

**Contribution to the General Discussion on the Preparation for General Comment No. 36
on Article 6 of the ICCPR: Right to Life**

Human Rights Committee

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Abstract:

In the Americas, Article 4(1) of the American Convention on ‘the right to life from conception’ has been the main argument used by groups that oppose the recognition of reproductive rights as human rights. The Inter-American Court, as the ultimate interpreter of the Convention, engaged in a rigorous hermeneutic exercise in the case of *Artavia Murillo v. Costa Rica*, to determine the final interpretation of this right. In that decision, the Court concludes that ‘the right to life from conception’ is not absolute, that it cannot be used to limit women’s rights nor to create discriminatory effects, and that it is fundamentally meant to protect pregnant woman, because the protection of the unborn child is implemented essentially through the protection of the woman. The Court’s interpretation implies the existence of positive obligations derived from this right, and reinforces the heightened protection pregnant women should be granted to ensure they can have safe and dignified pregnancies and that their human rights will not be violated on the basis of pregnancy.

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1. Introduction.

Women's Link Worldwide welcomes the opportunity to provide the following preliminary observations on the right to life.¹ Women's Link Worldwide is an international organization that uses the power of the law to promote social change that advances the rights of women and girls facing multiple inequalities. To achieve its mission, Women's Link Worldwide brings a gender perspective and an intersectional analysis to human rights law. Women's Link Worldwide goes beyond the courtroom and uses its work in litigation and other legal processes to strengthen human rights infrastructure, create public debate, and contribute to social movements that can transform society and guarantee the rights of women and girls.

Article 6 paragraph 1 of the ICCPR states that “[e]very human being has the inherent right to life.” This comment on Article 6 of the ICCPR will focus on two principal issues: first, the final interpretation of the right of life of the American Convention of Human Rights (ACHR) established by the Inter-American Court of Human Rights; second, examples of how, following the interpretation established by the Inter-American Court, prenatal life should be protected in accordance with the rights of pregnant women.

2. The interpretation of Article 4(1) on ‘the Right to Life from Conception’ of the American Convention of Human Rights Established by the Inter-American Court of Human Rights.

In the Americas, the judicial discussion around reproductive rights has focused on three main topics: emergency contraception, abortion, and, to a lesser extent, in vitro fertilization (IVF). In all three cases, the primary argument of opponents of these reproductive health rights has been that the right to life, contained in Article 4(1) of American Convention of Human Rights (ACHR), begins at conception, and is thus violated by these services. For this reason, the focus of this controversy has revolved around the interpretation of this right.

In 2012, the Inter-American Court of Human Rights, the ultimate interpreter of the Convention, ruled in the case of *Artavia Murillo et al v. Costa Rica*,² establishing the final interpretation of the right to life from the moment of conception protected by article 4(1)³ of the ACHR. The decision was a piece of landmark jurisprudence, resolving the main debates that have taken place around the protection of reproductive rights in the region.

The Inter-American Court conducted a broad analysis of the universal human rights system, the regional systems of Europe and Africa, the Inter-American Commission on Human Rights

¹ Women's Link Worldwide would like to thank Marta Hernandez and Kate Fetrow for their invaluable help in preparing this contribution. This document is based on the article: Mónica Roa, *La Interpretación Última del*

Derecho a la Vida Desde la Concepción en el Sistema Interamericano de Derechos Humanos in Diálogos judiciales en el Sistema Interamericano de Derechos Humanos (forthcoming).

² Inter-American Court of Human Rights. Case of *Artavia Murillo et al. ("IN VITRO FERTILIZATION") v. Costa Rica*. Preliminary objections, merits, reparations and costs. Judgement of November 28, 2012. Serie C n° 257.

³ Article 4(1) of the American Convention states: Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

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(IACHR), and other Latin American actors at national levels including national courts that had given their opinion on this right, representatives of the other branches of government, and diverse sectors of civil society, including academia.

i. Legal Definitions of Right to Life versus Metaphysical, Biological, and Theological Definitions of the Beginning of Human Life.

The Court began its analysis by noting their intent is to interpret the American Convention, not to solve the “dispute as to when human life begins,” a question that has been “assessed in different ways from a biological, medical, ethical, moral, philosophical and religious perspective.”⁴ Furthermore, the Court concurred “with domestic and international courts that there is no one agreed definition of the beginning of life.”⁵ To find otherwise would, in the words of the Court, “imply imposing specific types of beliefs on others who do not share them.”⁶

In this sense, the Court considers that conception can only take place in the body of the woman, as the zygote or embryo would have no chance of development if it never managed to implant itself in the uterus. The Court therefore determined that conception occurs at the “moment at which implantation occurs, and therefore . . . that, before this event, Article 4 of the American Convention cannot be applied.”⁷

ii. Systematic and Historical Interpretation.

