

10 December 2008

The Honourable Supreme Court of Justice, Corte Plena
Dr. Ruben Montenegro, Secretario
Managua, Nicaragua

Ref: Coadyuvancia al recurso de inconstitucionalidad No. 38-2008 interpuesto el 15 de julio del 2008 en contra de los artículos 143, 144 (primer párrafo), 148 y 149 de la Ley 641 de 2008

Dear Dr. Ruben Montenegro,

We are writing on behalf of the International Reproductive and Sexual Health Law Programme, Faculty of Law, University of Toronto.

We respectfully ask that in the consideration of the aforementioned case, the Honourable Supreme Court of Justice considers the information contained in this letter and the attached submission entitled: “The Interpretation of Article 4(1) of the *American Convention on Human Rights* Compatible with the Human Rights of Women.”

Criminal laws restricting access to abortion result in high incidence of unsafe abortion and millions of preventable deaths and injuries each year. Criminal laws do not restrict access to abortion. They only prohibit access to *safe* abortion.

Despite these effects, many countries justify criminal abortion laws as required by international human rights law. Some State Parties to the *American Convention on Human Rights* defend criminal sanctions as necessary to protect the “right to life” as guaranteed in Article 4(1). This article provides that “[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception.” It is claimed that because Article 4(1) is a non-derogable right, the termination of pregnancy must be prohibited to protect the life of the fetus from the moment of conception. Article 4(1), it is argued, demands heavily restrictive if not prohibitive criminal abortion laws.

Our submission demonstrates the incorrectness of this interpretation. According to the principles of treaty interpretation embodied in the *Vienna Convention on the Law of Treaties*, Article 4(1) of the *American Convention* permits legal abortion.

The right to life as guaranteed in the *American Convention* is a qualified right. The phrase “in general” indicates that Article 4(1) does not protect life from the moment of conception in its absolute sense or in all of its dimensions. Limits on the scope of Article 4(1) are discernable by reference to the object and purpose of the *American Convention*, the relationships between it and

the other provisions of the convention, and the immediate and broader context in which the right is found.

The *American Convention* cannot bear an interpretation of Article 4(1) that compels women under threat of criminal sanction to continue a pregnancy or to otherwise risk their health and lives to access a health care procedure. Such an interpretation is contrary to the object and purpose of the *American Convention*, foremost among them, respect for personal liberty, social justice and equality, and the inherent worth and dignity of the human person. The *American Convention* is designed to protect the human rights of all persons without discrimination. The right to life from the moment of conception must therefore be construed in a manner that recognizes and accommodates the enjoyment and exercise of all rights and freedoms protected in the *American Convention* as well as other regional and international human rights instruments. An interpretation of Article 4(1) as requiring criminal abortion laws denies women their rights to life, personal integrity, freedom from inhuman and degrading treatment, and non-discrimination.

The fact that criminal abortion laws are incompatible with the rights of women does not detract from the legitimacy of the objective that such laws are intended to achieve. The protection of life from the moment of conception remains an important objective. However, the criminalization of abortion is neither the sole nor the most effective means of realizing this goal. Life from the moment of conception should be protected in ways that are consistent and compatible with the rights of women. For example, Article 4(1) may be interpreted to require member states to improve pre- and post natal care, provide better nutrition during pregnancy, and improved obstetric services to enable women and their children to survive childbirth.

For these reasons, we request that the Honourable Supreme Court of Justice interpret the right to life under the Political Constitution of the Republic of Nicaragua and the *American Convention on Human Rights* in a manner compatible with the human rights of women.

Respectfully,

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***Amicus Curiae* Submission to the Supreme Court of Justice of Nicaragua, Corte Plena
Información de apoyo al recurso por inconstitucionalidad No. 38-2008 interpuesto el 15 de julio
del 2008 en contra de los artículos 143, 144 (primer párrafo), 148 y 149 de la Ley 641 de
2008**

**The Interpretation of Article 4(1) of the *American Convention on Human Rights*
Compatible with the Human Rights of Women**

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A. Introduction

1. The World Health Organization (“WHO”) estimates that each year almost 4 million unsafe abortions are performed in Latin America.¹ Women who resort to unsafe abortion procedures risk their lives and health. Thousands of Latin American women die annually as a consequence of unsafe abortion.² 17% of all maternal deaths in Latin American and the Caribbean are attributable to unsafe abortion procedures.³ Many more women, unwilling to risk prosecution to obtain post-abortion care, suffer severe health complications, including sepsis, pelvic trauma, and sterility.⁴
2. Following the enactment of Law 641, abortion is regulated by Articles 143, 144 (primer párrafo), 148 and 149 of the Penal Code of Nicaragua.⁵ The enactment of Articles 143, 148 and 149 inhibits the availability of safe services.⁶ Article 143 makes no exception for abortion in case of risk to the woman’s life or health, or in case of rape.⁷ Articles 148 and 149 are overbroad. They would interfere with any medical treatment or any interaction with a woman of reproductive age that might have direct or indirect consequences to a fetus. Qualified persons with medical training, such as doctors and surgeons are subject to imprisonment and disqualification from medical practice. Criminal laws do not restrict access to abortion. They only prohibit access to *safe* abortion. Clandestine abortions, often performed by unskilled persons under unhygienic conditions, contribute to the high maternal mortality rate in Nicaragua. A complete criminal prohibition on legal abortion is expected to increase the incidence of unsafe abortion leading to a consequent rise in the rates of maternal death and injury.
3. Given that millions of preventable deaths and injuries are the consequences of criminal abortion laws, it cannot be argued that international human rights law requires their enactment. Nevertheless, some State Parties to the *American Convention on Human Rights* (the “*American Convention*”)⁸ defend criminal sanctions as necessary to protect the “right to life” as guaranteed in Article 4(1). It provides that

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.

It is claimed that because Article 4(1) is a non-derogable right, the termination of pregnancy must be strictly prohibited to protect the life of the fetus from the moment of

¹ World Health Organization (WHO). *Unsafe abortion: global and regional estimates of incidence of unsafe abortion and associated mortality in 2000*. 4th ed. (Geneva: WHO, 2004) at 13-14. Online: <http://www.who.int/reproductivehealth/publications/unsafe_abortion_estimates_04/estimates.pdf> (date accessed: 29 March 2007).

