taken a public position on the matter for fear of public repercussion or for not having a sufficient basis to sustain their position.[431] The self-generated reports on abortion's criminalization, the compilations of official and self-generated data about abortion's criminalization public health impacts, and the book of 90 arguments, among other outputs, were instrumental tools to providing opinion leaders in Colombia with the evidence-backed arguments that they needed to feel confident in supporting *CausaJusta*'s cause.

Needless to say this process of 'reaching-out' took considerable effort and not everyone was ultimately on board.[432] But *CausaJusta*'s dedicated advocacy work did reap fruits: over the course of the more than 500 days that it took for the decision on the merits to be issued, notable public figures, journalist, academics, singers and others, expressed public support of *CausaJusta*'s demand.[433] The climax of this trickling of support materialized on February 17, 2022 – days before the CCC' issued its decision – with the release of an advocacy video in which approximately 40 different public figures (actors, singers, journalists, writers, opinion leaders, activists, and more)

[430] Conducted by author, "Interview with CRR", *supra* note 231.
[431] *Ibid*.
[432] *Ibid*.
[433] See e.g. Elizabeth Castillo, "Causa Justa: Eliminar el delito de aborto simple del Código Penal es una Causa Justa", *El Tiempo* (3 September 2021), online: <eltiempo.com/opinion/columnistas/elizabeth-castillo/causa-justa-columna-de-elizabeth-castillo-615541>; Ana Bejarano Ricaute, "Nuestra Causa Justa", *Los Danieles & Cambio* (1 August 2021), online: <cambiocolombia.com/opinion/los-danieles/nuestra-causa-justa>; Rodrigo Uprimny, "La despenalización del aborto: una causa justa", *El Espectador* (3 October 2021), online: <elespectador.com/opinion/columnistas/rodrigo-uprimny/la-despenalizacion-del-aborto-una-causa-justa>.

came together in support of *CausaJusta*.[434] The video is an incredible advocacy tool, which passes the message that "the *all* women have abortions, but those who are criminalized are the most marginalized". The video is also a vital testament of the great support that *CausaJusta* was able to mobilize which led to an important broadening of their audience-base.

5.1.4 Conclusion

CausaJusta's communicative strategy framed the abortion debate in a radically different manner than had been the case previously in Colombia. Rather than delving into a moral and religious discussion about the life of the fetus or reifying women "as the 'responsibilised (sic) subject' of neoliberalism",[435] *CausaJusta* focused on the data and the (in)equality and (in)equity of access and of the criminalization practices. Through this shift in narrative, *CausaJusta* was able to move the discussion away from the idea of 'choice' – and the frivolity attached to that – and onto the diversity of women that need and seek to access an abortion and the socio-economic contexts that enable or hinder its access. Further, armed with data and years of experience, *CausaJusta* had the arguments to make the case in the public arena that from a legal, social, bioethical, medical and moral perspective, access to abortion produces good outcomes not only for the women, girls and persons that gestate, but also for their communities and society as a whole.

CausaJusta not only transformed, but also dominated the national conversation.[436] While *CausaJusta*'s spokespersons acknowledge that more work is needed to change the way the debate is framed in small towns and more rural contexts, *CausaJusta* did see a shift, and thus a gain, in the way the traditional and national media approached abortion's decriminalization in Colombia.[437] No longer was the debate set up as being between the "pro-abortion feminist" and

[434] Causa Justa por el aborto, "Las mujeres que abortan en Colombia", (17 February 2022), online (video): *Youtube* <youtube.com/watch?v=2QI-OO3VcsU>.
[435] Baird & Millar, *supra* note 92 at 1121.
[436] Conducted by author, "Interview with LaMesa", *supra* note 239.
[437] *Ibid*; Conducted by author, "Interview with CRR", *supra* note 231.

the "religious leader", nor were the questions about "which life matters more".[438] Now, with conclusive data in hand, the media provided a public health and social issue framing of abortion and grounded questions in the disproportionate impacts of abortion's criminalization and how the normative change sought by *CausaJusta* would make a difference. Lastly, but not less important, *CausaJusta*'s mobilized public opinion leaders and key figures in Colombia who – through their public interventions – expressed in different ways the reasons for which abortion concerns all Colombians (not only the feminists) and why its total decriminalization was thus just.

5.2 The use of social media and new mediums

In a manner that resembles the strategies of abortion rights activists in other LAC countries, with Argentina being a prime example,[439] social media became a crucial part of *CausaJusta*'s "toolbox".[440] *CausaJusta* developed a strong presence in both Instagram and Twitter where, as with the mainstream media communications strategy, they amplified their legal and advocacy actions.[441] These platforms also became crucial sites to convene supporters to street mobilizations and demonstrations (see subsection 5.4) or to incite social media pressure-campaigns through sharable infographics and specific hashtags (such as #CorteAbortoSí or #CorteEsUrgente).[442]

The use of social media brought with it the utilization of new mediums and formats – such as videos, reels, Instagram Live's, song challenges and others – to reach and create resonance with younger audiences. In this subsection I will focus specifically on the reggaeton song and video, *Mi Causa Justa,*[443] which was released in August 2021 and which became viral through a dance-

[438] Conducted by author, "Interview with CRR", *supra* note 231; Conducted by author, "Interview with LaMesa", *supra* note 239.
[439] Claudia Laudano, "Social Media Debate on #AbortoLegal in Argentina" in Barbara Sutton & Nayla Luz Vacarezza, eds, *Abortion and Democracy: Contentious Body Politics in Argentina, Chile, and Uruguay*, 1st ed (London: Routledge, 2021) 175.
[440] Barbara Sutton & Nayla Luz Vacarezza, "Abortion Rights and Democracy - An Introduction" in Barbara Sutton & Nayla Luz Vacarezza, eds, *Abortion and Democracy: Contentious Body Politics in Argentina, Chile, and Uruguay*, 1st ed (London: Routledge, 2021) 1 at 9.
[441] Conducted by author, "Interview with CRR", *supra* note 231.
[442] In English: #CourtAbortionYes and #CourtItIsUrgent.
[443] La Mona Soy Yo, "Mi Causa Justa - canción por el Aborto en Colombia", (4 August 2021), online (video): *Youtube* <youtube.com/watch?v=hVMTmJHnyKA>.

