

Movement and counter-movement: a history of abortion law reform and the backlash in Colombia 2006–2014

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Abstract: *In 2006, the Constitutional Court of Colombia issued Decision C-355/2006, which liberalized the country's abortion law. The reform was groundbreaking in its argumentation, being one of the first judicial decisions in the world to uphold abortion rights on equality grounds, and the first by a constitutional court to rule on the constitutionality of abortion within a human rights framework. It was also the first of a series of reforms that would liberalize the abortion regulation in four other Latin American countries. The Colombian case is also notable for the process of strategic litigation carried out by feminist organizations after the Court's decision, in order to ensure its implementation and counter the opposition from conservative actors working in State institutions, as well as for the active role played by the Court in that process. Based on fieldwork carried out in Colombia in 2013, this article analyzes the process of progressive implementation and reactionary backlash after Decision C-355/2006, with an emphasis on strategic litigation by the feminist movement and subsequent decisions by the Constitutional Court, which consolidated its jurisprudence in the field of abortion rights. It highlights the role of both feminists and of conservative activists within State institutions as opposing social movements, and the dynamics of political and legal mobilization and counter-mobilization in that process. © 2014 Reproductive Health Matters*

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In 2006 the Colombian Constitutional Court issued the landmark Decision C-355/2006 that liberalized the country's abortion law, which until then criminalized abortion under all circumstances and placed Colombia among the handful of countries with the most restrictive abortion laws in the world.¹ Although the reform was restricted in its scope – for it did not legalize abortion on the woman's request but established an indications model – it was groundbreaking in terms of its argumentation. It was one of the first judicial decisions in the world to uphold abortion rights on equality grounds² and the first decision by a constitutional court to review the constitutionality of abortion in line with a human rights framework.³ Decision C-355 was also the first of a series of legal reforms that would liberalize, to different extents, the abortion laws in four other Latin American jurisdictions in the past decade: Mexico City, Brazil, Argentina and

Uruguay.* The Decision was issued as a result of a constitutionality challenge filed by Women's Link Worldwide as part of its strategic litigation project LAICIA (High Impact Litigation in Colombia for the Unconstitutionality of Abortion),[†] in alliance

*In 2007, Mexico City legalized abortion at the woman's request during the first trimester of pregnancy, and in 2009 the Supreme Court upheld the reform. In 2012, Brazil's Supremo Tribunal Federal legalized abortion in cases of anencephaly. Also in 2012, Argentina's Supreme Court established that abortion is legal in all cases of rape. Uruguay's National Congress legalized first trimester abortion in 2012 (on condition of mandatory counselling and a waiting period).

[†]The project was led by Colombian feminist attorney Mónica Roa, who at that time was the Director of the Gender Justice Program at Women's Link Worldwide (and is now Vice President of Strategy and External Relations). For information about the LAICIA project and an archive of documents related to the process before the Constitutional Court, see: http://www.womenslinkworldwide.org/wlw/new.php?modo=detalle_proyectos&dc=10.

with the *Mesa por la Vida y la Salud de las Mujeres* (Advocates for Women's Life and Health, hereinafter *La Mesa*).*

The Colombian case is also remarkable – although this has been less noted so far – for the process of strategic litigation carried out after Decision C-355 in order to ensure its implementation and resist backlash, as well as for the active role developed by the Court in that process. In fact, one of the outstanding particularities of the Colombian case is the impressive jurisprudence developed by the Constitutional Court, in which it specified the conditions for the application of the decision, mandated public authorities, including lower court judges, as well as private health service providers, to comply with it, and consolidated its doctrine in the field of abortion.

