



## UvA-DARE (Digital Academic Repository)

### Achieving the desirable nation : abortion and antenatal testing in Colombia : the case of amniocentesis

Olarte Sierra, M.F.

**Publication date**  
2010

[Link to publication](#)

#### **Citation for published version (APA):**

Olarte Sierra, M. F. (2010). *Achieving the desirable nation : abortion and antenatal testing in Colombia : the case of amniocentesis*.

#### **General rights**

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

#### **Disclaimer/Complaints regulations**

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

## Chapter 2

### De-penalising abortion in cases of foetal conditions that ‘make life unviable’

*A legal argument is a conceptual map of categorical inclusions and exclusions*

Delaney (2001: 489)

This chapter deals with the salient cultural norms, practices, and social imaginaries that informed abortion de-penalisation in cases of foetal conditions that ‘make life unviable outside the uterus’ (Sentencia C-355/06), as it took place in Colombia in May 2006.

Bearing in mind that legal mandates are profoundly intertwined with socio-cultural imaginaries and realities, and that neither law nor human groups are static (c.f. Moore 1983; Delaney 2001; Donovan & Anderson, III 2003), I argue that via the de-penalisation of abortion in cases in which the foetus has a condition ‘that makes life unviable’, it is possible to elucidate the way in which antenatal testing technologies play the role of allotting to either the pregnant woman or the foetus the status of being a *subject of rights*. By doing so, such technologies help to refine understandings and definitions of lives worth living, which resonate with ideas and definitions of desirable citizens in terms of fitness. However, given that abortion de-penalisation happened as a response to and within the framework of human rights discourse, a discourse that is unquestioningly taken for granted to be *right*, *self-evident*, and *universal*, dynamics and structures that refer to discriminatory attitudes and to clear notions of what are “desirable individuals” are obscured.

The goal of this chapter is twofold: firstly, to unearth ideals of desirable citizens, and secondly, to show the way in which antenatal technologies are mobilised for achieving and enabling the construction of this citizen type. To understand abortion de-penalisation in Colombia in such a light will enable the recognition of how Colombia thinks of itself as a nation, and a comprehension of what the country expects of its citizens and from the State.

In order to understand the abovementioned dynamics in relation to the shift from the full penalisation to the partial penalisation of abortion, I examine two different moments of the de-penalisation process. I start with a brief analysis of the history of the struggle for de-penalisation, followed by a focus on the lawsuits that achieved de-penalisation. Secondly, I analyse Sentence C-355/06 by which abortion was finally de-penalised.

In order to understand the later developments in the struggle against abortion penalisation, it is paramount to clarify why and how it is possible for Colombian citizens to present lawsuits demanding for the change of rules and regulations.

The Political Constitution describes Colombia as a 'Social State of Rights, organised in the form of a Unitarian Republic, decentralised, with autonomy in its territorial entities; democratic, participatory, pluralist; founded upon the respect of human dignity, in the work and solidarity of its peoples, and in the prevalence of the common good' (Constitución Política de Colombia Art. 1, my translation). This means, in practice and in theory, that 'popular sovereignty, participatory democracy, and the guarantee of fundamental rights are the principal basis of the State' (Uribe 2007: 3, my translation). In such a State, the legislator's power is limited by the rights citizens have, as stated in the Political Constitution. Furthermore, by the Constitution, Colombia is a State that looks for the 'operation of a just social order, founded upon human dignity and solidarity' (Sentencia C-355/06: 259). Such a defence of human dignity leads to the definition of life as an inviolable right, the avoidance of all forms of discrimination, and the consideration of freedom as a highly valued good (Uribe 2007: 3).

Apart from the Colombian Political Constitution, there exists yet another source of law called the Constitutional Block. In the spirit of internationality, the Colombian Political Constitution welcomed the influence of international law; however, to fully follow international law would transgress the Constitutional Article 4.1, which states the principle of Constitutional supremacy. Thus the idea of the Constitutional Block is that it allows the integration of international rights, rules, regulations, values, and principles, and the ultimate requirement for an international right to be incorporated in the Colombian Constitution is

that it must represent a 'human right'. The human right must be such that is not susceptible to limitations or exceptions; a stipulation which limits 'human rights' only to those contemplated in the International Humanitarian Right (Arango 2004; Ramelli 2004).

In such a scenario, and given that Colombia is a 'State of Guarantees' for rights and privileges, citizens may present a lawsuit before the Constitutional Court seeking to change laws that they consider unconstitutional. Therefore, if a citizen considers a particular regulation harmful to their or other's Constitutional rights, or human rights ratified and recognised by Colombia, he or she has the 'right' to sue such a regulation (c.f. Arango 2004). That is precisely what the lawyer Monica Roa and the other plaintiffs did with four articles of the Penal Code<sup>13</sup> in the case of abortion.

With the current juridical panorama clear, I will now briefly move to the history of the legal treatment of abortion and the struggles to de-penalise it in Colombia.

### Struggle and victory against abortion penalisation

To clarify, in what follows it is not my intension to discuss the human status of the foetus, or to present a position regarding whether foetuses should be treated as subjects of rights. What I want to stress and call attention to in this case is the fact that a prime requirement for a foetus to receive protection by law in Colombia is their genetic and morphological *normality*, as stated by medical doctors and scientifically imposed standards. The medical condition of the foetus thus becomes the turning point between being worthy or unworthy of legal protection, and thus of life.

On the 10<sup>th</sup> of May 2006, as a response to a series of lawsuits presented before the Colombian Constitutional Court<sup>14</sup>, by Sentence C-355/06 the Colombian Penal Code's articles that penalised abortion were changed<sup>15</sup>. De-penalisation allowed the practice of abortion with no penal repercussions, either to the woman who has one or to the person who

---

<sup>13</sup> Articles number 122, 123, 124, modified by article 14 of Law 890 of the year 2004 and 32 numeral 7, of the law 599 of the year 2000.

<sup>14</sup> Constitutional Court Files D- 6122, 6123 and 6124.

<sup>15</sup> Código Penal Colombiano Artículos 122, 123, and 124 of the Law 599 of the year 2000.

practices it. The Sentence includes three specific circumstances which were found by the plaintiffs and the Constitutional Court to harm women's human rights, as stated by the Colombian Political Constitution and by the United Nation's Human Rights bill<sup>16</sup>. The three specific circumstances that were freed from penal consequences were:

i) when the continuation of the pregnancy constitutes a danger to the life or health of the woman, as certified by a physician; ii) when there exists severe foetal malformations that make the foetus' life unviable, as certified by a physician; and, iii) when the pregnancy is the result of conduct, properly denounced, constitutive of carnal excess or sexual act without consent; abusive or artificial insemination or embryo transfer without consent; or incest (Sentencia 355/06: 278, my translation).