challenge on various platforms.[444] As González-Vélez (pioneer of the movement) said, these new mediums, and in particular the reggaeton song, was not only a way to connect with these young audiences "in their own terms", but also an acknowledgement by the movement "that there are other generations, and other ways of saying the same things".[445] While one could examine the reach of the song and video from different fronts, I will analyze the discursive tactics – the words used, the images and metaphors evoked – and thus the song and video's discursive value.

First, it is discursively significant that *Mi Causa Justa*'s core messaging is aiming to change the social meaning of abortion as a crime or sin. The chorus is unequivocal on this as it says: "I am not a delinquent, I am not a criminal // My just cause is liberty // I am not a delinquent, I am not a criminal // We want safe abortion now!".[446] Other verses of the song echo this message by saying: "[accessing a] voluntary abortion does not make us criminals, // the real criminals are those who violate freedoms";[447] and "choosing [to have an abortion] is neither a sin nor a crime".[448] These lyrics are clearly telling women, loud and clear, that they are neither criminals nor sinners for having an abortion. Further, as these lyrics are catchy and meant to be sang by the audience, there is incredibly discursive value in having women, girls or other persons capable of pregnancy say and repeat out loud that they are not criminals or sinner. In fact, the song is contributing to constructing differently the image of the people that have abortions in the social imaginary, but as well within women' own consciousness. It is contributing to changing their self-perception.

[444] Luciana Peker, "Catalina Martínez Coral, de Causa Justa, en Colombia: 'La lucha de las mujeres del sur inspiró a las del norte'" *Infobae* (29 May 2022), online: <infobae.com/sociedad/2022/05/29/la-colombiana-elegida-por-time-entre-las-100-mas-influyentes-la-lucha-de-las-mujeres-del-sur-inspiro-a-las-del-norte>.
[445] Ana Cristina González Vélez, *Address* (presentation delivered at La Secretaría de las Mujeres de Antioquia's online workshop on "La despenalización del aborto en Colombia: Por el derecho a decidir sobre nuestros propios cuerpos", 3 June 2022). [Unpublished] [González Vélez, *Address*].
[446] La Mona Soy Yo, *supra* note 443 at 00h00m13s. [Translated by author].
[447] *Ibid* at 00h00m56s. [Translated by author].
[448] *Ibid* at 00h01m00s. [Translated by author].

As Cook and as Adair & Lozano have argued, women feel shame and stigma when having an abortion not as a result of their decision of which they are rather very certain. The stigma comes from others (experienced), is felt in anticipation of the judgment by others (perceived), or is internalized and enacted.[449] In this sense, similar to what Sutton and Vacarezza refer to in the context of abortion advocacy in the Latin American Southern cone, this song and video also represent a crucial tool to "transform [the] stigma [associated with abortion] into public conversations based on women's experiences and feminist political perspectives".[450]

Mi Causa Justa also has a verse singing "women ask for a conscious maternity" and immediately a voice in the background yells: "it will be desired!".[451] This verse embodies one of the main slogans of the feminist movement in LAC: that "motherhood will be desired, or it will not be". This point is purposely made evident by the video, as the singer – La Mona Soy Yo – is pregnant. The video is thus showcasing that the fight is not for all women to have abortions. Rather, it is for women to be able to choose to continue a pregnancy or not, and thus for all pregnancies to be desired and cherished. How much clearer can this feminist motto get?

Other imaginary within the video is discursively powerful and symbolic, too. For instance, women in the video wear green kerchiefs – called in the lyrics "the flag of liberty"[452] – and which, as I will explain in subsection 5.4, is an emblem of the fight for legal abortion in LAC. In the video women are also uninhibitedly dancing to the reggaeton beat, which echoes another LAC feminist motto that claims *back* dancing reggaeton – a sexualized dance – as feminist.

[449] See Cook, "Stigmatized Meanings", *supra* note 11 at 354ff; Adair & Lozano, *supra* note 160 at 7.
[450] Sutton & Vacarezza, *supra* note 440 at 12.
[451] La Mona Soy Yo, *supra* note 443 at 00h00m31s. [Translated by author].
[452] *Ibid* at 00h00m30s. [Translated by author].

Finally, the song uses two other crucial protests slogans: "take your rosaries out of our ovaries"[453] and "we are not hysterical, we are historical".[454] The former is a clear rejection of the imposition of a religious dogma – particularly Catholicism – onto women's reproductive lives and thus onto their life projects. The latter is, in the words of Sutton and Vacarezza, a reaffirmation of "women's and feminist struggles to dismantle patriarchal conceptions about women's bodies and sexualities". In fact, the play on words is significant considering women are labeled *hysterical* as a means to diminish, patronize, and minimize them, their lived experiences and their demands.

In contrast, *historic* has a threefold significance and symbolism. Visually, it gives women – as a collective and individually – their due stature. From a historical point of view, the term is important as it was used first as "an affectional label for the senior activists in Argentina who became like 'rock stars' during the [Argentinian mobilizations]".[455] Its use in the Colombian context, or any other LAC country, then pays homage to the fact this feminist struggle has been intergenerational and transnational. Lastly, the word also gives resonance to the historic social and normative achievements that women and the LAC feminist movement have realized, especially in the later part of the last decade.