² *Ibid.* at 13.

³ *Ibid.* at 13.

⁴ *Ibid.* at 4.

⁵ No. 38-2008 interpuesto el 15 de julio del 2008 en contra de los artículos de la Ley 641 de 2008.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ 22 November 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978, ratification by Nicaragua 25 September 1979) [hereinafter *American Convention*].

conception. Article 4(1), it is argued, demands heavily restrictive if not prohibitive criminal abortion laws.

4. Our submission demonstrates the incorrectness of this interpretation. According to the principles of treaty interpretation embodied in the *Vienna Convention on the Law of Treaties* (the *Vienna Convention*),⁹ Article 4(1) of the *American Convention* permits legal abortion. The right to life as guaranteed in the *American Convention* is a qualified right. The phrase "in general" indicates that Article 4(1) does not protect life from the moment of conception in its absolute sense or in all of its dimensions. Limits on the scope of Article 4(1) are discernable by reference to the object and purpose of the *American Convention*, the relationships between it and the other provisions of the convention, and the immediate and broader context in which the right is found.
5. These considerations require that the scope of Article 4(1) extend to the protection of prenatal life in ways that are consistent and compatible with the rights of women under the *American Convention*. For example, the right to life may be interpreted to require the state provision of prenatal care, nutrition and essential obstetric care. The *American Convention* cannot bear an interpretation of Article 4(1) that compels women under threat of criminal sanction to continue a pregnancy or to otherwise risk their health and lives to access a health care procedure.
6. Such an interpretation is contrary to the object and purpose of the *American Convention*, foremost among them, respect for personal liberty, social justice and equality, and the inherent worth and dignity of the human person. The *American Convention* is designed to protect the human rights of all persons without discrimination. Its provisions cannot be construed to deny women their rights to personal integrity, freedom from inhuman and degrading treatment, and non-discrimination.

B. The Vienna Convention: A Framework of Interpretation

7. The Inter-American Commission on Human Rights (the "Commission") and the Inter-American Court of Human Rights (the "Inter-American Court") interpret the scope and interrelation of articles in the *American Convention* according to the general and supplementary rules of interpretation outlined in Articles 31 and 32 of the *Vienna Convention*.¹⁰ Article 31(1) provides that a treaty

shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.¹¹

⁹ 23 May 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (entered into force 27 January 1980). While Nicaragua has not ratified the *Vienna Convention*, Article 31 (General rule of interpretation) and Article 32 (Supplementary means of interpretation) of the *Vienna Convention* are considered to reflect customary rules of international law.

¹⁰ See *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) of the American Convention on Human Rights)* (1983), Advisory Opinion OC-3/83, Inter-Am. Ct. H.R. (Ser. A) No. 3. In this case, in order to ascertain the meaning and scope of Articles 4(2) and 4(4), the Inter-American Court applied the rules of interpretation set out in the *Vienna Convention*, which it deemed to state the relevant international law principles applicable to treaty interpretation.

¹¹ *Vienna Convention*, *supra* note 9, art. 31(1).

8. Where necessary, Article 32 allows recourse to “supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion.”¹² Supplementary means are available only to confirm a meaning derived from the general rules of interpretation or to determine a meaning where Article 31 “leaves the meaning ambiguous or obscure” or “leads to a result which is manifestly absurd or unreasonable.”¹³
9. The *Vienna Convention* offers a flexible instrument of interpretation rather than a fixed code. It embodies basic principles of interpretation, foremost among them, the importance of interpreting the words of a treaty in their context and not in the abstract. These principles are generally conceived of as four interpretive approaches: the textual approach, the purposive approach, the contextual approach, and the use of supplementary means approach.
10. This brief employs the four interpretive approaches to establish the scope of Article 4(1) of the *American Convention*, and to demonstrate that the phrase “in general, from the moment of conception” requires an interpretation of the right to life that facilitates access to safe, legal abortion.

a. The Textual Approach: “in general, from the moment of conception”

11. The textual approach emphasizes “the ordinary meaning to be given to the terms of the treaty.” As recognized by the Inter-American Court, the *Vienna Convention* “respects the principle of the primacy of the text, that is, the application of objective criteria of interpretation.”¹⁴ The written text of the *American Convention* is presumed to capture the authentic expression of the rights and freedoms protected therein. The textual approach thus insists upon a strict and detailed analysis of the language, phraseology and structure chosen to articulate a right or freedom.
12. The construction of Article 4(1) is notably distinct. The right to life of every “person” is protected “in general, from the moment of conception.” The *American Convention* is the only regional human rights instrument that expressly protects the right to life “from the moment of conception.” Other regional and international instruments are silent as to any temporal limitations on the right to life. For example, Article 2 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (the “*European Convention*”)¹⁵ simply guarantees that “[e]veryone's right to life shall be protected by law.”¹⁶

¹² *Ibid.*, art. 32.

¹³ *Ibid.*, arts. 32(a) and 32(b).

¹⁴ *Restrictions to the Death Penalty*, *supra* note 10 at para. 50.

¹⁵ 4 November 1950, 213 U.N.T.S. 222 (entered into force 3 September 1953) [hereinafter *European Convention*].

¹⁶ *Ibid.*, art. 2.