Abortion de-penalisation certainly is an important event in Colombian history. As we will see below, there have been attempts to achieve it since the mid 1970s. This section deals with such attempts. I firstly and briefly address the history of the struggle for abortion de-penalisation in the country, and secondly, I focus on the latest process which led to abortion de-penalisation. The aim of this section is to show that the de-penalisation of abortion in Colombia was possible due to a mix of socio-cultural factors; the way in which the lawsuit was framed, namely the discourse of human rights; the mobilisation of groups and actors that supported the lawsuits; and the composition of the Constitutional Court.

### *Brief history of abortion's legal status*

In Colombian legislative history, abortion has not always been fully penalised. During Republican times, the Republic's first piece of legislation (1837) allowed therapeutic abortion. The practice lacked penalisation when performed by a surgeon for the purpose of

---

<sup>16</sup> c.f. Files of lawsuits presented before the Constitutional Court D- 6122, 6123 and 6124; Sentencia C-355/06.

saving the life of a woman. At that time, abortion was not considered a crime against life but an act against social norms and *good customs*. That is, abortion was considered a practice that contravened social norms of good behaviour, but was not considered a crime. In the same piece of legislation, and in the legislation of 1873, abortions performed for reasons known as *honoris causa* (in order to preserve the good name and reputation of the family of the woman, and of single mothers) were benefited with a penalty reduction. These dispositions remained active through the subsequent legislations of 1890 and 1936, but were countermanded in the Penal Code of 1980 in which abortion was completely penalised with no penal reduction whatsoever (Agatón & Bohórquez 1997; Sentencia C-533/06).

By 2000, through a law project, the Penal Code's articles penalising abortion were changed in order to allow a penalty reduction and a possible penalty exception. Until May 2006, women could only expect a reduction (by one third) to the penalty of abortion (one to three years of prison) if they had been either raped or artificially inseminated without their consent<sup>17</sup>. If in such cases the woman proved that her health or life were at risk, or that the foetus presented a severe malformation, the woman could have an exemption from the penalty<sup>18</sup>. Such a reduction would depend, however, on the judge's assessment of the woman's reasons as valid for ending a *human life*, which was how the Court conceptualised the foetus (c.f. Sentencia C-133/94; C-591/95; C-198/02). This rather complex manoeuvre made possible within the law misled the general public to the belief, especially among those against abortion, that any woman who could medically prove foetal genetic or morphological variation could access a legal abortion (c.f. <http://www.vidahumana.org>)<sup>19</sup>.

Despite the highly restrictive penalisation of abortion, only on very few occasions did women face actual penal consequences (Buitrago 2003). This situation 'shows the distance between the severity of such norms and the difficulties for its application ... abortion is a frequent practice that is not considered a crime or a violation to the law by women who have one, their partners who support them or who pressure them to have an abortion, and by people doing the procedure' (Buitrago 2007: 11, my translation). Moreover, in cases which applied to the de-penalised circumstances, the practice of abortion was in fact

---

<sup>17</sup> Código Penal Colombiano, 2000.

<sup>18</sup> Código Penal Colombiano, 2000 art. 124-parágrafo.

<sup>19</sup> Accessed in February 2006.

being extensively used by women long before de-penalisation materialised, and has also been relatively accepted by society (c.f. Medina et al. 1999).

### *Struggles*

Although the topic of abortion has been discussed since Republican times, the struggle to de-penalise abortion in Colombia can only be traced back to 1975. Since then and up to 2005 all de-penalisation attempts were unfruitful. In 1975, Liberal Senator Iván López, for the first time in history, presented a law project seeking abortion de-penalisation before the Congress (Agatón & Bohórquez 1997; Revista Semana 2006a; Universidad Nacional de Colombia 2007a). A few years later, in 1979, Liberal Party representative Consuelo Lleras presented to Congress a law project seeking abortion de-penalisation under the same three circumstances: rape or incest; a threat to the woman's life or health; and if the foetus presented a morphological variation considered to prevent its life outside the uterus (Agatón & Bohórquez 1998; Revista Semana 2006 edición 1254; Buitrago 2007). The early use of antenatal diagnosis in Colombia (c.f. Sánchez-Torres 1972, 1993), socio-cultural changes regarding women's roles (one example being the re-conceptualisation of pregnancy as a choice and not as compulsory) – which were informed by women's movements both locally and globally (Viveros 1997) – and the changes in abortion legislation taking place in other parts of the world (Rapp 2000), led to a first attempt to allow women to have a secure and legal abortion when medically proven foetal conditions existed. Even though such a legal project triggered a massive polemic in political circles, it was unsuccessful in achieving its goal.

Other crucial moments in abortion de-penalisation history would be the Constituent Assembly of 1991, when abortion status was debated but 40 votes out of 65 kept it penalised. Later, in 1994, for the first time a lawsuit challenging the unconstitutionality of abortion penalisation was presented before the Constitutional Court. However, the institution kept abortion penalised as it was (Sentencia c-133/94). From this last lawsuit one can see how the abortion debate has been changing in nature over the last 15 years. Colombia has been declared a multi-ethnic and pluri-cultural secular society (Constitución Política de Colombia

1991), which brought about new arguments for what constitutes a valid reason for having the right to interrupt a pregnancy. The debate showed a movement towards a more secular discourse, which framed abortion within women's reproductive rights; yet this contrasted with the Constitutional Court's definition of the foetus as a human being and a person from the moment of conception. Thus, abortion would imply a violation of the right to life (Sentencia C-133/94).

What is of great importance is that this 1994 lawsuit attempted to de-penalise abortion in cases of foetal genetic or morphological variations. In order to achieve de-penalisation in a system that conceptualises antenatal life as a human being with rights that must be protected, the plaintiff argued that fetuses should not be considered a subject of rights, for only people who have been born could be considered as such. Moreover, viability to live outside the uterus implied the requirement of being a subject of rights. That is, foetal protection should be based on the viability of future life.