Two main phases can be identified in the process of implementation of Decision C-355. The first, from 2006 to 2009, was marked by the active role of government agencies, in particular the Ministry of Health, in issuing health sector regulations on implementing the decision and the provision of abortion services by the public health system.⁴ It was also characterized by the development of litigation by individual women and feminist organizations (in particular Women's Link and *La Mesa*), who denounced instances of violation of the rights granted by the Court's ruling and requested compliance on the part of different public and private actors. The Court upheld several of those claims and further developed criteria for the interpretation and implementation of its decision.^{5,6}

The second phase, since 2009, saw a strong backlash led by powerful conservative actors in key positions within the State, who have systematically attempted to obstruct the implementation of Decision C-355. In response, feminist organizations developed creative litigation strategies in order to confront the backlash, one of the most notable of which was a claim grounded in the

right to information.⁷ The Constitutional Court, in upholding these petitions, continued developing progressive jurisprudence regarding the implementation of legal abortion in Colombia, and also checked the actions of State officials who refused to comply with the Court's mandates and sought to create obstacles to their enforcement.

Drawing on semi-structured interviews with seven key actors in this process conducted in Colombia in 2013, as well as on primary source documents (mainly Court rulings) and secondary sources (mostly by Colombian scholars), this article analyzes the process of implementation and backlash after Decision C-355, with emphasis on strategic litigation by feminist organizations and subsequent decisions by the Constitutional Court.

Social movement theory has shown that in contemporary societies, organized opposition to a progressive movement that has achieved substantial success in its call for equal rights increasingly also takes the form of a social movement, i.e. a counter-movement.^{8–11} From this perspective, conservative mobilization, or counter-mobilization, can be analyzed using the same categories and frameworks used for the analysis of progressive social movements.

Particularly relevant for the analysis of the Colombian case is the concept of institutional activists, developed in social movement studies. This concept alludes to the presence of social movement members in formal positions within the government, who may respond more consistently to the movement's interests and goals than other State actors, even those who are movement allies.^{12,13} This category has generally been developed in analyses of the feminist movement, but it can also be applied to counter-activism from within the State, i.e. by conservative institutional activists. More generally, the analysis of the dynamics of mobilization and counter-mobilization is crucial to understanding the configuration of the abortion rights controversy in every country context, including how opposing actions and reactions develop and are played out.

The article analyses the process of implementation of the Decision C-355 from 2006 to 2009, considering the role of State institutions, strategic litigation and the ensuing jurisprudence. It then addresses the process of backlash and counter-mobilization against the Decision, as well as key litigation strategies to challenge these by feminist organizations, and subsequent decisions by the Court.

**La Mesa*, constituted in 1996, is the most important coalition for the defence of abortion rights in Colombia. At the time of the law reform, it included most prominently the following organizations: *Humanas*, *Orientame*, *Profamilia*, the Women's National Network, and Catholics for Choice, and independent activists and women's health advocates Florence Thomas and Ana Cristina González Vélez. See: <http://www.despenalizaciondelaborto.org.co>.

Litigation and the role of the Constitutional Court in the implementation of Decision C-355/2006

On 10 May 2006, the Constitutional Court issued Decision C-355 that liberalized the abortion law in Colombia, and established an indications model in which abortion is not a crime under three conditions: when the woman's life or health is at risk (certified by a physician); when there are serious malformations of the fetus that make life outside the uterus unviable (certified by a physician); or when pregnancy is the result of criminal acts, such as rape, incest or non-consensual insemination (backed by officially reporting the crime). The Court further nullified the provision in the Criminal Code under which consent by a woman under 14 was not valid to authorize the termination of their pregnancy. It also established that all health service providers, public and private, were obliged to offer safe abortions in the three specified circumstances. The Court adopted a comprehensive definition of health, which included mental health. It also pointed out that the right to conscientious objection can only be exercised by individuals, and not by legal persons or the State. Lastly, it specified that its ruling was immediately applicable and that the rights it protected did not require the enactment of further regulations in order to be enforced; however, it also made clear that competent bodies, such as the Ministry of Health, could develop public policies in accordance with its ruling.