This short analysis of the discursive tactics of the *CausaJusta* song – or their *anthem*, as some spokespersons called it[456] – evidences how words and imagery can be incredibly powerful as a means to construct social meanings differently. Not only are the song and video a sharp way to connect with younger audiences, thus creating wider resonance to *CausaJusta*'s demands. In addition, *Mi Causa Justa* embodies, in its lyrics and imagery, symbolisms of the LAC transnational feminist fight – a fight that transcends abortion access and demands the dismantling of all

[453] *Ibid* at 00h01m06s. [Translated by author].
[454] *Ibid* at 00h01m17s. [Translated by author].
[455] Sutton & Vacarezza, *supra* note 440 at 12.
[456] Peker, *supra* note 444.

patriarchal structures and stereotypes. Indeed, from a discourse analysis perspective, the song and video potently channel a narrative that celebrates women, women who access abortions, desired maternities, sexuality, freedom, liberty and equality. For one minute and 55 seconds, this song and video use words, symbolisms and narratives that can in fact go a long way to transforming the social conceptualization of abortion and the fight for its social liberalization.

5.3 Testimonies and first-person stories to connect with the audience

Since abortion can largely be an emotion-driven issue, connecting with the audience on an emotional level is crucial. For those opposing abortion, a *CausaJusta* spokesperson said, it is easier to tap into people's "deep emotional fibers", as their messaging is based on a "cognitive pathway" that easily reaches people's emotions.[457] In contrast, the messaging of feminists and the reproductive rights' movement – that, for the most part, was anchored to rationality and technical argumentation – struggled to connect with people's emotions, and thus lost its audience quickly.[458]

To address this emotional-connection imbalance, *CausaJusta* turned to testimonies of people who had or sought abortions. In this subsection, I want to focus on one particular project – Mujeres Imparables ("Unstoppable Women", hereinafter "***MujeresImparables***") – as it encapsulates a significant effort to putting a name to a real-life story and thus "connect with people's emotions".[459] Additionally, as I will highlight, the literary narrative of the stories contributes significantly to constructing differently the women who access the service in the social imaginary.

5.3.1 Mujeres Imparables: 20 años abriendo camino

MujeresImparables is an artistic transmedia project of LaMesa that seeks to "make visible the stories of women and men that have lived or accompanied an experience, or an attempt, of

[457] Conducted by author, "Interview with LaMesa", *supra* note 239.
[458] *Ibid*.
[459] *Ibid*.

accessing a voluntary interruption of the pregnancy in Colombia".[460] In short, the project's premises is that a writer, journalist, poet, or other artist turns an abortion first-person account – which are based on LaMesa's documented cases – into a poem, epistle, story, tale, or other literary form. These retold first-person accounts are then accompanied by a personalized illustration.

This literary artistic project aims to sensibilize and create further resonance about abortion as an essential reproductive health service. A *CausaJusta* spokesperson relates that, in fact, when the re-told stories and illustrations are shown to reticent audiences or people who do not know about abortion's epidemiology or "biographies",[461] "the emotional site of enunciation changes".[462] Interestingly, in contrasts to the narratives of the IHRL cases referred in subsection 2.2, the predominant focus in *MujeresImparables* is not on the extreme cases – the types of stories that were thought to generate empathy from people opposing abortion. Those extreme accounts are certainly also represented in *MujeresImparables* because those cases still exist and deserve to be told and embodied, especially considering women and girls experiencing such cases still face multiple barriers in access, stigma and violence in the provision of care.[463]

However, most of the re-told accounts in *MujeresImparables* tell the stories of unplanned pregnancies and of certainty by the woman, girl or pregnant person that they do not want to continue with that pregnancy. Most stories in fact present a narrative about abortion in which there

[460] La Mesa Por la Vida y la Salud de las Mujeres, "Mujeres Imparables: 20 años abriendo camino", online: *Mujeres Imparables* <mujeresimparables.co/>.
[461] I use the term abortion biographies in the sense used by Prandini & Erdman when they said that: "[a]s social things, whose socialization and interpretation reach beyond any pharmaceutical truth, medicines can also have their biographies written". Similarly, I would argue that abortion, how it is access, by whom, why, how the process unfolds, etc., tells a story that is akin to a biography. See Mariana Prandini Assis & Joanna N Erdman, "In the name of public health: misoprostol and the new criminalization of abortion in Brazil" (2021) 8:1 JL Bioscience 1 at 5. Underlying added.
[462] Conducted by author, "Interview with LaMesa", *supra* note 239.
[463] See Piedad Bonnett, "Poema con Alas", (26 September 2018), online: *Mujeres Imparables* <mujeresimparables.co/mujeres-imparables> (where she relates the story of a woman who had an unviable pregnancy – the fetus would not survive outside the womb – and nonetheless she faced countless barriers, delays, stigma, humiliations, and violence).

is no shame and guilt[464] or where the self-doubt, anxiety and guilt come from the social prejudices and the countless barriers the person experiences in the process.[465]

The "Story about Irene"[466] is representative in this regard. In a letter Irene writes to Camila we learn of both Irene and Camila's abortion stories. While Irene was shamed by a health provider, both Irene and Camila's stories illustrate that there was no guilt. There was only strong decisional certainty that those abortions were the right decision for them. Such unapologetic narrative – that is not premised on "contraceptive failure", does not seek to explain "why motherhood would have been an impossible or irresponsible option" and does not "profess grief and sadness for the decision"[467] – is radical and has the emancipatory potential to free abortion from the cloak of shame and stigma. In fact, by emphasizing the "positive, though still complex, *affects*"[468] that abortion creates, stories like this one can help refashion the social meaning of abortion.