13. Moreover, in international law, there is no precedent for interpreting terms such as “human being” or “person” to include a fetus.¹⁷ In the recent case of *Vo v. France*,¹⁸ the European Court of Human Rights explained “it is neither desirable, nor even possible as matters stand, to answer in the abstract the question whether the unborn child is a person for the purposes of Article 2 of the [*European*] *Convention*.”¹⁹
14. The express language of the *American Convention* does not allow for such ambiguity. In the abstract, Article 4(1) protects life from the moment of conception. However, the phraseology of the Article also confirms that the scope of protection afforded to fetal life is not absolute. Rather, the right to life is protected “in general, from the moment of conception” (emphasis added). The deliberate phrase “in general” qualifies the right to life. It indicates that the provision does not protect life from the moment of conception in its absolute sense or in all of its dimensions.
15. Dictum from the European Court of Human Rights supports the concept of a qualified right to life. In *Vo v. France*, the majority of the court envisaged that
- ... if the unborn do have a “right” to “life”, it is implicitly limited by the mother’s rights and interests ... [t]he [*European*] *Convention* institutions have not ... ruled out the possibility that in certain circumstances safeguards may be extended to the unborn child”[emphasis added].²⁰
16. Justice Rozakis in his separate opinion in *Vo. v. France* similarly recognized that:
- Even if one accepts that life begins before birth, that does not automatically and unconditionally confer on this form of human life a right to life equivalent to the corresponding right of a child after its birth ... this protection ... [is] distinct from that given to a child after birth, and far narrower in scope.²¹
17. While the phrase “in general” does not elucidate the parameters of the right, the broad language in which Article 4(1) is formulated cannot be taken to mean that there are no discernable limits on the right of life from the moment of conception. The question of scope cannot be answered abstractly. Rather, limits implicit in the terms of Article 4(1) are best discerned by reference to the object and purpose of the *American Convention*, the relationships between it and the other articles in the *American Convention* as well as the context in which the right is applied. To preserve the coherence of the *Convention* text and to maintain the integrity of the Inter-American human rights system as a whole, the interpretation of the scope of Article 4(1) must be guided by these considerations

¹⁷ Philip Alston, *The Unborn Child and Abortion Under the Draft Convention on the Rights of the Child*, (1990) 12 *Hum. Rts. Q.* 156 at 170.

¹⁸ (2004), App. No. 53924/00, Eur. Ct. HR. [hereinafter *Vo v. France*].

¹⁹ *Ibid.* at para 85.

²⁰ *Vo v. France*, *supra* note 18 at para. 80.

²¹ *Ibid.* (Separate Opinion of Rozakis J., joined by Caflisch, Fischbach, Lorenzen and Thomassen JJ.).

b. The Purposive Approach: The Object and Purpose of the *American Convention*

18. Under the *Vienna Convention*, the “ordinary meaning” of a provision is not determined solely by its literal construction. Rather, a provision must be interpreted in light of the object and purpose of the treaty in which it is embodied. It must be read in a manner consistent with the distinctive character of a treaty, which infuses all of the substantive provisions. The object and purpose are largely discerned from the text of the treaty itself, and its preamble.
19. According to the first paragraph in the preamble, the purpose of the *American Convention* is “to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man.”²² The second paragraph further recognizes that “the essential rights of man” justify international protection precisely because they “are not derived from one's being a national of a certain state, but are based upon attributes of the human personality.”²³ The third paragraph emphasizes the supranational character of the *American Convention* by explicitly situating it in the international context. It states that the principles embodied in the Convention have been set forth “... in the *Universal Declaration of Human Rights*, and ... have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope.”²⁴
20. In the *Fairén Garbí and Solís Corrales* case,²⁵ the Inter-American Court further confirmed that:
- The object and purpose of the American Convention is the effective protection of human rights. The Convention must, therefore, be interpreted so as to give it its full meaning and to enable the system for the protection of human rights entrusted to the Commission and the Court to attain its " appropriate effects.”²⁶
21. In summary, the attributes of the human person are the essence of the *American Convention*. Its object and purpose is to establish a system of protection of personal liberty and social justice wherein the essential rights and freedoms of individual human beings, by virtue of their human person alone, and irrespective of their nationality, are *effectively* protected. Effective protection requires that human rights and freedoms are not merely recognized in law, but can be meaningfully exercised in practice.

²² *American Convention*, *supra* note 8, preamble.

²³ *Ibid.* The Inter-American Court confirmed: “the object and purpose [of human rights treaties] is the protection of the basic rights of individual human beings irrespective of their nationality.” In *The Effect of Reservations on the Entry Into Force of the American Convention on Human Rights (Arts. 74 and 75)* (1982), Advisory Opinion OC-2/82, Inter-Am. Ct. H.R. (Ser. A) No. 2. at para. 29.

²⁴ *American Convention*, *supra* note 8, preamble.

²⁵ (1994), Inter-Am.Ct.H.R. (Ser. D) No. 2.

²⁶ *Ibid.* at para. 35.

(i) The Supranational Character of the *American Convention*

22. The scope of Article 4(1) must be read in a manner consistent with the distinctive character of a human rights instrument. The preamble confirms that the object and purpose of the *American Convention* is the protection of the individual, and not the interest of any contracting state. The *American Convention* therefore protects every individual within its jurisdiction irrespective of nationality. Moreover, its rights and freedoms are universal in nature as underscored in the *American Declaration of the Rights and Duties of Man*,²⁷ the *Universal Declaration of Human Rights*²⁸ and other regional and international human rights instruments.
23. Given the *American Convention*'s supranational character, Article 4(1) cannot be interpreted in a manner that privileges any particular religion, culture or tradition. It must be interpreted to protect the freedom of conscience and religion of all persons. It cannot be interpreted in a way that allows those of one religious faith to impose that faith on others.
24. The construction of Article 4(1) to protect life from the moment of conception as an absolute guarantee indicates an adherence to a uniquely Roman Catholic doctrine.²⁹ Catholic doctrine, however, cannot dictate the interpretation of a human rights instrument. The interpretation of the *American Convention* is not a moral or religious endeavour. It is a question of the legal protection of rights according to the object and purpose of the *American Convention*.
25. If the rights and freedoms guaranteed the *American Convention* are to be effectively protected, their interpretation cannot depend upon the tenets of one religion or the will of a majority. Rather, the interpretation the right to life must remain within the legal sphere and facilitate the respect of the beliefs of conscience or religion of all. Article 12 of the *American Convention* specifically guarantees "[e]veryone ... the right to freedom of conscience and religion" (emphasis added).³⁰ Women too have a right to exercise their conscience. Moreover, women should not be denied access to safe and legal abortion simply because they are nationals of a country that facilitates the imposition of one religious doctrine at the expense of their freedom of conscience and religion.

²⁷ O.A.S. Res. XXX (adopted 2 May 1948).

²⁸ GA Res. 217 (III) UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948).

²⁹ In 1869, the Catholic Church redefined the mortal sin of abortion as applying not simply from 'quickening', which generally occurred between the twelfth and thirteenth week of gestation, but from conception. Conception is Roman Catholic doctrine is thus recognized as the moment when god gives life to the "unborn." See R.J. Cook & B.M. Dickens, "Human Rights Dynamics of Abortion Law Reform" (2003) Hum. Rts. Q. 1 at 9, translated into Spanish: "Dinámicas de los derechos humanos en la reforma de las leyes del aborto". Online: <<http://www.gire.org.mx/phpnuke/modules.php?name=prueba&opgire=61>> (date accessed: 29 March 2007).