Since 2005, when Women's Link launched the LAICIA project that motivated the Court's Decision, feminist organizations, in particular *La Mesa*, lobbied the government, especially the Ministry of Health (then called Ministry of Social Protection), requesting explicit health sector rules for the provision of abortion services. Colombian feminists were conscious of other Latin American cases in which exceptions to abortion criminalization were not enforced and women had virtually no access to lawful abortions (Interview, Ana Cristina González Vélez, researcher, CEDES-Argentina; Ex-National Director of Public Health (2002–2004); co-founder, Global Doctors for Choice; member, *La Mesa*. 16 February 2013). Their intention was that the Court's decision "would not become a dead letter" (Interview, Cristina Villarreal, Director, Fundación Oriéntame; member, *La Mesa*. 28 January 2013), and they wanted new health sector regulations to be ready when the Court issued its ruling (Interview, Cecilia Barraza, Advisor, Office for Gender Equity; founder, *Humanas: Centro*

Regional de Derechos Humanos y Justicia de Género. 10 February 2013). For its part, the Ministry of Health was interested in preparing a response from the health sector perspective in case the Court liberalized the abortion law.⁴ So, *La Mesa* started discussing with the Ministry of Health from 2005 the possibility of drafting a health sector regulatory framework for legal abortions.⁴ Other organizations, in particular the Center for Reproductive Rights in New York, provided advice during this process. The main purpose of the proposed regulations was "to empower women and to give assurance to health professionals, i.e. to fulfill the two main conditions for the enforcement of the indications model" (Interview, Ana Cristina González Vélez). The synergy between the Ministry of Health and feminist organizations was facilitated by the presence of institutional activists who were part of the movement and at the same time had worked within the State system. A key actor in this regards was public health expert Ana Cristina González Vélez, who had occupied important public health positions, was knowledgeable of the State bureaucracy and had contact with decision-makers within the Ministry of Health.

As a result, soon after Decision C-355 was announced, the Ministry of Health issued new regulations which specified conditions for the implementation of lawful abortion by public and private health services providers. The most important of these measures was the enactment of Decree 4444, in December 2006, which adopted the World Health Organization's *Safe Abortion: Technical and Policy Guidance for Health Systems* (2003, 1st edition).^{*} Also in December that year, abortion on the grounds allowed by the Court was incorporated as part of the services to be provided by the public health system in Colombia (*Plan Obligatorio de Salud*).[†] The new regulations have been praised for the rapidness of their enactment, as well as their content, which includes the free provision of abortion in public clinics, the establishment of a maximum five-day period between the woman's request and the abortion, and the responsibility of the Ministry of Health for training health professionals to provide this service⁴ (Interview, Cristina Villarreal).

^{*}Ministry of Social Protection. Decreto 4444 por el cual se reglamenta la prestación de unos servicios en salud sexual y reproductiva. Bogotá, 13 December 2006.

[†]Consejo Nacional de Seguridad Social en Salud. Acuerdo 350, Bogotá, 22 December 2006.

With regard to the actual implementation of Decision C-355, two special centres for the provision of legal abortion services (*centros amigables*) were created in Bogotá, and public health services as well as private clinics have shown a commitment to give attention to abortion cases¹⁴ (Interview, Sandra Mazo, Director, Catholics for Choice Colombia, 25 January 2013). However, there have also been serious obstacles, and women have encountered systemic difficulties in their search for access to abortion within the law. Among the main reported obstacles are:

- The lack of information regarding the new legal framework, especially in regions and cities far from the main urban centres. In this regard, it has been observed that there has not been political will to provide information throughout the country, beyond the main cities of Bogotá, Barranquilla, Cali and Medellín (Interview, Cristina Villarreal).
- Additional requirements beyond those established by the Court. In particular, health service providers have requested judicial authorization or other types of authorizations not mandated in Decision C-355.¹⁵
- The use of collective or institutional conscientious objection by health care providers, which was explicitly banned in the Court's Decision.¹⁵ In particular, private providers linked to Catholic organizations have systematically refused to perform legal abortions, appealing to institutional conscientious objection.
- The claim of judicial conscientious objection in order to refuse *tutelas* to women who met obstacles during the exercise of their abortion rights.
- Disregard of the autonomy of young girls to make a decision.
- Discriminatory treatment and delaying tactics by health service providers, such as unjustified waiting periods.^{5,15,16} In some reported cases, the actions by the health care system has amounted to institutional violence against women.¹⁵