The Court kept abortion penalisation as it was, for it still regarded the life of the foetus as needing protection as the life of a human being. Nevertheless, some Judges who rejected continued penalisation brought to the debate the matter of foetal morphological or genetic variations, as one of the cases that should be de-penalised. These Judges articulated their argument by stating that to criminalise a woman 'albeit she knows of the existence of severe morphological or mental malformations in her future child' or if she faces several economic constraints, makes penalisation difficult to understand and to accept (Sentencia C-133/94: 21). For these Judges, to keep abortion penalised under the abovementioned circumstances seemed an excess on the part of the Constitutional Court, and an intrusion of the State into the private sphere of sexual and reproductive rights.

In 1997, a lawsuit that sought to strengthen abortion penalties was presented before the Constitutional Court (Sentencia C-013/97). This lawsuit found that the penalty for abortion in cases of rape was too soft and that such a practice should be treated as homicide. The Court reviewed abortion penalisation in general, as well as the prescribed penalties. The Court's Sentence (Sentencia C-013/97) contained a very conservative and Catholic emphasis, agreeing on an understanding of abortion as the 'homicide' of an 'innocent victim', but the penalties were not modified because the Court considered the matter to have already been

addressed and solved. The Sentence used the Papal encyclical *Humanae Vitae* to support their point, and suggested that in cases of rape, abortion was not a must, for it was always plausible to give the child up for adoption (Buitrago 2003; Roa 2005a-b).

In this case again, a minority of the Constitutional Court's Judges did not agree with the Court's position on penalising abortion or of conceptualising the foetus as a human being, and questioned as a valid argument the Court resorting to the Papal encyclical. To make their point for abortion de-penalisation and against adoption as the suggested means for keeping it penalised, Judges expressed their minority dissenting opinion<sup>20</sup> with regard to Sentence C-133/94, adding that to force a woman to deliver a child under the conditions of rape, if the foetus presents genetic or morphologic variations, or if the woman faces several economic constrains, protects but the biological life of the foetus. Real protection of life did not take place given that, for the Judges, many unwanted children are abandoned and mistreated by their biological mothers (Sentencia C-013/97: 37). That is, the dissenting Judges argued that by not granting an abortion to women under these three circumstances, there would be in fact be negative repercussions for the future child, who would always be or would become undesirable, and thus would run the risk of being mistreated or abandoned by its mother. Furthermore, these Judges expressed concern over a possible conflict of rights that may come about, either in the way in which conception happened (rape, un-consented embryo transfer, or artificial insemination), or as a result of problems that can evolve during pregnancy (foetal genetic or morphological variations, or danger to the health or life of the woman). Unfortunately, there is no further elaboration into what kind of conflict they were referring to, or what kinds of rights appeared to be in conflict.

What is interesting in the above case is precisely the clarification of minority dissenting opinion. These Judges articulated a conceptualisation of a 'foetus different from the average' as inherently undesirable, and suggested that this condition would lead parents to abandon such children. In this case, they considered it better to abort such foetuses.

---

<sup>20</sup> The term in Spanish is *Salvamento de voto*. It means that a Judge or some Judges (a minority) disagree with the majority of Judges.

This Sentence reveals how the Court was composed of individuals holding opposite positions regarding life, rights, and pregnancy, and that the debate was indeed moving and searching for a secular discourse (Sentencia C-013/97).

In 2002, after the Penal Code's articles that penalised abortion were changed by a law project (see Sentencia C-198/02), a lawsuit against the Penal Code's article 124, and its paragraph by which abortion penalisation could be exempted, was presented before the Constitutional Court. This lawsuit attempted to eliminate the circumstances in which there could be granted a penalty exception. For the plaintiff, not only could the paragraph and the circumstances be subject to multiple interpretations, but more importantly, abortion should always have penal repercussions. Furthermore, the plaintiff found that the incorporation of the paragraph in question, which referred basically to cases of foetal genetic or morphological variations, what was called 'eugenic abortion', was not thoroughly debated in the two chambers when the law project by which the Penal Code was modified took place (Sentencia C-198/02).

In this case, the Court decided in favour of keeping the Penal Code's article and paragraph as they were; that is, to allow penalty reduction and even total exemption, arguing that the process of including the paragraph had indeed been debated in depth.

However, as in the previous cases, not all Judges agreed on this decision. In this case again, the Judges who presented a clarification of minority dissenting opinion expressed their rejection of maintaining abortion penalisation as it was. In their reference to 'eugenic abortion' they expressed the opinion that to grant an abortion in cases in which 'there exist genetic malformations, detectable through the use of early diagnosis techniques ... [T]he way to prevent them will be to prevent such a creature, which will be born deformed, becoming a source of suffering for the others and for itself...' The idea behind this claims to be humanitarian, though it departs from the understanding that some lives are more worthy than others: 'that means that only those who are in good health have the right to be born' (Sentencia C-198/02: 49, my translation).

With this Sentence, the dynamics of the debate and the characteristics of the actors showed new nuances, challenging the dominance of the church by using a more secular

discourse to defend or reject the sued norm. Moreover, it systematically included not only political actors but also some civil society sectors such as women's movements, NGOs, and the media (Viveros 1997; Buitrago 2003). Furthermore, and for the first time in decades, abortion was made flexible, as under specific situations women would not necessarily face penal consequences. Finally, via the ratification of the Penal Code's article 124 and its paragraph, Colombia as a State and as a Nation openly articulated the category of having 'severe medical or genetic pathologies that are incompatible with human life' (Sentencia C-198/02: 12). Such an articulation was accepted by the Judges as 'it responds better to the social reality' (: 15). Nevertheless, the Court established that the competent judge who prosecutes a woman must determine whether the *foetal pathology* did indeed correspond to a 'condition that makes life unviable'. In this sense, from 2002 until 2006, it was the judge who decided whether or not a condition was severe enough to constitute a legitimate reason for having an abortion and facing no penal consequences.

Throughout this long history of defeats and partial victories, the common understanding amongst many congressmen, judges, senators, and the vast majority of the civil society, was of the embryo and the foetus as a human being; hence abortion could only signify murder. Objections to the de-penalisation of abortion with regards to the foetus' genetic information were grounded in the view of some scholars, medical doctors, geneticists, church representatives, and common individuals that such an abortion was nothing but eugenics (c.f. Sentencia C-013/97; [www.vidahumana.org](http://www.vidahumana.org)). Support for penalty reduction or exemption for abortion was based on the understanding that pregnancy is a choice and should not be a legal imposition; that women's right to sexual and reproductive freedom, to health, to dignity, and to life should be considered stronger than the protection for the foetus; and that foetal genetic or morphological variations that are incompatible with extra uterine life, however that is defined, contradict women's aforementioned rights, and pose no real protection to the life of the future child with disabilities.