Further, beyond the abortion stories, through the letter we also learn that Irene was the only person Camila knew who had had an abortion at the time when she needed one and that even though they were not friends at first, the call for help by Camila immediately created a sorority bond between them; a bond of non-judgment and of endless support. Finally, we also learn that Camila was the victim of an emotionally-abusive partner, something she only realized when she sought an abortion prompting a decision to leave him. Irene says that Camila's experience allowed her to understand that when "[women] abort, [women] also abort what hurts them"[469] which is, perhaps, another way of saying that when women have abortions they know what they are doing.

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[464] See Mariángela Urbina, "Relato sobre Irene", (12 October 2020), online: *Mujeres Imparables* <mujeresimparables.co/relato-sobre-irene>; Gloria Susana Esquivel, "Relato Sobre Alejandra", (26 September 2018), online: *Mujeres Imparables* <mujeresimparables.co/alejandra>.
[465] See Ricardo Silva, "Relato Sobre Darío", (26 September 2018), online: *Mujeres Imparables* <mujeresimparables.co/dario-por-ricardo-silva>; Ita María, "Mujer Bitácora", (10 December 2020), online: *Mujeres Imparables* <mujeresimparables.co/relato-ita-maria>.
[466] Urbina, *supra* note 464.
[467] These are the type of narratives Baird & Millar found in their analysis of first-person accounts in Australian sites. Baird & Millar, *supra* note 92 at 1119.
[468] See Sutton & Borland, *supra* note 50 at 50. *Italics* added.
[469] Urbina, *supra* note 464.

Finally, it is worth mentioning that five of these first-person accounts were turned into a journalistic publication in early February 2022.[470] The publication jarringly evidenced women's experience of delays, shame, stigma, violence and barriers and thus was a means to exercising pressure and making visible the urgency of abortion's decriminalization in Colombia. The journalistic account, however, was also discursively significant insofar as the people giving the first-person testimonies were re-interviewed and had the opportunity explain why, based on their experience, the CCC should decriminalize abortion. In other words, the journalistic piece includes direct appeals from the interviewees to the CCC on the urgency of acceding to *CausaJusta*'s demand for decriminalization. Their call was unequivocal, as Andrea's power words show:

> "[I]t is not fair that we cannot access dignified healthcare. No more violence. It is as if we were worth more as mothers than women. And something else: we have had abortions since time immemorial, and we will continue doing it because we are unstoppable, because we are no longer alone, because we are now a herd".[471]

5.3.2 Conclusion

With these first-person accounts, *CausaJusta* not only aimed to bring to light the multiple barriers that made the legal indications model insufficient, unjust and disproportionate. The movement also sought to create different emotional reactions and feelings towards abortion and the women who have abortions and with that to continue advancing the social decriminalization of abortion. Beyond the progressive decision of the CCC, *CausaJusta*'s dedicated work to construct a different social imaginary about abortion, about women, girls or other people that can gestate, and even about the people who support those women and persons in the process, is remarkable.

[470] Juan David Laverde Palma, "Bitácora de un atropello repetido: el aborto en cinco relatos estremecedores", *El Espectador* (9 February 2022), online: <elespectador.com/judicial/bitacora-de-un-atropello-repetido-el-aborto-en-cinco-relatos-estremecedores>.
[471] *Ibid*.

5.4 Social mobilizations and street performances

In Argentina, where the now-transnational feminist *Green Wave* movement for abortion's liberalization was born, street performances and social mobilization were "a central strategy".[472] The *National Campaign for the Right to Legal, Safe and Free Abortion* (the "**National Campaign**"), which is the Argentinian collective that has been fighting for abortion's decriminalization and legalization since 2005,[473] in fact used massive demonstrations as a means to have their claims heard and seen and to influence the realm of "institutional politics".[474]

The massive demonstrations for abortion in Argentina shook the nation – visually, emotionally, and historically – on the eve of the Argentina's 2018 Legislature's vote on a bill to legalize abortion.[475] Even though the 2018 bill did not get enough votes, that night is regarded as a point of no return for the *Green Wave*. Both the 2018 vigil, and then the 2020 vigil that concluded with a legislative victory, proved to feminists of LAC that the streets were indeed powerful sites for sorority-building and useful for, quite literally, embodying their social and political demands; to making themselves be seen and heard.

As a spokesperson says, *CausaJusta* was certainly inspired by the *Green Wave*'s force.[476] This meant that in addition to articulating a national voice[477] and creating alliances with activists and groups fighting for other social justice issues in Colombia,[478] *CausaJusta*'s canalized the power of massive social demonstrations. All strategies were of course adapted to the particular context. But, in a similar vein to the Argentinian mobilizations that occupied the space and demonstrated

[472] Sutton & Vacarezza, *supra* note 440 at 11.
[473] For a detail and historical account of the National Campaign see María Alicia Gutiérrez, "The Experience of the National Campaign for the Right to Legal, Safe, and Free Abortion in Argentina" in Barbara Sutton & Nayla Luz Vacarezza, eds, *Abortion and Democracy: Contentious Body Politics in Argentina, Chile, and Uruguay*, 1st ed (London: Routledge, 2021) 157 at 157.
[474] Sutton & Vacarezza, *supra* note 440 at 11.
[475] See Palmeiro, *supra* note 401 (referring that there were around 1 million people waiting outside the Legislature "in a vigil that often resembled a festival and a coven, with a stage that welcomed artists and *compañeras* and important figures in the struggle, with tents and stands of the different political organisations and collectives" at 561–562).
[476] Conducted by author, "Interview with CRR", *supra* note 231.
[477] González Vélez, *Address*, *supra* note 445.
[478] Conducted by author, "Interview with LaMesa", *supra* note 239; Conducted by author, "Interview with CRR", *supra* note 231.

in front of Argentina's legislature, *CausaJusta* convened demonstrations and public interventions on the steps in front of the CCC: a symbolic site for abortion rights' activist and feminists in Colombia as this was where abortion had been decriminalized in 2006 and where now its further liberalization was being considered.