As a response to this situation, women requested the judiciary to intervene to protect their rights, and the Constitutional Court upheld their claims. Whereas Decision C-355 had been motivated by an Action of Unconstitutionality, which in Colombia is filed in the abstract and is directed to challenge the constitutionality of an existing norm, the subsequent Court's jurisprudence on abortion arose from *tutela* writs filed by individual women and

feminist organizations seeking redress for the violation of women's fundamental rights. The *tutela*, introduced by Constitutional reform in 1991, is similar to the *amparo* writ of other Latin American countries, but its special features have made it a major instrument for the protection of constitutional rights. A *tutela* claim can be filed by any citizen who is a potential or actual victim of a fundamental rights violation, if there are no other means of obtaining redress. It can be brought before any court, without need of legal representation or written documentation, and must be decided through an expeditious procedure. All lower courts' decisions regarding *tutelas* reach the Constitutional Court, which can use its discretion to select to rule on any of them.

After Decision C-355, individual women liberally used *tutelas* when they were denied access to legal abortion services. Remarkable in this regard is that women did not ask for judicial authorization, which is common practice in other Latin American countries, even where it is generally not required by the law. Instead, they used the judicial system to denounce obstacles, and demanded their rights through a proper legal mechanism. At the same time, feminist organizations, in particular Women's Link and *La Mesa*, developed a process of strategic litigation to counter the obstacles and difficulties detected during the implementation process.* The Court selected some of these claims and developed a comprehensive jurisprudence about the way in which the abortion law should be implemented in Colombia (Interview, Ariadna Tovar, Senior Attorney, Women's Link Worldwide. 19 and 22 February 2013).

Throughout this process, not only has the Court heard concrete cases of violation of the right to abortion in the circumstances allowed by the law, but it has also developed general criteria for the elimination of barriers for access to health services in these cases, indicated the obligations of state institutions with regard to implementation of the law more generally, and established penalties for health services and state officials who deny that right. Thus, the general pattern of judicial decision-making since Decision C-355 consisted, on the one hand, in negative rulings by lower courts of the first and second instance that systematically denied *tutelas* (even on the illegal basis of judicial conscientious objection),

*See Roa and Klugman on strategic litigation in Colombia as an advocacy tool, in this issue of RHM.²⁵

and, on the other hand, favourable decisions by the Constitutional Court.*

Some of the most important decisions by the Constitutional Court against non-compliance with Decision C-355 have been[†]:

- In Decision T-988, 20 November 2007, the Court reminded health care providers that placing further requirements on women seeking lawful abortions was illegal.
- On 28 February 2008, Decision T-209 specified the conditions for the exercise of conscientious objection by health service providers, and imposed sanctions on institutions that invoked it collectively. This case involved persistent violence towards a minor and her mother, and the lack of legal enforcement motivated a request by Women's Link to the Inter-American Commission of Human Rights for urgent action (*medidas cautelares*), which mandated the Colombian State to take the necessary measures to protect both women.**
- In Decision T-946, October 2 2008, the Court condemned judicial conscientious objection and ordered the investigation of judges who had invoked it.
- In the outstanding Decision T-388, 28 May 2009, the Court integrated the criteria it had advanced in former decisions, and developed a comprehensive framework for the effective enforcement of its mandate to grant access to legal abortion, including the State's obligation to implement public education campaigns regarding access to legal abortion. Among its main provisions, the decision emphasized that consent by girls under 14 years old was sufficient to grant them access to abortion; it established that the right to individual conscientious objection by health care professionals was not absolute; and it reiterated the prohibition of judicial conscientious objection.^{††,***}

*Interview with Mónica Roa. Procurador obstaculiza aborto legal: líder de la despenalización. El Tiempo. 12 May 2012.