³⁰ *American Convention*, *supra* note 8, art. 12.

(ii) The Protection of Personal Liberty, Social Justice and the Basic Attributes of the Human Personality

26. The *American Convention* is predicated on respect for personal liberty, social justice and equality, and the basic attributes – the inherent worth and dignity - of the human person. The scope of Article 4(1) must be guided by these very same values and principles. Given that fetal “life” is intimately connected with, and cannot be isolated from, the lives of pregnant women, any interpretation of the right to life from the moment of conception will impact upon the rights and interests of the pregnant woman.
27. The decision of a woman to reproduce or not to reproduce has profound psychological, economic and social consequences. The circumstances giving rise to a pregnancy, its continuation or its termination, are complex and varied. It is a decision that is properly perceived “as an integral part of modern woman's struggle to assert *her* dignity and worth as a human being” (emphasis in the original).³¹
28. An interpretation of Article 4(1) that restricts access to abortion and thereby compels a woman under threat of criminal sanction to continue a pregnancy denies women the freedom to make informed decisions about matters of fundamental personal importance. That is, “[f]orcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman’s body and thus a violation of security of the person.”³²
29. The freedom to make decisions of fundamental personal importance without state interference is a quintessential aspect of personal liberty, a principle that underlies the object and purpose of the *American Convention*.

c. The Contextual Approach: The *American Convention* within Systems of Human Rights Protection

30. Article 31 of the *Vienna Convention* requires that the words of a treaty be interpreted in their context. The term “context” is defined in Article 31(2) as comprising the treaty text, including its preamble and annexes, as well as, agreements and instruments related to the treaty and made in connection with its conclusion. In addition, the *Vienna Convention* recognizes a broader framework that surrounds and provides meaning to the words of a treaty. Article 31(3) states that:

There shall be taken into account, together with the context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

³¹ *R v. Morgentaler* (1988) 44 DLR (4th) 385 (Supreme Court of Canada) at 491 (per Justice Bertha Wilson).

³² *Ibid* at 402 (per then Chief Justice Brian Dickson).

- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.³³

31. These provisions recognize concentric contexts that inform the interpretation of the *American Convention*: the context of the treaty and its related agreements and instruments, the regional context of the Inter-American human rights system, and the broader context of international human rights law.

32. The contextual approach presumes that the provisions of the *American Convention* are intended to work together in a consistent framework of human rights protection. There is no hierarchy of rights. Rather, all articles are of equal value and interrelated. Therefore, no single right can suppress or exclude the operation of another, nor is any one right interpretable in isolation from the others. The interpretive principle of internal consistency is explicitly recognized in Article 29(a) of the *American Convention*, which provides that:

No provision of this Convention shall be interpreted as ... permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein....³⁴

The *American Convention* should thus be construed, if at all possible, to avoid any inconsistency or incompatibility between its provisions.

33. The interpretive principle of coherence also applies to the relationship between the *American Convention* and the regional and international human rights systems that surround it. In *The Word "Laws"* case,³⁵ the Inter-American Court stated that '[t]he meaning of [a] ... word in the context of a system for the protection of human rights cannot be disassociated from the nature and origin of that system.'³⁶

34. The contextual approach recognizes the *American Convention* as an indivisible part of the Inter-American system of human rights system. The provisions of related human rights treaties adopted and ratified in the region inform the interpretation of the *American Convention*, including for example, the *Convention on the Prevention, Punishment and Eradication of Violence against Women*.³⁷ The interpretation of the *American Convention* is also guided by the opinions and reports of various regional bodies and specialized organizations that monitor and enforce OAS member states' compliance with human

³³ *Vienna Convention*, *supra* note 9, art. 31(3).

³⁴ *American Convention*, *supra* note 8, art 29(a).

³⁵ *The Word "Laws" in Article 30 of the American Convention on Human Rights* (1986), Advisory Opinion OC-6/86, Inter-Am. Ct. H.R. (Ser. A) No. 6.

³⁶ *Ibid.* at para. 21.

³⁷ 9 June 1994, 33 I.L.M. 1534 (entered into force 5 March 1995, ratification by Nicaragua 12 December 1995).

rights obligations. These include, among others, the Commission and Court, as well as the Inter-American Commission of Women (CIM) and the Special Rapporteur on the Status of Women in the Americas (Special Rapporteur). The CIM and the Special Rapporteur are intended to specifically monitor and promote the protection of women's human rights in the region.

35. In the "*Other Treaties*" case³⁸, the Inter-American Court perceived in the *American Convention* "[a] certain tendency to integrate the regional and universal systems for the protection of human rights."³⁹ The preamble affirms that the principles underlying the *American Convention*

have been set forth in the *Charter of the Organization of American States*, in the *American Declaration of the Rights and Duties of Man*, and in the *Universal Declaration of Human Rights*, and ... have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope.⁴⁰

36. Moreover, Articles 29(b) and (c) of the *American Convention* expressly recognize that:

No provision of the Convention may be interpreted as ... (b) restricting the enjoyment or exercise of any right or freedom recognized ... by virtue of another convention to which one of the said states is a party ... (d) excluding or limiting the effect that the *American Declaration of the Rights and Duties of Man* and other international acts of the same nature may have.⁴¹

37. In recognition of the universal nature of human rights, the Inter-American Court has demonstrated a willingness to adopt existing interpretations of parallel provisions in regional and international human rights treaties when construing the articles of the *American Convention*.⁴² This interpretive approach preserves a harmony, coherence and consistency among systems of human rights protection.

(i) The Scope of Article 4(1) in Context

38. The limits implied by the phrase "in general," which serve to define the scope of Article 4(1), are interpretable only by reference to these multiple contextual frameworks. The right to life from the moment of conception should be construed in a manner that recognizes and accommodates the enjoyment and exercise of all rights and freedoms

³⁸ "*Other Treaties*" Subject to the Consultative Jurisdiction of the Court (Art. 64 of the *American Convention on Human Rights*) (1982), Advisory Opinion OC-1/82, Inter-Am. Ct. H.R. (Ser. A) No. 1.