The Court continued with a systematic and historical interpretation, reviewing all international legal instruments and relevant international law, including the universal human rights system, the preparatory work on the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, General Comment No. 6 on the right to life of the Human Rights Committee⁸, General Comment No. 17 on the rights of the Child from the same Committee⁹, the reports of the Committee on the Elimination of Discrimination against Women (“CEDAW”), and the Convention on the Rights of the Child, and concluded that:

[I]t is not possible to use any of these articles or treaties to substantiate that the embryo can be considered a person in the terms of Article 4 of the Convention. Similarly, it is not possible to reach this conclusion from the preparatory work or from the systematic interpretation of the rights recognized in the American Convention or in the American Declaration.¹⁰

iii. Evolutive Interpretation.

Third, the Inter-American Court offered an evolutive interpretation, analyzing the pertinent developments in international and comparative law concerning the specific legal status of the embryo, and the regulations and practice of comparative law in relation to IVF. The Court found that,

⁴ Case *Artavia et al Vs. Costa Rica*. Para. 185.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.* Para. 189.

⁸ U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I), 16^o período de sesiones, 1982.

⁹ U.N. Doc. HRI/GEN/1/Rev.7, 35^o período de sesiones, 1989.

¹⁰ *Artavia et al v. Costa Rica*. Para. 244.

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“the regulatory trends in international law do not lead to the conclusion that the embryo should be treated in the same way as a person, or that it has a right to life.”¹¹ It also established that the regional practice is to provide gradual and incremental protection to prenatal life, rather than taking an absolutist approach, therefore holding that the embryo cannot be considered an individual subject of rights.¹²

iv. Interpretation According to the Object and Purpose of the Treaty.

Finally, regarding the principles of the most favorable interpretation and the object and purpose of the treaty, the Inter-American Court concluded that an absolute protection of an embryo “cannot be alleged, annulling the rights of the pregnant woman.”¹³ Moreover, the Court held that:

[T]he purpose of Article 4(1) of the Convention is to safeguard the right to life, without this entailing the denial of other rights protected by the Convention. Thus, the object and purpose of the expression ‘in general’ is to permit, should a conflict between rights arise, the possibility of invoking exceptions to the protection of the right to life from the moment of conception. In other words, the object and purpose of Article 4(1) of the Convention is that the right to life should not be understood as an absolute right, the alleged protection of which can justify the total negation of other rights.¹⁴

States cannot, therefore, give greater or absolutist protection to fetal life when doing so impedes upon the woman’s other rights, as such an approach “would be contrary to the protection of human rights.”¹⁵

v. Conclusion.

Accordingly, the Inter-American Court established that the protection of the right to life from conception starts at the time of implantation of the fertilized egg in the uterus; protection of prenatal life must be incremental, rather than absolute, and allow exceptions; that embryos do not have personhood status; that the right to life cannot be used to disproportionately limit other rights or generate discriminatory effects, especially against pregnant women; and that the right to life is intended to protect the pregnant woman, because this is the only way to protect prenatal life. As a result of this analysis, the Inter-American Court has finally established a final interpretation of article 4(1), which is a historic step towards ensuring the reproductive rights of women and girls:

The Court has used different methods of interpretation that have led to similar results according to which **the embryo cannot be understood to be a person** for the purposes of Article 4(1) of the American Convention. In addition, after analyzing the available scientific data, the Court has concluded that “conception” in the sense of Article 4(1) occurs at the moment when the embryo becomes implanted in the uterus, which explains why, before this event, Article 4 of the Convention would not be applicable. Moreover, it can be concluded from the words “in general” that **the protection of the right to life under this provision is not absolute, but**

¹¹ Ibid. Para 253.

¹² Ibid. Para. 256.

¹³ Ibid. Para. 263.

¹⁴ Ibid. Para 258.

¹⁵ Ibid. Para. 259.

rather gradual and incremental according to its development, since it is not an absolute and unconditional obligation, but entails understanding that exceptions to the general rule are admissible.¹⁶

3. Examples of State Obligations Derived from the Protection of Prenatal Life in Relation to the Protection of Pregnant Women's Rights.