[†]For comprehensive accounts of these decisions, see Parra⁵ and Salgado.⁶

**MC 270/09 – X y XX, Colombia. Inter-American Commission, 21 September 2009. See Parra⁵ for an account of this case.

^{††}Based on the analysis developed by Parra.⁵

***Women's Link has just launched a publication with excerpts from this decision, with comments by experts from countries where conscientious objection is also being debated. See: http://www.womenslinkworldwide.org/wlw/new.php?modo=detalle_proyectos&dc=74.

During the decision-making process in this case, the Court requested several State institutions as well as *La Mesa* to submit information regarding compliance with C-355.

This process, characterized by the gradual development of criteria for the enforcement of the Court's decision, and a positive dynamic between feminist NGOs and different sectors of the State in an effort to implement the new abortion norms, was affected by a strong process of backlash that started in 2009, led by conservative institutional activists working within the State's structure.

Counter-mobilization, backlash and intervention of the Constitutional Court

In Colombia, as in other Latin American countries, the traditional opposition to the advance of sexual and reproductive rights, and abortion rights in particular, has been the Catholic Church. In fact, the Colombian Catholic Church stands out in the region as one of the most traditional and influential in the country's political life.^{17,18} Historically, the Church's influence on the State in Colombia was exercised through the National Conference of Bishops and other Catholic leaders.¹⁹ However, in line with a common development in other Latin American countries,²⁰ a new type of religious mobilization has emerged, which can be analyzed as a counter-movement. Especially in the past decade, right-wing lay Catholics in Colombia began using the same methods as other social movements, in order to oppose the advancement of sexual and reproductive rights claims. This included the appropriation of the language of rights, mobilization based on civil society organizations, legislative lobbying and strategic litigation.¹⁹ Among the main Catholic organizations in Colombia working in the sphere of civil society are *Red Futuro Colombia*, *Unidos a Dios salvaremos a Colombia*, *Legión de María*, and the *Consejo Nacional de Laicos* (Interview, Sandra Mazo).

In 2005, when Women's Link launched the LAICIA project, the Catholic network set out to campaign against the lawsuit, with support from Human Life International and its Colombian affiliate.²¹ Other actions by conservative lay Catholics included gathering two million signatures on a demand to keep the ban on abortion, and a march to the Congress to present them. This action was promoted by the Rector of the

Gran Colombia University, José Galat.²² During the proceedings before the Constitutional Court, they submitted *amicus curiae* briefs, and when the Court issued Decision C-355, the Catholic Church opposed it through public declarations and excommunicated the Court's Justices as well as the plaintiffs.²³ Following the Decision, lay Catholic actors brought 40 lawsuits against it,¹⁹ and conservative actors lobbied the Ministry of Health and other State institutions to try to deter the enactment of regulations for the implementation of the Decision.²¹

However, their reaction was uncoordinated and had no leadership. With the appointment of conservative institutional activists at crucial and powerful State institutions, who developed a belligerent and carefully crafted strategy, the biggest counter-mobilization and backlash in the field of abortion rights ensued. In 2009, a prominent conservative public official, Alejandro Ordoñez, was appointed as the head of the powerful *Procuraduría General de la Nación*. The *Procuraduría*, created by the 1991 Constitution, has a broad mandate, covering both the duties of Inspector General and Attorney General. This institution is in charge of the enforcement of the Constitution, general laws, judicial decisions and administrative acts. Its head (the *Procurador*), who is appointed by Congress for a four-year term, is in the highest position in charge of the enforcement of human rights, and also has competence to investigate public officials, even those publicly elected, and to remove them from office without criminal trial, for non-compliance with their duties. Until Ordoñez's appointment, the *Procuraduría* had been favourable to the implementation of Decision C-355, and had agreed to collaborate with feminist organizations, in particular Women's Link, in supervising compliance (Interview, Cristina Villarreal).