From the multiple mobilizations that *CausaJusta* convened throughout two years, I want to highlight three crucial moments that I believe encapsulate the significance of these mobilizations. First, on September 16, 2020, the day the demand for the unconstitutionality of the crime of abortion was presented before the CCC, *CausaJusta*'s members gathered in front of the CCC and read their manifesto.[479] This first act, while small in scale, marked the beginning of series of symbolic gatherings, performance and mobilizations that would take place in that same location. It also marked the beginning of what I see as *CausaJusta*'s social and cultural revolution.

The second moment I wish to highlight, took place on November 11, 2021. On this day, *CausaJusta* organized a powerful symbolic act in front of the CCC in which 90 members of the movement took turns reading out loud the 90 arguments that *CausaJusta* had presented in its demand to the CCC.[480] The reading aloud of the arguments was discursively significant for a couple of reasons. First, the event occurred during the week that the discussion of the merits of demand was on the agenda and thus served as a powerful way for *CausaJusta* to publicly reiterate all the reasons why the elimination of crime of abortion was a *just case*.

Second, I see this symbolic act as democratizing the legal process. Through concise but clear messages, *CausaJusta* gave Colombians a snapshot of the legal, social, public health, ethics, and human rights arguments underlying their legal demand. While using the public space as a means

[479] See "Los Argumentos", *supra* note 408.
[480] See Causa Justa por el aborto (@causajustaporelaborto), "Hoy, en un acto simbólico...", (11 November 2021), online: *Instagram* <instagram.com/p/CWJvxUIphbt>; Causa Justa por el aborto (@causajustaporelaborto), "90 argumentos leídos por 90 mujeres...", (11 November 2021), online: *Instagram* <instagram.com/p/CWKHV5QsrYK>.

to advance or advocate for a legal process is not a new tactic, publicly presenting all of their arguments was innovative. It was also a symbolic means to advance what *CausaJusta* originally set out to do: create, sustain and have a national conversation about abortion on women's own terms and on the basis of well-reasoned and evidence-based arguments.

The third "moment" I wish to refer here is more of a *continuum* of moments. As of November 2021, when the discussion on the merits was on the agenda but was subsequently stalled due to a recusation request and other delays, *CausaJusta* began convening sit-in demonstrations in front of the CCC[481] each time the matter was or could be on the CCC's agenda. Astutely, *CausaJusta* used the court's deliberation agenda as a catalyst to "mobilize public support" in the streets and create pressure.[482] In fact, their constant presence and sustained demonstrations on the steps of the CCC conveyed a strong message – a message that went beyond speech or words.[483]

The message was not only about the urgency of decriminalizing abortion. The persistent physical presence of *CausaJusta* in that site also signified the magnitude of what abortion's decriminalization meant for the movement and their careful vigilance over the process. As Sutton and Vacarezza state, albeit in the Argentinian context but applicable to the Colombian one, the "embodied presence and occupation of public spaces [was] also a claim to democracy understood as the power of ordinary people".[484] In this sense, *CausaJusta*'s sit-ins on the steps of the CCC not only became "a stage for exercising rights and manifesting public engagement".[485] It also demonstrated *CausaJusta*'s resolute intention to see their demands materialized – ideally through a CCC's decision on the merits, but if not, later, through further mobilization and organization. It

[481] See e.g. "Aborto en Colombia: plantón en la Corte Constitucional que retomó estudio del caso", *El Espectador* (20 January 2022), online: <elespectador.com/judicial/en-imagenes-planton-en-la-corte-constitucional-por-expediente-sobre-aborto>.
[482] See Open Society Justice Initiative, *supra* note 158 saying that public hearings or trials create a "rare and potentially valuable opportunity to mobilize public support" at 76.
[483] Sutton & Vacarezza, *supra* note 440 (in reference to Butler's idea that "through embodied protest, activists convey more than what they say" at 11).
[484] *Ibid*.
[485] Open Society Justice Initiative, *supra* note 158 at 77.

communicated that abortion's decriminalization was not only urgent, but a just and necessary cause to ensure women's full and equal citizenship in Colombia.

As these sit-in's were persistent, on February 21st, 2022, when Judgment C-055/2022's holding became known, *CausaJusta* and its supporters were present. On that day, the steps of the CCC magnificently turned from a site of demonstration to a site of fervent feminist celebration.

5.4.1 *Causa Justa's* green kerchief

I would be remiss in speaking about social mobilizations and public interventions on this issue without also speaking about the purposive and symbolic use of the green kerchief by *CausaJusta*. "The triangular green kerchief", as Vacarezza explains, emerged in Argentina as an abortion rights symbol [… with] its popularity gr[owing] exponentially in 2018".[486] Currently the green kerchief has attained "global visibility"[487] and "resonance across borders".[488] As a symbol, Sutton and Vacarezza argue that it passes on "argumentative frames and powerful political affects".[489] *CausaJusta* sought to utilize this political *affect* by producing a version of the green kerchief for their own collective movement.

The *CausaJusta* sit-ins on the steps of the CCC, as well as the national demonstrations held on key dates, such as the International Day on the Elimination of Violence Against Women (November 25th) and Women's International Day (March 8th), were filled with *CausaJusta*'s green kerchiefs and the color green all around. The fact that so many people – especially women, girls, adolescents, and transgender folks – took to the streets and used their voices and bodies to express solidarity with the cause of abortion's decriminalization, is monumental. Moreover, the

[486] Nayla Luz Vacarezza, "Orange Hands and Green Kerchiefs - Affect and Democratic Politics in Two Transnational Symbols for Abortion Rights" in Barbara Sutton & Nayla Luz Vacarezza, eds, *Abortion and Democracy: Contentious Body Politics in Argentina, Chile, and Uruguay*, 1st ed (London: Routledge, 2021) 70 at 79.
[487] *Ibid*.
[488] Sutton & Vacarezza, *supra* note 440 at 12.
[489] *Ibid*.

widespread use of the *CausaJusta* green kerchief evidences the "collective identity" this movement built and the "particular aesthetic, political and affective atmosphere"[490] it channeled.

