

**THE DEBATE ABOUT THE CRIMINALIZATION OF ABORTION:
Some considerations from the disability to broaden the discussion**

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In recent months, two situations have stirred discussions around the relationship between abortion, fertility and disability in Latin America. On the one hand, the Zika virus epidemic has prompted a debate in some countries like Brazil regarding the need to vindicate the rights of women affected by the virus to opt for abortion in cases of microcephaly, while at the same time protecting the dignity of children born of these pregnancies (Brum). Meanwhile, on the other hand, a controversial judgment (April 13th, 2016) by the Constitutional Court of Colombia reaffirmed the validity of a 2010 law stating that people with “mental disabilities” can be sterilized without their consent. In both cases, an indisputable fact is revealed: these discussions touch the heartstrings of traditional groups which hold political, economic, and religious power. This subject is also sensitive within civil society and human rights activists and movements.

In Ecuador, the debate has been muted after the discussion resumed in October 2013 in which a group of senators at the National Assembly intended to clarify the law that prohibits abortion. In the discussions that have arisen in this regard, especially from groups of feminist activism advocating abortion as a right for women, a critical element has not been taken into account: the sole exception of the law against abortion, which decriminalizes abortion for rape only in cases where the victims are women with “mental disabilities” who in the past were recognized by the law as “idiots or insane women”.

This reflection seeks to expand the debate on the decriminalization of abortion, taking into account disability—both in relation to abortion, which in some legislation like Colombia’s, is known as “fetal infeasibility,” as well as in relation to self-determination of fertility and women with disabilities. I would like to address the complexity of the discussion considering the ethical and legal aspects that disability brings, considered not from medical or welfare perspectives, but from the thought developed by what is known as the social model of disability. In this sense, I think it is important to take into account the definition of “disability” that the United Nations Convention on the Rights of Persons with Disabilities proposed in paragraph e:

[...] that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others

Also, it is important to remember that in Article 6, the United Nations Convention cited—which this year celebrates ten years since its approval and which Ecuador accepted in 2008—it refers to the rights of women with disabilities. It is specifically indicated along two paragraphs:

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.
2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

I recognize that the debate could tend to become entangled parting from these considerations, but I think that difficulty is necessary to not forget that when we talk about both abortion and gender violence, disability comes into play as an element in which discrimination is expressed in many ways, revealing their intersectional nature—that is, the fact that when we talk about women with disabilities, as well as abortion and disability, more than one mode of discrimination is at stake, as indicated by the comments to Article 6, made in August 2015.

Thus, I would like to consider some questions that move us to think: what do these exceptions tell us when laws on abortion are related to disability?; What are the differences between “unfeasible” and “deficiency” when we refer to a fetus likely to be aborted? Why a woman with disabilities (especially in a situation of “mental” or “intellectual” disabilities) is deemed unfit to procreate and therefore is perceived as a subject whose will should not be taken into account by existing laws? Is it possible that the practices of involuntary sterilization and abortion permissiveness of women with disabilities increase in cases of sexual abuse?; At what point do both a the unborn child and the woman who chooses to be a mother (perhaps both with disabilities), enter into a relationship? And finally: how can this debate enrich reflection on the decriminalization of abortion and, above all, promote the fulfillment of human rights not exercised to the detriment of other rights?