Before his appointment as *Procurador*, Ordoñez had openly expressed fundamentalist positions against abortion, gay marriage and the United Nations system,⁵ and as a former judge at the State Council he had issued decisions based on Catholic doctrine.¹⁹ One of his first actions as *Procurador* was the appointment of conservative attorney Ilva Myriam Hoyos, linked to Opus Dei, as head of the office in charge of protection of sexual and reproductive rights and of overseeing the implementation of Decision C-355.¹⁹ Hoyos was law professor and former Dean at an Opus Dei University (*Universidad de la Sabana*), as well as a former president of *Red Futuro Colombia*.

When the Constitutional Court was studying the constitutional challenge that resulted in Decision C-355, Hoyos presented 47 *amici curiae* against it, and announced that she would take actions against a Court's decision that liberalized the abortion law (Interview, Andrea Parra, Director, Action Program for Equality and Social Inclusion [a public interest law clinic], Universidad de los Andes; Women's Link Worldwide, former staff attorney. 19 February 2013).

From the *Procuraduría*, a new type of religious mobilization has developed, which has defended fundamentalist positions against abortion rights through a discourse that appeals to constitutional arguments and avoids mentioning religious principles.¹⁹ In general, their actions have had a chilling effect on other state officials, due to the power of the *Procurador* to dismiss them from their jobs. For instance, the *Procurador* told public officials in charge of the implementation of abortion services that misoprostol was an unsafe method, and more expensive than others, and thus, that they could go to jail for reducing public finances by purchasing it. The presence of these actors within the State's structure has also encouraged other public officials to be vocal in the public space about their convictions against sexual and reproductive rights (Interview, Ariadna Tovar). Furthermore, in 2009, the *Procurador* ordered the investigation and suspension of the construction of the *Clínica de la Mujer* (Women's Clinic) in the city of Medellín, intended to provide sexual and reproductive health services. He also ordered the public official in charge of the City's gender policy, as well as the official in charge of the Clinic project in the Health Secretariat, to leave their jobs (Interview, Cristina Villarreal). Finally, in 2010, the regional health authority denied the authorization for the construction of the Clinic.

The most important action, though, in terms of its consequences for the general implementation of Decision C-355, was the lawsuit by the *Procurador* in 2009 demanding the suspension and annulment of Decree 4444, issued by the Ministry of Health, which he brought before the State Council,* requesting an injunction and the annulment of that Decree. His argument

*The State Council is one of the three High Courts in Colombia. It is the highest court in matters related to administrative law and is in charge of deciding all controversies arising from actions by public officials. The other two High Courts are the Constitutional Court and the Supreme Court.

was that the national government did not have the constitutional powers to issue further regulations to a decision by the Constitutional Court without the passage of a law by Congress. The State Council upheld the claim, immediately suspended the Decree, and declared it null in March 2013.* The legal effects of the suspension and annulment of the Decree were not its most significant consequences, however, since on the one hand, the Constitutional Court had indicated that its decision was directly applicable and specified that its source was the WHO Safe Abortion Guidance; and, on the other hand, the Court had itself developed a solid jurisprudence regarding the criteria for implementation. However, the suspension and later on annulment of the Decree produced deep confusion and misinformation among the general public and health service providers regarding the status of Decision C-355 and the right of women to have access to legal abortion services. Directives issued by the *Procurador* to health service providers contributed to the confusion, saying that as the Decree had been suspended, health service providers were not obliged to perform abortions.²⁴

Feminist organizations used strategic litigation and other legal actions²⁵ to fight back against this backlash. The Constitutional Court has been the most important actor within the State structure with the capacity and will to oppose the conservative reaction against Decision C-355. On the one hand, since the start of the backlash in 2009, State actors had petitioned for the annulment of Decision C-355, as well as subsequent Court rulings.[†] These petitions were systematically rejected by the Court (Interview, Ariadna Tovar), which reminded petitioners that “actions to invalidate”** a ruling can proceed only when there have been serious due process violations, but cannot be used to re-open debates already settled by the Court’s constitutional jurisprudence.

*Exp. 11001-03-24-000-2008-00256-00, 13 March 2013. Sentence. Action of Nullity against Decree 4444 of 2006. State Council.