Due to the constant and forceful actions against abortion de-penalisation on the part of the Catholic and Christian Churches, abortion debate has been irreversibly polarised between those who are 'pro-life' and 'pro-choice', as if such categories were self-evident, or more importantly, as if they were rigid, mutually exclusive categories. The former position

is seen as a single massive group of religious people (and, by default, positions such people as having a visceral, fundamentalist, and backwards discourse); and the latter is seen as a more varied group of scholars, feminists, and liberals, whose arguments are considered *avant garde*, rational, and progressive. The debate has been made profoundly dichotomous and nuances of dissent have been cut off and labelled religious and pre-modern.

### *Victory*

In such a climate, in 2005 lawyer Monica Roa filed two lawsuits (D 6122)<sup>21</sup> to challenge the articles of the Colombian Penal Code that penalised abortion in all cases<sup>22</sup>. The second lawsuit was accompanied by another two lawsuits which sought similar goals (D 6123 & D 6124). Roa and the other plaintiffs used the previous discourse of presenting abortion penalisation as a problem of public health, but also introduced new issues which positioned abortion as a violation of women's human rights (D 6122; Sentencia C-355/06). The three lawsuits picked up and conveyed the arguments used by the Judges who clarified their minority dissenting opinion in Sentences C-133/94, C-013/97, and C-198/02, and inscribed the issue as a matter of international human rights.

Roa's intention was a more flexible abortion law that permitted women to have an abortion under three specific circumstances: if a woman has been raped or artificially inseminated against her will; if a woman's health or life are threatened by the pregnancy; and if the foetus has severe morphological or genetic conditions that are incompatible with extra uterine life (D 6122)<sup>23</sup>.

On 10<sup>th</sup> May 2006, the Constitutional Court de-penalised abortion in the three demanded cases (Corte Constitucional 2006a-b). However, the Court was clear in stating that in all three cases the woman's petition for an abortion needed to be supported by a certificate. In the first case, the certificate must be a formal report from the police, and for the

---

<sup>21</sup> For the first lawsuit, the Constitutional Court declared an 'inhibitory sentence': they did not definitively decide on the case but left all possibilities open for a new lawsuit. The reason for such a Sentence was that to de-penalise abortion, as demanded in the lawsuit, would contradict other articles of the Penal Code. In the Second lawsuit Roa sued all articles that were related to the crime of abortion.

<sup>22</sup> Articles 122, 123, 124 and 32 numeral 7

<sup>23</sup> Note the difference in wording between the lawsuit and the Court's Sentence. The Sentence de-penalised conditions that made the foetus unviable, not incompatibilities with life.

two latter cases the certificate must be signed by a medical authority (Sentencia C-355/06: 281). Hence, in cases of a risk to the woman's health, or in cases of foetal malformation, one could say that women's choice is very much determined by her physician's viewpoint and understanding of what is a condition that makes life unviable, and what is an unviable life.

According to Roa and the other plaintiffs, the penalisation of abortion constituted a violation of women's fundamental human rights. Roa's argument was that not allowing women to have a legal and safe abortion infringed upon the following rights and principles: the principle of proportionality<sup>24</sup>; the right to life; the right to dignity; the right to equality and to be free of discrimination; the right to reproductive autonomy and freedom; the right to free development of personality; the right to health; to integrity; and the right to remain free of inhuman, degrading, and cruel treatment, and torture.

In general terms, for the plaintiffs abortion penalisation under the three presented cases was a violation of these seven mentioned Constitutional (and international) rights. But the violation of the right to remain free of inhuman, degrading, and cruel treatment refers specifically to one situation. For Roa (D 6122:16), to *force* a woman to give birth to a child with *severe malformations* constitutes not only a contravention of all the rights that full penalisation suppose, but also entails a contravention of a 'fundamental human right' ratified by Colombia and thus part of the Constitutional Block. In Roa's terms, as stated in the lawsuit (D 6122: 16):

The latest decision of the Committee of Human Rights of the United Nations, part of the Constitutional Block, establishes that not to warrant the possibility of a legal abortion when there exist foetal malformations, is a violation of the right to remain free of torture and cruel, inhuman, and degrading treatment. In such cases, women have wanted pregnancies and because such become unviable women are tremendously affected. Technological innovations in the area of obstetrics allow always for more diagnosis of foetal malformations, which can be incompatible with extra uterine life ... The pregnancy is imposed on the woman (which, after

---

<sup>24</sup> As stated by the Constitutional Court, there are no absolute rights. When two rights are in conflict, the Court of the legislator has to evaluate which right deserves special protection above the other.

diagnosis, becomes unwanted) harming, then, her fundamental rights, with the pretension to protect a human life that has no future ... The violation of women's rights is even more extreme when, after having to give birth to *monstrous creatures*, women are forced to care for them and breastfeed them during the period of life that they [the creatures] have (hours, days) (My translation, emphasis added).

From the above excerpt at least three issues can be highlighted. First is the fact that to bear a foetus with morphological variations constitutes, and is equalised with, torture (as torture is defined and opposed by the United Nations bill of Human Rights)<sup>25</sup>. This supposes that to not grant an abortion to such an affected woman is to mistreat her; the same way that, for instance, a political prisoner is tortured, physically and psychologically, for holding a particular political stand.

The idea here is that to be pregnant with and not allowed to abort a foetus different from the average – and I say *different from the average* because, as will become apparent, the ‘conditions that make life unviable’ are not clear cut – is a degradation, a torture, and an imposition of inhuman treatments upon the woman. This speaks eloquently about the understanding and place that people with disabilities – those foetuses who survive to be born – have in Colombian society. To conceptualise a pregnancy with a foetuses different from the average as a most undesirable, painful, and degrading event, elucidates the conceptualisation that people with disabilities exist as undesirable family members and fellow citizens, who only bring about extreme suffering, and suppose the degradation of the families (and societies) in which they live.

---

<sup>25</sup> The United Nations defines torture as follows: ‘...torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions’. *Convention against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Created on July 16, 1994 / Last edited on January 25, 1997. Electronic source: <http://www.hrweb.org/legal/cat.html> Visited on 4 April 2009.