³⁹ *Ibid.* at para. 41.

⁴⁰ *American Convention*, *supra* note 8, preamble.

⁴¹ *Ibid.*, art. 29

⁴² In *Villagran Morales et al. Case (The "Street Children" Case)* (1997), Preliminary Objections, Inter-Am. Ct. H.R. (Ser. C) No. 32, the Inter-American Court relied heavily on the European Court of Human Rights' jurisprudence regarding the right to personal liberty and security, the right to humane treatment, and the rights to judicial protection and a fair trial in its interpretation of parallel provisions in the *American Convention*.

protected in the *American Convention* as well as other regional and international human rights instruments.

39. The contextual approach militates against an interpretation of Article 4(1) that compels a woman under threat of criminal sanction to continue a pregnancy that is medically ill advised, follows a sexual assault or is unrelated to a woman's own priorities and aspirations. An interpretation of the right to life that demands the criminalization of abortion denies women their human rights.
40. The effective protection of women's human rights is increasingly recognized as an important objective of regional and the international human rights systems. Respect for women's equal entitlement to human rights protection was decisively affirmed in the 1990s through a series of U.N. conferences and world summits of governments. The treaty monitoring bodies of all major international human rights instruments, among them the *Convention on the Elimination of All Forms of Discrimination against Women* (the *Women's Convention*),⁴³ have elaborated the content and meaning of women's human rights.
41. The Inter-American system has long recognized the formal rights of women. Established in 1928, the CIM was the first official intergovernmental agency in the world created expressly to ensure recognition of women's civil and political rights. Since 1995, the Inter-American Commission has dedicated a chapter on the condition of women in every country report. In its 1997 Annual Report, the Commission presented a substantial report on the status of women in the Americas.⁴⁴ The report focused on the principle of non-discrimination and emphasized the scarce jurisprudence in the Inter-American system addressing issues of gender. In 1998, the Twenty-ninth Assembly of Delegates of the CIM adopted the *Declaration of Santo Domingo*,⁴⁵ which declared "[t]hat the rights of women throughout their entire life cycle are an inalienable, integral, and indivisible part of universal human rights" and "[t]hat it is imperative to ensure the observance of the human rights of women for the purpose of eliminating all discriminatory situations and to recognize women's legal capacity and equality under the law."
42. As there is no hierarchy of rights in the *American Convention*, neither is there a hierarchy of persons entitled to its protections. It is designed to protect the human rights of all persons without discrimination. Neither the *American Convention*, nor the human rights systems which surround it, can bear an interpretation of Article 4(1) that compels pregnant women under criminal sanction to continue a pregnancy or otherwise risk their health and lives to obtain an abortion. This interpretation privileges fetal life to the detriment of the rights of pregnant woman. It denies women their equal entitlement to enjoy and exercise the rights to life, respect for physical, mental, and moral integrity and freedom from inhuman and degrading treatment, and the right to non-discrimination and

⁴³ 18 Dec 1979, GA Res. 34/180, UN GAOR, 34th Sess, Supp. No. 46 at 193 (entered into force 3 Sept 1981, ratification by Nicaragua 27 October 1981) [hereinafter *Women's Convention*].

⁴⁴ Inter-American Commission on Human Rights. *Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas*. OEA/Ser.L/V/II.100, Doc. 17 (1998).

⁴⁵ CIM/RES. 195 (XXIX-O/98), (adopted 18 November 1998).

due respect for difference. If the human rights of women are to be effectively protected under the *American Convention*, its provisions cannot be interpreted to mean that a woman loses her basic human rights upon becoming pregnant.

(ii) Article 4(1) - A Woman's Right to Life

43. The protection of Article 4(1) indisputably extends to pregnant women. Every woman has the right to have her life respected and protected by law, and not to be deprived of her life arbitrarily. Compelling a pregnant woman, under threat of criminal sanction, to continue a pregnancy fails to respect and protect pregnant women's right to life. Rather, criminal laws restricting access to abortion services arbitrarily deprive women of their right to have their lives protected.
44. It is a well-documented fact that criminal laws do not restrict access to abortion. They only prohibit access to *safe* abortion. As confirmed by the WHO, unsafe abortion is a leading cause of maternal mortality in countries with prohibitive or restrictive criminal abortion laws. Every year, an estimated 4 million unsafe abortions are performed in Latin America.⁴⁶ Due to the hazardous conditions under which these abortions are performed and women's unwillingness to risk prosecution to obtain post-abortion care, thousands of women die from abortion complications related to clandestine procedures.⁴⁷
45. The Inter-American Commission and international human rights committees have documented serious concerns about the criminalization of abortion and its effect on unsafe abortion and high rates of maternal mortality. On November 10, 2006, the Special Rapporteur on the Rights of Women of the Inter-American Commission issued a letter to the Nicaraguan Minister of Foreign Affairs emphasizing that "therapeutic abortion has been internationally recognized as a specialized and necessary health service for women, its ultimate purpose being to save the life of the mother when threatened during pregnancy. Denial of this service endangers women's lives as well as their physical and psychological integrity."⁴⁸ In its most recent Concluding Observations on Nicaragua, the Committee on the Elimination of Discrimination against Women (CEDAW) likewise stated its concern about recent legal reform to "criminalize therapeutic abortion, which may lead more women to seek unsafe, illegal abortions, with consequent risks to their life and health."⁴⁹ The Committee on the Rights of the Child (CRC) has expressed concern about the high rates of adolescent pregnancy and abortion-related maternal mortality.⁵⁰

⁴⁶ WHO, *supra* note 1 at 13-14.

⁴⁷ *Ibid.* at 4.

⁴⁸ Letter from the Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights addressed to the Minister of Foreign Affairs of Nicaragua (10 November 2006).

⁴⁹ CEDAW Concluding Observations, Nicaragua, U.N. Doc. CEDAW/C/NIC/CO/6 (2007) at para. 17.

⁵⁰ CRC Concluding Observations, Nicaragua, U.N. Doc. CRC/C/15/Add.108 (1999) at para 35. See also: CRC Concluding Observations, Nicaragua, U.N. Doc. CRC/C/15/Add.36 (1995) at para 19.