[†]For example, in 2009 the *Procuraduría* presented an action to invalidate Decision C-355 before the Constitutional Court, because of alleged procedural failures (T-388/2009). This was, reportedly, the first time that a *Procurador* requested the nullity of a decision issued by the Constitutional Court whose aim was to protect rights.⁵ The Court rejected the petition and its arguments in 2010.

**Acción de Nulidad.

Meanwhile, women and feminist organizations continued litigating regarding the obstacles women faced in accessing legal abortion services, e.g. through *tutelas*, some of which were selected and resolved by the Court. On 3 November 2011, the Court issued an outstanding Decision T-841, in which it imposed financial penalties on health professionals who denied an abortion to a 12-year-old girl. It reaffirmed that the risk to her mental health was a sufficient reason to accept her right to abortion, and developed the concept of the right to a timely and quality diagnosis, including a risk assessment when indicated. Litigation in this case was led by *La Mesa*, and was grounded in the arguments contained in a regional consensus on the “health exception” developed by women’s health advocates from different Latin American countries. The discussion that led to this consensus had been initiated in Colombia in the aftermath of Constitutional Court Decision C-355. The Court upheld the arguments in support of the health exception, including in particular the enforcement of a comprehensive definition of health that included mental health, in line with the regional consensus.¹⁴

Besides the pursuit of claims oriented to ensure implementation of Decision C-355, in the midst of the backlash, Women’s Link decided to initiate strategic litigation based on the right to information, to try to put the brakes on the conservative offensive. On September 21, 2011, it submitted a *tutela* writ before the Constitutional Court, signed by over 1,200 Colombian women, in which they denounced the *Procurador* as well as two other officials from the *Procuraduría* (Delegate Inspectors Ilva Myriam Hoyos and María Eugenia Carreño) for having systematically transmitted false and distorted information regarding women’s reproductive rights. The petitioners pointed out that since 2009 the *Procuraduría* had lied that emergency contraception was abortifacient, that misoprostol was a dangerous drug, that institutions could be conscientious objectors; and that the Department of Health (*Superintendencia de Salud*) was not obliged to remove obstacles to access to lawful abortion. The lawsuit was grounded on the right to receive information that complies with standards of quality, including accuracy, opportunity and reliability.⁷ The right to information is a fundamental right, protected by Constitutional Article 20, as well as by Article 13 of the Inter-American Convention on Human Rights. This was the first time in Colombia that a court case was

about the right to accurate information; it had only been used before in relation to the right to speak out, in cases of censorship. The *tutela* was submitted to Bogota's Judicial Council and rejected at the first and second instance. The Constitutional Court decided to consider it on appeal. In Decision T-627/12 in 2012, the Court upheld the women's claim, reaffirmed the duty of State officials to provide accurate and truthful information for the exercise of fundamental rights, and obliged the *Procurador* and the other two officials to correct the information they had disseminated. The *Procurador* complied with the Court's decision; had he not done so, he could have been found guilty of contempt of court. This is considered a most significant decision, and the first case worldwide in which a Constitutional Court recognized the right to receive quality information.⁷

As an example of the dynamics of mobilization and counter-mobilization, this history shows that a high level of polarization, such as that created by conservative institutional activists within the State, may galvanize liberal actors in society to resist the advance of an extremist religious position in the political realm. In fact, such a situation may become an opportunity for feminists to gather allies from other social sectors to support their cause, in opposition to the conservative reaction. In this case, the *Procurador's* radicalism contributed to an alliance of secular actors, among them journalists, academics and women's organizations, which created the Alliance for a Secular State, led by feminist organizations, with the purpose of challenging the *Procurador's* actions (Interview, Sandra Mazo, and Interview, Florence Thomas, feminist scholar; member, La Mesa. 9 February 2013). It also contributed to gathering support from LGBT organizations, mainly *Colombia Diversa*, which continuously filed *amicus* in support of abortion rights.