Correspondingly, I find the reference to torture problematic, because to bring torture to such a level trivialises situations in which people are in chains, kept captive, and endure physical and psychological pain due to a political, ethical, or moral stand, or on account of their social position, as many are in Colombia. From my point of view, the two situations are, by far, incommensurable. The UN definition of torture is very broad, and thus one could say that disability is 'dehumanised' (treated at a distance, loose from a person or a body) and instrumentalised in favour of pro-choice politics.

Secondly, fetuses with morphological differences are converted into 'monstrous creatures', which is not only violently disrespectful to people who may have such morphological variations, but also detaches the fetus from any possibility of potential humanness.

This latter point brings me to the third issue: it is through the use and availability, and in this particular case, mobilisation of antenatal technologies that such *creatures* are spotted, diagnosed, constructed, made visible, and made real.

It is noteworthy that Roa does not delve into what she considers 'conditions incompatible with life' or what a 'monstrous creature' is. Roa treats these two categories as if they were specific, neutral, and clear cut. She uses as an example of such categories the case of anencephaly<sup>26</sup>, but takes these two categories as unproblematic, not accounting for the myriad of possibilities that such an assumption entails and enables. Furthermore, she forces society to establish what are thought to be 'incompatibilities with life' in exact and solely medical terms, and obscures the profound intertwinement that exists between a medical impairment and a disability, in wider socio-cultural terms (c.f. Shakespeare 1998). That is, the complete focus on medical conditions dims the fact that disabilities are socially and culturally constructed, which means that 'incompatibilities with life' are by no means universal, static categories.

Furthermore, by relying on the discourse of human rights, Roa detaches any possible relation to humanness in fetuses, which, defined and categorised by medical science and its practitioners as not meeting pre-given standards of what is called normal, become a burden

---

<sup>26</sup>As defined by the Merriam-Webster online dictionary, anencephaly is the 'congenital absence of all or a major part of the brain'.

and a torture to the woman carrying them. In this sense, malformed fetuses are unwanted, undesirable. Roa, who strongly criticises full penalisation of abortion because it implies a reduction of women to their biological dimension and possibilities (i.e. reproduction), without hesitation limits the foetus to its biological condition when it is different from the average. Furthermore, the absolutist medical conditions (as diagnostic categories) which, through the use of antenatal technologies, define the life, fate, and identity of such fetuses, make them unworthy to be protected by law.

Roa's successful lawsuits to achieve abortion de-penalisation brought the abortion debate to a new level. Her campaign differed from previous attempts in at least four crucial respects. Firstly, members of civil society both for and against abortion de-penalisation took an active part in the debate (i.e. through letters to the Judges, peaceful demonstrations, public debates, notes in the dailies, magazines, and so forth).

Secondly, Roa involved the international community, as Colombia has committed itself with international organisations such as the United Nations' Convention on the Elimination of All forms of Discrimination against Women (CEDAW), which strongly supported Roa's initiative.

Thirdly, pro de-penalisation voices provided and sought a debate with arguments less religious and moralist than their opponents by exposing abortion as a public health issue, related to gender inequality and social injustice, in which the status of the foetus was not principally at issue, or rather, was altogether isolated from the onset of the debate. Nevertheless, in the case of foetal genetic or morphological variation, the human status of the foetus, and as a subject of rights, was touched upon. For Roa, fetuses with diagnosed conditions falling into the category of 'incompatibilities with life' should not be considered subjects of rights, as such lives 'have no future' (D 6122: 16).

Fourth and finally, with regard to the features of the debate, the media gave full coverage of it until de-penalisation was approved, and covered the ongoing debate for almost a year. It is, however, striking how arguments defending women's right to abort

foetuses with morphological or genetic variations were fairly discussed<sup>27</sup> in the public debate, in comparison with the other two situations presented to the Court.

### De-penalisation Sentence C-355/06

Although my central concern is abortion de-penalisation in cases of foetal malformation, here I also refer to the case of abortion when the woman's life is endangered by the pregnancy. The aim of this section is to show the extent to which the discourse of human rights shapes understandings of the subjects of rights, who are either defined by apparently merely scientific medical terms by means of antenatal technologies, or are blurrily understood from a bio-psycho-social perspective of the health of the woman.

On 10 May 2006, by a press release (Corte Constitucional 2006b), Colombians were informed that abortion in the cases demanded by Roa and the other plaintiffs had been de-penalised. Colombians were also informed that, although there was not yet corresponding regulation, the Constitutional Court's decision required immediate compliance. That is, from 10<sup>th</sup> March 2006 any woman whose case fell under the de-penalised circumstances could receive a legal abortion. The Ministry of Social Protection<sup>28</sup> stated that while the practice of abortion was regulated by Colombian authorities, legal abortions were supposed to follow the protocol presented by the WHO (OMS 2003). The Ministry of Social Protection also stated that from that day on 'Voluntary Interruption of the Pregnancy' was covered by Social Security; thus all women in Colombian territory were granted full access to the procedure with no extra costs involved (Norma Técnica. Ministerio de la Protección Social).

The 533 page long Sentence C-355/06 took quite some months to be readied. For the Sentence to be completed, it required collecting together the three lawsuits presented before the Constitutional Court, and the interventions of six public institutions (the Colombian Institute of Family Well being (ICBF), The Ombudsman, The Ministry of Social Protection,

---

<sup>27</sup> Only a minority of media articles addressed the matter of foetal malformation when discussing abortion de-penalisation. Such articles were presented either by paediatricians, obstetricians, and the pro-life movement. The arguments exposed by the medical professionals refer to women's sorrow and difficulties when delivering a foetus which, given its medical status, would have a short life span. The pro-life movement argued that women could always give children with (and without) disabilities up for adoption.

<sup>28</sup> Decreto No. 4444 de 13 de Diciembre de 2006, which regulated the practice of 'Voluntary Interruption of Pregnancy'.

the University Santiago de Cali, and the National Academy of Medicine) and three private institutions (Corporation house of the woman, Corporation Sisma Mujer, and the Episcopal Conference). Further, it included information from nine interventions by citizens, eight of which rejected the attempts at de-penalising abortion, and one which pleaded for all the documentation given during the first process started by Roa (to which the Court declared the Inhibitory Sentence) to be taken into account, in order to enrich the debate.

Also included but not taken into account, because such interventions were presented after the legal term for intervention expired, were hundreds of civil voices, which mobilised to either support or reject the lawsuits.

The Sentence contains as well the Court's considerations and decision: the presentation of the case conducted by exposing Judge Álvaro Araújo, and vote clarification done by one of the Judges, intended to promote abortion de-penalisation by a review of abortion in comparable law.