46. CEDAW, the CRC, The Human Rights Committee (HRC), and the Committee on Economic, Social and Cultural Rights (CESCR) have all recognized the effect of criminalization on rates of unsafe abortion and maternal mortality in Latin America.⁵¹

47. Moreover, the known prevalence of clandestine abortions and the high rates of related maternal mortality in the face of criminal prohibitions render the deprivation of women's lives arbitrary. Jurisprudence from the European Court of Human Rights is instructive on this point. In *Open Door Counselling Ltd. and Dublin Well Woman Centre Ltd v. Republic of Ireland*,⁵² the European Court held that an injunction which banned women's health clinics from providing non-directive counselling on abortion services abroad violated the right to freedom of information under the *European Convention*. The European Court's decision was partially based on the fact that

... information that the injunction sought to restrict was already available elsewhere although in a manner which was not supervised by qualified personnel and thus less protective of women's health [e.g. magazines and telephone directories]. Furthermore, the injunction appears to have been largely ineffective in protecting the right to life of the unborn since it did not prevent large numbers of Irish women from continuing to obtain abortions in Great Britain.⁵³

48. Criminal laws that deny access to abortion for the purpose of protecting life from the moment of conception are largely ineffective in achieving their intended objective. They do not restrict access to abortion, but force women to risk their lives to obtain an illegal and unsafe abortion. It is an arbitrary deprivation of the right to life to maintain an ineffective law that risks the lives of thousands of women.

49. The criminalization of abortion, given its effects on unsafe abortion and high rates of maternal mortality, violate women's right to life under Article 4(1) of the *American Convention*. This interpretation is further supported by the concluding observations of both CEDAW and the HRC, which have explicitly characterized criminal abortion laws as a violation of the right to life.⁵⁴

50. In CEDAW's most recent Concluding Observations on Nicaragua, the Committee called on the Government of Nicaragua to review "the laws relating to abortion with a view to

⁵¹ See e.g. CEDAW Concluding Observations: Peru, U.N. Doc. CEDAW/C/PER/CO/6 (2007) at para 24; Paraguay, U.N. Doc. A/60/38 (2005) at para 287; Chile, U.N. Doc. A/54/38, (1999) at para. 228. CRC Concluding Observations: Colombia, U.N. Doc. CRC/C/15/Add.137 (2000) at para 48; Guatemala, U.N. Doc. CRC/C/15/Add.154 (2001) at para. 40; Paraguay, U.N. Doc. CRC/C/15/Add.166 (2001) at para 37. HRC Concluding Observations: Bolivia, U.N. Doc. CCPR/C/79/Add.74 (1997) at para 22; Colombia, U.N. Doc. CCPR/CO/80/COL (2004) at para 13; Costa Rica, U.N. Doc. CCPR/C/79/Add.107 (1999) at para 11. CESRC Concluding Observations: Mexico, U.N. Doc. E/C.12/MEX/CO/4 (2006) at para 25; Brazil, U.N. Doc. E/C.12/1/Add.87 (2003) at para 27; Chile, U.N. Doc. E/C.12/1/Add.105 (2004) at para 26.

⁵² (1992) Eur. Ct. HR, Series A, No. 246.

⁵³ *Ibid.* at para. 76.

⁵⁴ CEDAW Concluding Observations: Belize, U.N. Doc. A/54/38 (1999) at para. 56; Colombia, U.N. Doc. A/54/38 (1999) at para. 393. HRC Concluding Observations: Costa Rica, U.N. Doc. CCPR/C/79/Add.107 (1999) at para. 11 Paraguay, U.N. Doc. CCPR/C/PRY/CO/2 (2006) at para 10.

removing punitive provisions imposed on women who have abortions ... to reduce women's maternal mortality rates."⁵⁵

51. In its concluding observations on Chile, the HRC stated that:

The criminalization of all abortions, without exception, raises serious issues, especially in the light of unrefuted reports that many women undergo illegal abortions that pose a threat to their lives ... The State party is under a duty to take measures to ensure the right to life of all persons, including pregnant women whose pregnancies are terminated. In this regard, the Committee recommends that the law be amended so as to introduce exceptions to the general prohibition of all abortions ...⁵⁶

52. In its Concluding Observations on Guatemala, the HRC reiterated the duty on state parties "to adopt the necessary measures to guarantee the right to life [Article 6 of the Civil and Political Rights Covenant] of pregnant women who decide to interrupt their pregnancy."⁵⁷ To this end, it called on the government of Guatemala to amend its criminal abortion law.

(iii) Article 5 - Woman's Right to Physical, Mental, and Moral Integrity and the Right not to be Subjected to Cruel, Inhuman and Degrading Treatment.

53. The letter of the Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights characterized the Nicaraguan criminal prohibition on abortion as endangering not only women's lives, but also their physical and psychological integrity.⁵⁸ In its 1999 Report on Colombia, the Commission similarly understood abortion as "constitut[ing] a very serious problem for Colombian women, not only from a health perspective, but also considering their rights as women, which include the rights to personal integrity ..."⁵⁹ The object of Article 5, as well as of the whole of the *American Convention*, is to protect the personal integrity of the human person.

54. Article 5(1) provides that "[e]very person has the right to have his physical, mental and moral integrity respected." An interpretation of Article 4(1) that compels a woman under threat of criminal sanction to continue a pregnancy that is medically ill advised, follows a sexual assault or is unrelated to a woman's own priorities and aspirations denies women this right.

55. Pregnancy can involve serious physical and psychological health risks for women. Unintended pregnancy is associated with higher maternal morbidity, a greater risk of depression, and maternal and child abuse. Adolescent pregnancy carries an increased risk

⁵⁵ CEDAW Concluding Observations, Nicaragua, U.N. Doc. CEDAW/C/NIC/CO/6 (2007) at para. 18.

⁵⁶ HRC Concluding Observations, Chile, U.N. Doc. CCPR/C/79/Add.104 (1999) at para. 15.

⁵⁷ HRC Concluding Observations, Guatemala, U.N. Doc. CCPR/CO/72/G TM (2001) at para. 19.

⁵⁸ Letter from the Rapporteur on the Rights of Women, *supra* note 48.