Instead of understanding the right to life as a restriction upon reproductive rights and health services, under *Artavia Murillo* a proper interpretation of this right is that it *protects* reproductive rights, because doing so is the only way to protect prenatal life while respecting and guaranteeing the rights of women. In the words of the Inter-American Court, “**the direct subject of protection is fundamentally the pregnant woman, because the protection of the unborn child is implemented essentially through the protection of the woman**”.¹⁷ Other interpretations would create an “arbitrary and excessive interference in private and family life” and have discriminatory effects, which “would be contrary to the protection of human rights.”¹⁸

The following recent cases illustrate how the right to life when viewed as protective of pregnant women reinforces existing positive obligations on states to, for example, provide safe and dignified reproductive health, adequate nutrition and hydration, and safe work and home environments.

i. Maternal Mortality and Intersectional Discrimination.

According to the Inter-American Court of Human Rights, the protection of the right to life with regard to reproductive rights must center upon the rights of the pregnant woman. High maternal mortality rates related to pregnancy, delivery, and post-natal health issues seriously affect the rights of women and the right to life of newborns. The World Health Organization (WHO) indicates that ninety-nine percent of maternal deaths occur in developing countries, constituting an additional violation on the right to be free from discrimination on the basis of origin. Moreover, there are disparities within developing countries. For instance, in Colombia, the maternal mortality is higher in the poorest fifth of the population than in higher socioeconomic classes, which adds one more layer of discrimination on the basis of socioeconomic status.¹⁹ Indeed, in the Guajira region of Colombia, the rates of maternal mortality have gradually increased to one-and-a-half times the national average, and in the region of Choco the rates are almost seven times the national average.

The Tragic Case of Wayúu Women: In February 2015, the Wayúu indigenous peoples, the largest indigenous group in Colombia, requested precautionary measures before the IACHR. The request alleges that the Wayúu people, particularly newborns and pregnant women, are at risk of dying because of dehydration, malnutrition, and lack of access to quality healthcare services. Colombia's family welfare agency reported that 4,151 children had died as a result of these conditions.²⁰ The measures have not been decided to date, but they offer an opportunity to start using the final

¹⁶ Ibid. Para. 264.

¹⁷ Ibid. Para. 222.

¹⁸ Ibid. Para. 259, 316.

¹⁹ El Tiempo. *Colombia tiene una enorme brecha de mortalidad materna entre regiones*. June 23, 2015. Available at: <http://www.eltiempo.com/estilo-de-vida/salud/mortalidad-materna-en-colombia/15990738>

²⁰ McKenzie Victoria. *A Severe Lack of Clean Water Is Killing Indigenous Children in Colombia*. April 21, 2015. Available at: <http://www.vice.com/read/why-do-indigenous-children-in-colombia-keep-dying-of-thirst-456>

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interpretation of the right to life from conception to reinforce the State's duty to guarantee heightened protection of pregnant women and newborns.

ii. The Right to Dignified and Safe Pregnancies and Deliveries: the Case of Giving Birth in a Hospital Bathroom.

The lack of timely health care in a hospital by medical personnel forced a twenty-five year-old woman to give birth in the bathroom of a University Hospital. According to the statement from the young woman's family, the hospital denied her appropriate care because the last payment was not recorded in the system and the woman was made to deal with bureaucratic demands before the hospital would provide her the care she urgently needed.²¹ This failure to provide appropriate health services is undoubtedly a threat to the lives of pregnant women and therefore newborn life, in violation of the interpretation of article 4(1) established by the Inter-American Court. In addition, it is profoundly degrading to the dignity of pregnant women and their children.

iii. Chemical Exposure During Pregnancy and Protection of the Health and Wellbeing of Pregnant Women.

Another way in which the right to life from conception and the right to life of pregnant women are connected is that both are harmed through unintended exposure to chemicals. We have identified three examples on this issue: first, a case involving cosmetic chemicals that can harm the fetus, cause miscarriages, and severely damage women's health; second, a case involving the drug thalidomide, which has been proven to cause fetal deformity when taken by pregnant women; and finally, a case concerning the spraying of glyphosate, a pesticide, in Colombia, which represents a serious risk both to the lives of pregnant women and prenatal life.

Illness in nail salons: The first case is related to the activity of nail technicians, who handle chemicals in nail polish, solvents, hardeners, and other products daily. These chemicals can affect unborn life and cause cancer, breathing problems, and even miscarriages. Recent medical studies have shown the relationship between the chemicals in cosmetics and serious health problems.²² Many manicurists have suffered multiple miscarriages. Furthermore, their children often suffer from illnesses as a result of their mother's exposure to these chemicals while pregnant.