With regard to public institutions' interventions, all six supported the initiative of de-penalising abortion. All positions revolved around a common argument, which was constituted of two points. Firstly, that abortion penalisation disregarded women's human rights, and in that sense violated international treaties signed by Colombia, while at the same time harming the Colombian Political Constitution. Secondly, that abortion represented a real public health problem due to the high rates of maternal deaths caused by unsafe abortions.

The strongest argument used to plead for abortion de-penalisation related to the high number of unwanted pregnancies due to, a) the lack of education in reproductive and sexual health and rights, especially amongst adolescents; and b) (intra family) violence. For the intervening institutions, these two aspects represented situations that led to the high numbers of abortions, and subsequently converted the practice of unsafe abortion into a public health matter. Similarly, situations of rape or incest, and also when the woman's life or health were endangered due to the pregnancy, were extensively discussed as a matter of women's human rights by all interveners who supported the lawsuits.

The case of a diagnosed foetal genetic or morphological variation was scarcely addressed, if at all. Only two public institutions advanced positions referring to abortion de-penalisation in this particular case, and they presented their argument somewhat differently to Roa. For the Ombudsman and the Universidad Santiago de Cali, penalisation of abortion in cases of foetal genetic or morphological variations harmed the human dignity of the person who is born with a severe disability and not, as Roa argued, the dignity of the woman when she is *forced* to deliver and to care for a child with a particular disability or physical condition.

In general, voices supporting the demand (public, private, provided in time or out of time) used Roa's same arguments for defending abortion de-penalisation, as well the discourse of violation of human and Constitutional rights: they repeated the same wording for voicing their plea, relied on the same definitions, and quoted the same sources (documents, websites, statistics, definitions). When reading the texts, the Sentence, and later public documents (produced by the joint work between the Ministry of Social Protection and the Bio-ethics Network of the National University in Bogotá), it is clear that the argument for de-penalising abortion, based on the idea that penalisation is a violation of women's human rights, and that not allowing a woman to abort a foetus considered to be *malformed* constitutes a torture (as torture is defined and punished by the United Nations), becomes extraordinarily solid. This is so much the case that the simplest attempt to problematise either the practice of selective abortion, or the argument that it constitutes torture if a pregnant woman carrying a foetus different from the average is not granted a legal abortion, seems virtually impossible. The consequence of the repetition of these sorts of arguments and documents is basically to legitimate the practice through discourse. But this discourse, mentioned and mobilised in the lawsuits, debates, Sentence, and public documents, is not any sort of discourse, but one considered to be truthful, and those who are speaking or engaging in the discourse are considered the best of citizens (Foucault 2001). In this case, the constant repetition from public, legitimate, and powerful institutions and figures makes concrete, strong, real, and normal the viewpoint that selective abortion is a matter of human rights; that if women are not allowed to abort fetuses considered to be malformed, they are being tortured.

Furthermore, the arguments offered before the Constitutional Court by presenting Judge Álvaro Araújo are of enormous richness for understanding the salient socio-cultural norms and understandings about specific groups of people and citizens. Araújo pleaded for the total de-penalisation of abortion, for to penalise abortion was to instrumentalise and objectify women to their reproductive capacity. Women, regardless of their motivations, should have the legal possibility of interrupting their pregnancies (Sentencia C-355/06: 283-284).

The main argument presented by the Court for not allowing abortion on demand – or as Araújo presented it, the total de-penalisation of abortion – was that such a practice would contravene the Political Constitution of Colombia, which protects the value of life, and also protects antenatal life. The Court decided that abortion should only be permitted when the Constitutionally protected *good* of antenatal life (good because the foetus is not yet a citizen) harms the Constitutional and human *rights* of the pregnant women (a citizen, thus a subject of rights), as presented in the lawsuits.

The Court was emphatic in expressing that it laid out of its reach to determine when human life started. Consequently, the discussion around abortion was framed in terms of proportionality of rights. Under the three outlined cases for abortion de-penalisation, to privilege the Constitutionally protected good of foetal life over the woman's Constitutional and human rights appeared to be disproportionate. Although foetal life counts for Constitutional protection, the Court expressed that there is no such thing as foetal rights, for fetuses are not the subjects of rights. Only citizens are subjects of rights; only persons are susceptible to be citizens; and the Court only recognises personhood after birth, when the baby is separated from its mother – not before. Hence, when the woman's rights, and the foetus' protected good of life, are in contradiction (as they appeared to be in the argued cases), the woman's right is the one which should be safeguarded (Sentencia C-355/06: 164).

After a long and a heated debate the Court decided to de-penalise abortion. The Judges analysed abortion de-penalisation in the circumstances presented by Roa and the other plaintiffs (D-6122, D-6123, and D-6124) in the light of international human rights ratified by Colombia, and women's Constitutional rights. To keep abortion penalised under those three cases was found to indeed violate several rights: women's rights to sexual and

reproductive autonomy (to chose the number of children); to the free development of personality (to decided whether to take on the maternity role); to life (as illegal unsafe abortions threaten women’s life, or when the pregnancy endangers the woman’s life); to health (as mentioned for the previous right); to integrity (as illegal unsafe abortions threaten a woman’s life, or when the pregnancy endangers the woman’s life); to equality (non discrimination, as there is no medical condition or procedure that men suffer or experience that is penalised); to dignity (to not objectify and reduce women to their reproductive capability); and the right to remain free from cruel, inhuman, and degrading treatment, and torture (to be forced to bring the pregnancy of a foetus with morphological or genetic variations to term, and subsequently, having to care for such a child) (Sentencia C-355/06).

Given that the matter of concern here is abortion de-penalisation in cases of foetal genetic or morphological variations, I do not address the case of abortion de-penalisation ‘when the pregnancy is the result of a conduct, properly denounced, constitutive of carnal excess or sexual act without consent; abusive or artificial insemination, or embryo transfer without consent; or incest’ (Sentence 355/06: 278, my translation). However, I will briefly address the case of abortion de-penalisation ‘when the continuation of the pregnancy constitutes a danger to the life or health of the woman, as certified by a physician’ (Sentence 355/06: 278, my translation). I do so because, as different as this case may seem from abortion in cases of foetal genetic or morphological variations, the two are in fact deeply related, as further chapters show.