Conclusions

The Colombian Constitutional Court has played a vanguard role in the region, and possibly world-

wide, in the implementation of abortion legal reform. In a country where Catholicism has historically penetrated the political sphere, the Court proved to be the main State institution to stand against attempts to impose fundamentalist religious views through the policy-making process, and to support feminist claims for the full implementation of Decision C-355. In this way, the Colombian case shows the important role courts may have, not only in issuing groundbreaking legal reforms in support of women's reproductive rights when the political process is stagnant, but also in ensuring the enforcement of their own rulings, in countering backlash, and in providing social actors with an institutional venue for seeking the enforcement of their rights.

With regards to conservative counter-mobilization, as predicted in social movement theory and in line with contemporary developments in other Latin American countries, religious and in particular Catholic mobilization against abortion rights in Colombia has the characteristics of a social movement. In this case, the Constitutional Court has been highly effective in countering this backlash. However, a note of caution should be added, for the Court's ability to protect abortion rights may be undermined if conservative activists were to be appointed to the Court itself. In fact, Ilva Myriam Hoyos has been short-listed as a candidate more than once, and there is growing concern regarding the increasingly conservative membership of the Constitutional Court. This means the work of the progressive women's rights movement is far from over.

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Résumé

En 2006, la Cour constitutionnelle de Colombie a publié la Décision C-355/2006, qui a libéralisé la loi nationale sur l’avortement. La réforme était novatrice dans son argumentation, car il s’agissait de l’une des premières décisions judiciaires au monde à consacrer les droits à l’avortement au motif de l’égalité, et la première d’une cour constitutionnelle sur la constitutionnalité de

Resumen

En el año 2006, la Corte Constitucional de Colombia emitió la Sentencia C-355/2006, que liberalizó la ley referente al aborto en el país. La reforma fue innovadora en sus argumentos, ya que fue uno de los primeros fallos judiciales del mundo que defendió los derechos de aborto por motivos de igualdad, y la primera sentencia emitida por una corte constitucional que se pronunció respecto a

l'avortement dans l'optique des droits de l'homme. C'était aussi la première d'une série de réformes qui allaient libéraliser les lois sur l'avortement de quatre autres pays d'Amérique latine. Le cas de la Colombie est aussi remarquable par le processus de litige stratégique mené après la décision de la Cour, pour veiller à son application et contrer l'opposition d'acteurs conservateurs qui travaillent dans des institutions étatiques, ainsi que par le rôle actif que la Cour a joué dans ce processus. Sur la base du travail de terrain mené en Colombie en 2013, cet article analyse la mise en œuvre progressive et le contrecoup réactionnaire enregistré après la Décision C-355/2006, en mettant l'accent sur le litige stratégique du mouvement féministe et les décisions ultérieures de la Cour constitutionnelle, qui ont consolidé sa jurisprudence dans le domaine des droits à l'avortement. Il met en lumière le rôle aussi bien des militantes féministes que des activistes conservateurs dans les institutions étatiques comme mouvements sociaux opposés, et les dynamiques de la mobilisation juridique et politique et la contre-mobilisation dans ce processus.

la constitucionalidad del aborto en un marco de derechos humanos. Además, fue la primera en una serie de reformas que liberalizarían las leyes de aborto de cuatro países latinoamericanos más. El caso de Colombia también es notable por el proceso de litigio estratégico llevado a cabo por organizaciones feministas después del fallo de la Corte, a fin de asegurar su aplicación y contrarrestar la oposición de actores conservadores que trabajaban en instituciones estatales, así como por el rol activo desempeñado por la Corte en ese proceso. Basado en el trabajo de campo realizado en Colombia en el 2013, este artículo analiza el proceso de implementación progresista y la reacción después de la Sentencia C-355/2006, con énfasis en el litigio estratégico por el movimiento feminista y decisiones posteriores emitidas por la Corte Constitucional, que consolidaron su jurisprudencia en el campo de los derechos de aborto. Se destacan los roles de feministas y activistas conservadores en instituciones estatales como movimientos sociales opuestos, y la dinámica de la movilización político-jurídica y la contra-movilización en ese proceso.