One issue is that in the United States the chemical industry is responsible for evaluating the safety of these chemicals, including the three most associated with serious health issues, dibutyl phalate, toluene and formaldehyde. The industry continues to insist that these products are safe, despite the fact that some companies have begun to voluntarily remove certain chemicals from their products.²³

Thalidomide: Between 1958 and 1963, the German company Grünethal marketed thalidomide to pregnant women to calm their nerves, claiming that the company did not know that the product

21 Rcnradio. *Denuncian que una joven dio a luz en el baño de un hospital porque no la atendieron*. May, 21 2015. Available at: http://www.rcnradio.com/noticias/denuncian-que-una-joven-dio-luz-en-el-bano-de-un-hospital-porque-no-la-atendieron-213566?utm_source=divr.it&utm_medium=twitter

22 New York Times. *Perfect Nails, Poisoned Workers*. May 8, 2015. Available at: http://www.nytimes.com/2015/05/11/nyregion/nail-salon-workers-in-nyc-face-hazardous-chemicals.html?_r=0

23 Ibid.

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produced fetal deformity. Children were born without limbs or with deformed limbs. Even today, survivors suffer from other physical problems.²⁴

Aerial Spraying of glyphosate: A final documented threat to life and health of pregnant women is the spraying of crops with the pesticide glyphosate. In Colombia, glyphosate has been sprayed aerially for twenty years as part of the war on drugs.²⁵ Despite opposition to its use by independent organizations and organs of justice, and a report by the WHO that finds that the chemical is carcinogenic, governments have continued to use it. Studies show that spraying glyphosate increases the likelihood of respiratory, eye, and skin problems and can even lead to miscarriages.²⁶ Furthermore, studies evaluating medical consultations recorded between 2003 and 2007 have shown a relationship between spraying glyphosate and increased miscarriages in the affected areas.²⁷

In May 2015, the Colombian government ordered a halt to the aerial spraying after the WHO declared it likely that the glyphosate causes cancer in humans. However, the government only banned the use of glyphosate for aerial eradication. Farmers who grow legal crops are still permitted to use this chemical.²⁸

4. Conclusions.

The jurisprudence established by *Artavia Murillo et al v. Costa Rica* makes clear that the object of protection of the right of life from the conception is the pregnant woman because the protection of prenatal life can only be realized by giving her protection. This interpretation strengthens states' existing obligations to provide prenatal care services, guarantee pregnant women protection from violence, and maintain proper nutrition and environmental conditions so women may have safe and dignified pregnancies. States must also ensure that women are not denied their rights as a result of pregnancy. Furthermore, states cannot allow that an alleged 'right to life' of the fetus be used to restrict women's rights because such a restriction would create disproportionate and discriminatory effects and would violate existing regional and international human rights standards. States must also take into account the intersecting inequalities that pregnant women and girls experience to address the differential needs of specific groups.

24 El País. *La talidomida ha prescrito*. October, 23, 2014. Available at: http://cultura.elpais.com/cultura/2014/10/23/actualidad/1414071598_434692.html

25 Business & Human Rights Resource Center. *Colombia: ONG pide cesar fumigaciones a cultivos ilícitos por daños en la salud y el ambiente en estrategia antinarco y contrainsurgente*. Available at: <http://business-humanrights.org/es/colombia-ong-pide-cesar-fumigaciones-a-cultivos-il%C3%ADcitos-por-da%C3%BIos-en-la-salud-y-el-ambiente-en-estrategia-antinarco%C3%B3ticos-y-contrainsurgente>

26 Oficina del Alto Comisionado de Naciones Unidas. Colombia. *¿Debieron suspenderse hacemuch tiempo las fumigaciones con Glifosato?* Available at: <http://www.hchr.org.co/migracion/index.php/informacion-publica/compilacion-noticias/56-desc/6205-debieron-suspenderse-hace-mucho-tiempo-las-fumigaciones-con-glifosato>

27 Adriana Camacho, Profesora de la Facultad de Economía de la Universidad de los Andes, y Daniel Mejía, Director del Centro de Estudios sobre Seguridad y Drogas.

28 New York Times. *Defying U.S., Colombia Halts Aerial Spraying of Crops Used to Make Cocaine*. Available at: <http://www.nytimes.com/2015/05/15/world/americas/colombia-halts-us-backed-spraying-of-illegal-coca-crops.html>