⁵⁹ OAS, Inter-American Commission on Human Rights, *Third Report on the Human Rights Situation in Colombia*, "Chapter XII – The Rights of Women", OEA/Ser.L/V/II.102, Doc. 9 Rev. 1 (1999) at para. 49.

of obstetrical complications, as well as premature and distressed delivery. Moreover, maternal mortality is not the only consequence of unsafe and illegal abortion. For every maternal death, there are many women who suffer serious complications with continued suffering and incapacity, such as sepsis, pelvic trauma, and sterility. When a pregnant woman's health is endangered, either due to the pregnancy itself or the known risks of illegal abortion, it is a violation of her physical and psychological integrity to criminally prohibit access to safe and effective medical care.

56. Forced pregnancy in cases of sexual assault and fetal abnormality also violate the physical, mental and moral integrity of women. Criminal abortion laws that do not provide a sexual assault exemption perpetuate a woman's victimization. She is forced to physically and psychologically bear the consequences of a severely intrusive assault. Criminal laws that require a woman to endure the trauma of induced labour and the delivery of a dead fetus in cases of severe fetal abnormality incompatible with life cause undue psychological hardship.

57. In these cases, criminal prohibitions do not merely violate women's rights to personal integrity. They constitute a form of cruel, inhuman and degrading treatment. Article 5(2) of the *American Convention* provides that "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."

58. In its Concluding Observations on Peru, the HRC expressed its concern "that abortion gives rise to a criminal penalty even if a woman is pregnant as a result of rape."⁶⁰ The Committee found that criminal restriction subjected women to cruel, inhuman and degrading treatment, contrary to Article 7 of the Political Covenant. In its Concluding Observations on Ecuador, the HRC similarly expressed:

its concern about the very high number of suicides of young females ... which appear in part to be related to the prohibition of abortion. In this regard, the Committee regrets the State party's failure to address the resulting problems faced by adolescent girls, in particular rape victims, who suffer the consequences of such acts for the rest of their lives. Such situations are, from both the legal and practical standpoints, incompatible with Articles 3, 6 and 7 of the Covenant ...⁶¹

59. Even where a pregnancy does not threaten the health of women, the physical, mental and moral invasiveness of criminal restrictions on access to abortion is profound. Gestation, childbirth and childcare enlist the most elemental biological and psychological aspects of the female person. Although both men and women participate in the act of conception, women disproportionately bear the costs of pregnancy and childbirth throughout their lives. For example, young women with unintended births are more likely to terminate their schooling and to require social assistance compared to adolescents who postpone having children.

⁶⁰ HRC Concluding Observations, Peru, U.N. Doc. CCPR/C/79/Add.72 (1996) at para. 15.

⁶¹ HRC Concluding Observations, Ecuador, U.N. Doc. CCPR/C/79/Add.92 (1998) at para. 11.

60. Forced gestation and childbirth thus denies women the most basic attribute of the human person – personal fulfillment and liberty. In *Loayza Tamayo*,⁶² the Inter-American Court recognized that the *American Convention* protects the

... concept of personal fulfillment, which in turn is based on the options that an individual may have for leading his life and achieving the goal that he sets for himself. Strictly speaking, those options are the manifestation and guarantee of freedom. An individual can hardly be described as truly free if he does not have options to pursue in life and to carry that life to its natural conclusion. Those options, in themselves, have an important existential value. Hence, their elimination or curtailment objectively abridges freedom and constitutes the loss of a valuable asset, a loss that this Court cannot disregard.⁶³

61. Criminal laws that restrict access to abortion have the discriminatory effect of undermining women’s capacity to make fundamental decisions about their bodies and lives. Although women are formally guaranteed the right to personal integrity, they cannot meaningfully exercise it. Women must risk their lives, health, and criminal prosecution in order to direct the course of their own lives.

(iv) Articles 1(1) & 24 - Right to Non-Discrimination and Due Respect for Difference

62. Discrimination on the grounds of sex is prohibited under the *American Convention* and by all other regional and international human rights instruments. Article 1(1) of the *American Convention* sets out a general obligation on the part of states to protect the guaranteed rights and freedoms without discrimination:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 24 of the *American Convention* further provides that “All persons are equal before the law”. Consequently, they are entitled, without discrimination, to equal protection of the law.

63. Denying women access to medical procedures on the basis of sex violates the principles of non-discrimination and due respect for difference. Article 12(1) of the *Women’s Convention* requires member states to “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services.”⁶⁴ In its General

⁶² *Reparations (Art. 67 American Convention on Human Rights)* (1999), Inter-Am. Ct. H.R. (Ser.C) No. 42.

⁶³ *Ibid.* at para. 148.

⁶⁴ *Women’s Convention*, *supra* note 43, art. 12(1).

Recommendation on *Women and Health*, CEDAW explains that women's biological differences respecting pregnancy and its prevention must be accommodated in ways that adequately reflect those differences, and explains that laws that criminalize medical procedures that only women need are a form of discrimination.⁶⁵

64. An interpretation of Article 4(1) that demands criminally restrictive abortion laws fails to provide women access to reproductive health services specific to their health needs. Rather, prohibitions on access to abortion discriminate against women by criminalizing a safe and effective health care procedure that only women need. Women are exposed to health and life risks not faced by men. They alone suffer the physical, mental and moral consequences of unsafe or unwanted pregnancies.
65. Both the HRC and CEDAW have explicitly characterized criminal abortion laws as a violation of the right to non-discrimination. In its Concluding Observations on both Ecuador and Peru,⁶⁶ the HRC found the criminal prohibition of abortion, especially in cases of rape, to be incompatible with Article 3 of the *International Covenant on Civil and Political Rights*,⁶⁷ which "ensure[s] the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant." In its Concluding Observations on Colombia, CEDAW found "that legal provisions on abortion constitute a violation of ... article 12 of the [*Women's*] *Convention*."⁶⁸
66. Sex discrimination is also aggravated by compound factors such as race, age, nationality and socio-economic status. A reading of Article 4(1) that compels a woman under threat of criminal sanction to continue a pregnancy gives rise to compound forms of discrimination. Despite the imperative that the *American Convention* be interpreted to give equal protection of the law, women marginalized by age, poverty and race disproportionately bear the burden of unsafe and illegal abortion. Without access to reproductive information or contraceptive services, these women are most often in need of abortion services, but lack the social and economic resources necessary to procure illegal abortions under safe medical conditions.
67. Both CEDAW and the HRC have examined the discriminatory and disproportionate impact of restrictive abortion laws. In its Concluding Observations on Ireland, CEDAW noted that due to the illegality of abortion in Ireland, women must travel abroad to terminate their pregnancies. The Committee recognized that "[t]his creates hardship for vulnerable groups, such as female asylum seekers who cannot leave the territory of the State."⁶⁹ In its Concluding Observations on Argentina, the HRC expressed "concern over discriminatory aspects of the laws and policies in force, which result in disproportionate resort to illegal, unsafe abortions by poor and rural women."⁷⁰

⁶⁵ CEDAW, General Recommendation 24, Women and Health (Article 12), CEDAW/C/1999/I/W.G.II/WP.2/Rev.1 at paras. 6 & 14.