For the cases in which ‘the continuation of the pregnancy constitutes a danger to the life or health of the woman, as certified by a physician’, the court found that not allowing women access to a legal abortion corresponded to harm to a women’s right to life and to health. As stated in the Sentence:

... it results, without any doubt, excessive to demand the sacrifice of an already formed life, in order to protect life that is in development ... [I]n this specific hypothesis, there is not even equivalence between the rights not only to life, but also the mother’s own right to health, in respect of safeguarding the embryo ... The State cannot ask, in this particular case,

pregnant women to assume heroic sacrifices and to offer up their rights, in the benefits of third parties or of the general interest (C-355/06: 268, my translation).

In the interest of defending women's rights as presented in the Colombian Political Constitution, and in concordance with international human rights, the Court stated that when considering women's health, it is not only physical health which should be considered. Noteworthy is that the Court's understanding of health, which is to be taken into account when granting a woman a legal abortion, is the same definition used by the World Health Organisation (1948)<sup>29</sup>. In the Sentence this reads as follows:

The Court has considered that life, in terms of its Constitutional preservation, does not consist merely of its biological preservation but, since it is about human beings, [life] requires to be developed under the minimum conditions of dignity ... given that the person is an integral and complete whole, which includes purely material, physical, and biological aspects, as well as those of the spiritual, mental, and psychic order. In order for life to truly correspond to human dignity, all of these factors have to be met as essential; given that they contribute to configure the united individual (C-355/06: 246, my translation).

Such an understanding of health, when translated in terms of abortion depenalisation in this specific case, means that 'this hypothesis does not cover exclusively the effect on the pregnant woman's physical health, but also, all those cases in which her mental health is affected ... [P]regnancy can cause a situation of severe anguish, or even grave psychic alterations that justify its interruption, following medical certification' (C-355/06: 269, my translation). This last point will be of great importance in cases in which the treating specialist does not agree with an abortion in cases of foetal genetic or morphological variations, as is shown in Chapter 5.

---

<sup>29</sup> Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.

With regard to the case ‘when there exist severe foetal malformations that make the foetus’ life unviable, as certified by a physician’ (Sentencia 355/06: 278, my translation), the Court decided that, as demanded by Roa, not allowing women to abort such fetuses did represent a case of torture. In an attempt at clarity, the Court expressed that cases susceptible to consideration as ‘conditions that make life unviable’ should only be those in which ‘the foetus will *probably* not live, according to medical certification, due to a severe malformation’ (Sentencia C-355/06: 270, my translation, emphasis added). The Court clarified that ‘this hypothesis [of foetal genetic morphological variations] is altogether different from the mere identification of some disease in the foetus, which can be treated either before or after delivery’ (Sentencia C-355/06: 270, my translation). Despite this attempted clarification, an effective delimitation of ‘conditions that make life unviable’ is virtually nonexistent and rather problematic.

To refer to conditions in which the foetus will probably die opens up a myriad of situations, not necessarily limited to such extreme cases as anencephaly (the absence of a brain). Furthermore, to include the *probability of death*, a probability that all living things face permanently, supposes the inclusion of countless cases in which, for instance, the lack of technological facilities and resources lead to the premature death of an infant that in other conditions could have lived. Allow me an example: it is not the same to be diagnosed with a cardiac condition and to be born in a third level private clinic in Bogotá, as to be diagnosed with the same condition in a rural area with no access to high-tech neonatal medicine. What makes the inclusion of the *probability of death* problematic is that social conditions should be taken into account in the moment in which an abortion is granted, however, as presented by the lawsuit and by the Sentence, ‘conditions that make life unviable’ are taken to be purely medical.

Similarly, the related attempt at clarity and delimitation made by the Court, expressing that ‘this hypothesis [of foetal genetic morphological variations] is altogether different from mere identification of some disease in the foetus, which can be treated either before or after delivery’ (Sentencia C-355/06: 270, my translation) also falls short. This is so because such a definition includes the whole spectrum of genetic conditions such as diabetes and Huntington’s disease, or predispositions such as cancer, together with all chromosomal

variations such as trisomy-21 (associated with Down syndrome), Turner syndrome, or Klinefelter syndrome, to mention a few, which are not treatable either before or after birth. That means that all fetuses with such conditions are susceptible to being aborted, otherwise the women carrying them may be subjected to torture and cruel treatments.

Given that the Court needed to solve the issue of the subjects of rights and the Constitutional protection of the good of (antenatal) life in order to allow abortion in these cases, the Court manoeuvred in relation to the worthiness of the life of the future child:

The State's duty of protecting the life of the nasciturus [unborn] loses weight, precisely for being in the situation of an unviable life. Therefore, women's rights have to prevail, and the legislator cannot force her ... to bring to term the pregnancy of a foetus which, according to medical certification, is in such conditions ... An additional ground for considering the non penalisation of the mother in this respect, which includes real extreme cases, is found in the consideration that to resort to penal sanction for protecting the life in gestation would imply the imposition of a conduct that exceeds what is normally demandable to the mother; given that she should endure the burden of a pregnancy and the subsequent loss of a life of a being, which, given its severe malformations is unviable. Furthermore, ... to force a woman to bring to term a pregnancy of this nature signifies to subject her to cruel, inhuman and degrading treatment that affects her moral intangibility, this is, her right to human dignity (Sentencia C-355/06: 270, my translation).

Contrary to the definition of health used by the Court to provide parameters for deciding when to grant a woman an abortion, the definition of what makes a future life unworthy of State protection is based, comprised, and weighted in scientific medical terms. Further, it is through the availability and use of antenatal diagnostic technologies that the foetus' worthiness is decided. However, given the aura of detachment, neutrality, and

objectivity that both law and science have (Thorpe 2008), the Court deposited the responsibility to decide upon which cases are suitable for abortion on medical practitioners:

[I]t does not correspond to the Court, for it is outside its jurisdiction, to establish in which events the continuation of a pregnancy constitutes a danger to the woman's life or health; or when there exists grave foetal malformation that makes its life unviable. Such determination is situated on the head of the medical professionals, who will act accordingly to ethical standards of their profession (Sentencia C-355/06: 271, my translation).

What is problematic in determining the worthiness of a life-to-be in absolute medical terms and by means of antenatal diagnostic technologies is, again, that the social and cultural dimensions of a disease, a condition, and a disability are altogether removed from the discussion. Further, the human and life experiences of those who are already born with such a condition, disability, or disease is universalised, minimised, and, more importantly, stigmatised. In addition, to rely merely on medical terminology and classification, as if they were neutral, acultural, and universal concepts, is to overlook the unique experience of families and individuals on the one hand, and the role that socio-cultural factors play in the definition, construction, and experience of an illness, condition, or disability on the other (c.f. Good 1998; van der Geest 2002).