The prevalence of the *CausaJusta* green kerchief further evidences how the movement ignited a national conversation about abortion. However, *CausaJusta* also sparked a social and cultural revolution that went beyond abortion. The collective was able to convey the crucial message that women's liberty, equality, dignity, and full participation in society are not ensured so long as abortion is considered a crime. As such, women's democratic participation and unconditional sexual, reproductive, economic, social, liberty are prerequisites, the movement argued, to ensuring democracy, human rights and justice. Adapting Vacarezza's statement to *CausaJusta*'s movement and socio-cultural revolution:

> "[i]n these marches, protesters fought for abortion as a right that must be recognized within institutional democracies, but they also fought for participative and substantive democracy, built in the streets through collective occupation of public spaces for debate and action."[491]

Finally, the purposive use of the green kerchief by *CausaJusta*'s movement in this context, symbolically and visually expresses the indisputable sisterly bond that exists between its members, all of whom are fighting for liberty, equality and dignity. This sisterly bond is epitomized by Friedman's concept of feminist friendships which provides, "more […] than many other personal relationships[, …] the social support for people who are idiosyncratic […]".[492] The feminist modern friendship – as a result of being the product of attachments made by choice between folks who defy "the local conventions for their gender" – holds the power for being "social disruptive"

[490] Vacarezza, *supra* note 486 at 80.
[491] *Ibid* at 83.
[492] Marilyn Friedman, "Feminism and modern friendship: dislocating the community" in Shlomo Avineri & Avner De-Shalit, eds, *Communitarianism and individualism* Oxford readings in politics and government (Oxford England ; Oxford University Press, 1992) 101 at 114. [Friedman, "Feminism"].

and is a source and force for "for social change".[493] This is what *CausaJusta* became and is today: a source and force for social change.

5.5 Conclusion

This chapter has reviewed a non-comprehensive account of the social, communicative, and alternative strategies *CausaJusta* implemented in parallel to their legal demand. These *other* strategies ranged from the careful adaptation of the movement's key messaging to particular audiences, to the convening of mass mobilizations and demonstrations. These strategies also included the mobilization of public opinion leaders, the creation of a *CausaJusta* reggaeton anthem, and the use of first-person testimonies to connect emotionally with reticent audiences. All of these strategies worked in a synergistic way together and with regard to the legal demand before the CCC. In consequence, *CausaJusta* was able to create and sustain a public conversation on abortion and mobilize forces for abortion's social and legal decriminalization.

Further, these strategies made a significant contribution to changing the social meaning of abortion in Colombia from something viewed as negative, a crime, a sin, into a *positive social good*. Crucially, these creative tactics contributed in powerful ways to the reconceptualization of the social perception of the women, girls, and persons who can get pregnant who have abortions and of the self-judgment that has been internalized.

Finally, the use of the green kerchief as a symbol of resistance and a "flag of liberty"; the imagery on social media that represented Colombian women in their diversity; the use of evidence-based arguments to reframe the conversation about abortion; the sit-in demonstrations on the steps of the CCC; and the amplification of the real-life stories of people who access an abortion, to name but a few, were all actions and tactics that articulated new narratives. These narratives pushed the

[493] *Ibid.*

conversation about abortion out of religious/moral dogma and into the streets, into people's real lives, and transformed abortion's decriminalization into an issue that centralized the values and principles of democracy, citizenship and equality.

6 Chapter 6: Conclusion

6.1 The findings

Antaki writes that "law reside[s] as much in language as in rules".[494] Echoing the spirit of this assertion, this thesis has shown that social and legal changes not only pass through the rules established *on paper,* in a bill or judicial decision, but are also informed by the way we speak about the issue – by the language that is employed – both normatively and socially. Crucially, this thesis' inquiry has evidenced the self-reinforcing way in which the discursive construction of an issue is informed by how social actors frame that issue and the use of narrative in normative frames.

Through the study of Colombia's path to decriminalizing and liberalizing abortion, this thesis has shown, concretely, the power of abortion narratives created by legal discourse. As was examined in chapter 3, the normative framing of abortion in Judgment C-355/2006 as an issue affecting women and girls' fundamental right to dignity and their right to the free development of their personality challenged the primacy of the rubric of women's individual rights to privacy and autonomy and the narrative of "choice", characteristic of the global north's abortion debate. In addition, such progressive framing (for the time) also constituted a significant normative rejection of the socially-imposed mandate of motherhood that loomed over women. This rejection – and the powerful wording used by the CCC – constituted in turn a crucial steppingstone to changing in the social imaginary the conception of women and reaffirming their value in society beyond maternity.

[494] Mark Antaki, "Genre, Critique, and Human Rights" (2013) 82:4 Univ Tor Q 974 at 974.

This thesis has also examined the fundamental role that social actors can play in creating social resonance to normative developments and in building legal resonance for radical and feminist demands. Chapter 3 highlighted in particular the work of LaMesa in documenting the barriers experienced by women, girls and persons with the capacity to gestate when seeking abortion services under the legal indications model. As the analysis in chapter 3 evidenced, such work, and LaMesa's categorization of the data collected, were key tools for the development of further jurisprudential protections to abortion access in Colombia. I argued that the expansive abortion case-law following the 2006 decision, in which among other things the *voluntary interruption of the pregnancy* (I.V.E) was recognized as an autonomous constitutionally protected right, is the result of the significant socio-juridical dialogue between the CCC and social actors, like LaMesa, that judiciously document women's real lived experiences. I showed that in fact such dialogic relationship was possible, in great part, by LaMesa's production of trustworthy evidence-based knowledge regarding abortion's (in)accessibility in Colombia; knowledge and evidence that the CCC legitimized, in turn, through its jurisprudence.