⁶⁶ HRC Concluding Observations: Ecuador, U.N. Doc. CCPR/C/79/Add.92 (1998) at para. 11; Peru, U.N. Doc. CCPR/C/79/Add.72 (1996) at para. 15.

⁶⁷ 21 December 1966, 999 U.N.T.S. 171 (entered into force 23 March 1976, ratification by Nicaragua 12 June 1980).

⁶⁸ CEDAW Concluding Observations, Colombia, U.N. Doc. A/54/38 (1999) at para. 393.

⁶⁹ CEDAW Concluding Observations, Ireland, U.N. Doc. A/54/38 (1999) at para. 185.

⁷⁰ HRC Concluding Observations, Argentina, U.N. Doc. CCPR/CO/70/ARG (2000) at para. 14.

(v) The Right to Life from the Moment of Conception in the Context of Women’s Human Rights

68. The fact that criminal abortion laws are incompatible with the rights of women does not detract from the legitimacy of the objective that such laws are intended to achieve. The protection of life from the moment of conception remains an important objective. However, the criminalization of abortion is neither the sole nor the most effective or reasonable means of protecting fetal life.
69. The protection of life from the moment of conception can be accomplished in a manner respectful of women’s rights. Article 4(1) might well require member states to improve pre- and post natal care, provide better nutrition during pregnancy, and improved obstetric services to enable women and their children to survive childbirth. For example, many stillbirth deaths are the consequence of inadequate or inappropriate care during pregnancy and delivery. Million of babies who survive the birth process are so badly injured that they will require extended care throughout their lives.⁷¹ Protecting fetal life in these circumstances does not compromise, but complies with the rights of pregnant women who are eagerly awaiting the birth of a healthy child.
70. This qualified interpretation of the right to life from the moment of conception is supported by the interpretive practices of the Committee on the Rights of the Child (CRC). Article 6(1) of the *Convention on the Rights of the Child* (the *Children’s Convention*)⁷² protects the "inherent right to life" of every child. Article 1 of the *Children’s Convention* explicitly states that “a child means every human being”, that is a human in being. The ninth paragraph of its preamble recognizes that "the child ... needs special safeguards and care, including appropriate legal protection, before as well as after birth" [emphasis added]. The concluding observations of the CRC reveal that it does not interpret this preambular language as prohibiting legal abortions. Rather, the CRC routinely encourages the legalization of abortion to protect the life and health of pregnant female children.⁷³

d. Supplementary Means of Interpretation

71. Pursuant to Article 32 of the *Vienna Convention*, supplementary means of interpretation, including the preparatory work of the treaty can be used to confirm a meaning derived

⁷¹ R.J. Cook, B.M. Dickens & M.F. Fathalla, *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law* (Oxford: Clarendon Press, 2003) at 24, translated into Spanish: *Salud Reproductiva y Derechos Humanos: Integración de la Medicina, la Ética y el Derecho* (Bogotá: Profamilia, 2004).

⁷² 20 Nov 1989, GA Res. 44/25 (XLIV) UN GAOR, 44th Sess., Supp No. 49 at 167, UN Doc. A/44/49 (entered into force 2 September 1990, ratification by Nicaragua 4 November 1990).

⁷³ For example, in its Concluding Observations on Chad, the CRC communicated its concern about the impact that “punitive legislation regarding abortion can have on maternal mortality rates for adolescent girls [and] encourage[d] the State party to review its practices under the existing legislation authorizing abortions for therapeutic reasons, with a view to preventing illegal abortions and improving protection of the mental and physical health of girls. CRC Concluding Observations, Chad, U.N. Doc. CRC/C/15/Add.107 (1999) at para. 30.

from the general rules of interpretation. In *Case 2141*,⁷⁴ the Inter-American Commission examined the preparatory work of the *American Convention* to dismiss the claim that Article 4(1) of the *American Convention* had established the absolute concept of the right to life from the moment of conception.

72. The Commission recognized that “[t]he legal implications of the clause ‘in general, from the moment of conception’ are substantially different from the shorter clause ‘from the moment of conception’.”⁷⁵ The Commission held that in light of the preparatory history, the phrase “in general, from the moment of conception” was intended to strike a balance between the demands of State Parties who were adamant about protecting fetal life, and other countries who had concerns about protecting lawful abortion in their respective domestic jurisdictions. Given this intention, the Inter-American Commission confirmed that the words “in general” precluded an interpretation of Article 4(1) that required the absolute prohibition of abortion.

3. Conclusion

73. Article 4(1), protecting the right to life “in general from the moment of conception,” should be construed in a manner that recognizes and accommodates women’s enjoyment and exercise of all rights and freedoms protected in the *American Convention*, as well as, other regional and international human rights instruments.

74. The phrase “in general” recognizes that the protection of the right to life from the moment of conception is intimately connected with, and cannot be regarded in isolation from, the rights and freedoms of the pregnant women. In order to maintain the coherence of the *American Convention*, and the human rights systems which surround it, the scope of Article 4(1) can only extend to the protection of prenatal life in ways that respect, protect and fulfill the human rights of women.

⁷⁴ (1981) Inter-Am. Comm. H.R. No. 23/81, Annual report of the Inter-American Commission on Human Rights: 1980-81, OEO/ser. L/V/1154, Doc. 9 rev.1.

⁷⁵ *Ibid.* at para. 30.

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