One also needs to take into account the role played by the treating physicians, with whom the decision for granting an abortion lies. That is, abortion decisions depend on the sort and amount of information given by the physician, whose perception of medical conditions depend, in turn, on his or her medical education and individual history, both of which are subsumed in a specific socio-cultural context (Good 1998). This means that if an obstetrician finds a particular condition to be severe enough, or, on the contrary, does not agree with prospective parents on the severity of the foetal condition, he or she will convey such a point of view to the woman or couple, and on such a basis an abortion decision will be made.

This apparent contradiction between basing a condition on medical terms and disregarding the social context in which it happens to exist is solved – although in a rather problematic fashion – in Judge Araújo’s argument pleading for abortion de-penalisation. When presenting the case of foetal conditions that ‘make life unviable’, Judge Araújo referred to the need for not forcing a woman to go against her Constitutional right to ‘*choose her life plan*, in order to privilege a life that *scientifically would not be viable*, or that is considered to be incompatible with life’ (Sentencia C-355/06: 333, my translation, emphasis added). In this context, to be pregnant with a foetus different from what the woman or the couple had foreseen in their *life plan*, and not to be allowed to abort such a foetus, constitutes yet another violation of a Constitutional right, i.e. the right to free development of personality (Constitución Política Art. 16). To link foetal conditions with prospective parents’ life plans opens even more the scope of conditions that make life unviable, and brings in the socio-cultural component that seemed absent in the Court’s Sentence. Nevertheless, what I call the socio-cultural component of the understanding of a ‘condition that makes life unviable’ is rather slippery, because when the severity of a foetal condition is presented in relation to prospective parents’ life plans, this means that any sort of foetal condition that does not meet prospective parents’ life plans is then susceptible for abortion. This understanding implies unviability not only in purely biological terms (as in the case of anencephaly or bilateral renal agenesis), but also in socio-cultural terms of incompatibility or unviability of life according to what life ‘should be’ in relation to socio-cultural norms and imaginaries.

The loose understanding of ‘conditions that make life unviable’ used by Judge Araújo is also evident in the cases he presented when arguing for abortion de-penalisation. The Judge referred to three medical conditions that he considered extreme: the use of Thalidomide, a drug that when taken during pregnancy causes variations in the development of the limbs, and in some cases affects the eyes and the respiratory tract of fetuses; Tay-Sachs, explained by the Judge as producing an early death, which is inherited by a recessive gene; and ‘an epidemic in Cali [registered by a newspaper] of sirenomelia, a rare congenital condition in which lower limbs are merged together ... and cyclopia, another rare malformation characterised by the development of a single eye’ (Sentencia C-355/06: 335, my translation). It is noteworthy that out of the three conditions presented by Araújo,

only cyclopia results in the imminent death of the newborn. From Judge Araújo's presentations, it is evident that the range of interpretations of conditions considered as 'making life unviable' depends upon who is defining them.

### Final comments

In this chapter I have shown how antenatal technologies play a central role in abortion de-penalisation in cases of foetal genetic or morphological variations, not only because through the availability and use of such technologies are 'malformed' fetuses spotted, diagnosed, constructed, and made real, but also because through such diagnoses fetuses may lose or gain the State's protection. This case of abortion de-penalisation thus makes evident not only the relationship between law and science, and the social consequences of such a relationship, but also that law and science are products of a socio-cultural environment. It is science that defines, delimits, constructs, and separates the well-formed from the ill-formed fetuses which (under the standards that science has set up) can be aborted. It was medical expertise which was called to inform the Constitutional Court about the dangers and realities of health risks and foetal conditions in order to allow abortion de-penalisation. It is science and medicine's thresholds that women need to pass in order to exercise their human (reproductive) rights, and it is through antenatal diagnostic technologies that subjects of rights are made. But also, through the de-penalisation Sentence, it became evident that the abortion of fetuses that do not fit prospective parents' expectations similarly reveal that scientific and legal thresholds are flexible and that they respond accordingly to social understandings of good and wrong or fit and unfit fetuses, life plans, and (prospective) citizens.

The interaction of science and law provided, indeed, a new definition of the foetus that allows women to abort, on the basis of fetuses' worthiness of legal protection. However, that worthiness, when translated to women's or couples' everyday cognitions, refers also to the worthiness of the prospective child for investing time, effort, and money into it. Hence, if pregnancy is a choice, and women have the *right* to choose whether to take on that role, as stated and defended by human rights, the practice of selective abortion

undoubtedly gives women or couples the possibility to choose the kind of family they want to rear.

However, the terms by which abortion was de-penalised perpetuates the stigmatising image of people with disabilities, reinforcing the public understanding of them as people who only pose burdens and troubles to the individuals and societies around them. Similarly, the de-penalisation Sentence makes free of penal consequences the choice of what kind of children one is willing to bring up. That, in the longer run, means making discrimination against people with disabilities free of penal repercussions. In other words, the Sentence makes legal the choice of the kind of individuals considered desirable or not, under specific ideals of healthy and normal human beings, which respond to women's or couples' *chosen life plans*.

My second statement visibly complicates abortion de-penalisation, for such an assertion links up the practice of selective abortion of foetuses that do not relate to prospective parents' life plans, with eugenic ideas. Such discrimination is, however, not new. There has existed for decades – as it is shown in Chapter 4 – a stereotypical ideal of human beings and of Colombian citizens that inform both the practice of selective abortion and abortion de-penalisation.

I also showed in this chapter that throughout the last lawsuits and the abortion de-penalisation Sentence, the discourse of human rights was used as the ultimate argument for de-penalisation. To penalise abortion in cases of foetal malformation is here understood as torture to women, and therefore a violation of human rights. Abortion de-penalisation in Colombia is thus portrayed as a victory for the respect of human and Constitutional rights, as well as a triumph of women's struggles in the search for a more just and democratic society. However, I have problematised the fact that the pregnancy and delivery of a foetus different from the average is equalised with torture, as torture is defined and opposed by the United Nations. It not only simplifies the lived experience of people who, given the socio-political conditions of this country, have endured the torture of being kidnapped, chased, killed, and so on and so forth, but also provides fertile grounds for continuing the structural discrimination against people with disabilities.