The focus in chapter 4 turned to the unconstitutionality claim, designed and advanced by the feminist collective *CausaJusta*, and the significant discursive shifts prompted by Judgment C-055/2022, the decision that followed it, especially in relation to the normative and social understanding of abortion in Colombia. Notably, chapter 4 evidenced that beyond reproductive autonomy concerns, *CausaJusta*'s legal demand and Judgment C-055/2022 reframed abortion's continued criminalization in Colombia as severely impacting women's equality, moral agency and full citizenship. The success of *CausaJusta*'s demand – which framed the radical claim for total decriminalization on the CCC's constitutional language and on the basis of evidence-based arguments – is reflected in the paradigm shifts that ensued from Judgment C-055/2022.

The two radical and significant discursive shifts discussed in chapter 4 are worth recalling. On one hand, I showed how the CCC transitioned its analysis from an exclusive public health frame to a frame more attuned with RJ concerns. Notably, the implicit embrace of the RJ framework allowed the CCC to foreground in its analysis the disproportionate impacts experienced by those living at the intersection of multiple vulnerability factors. This revealed how a normative framework that, while on paper seemed progressive, in practice had many shortcomings. On the other, I discussed the CCC's recognition, for the first time, that the right of women, girls and persons who can gestate to freedom of conscience is engaged when abortion is criminalized. Significantly, the CCC recognized that the barriers and stigma perpetuated by abortion's criminalization end up imposing a specific vision of womanhood and a specific life plan for women contrary to their right to freedom of conscience.

The thesis' analysis illustrated that both these shifts in discourse were normatively and symbolically important. First, the paradigm shift recognizes that the socio-economic context has an impact on the ability of women, girls and persons with reproductive capacity's to *choose* to access an abortion. In this sense, the framing of abortion moves past the narrative of choice and foregrounds dignified living conditions and access to sexual and reproductive health information and education as necessary elements for the exercise of reproductive autonomy. Second, the freedom of conscience analysis affirms women's moral agency to make decisions regarding their own lives and futures, thus recognizing women's decisional and moral autonomy. This recognition constitutes, in turn, a symbolic reparation for all those who accessed abortion services in undignified conditions – having to justify themselves – and a reappropriation by the women's movement of a right normally invoked to constrain access to abortion.

Finally, chapter 5 traced and examined some of the strategies deployed by *CausaJusta* in parallel to its legal demand. Its innovative communications approach, for instance, evidenced that carefully attuning messaging to the audience and the judicious and critical use of data are powerful means to reframe the abortion debate in the public arena, away from religious argumentation and fora. *CausaJusta*'s purposeful use of social media and new media, and the mobilization of public opinion leaders, were also crucial tools to connect with different audiences and reconstruct the social meaning of abortion and women who access abortion within the social imaginary.

Chapter 5 also evidenced how the use of first-person testimonies that foreground the situations in which women decide to have an abortion contribute to demystifying abortion as something exceptional and to projecting women and their decisions as multidimensional, complex and diverse. Such narratives also were crucial to creating an emotional connection with reticent audiences. Last, the analysis of *CausaJusta*'s social mobilizations and sit-in demonstration before the CCC exemplified the power of collective action and the appropriation of the public space to become a visible movement that embodied a claim to democracy and equal and full citizenship. The symbolic use of the green kerchief that accompanied these mobilizations ultimately also evidenced the *Green Wave*'s power and momentum as a transnational feminist revolution.

6.2 What Colombia's case-study teaches us

This thesis's critical discourse analysis of Colombia's abortion jurisprudence and the discussion regarding social actors' work and alternative strategies yield three main lessons that I believe are valuable. First, a claim for abortion access should be constructed with strong legal resonance. This means, on one hand, utilizing the legitimatized idioms and institutions of the particular context, such as the constitutional law framework and the CCC institution in the case of Colombia. On another hand, it means constructing a claim to abortion based on the vast panoply

of rights – beyond the privacy doctrine – engaged and impacted by abortion's criminalization or by restrictions to its access. Concretely, this implies constructing a rights-based claim in terms that capture the real-life experiences and multidimensionality of the women and people who need abortions, which can be framed in terms of equality, dignity, moral agency and full citizenship.

Second, when existing normative frameworks are insufficient to encompass the demands of the women and reproductive rights' movement – which is often the case – the work of social actors becomes paramount. Civil society organizations invested in the protection of women's rights and equality can – through the meticulous monitoring and documentation of barriers and of abortion's lived experiences – create reliable evidence and produce new knowledge in support of more radical and feminist demands. Normative changes, in other words, will be informed and supported by the evidence that social actors can produce and legitimize.

Third, no legal strategy or victory can truly translate into effective and equitable access to abortion without a radical reframing within the social imaginary of the social meaning of abortion and of those who access it. As this thesis has argued and demonstrated, the abortion narratives created by normative framing are discursively significant insofar as they contribute to the social construction of abortion. However, even progressive narratives of abortion embedded in normative developments will fall short of creating a change in the social imaginary if they are not amplified, repeated, and publicly embodied and represented in the social and cultural context.

Colombia's case-study thus evidences that abortion's *legal* decriminalization and liberalization could only be attained through the sustained use of legal strategies and tools that progressively frame abortion access as a multifaceted rights issue and a matter concerning women's full and equal citizenship, thus going to the democratic foundation of society. Equally, the case-study shows that abortion's *social* decriminalization, which must accompany any legal

demand for change and any normative victory, can only be attained through the consistent use of communicative, artistic, performative, and social mobilization tactics that reconstruct and reframe abortion's social meaning in feminist ways utilizing as steppingstones the narratives that emerge from the progressive normative framing achieved.

6.3 The unaddressed territory for future research

The historic triumph of *CausaJusta* in creating a legal, social and cultural revolution, exemplified primarily by Judgment C-055/2022, which put Colombia at the global forefront of abortion protections, but also by the social resonance the movement garnered, is undeniable. These achievements do not mean, however, that the work in Colombia on abortion rights and access is done. On the contrary, *CausaJusta* spokespersons emphasize that the normative victory constitutes only the first step in the fight for the legal and social total decriminalization of abortion.[495]

Many challenges still lie ahead for abortion access in the post-Judgment C-055/2022 context. While such challenges and the tactics that *CausaJusta* will employ to address them lie outside the scope of this thesis, *CausaJusta* has three renewed axes of work that could be the source of future academic research and analysis. A first is the work surrounding the implementation of the 2022 decision. This includes, so far, documenting barriers to accessing abortion on request, designing trainings and disseminating reliable, accessible information regarding the new legal framework, and lobbying government to pass necessary sexual and reproductive health public policy.[496]

A second axis of work concerns the legal defense of the legitimacy and validity of Judgment C-055/202 and of the abortion rights advocates.[497] While a normative regression is highly unlikely given the careful observance of the due process within the unconstitutional review process and the

[495] Conducted by author, "Interview with CRR", *supra* note 231; Conducted by author, "Interview with LaMesa", *supra* note 239.
[496] Conducted by author, "Interview with CRR", *supra* note 231; Conducted by author, "Interview with LaMesa", *supra* note 239.
[497] Conducted by author, "Interview with CRR", *supra* note 231; Conducted by author, "Interview with LaMesa", *supra* note 239.

strong legitimacy that the CCC enjoys, *CausaJusta* is nonetheless ready to defend the judgment from any regressive attempts on any and all fronts: legally, politically, socially and culturally.

As a third axis, *CausaJusta* is continuing its work to advance the social decriminalization of abortion. The latest strategy of *CausaJusta* in this front – the public reading project of Judgment C-055/2022 – is worth mentioning if only because it evidences the discursive value and importance of the words and the narratives of the judicial decision. In short, the project consists of the reading, by activists, advocates and members of *CausaJusta*, of parts of the judgment through videos and/or in person from different cities of Colombia.[498] The initiative is not only a symbolic embodiment of the judgment as something that now belongs to the women of Colombia and to the movement. The project is also a powerful tactic to *translate* and amplify the avant-garde, rights-affirming, and dignifying words of a judicial decision into the social fabrics of Colombian society. This kind of work is truly essential because the way in which "discursive reconstruction of rights" allowed for progressive judgments that were in turn supported and translated into the social fabric, is, ultimately, "how rights are made real".[499]

Future research on social and legal discourse can thus track and follow, as of now, *CausaJusta*'s renewed strategies to implement the decision and ultimately ensure that, in Colombia, all women, girls and persons who can gestate have equal and dignified access to abortion services and can exercise their moral capacity to command their life projects. Other research can also examine, with the perspective of some years, whether and how the progressive normative framings of Judgment C-055/202 contributed to abortion's social decriminalization in Colombia and, more specifically, to the construction of abortion as a positive social good. Another

[498] See e.g. Causa Justa por el aborto (@causajustaporelaborto), "El 31 de mayo la Corte Constitucional divulgó el texto completo de la Sentencia C-055...", online: *Instagram* <https://www.instagram.com/p/CffLCrNps4S/>.
[499] Open Society Justice Initiative, *supra* note 158 at 82–83.

type of research could instead use this thesis' findings to propose strategies that – bearing in mind the difference in contexts – could contribute to the fight for legal, safe and free abortion elsewhere in the world.

6.4 A call for an unyielding, transnational, and South-North-inspired feminist resistance

Abortion rights should never be up for debate. Yet, in many countries, the slightest political changes can still today threaten the right to access abortion services.

In the case of Colombia, while some of the patriarchal legal, social, and moral structures that reduced women to their reproductive role were challenged through the combination of innovative legal and social strategies spanning for over 15 years, social actors' monitoring work must continue. Even after the adequate implementation of the progressive Judgment C-055/2022 is realized, feminist vigilance will and must be unyielding.[500] This is true for Colombia, but for everywhere else too because the attacks on abortion rights are transnational and well-organized.

The innovative tactics being employed by feminist actors in Colombia to ensure not only a normative gain, but also a social transformation, can hopefully serve of inspiration to feminist colleagues fighting for abortion access around the world, including in the global north. Particularly, the social strategies and narratives of *CausaJusta* and the *Green Wave* movement, both of which epitomize a transnational and powerful call for liberty, dignity and equality, evidence two fundamental takeaways for the feminist and reproductive rights movements: that the fight for abortion access must be feminist, inclusive, transnational and solidary, and that once abortion rights are attained, their protection should be fierce and uncompromising.

[500] See e.g. Catalina Martínez Coral & Juliana Martínez Londoño, "[Opinión] 'Roe vs. Wade': no permitiremos retrocesos", *El Espectador* (13 June 2022), online: <elespectador.com/mundo/america/opinion-roe-vs-wade-no-permitiremos-retrocesos> (saying that "[t]he feminist movement's bet must continue to be […] to occupy all spaces of public opinion until our rights become commonplace, until they are not subject to political ups and downs or authoritarian impulses, and until society internalizes that allowing access to abortion means guaranteeing dignified lives with autonomy for all"). [Translated by author].

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