

January 2014

# Prenatal Rights Outside the Context of Abortion in Latin America and the Caribbean: A Comparative Analysis of Domestic Laws and Relevant Jurisprudence Following the Adoption of the American Convention on Human Rights

Ligia M. De Jesus

Follow this and additional works at: [http://digitalcommons.liberty.edu/lu\\_law\\_review](http://digitalcommons.liberty.edu/lu_law_review)

## Recommended Citation

De Jesus, Ligia M. (2014) "Prenatal Rights Outside the Context of Abortion in Latin America and the Caribbean: A Comparative Analysis of Domestic Laws and Relevant Jurisprudence Following the Adoption of the American Convention on Human Rights," *Liberty University Law Review*: Vol. 8: Iss. 2, Article 2.

Available at: [http://digitalcommons.liberty.edu/lu\\_law\\_review/vol8/iss2/2](http://digitalcommons.liberty.edu/lu_law_review/vol8/iss2/2)

This Article is brought to you for free and open access by the Liberty University School of Law at DigitalCommons@Liberty University. It has been accepted for inclusion in Liberty University Law Review by an authorized administrator of DigitalCommons@Liberty University. For more information, please contact [scholarlycommunication@liberty.edu](mailto:scholarlycommunication@liberty.edu).

## ARTICLE

# PRENATAL RIGHTS OUTSIDE THE CONTEXT OF ABORTION IN LATIN AMERICA AND THE CARIBBEAN: A COMPARATIVE ANALYSIS OF DOMESTIC LAWS AND RELEVANT JURISPRUDENCE FOLLOWING THE ADOPTION OF THE AMERICAN CONVENTION ON HUMAN RIGHTS

*Ligia M. De Jesus*<sup>†</sup>

### I. INTRODUCTION

By ratifying the American Convention on Human Rights,<sup>1</sup> Latin American and Caribbean states<sup>2</sup> committed themselves to protect the right to life from the moment of conception in Article 4(1), which 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.”<sup>3</sup>

---

† *Associate Professor of Law, Ave Maria School of Law; LL.M., Harvard Law School.* The author wishes to thank Ave Maria School of Law for supporting this project with a summer research grant. She also wishes to thank Anthony Tannus Wright, Eduardo Aguilera, Cintia Bayardi, María Laura Farfán, Sandy Pineda and Siomara Umaña for their assistance in reviewing domestic Latin American codes.

1. Organization of American States, American Convention on Human Rights, NOV. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978).

2. For the purposes of this paper, Latin American and Caribbean states will include countries in Latin America and the Caribbean that have ratified the Convention on the Rights of the Child and the American Convention on Human Rights (a total of 25 nations): Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, Venezuela,. This classification does not include countries in the region that have not ratified the American Convention on Human Rights: Antigua and Barbuda, Bahamas, Belize, Cuba, Guyana, St. Kitts and Nevis, Saint Lucia and St. Vincent and the Grenadines. Canada and the United States, although members of the OAS, have not ratified the American Convention either. *American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32), Signatories and Ratifications*, ORGANIZATION OF AMERICAN STATES (February 21, 2014), [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm). It does not include foreign territories in the geographic region such as Puerto Rico, Guadeloupe or French Guyana either. *Id.*

3. Organization of American States, American Convention on Human Rights, NOV. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978).

This paper addresses state parties' interpretation of this provision by specifically looking at state practice on recognition of prenatal rights, including the right to life from conception, economic and social rights of the unborn, as well as other rights in the areas of family law and property law. State practice subsequent to the adoption of a treaty, which establishes the agreement of the parties regarding its interpretation, is a primary source of treaty interpretation, according to Article 31(3)(b) of the Vienna Convention on the Law of Treaties,<sup>4</sup> which the Inter-American Court on Human Rights has deemed to state the relevant international law principles on treaty interpretation.<sup>5</sup> Subsequent state practice is then directly relevant to a proper interpretation of Article 4(1) of the American Convention.

The paper carries out a comparative law analysis of Latin American and Caribbean national constitutions and primary laws, i.e., laws that prevail over lesser regulations or administrative directives, such as civil, family, and children's codes. Content and language in these statutes and high court decisions is described in detail in the following sections.<sup>6</sup>

## II. CONSTITUTIONAL RECOGNITION AND PROTECTION OF THE RIGHT TO LIFE FROM CONCEPTION

After signature or ratification of the American Convention on Human Rights, Latin American and Caribbean states have been the precursors of explicit recognition of a fundamental right to life from conception in their national constitutions, often using language identical to the Convention's language. Eight Latin American and Caribbean nations have explicitly protected the right to life from conception in their national constitutions:

---

4. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, 340, 8 I.L.M. 679, 692.

5. Restrictions to the Death Penalty (Arts. 4(2) ad 4(4) American Convention on Human Rights), Advisory Opinion OC-3/83, Inter-Am. Ct. H.R. (ser. A) No. 3, ¶48-50 (Sept. 8, 1983).

6. An analysis of whether or not current state practice and *opinio juris* rise to the level of regional custom is beyond the scope of this paper, which focuses on state practice for the purposes of treaty interpretation only. Regional and local custom can be a source of customary international law. See Right of Passage Over Indian Territory (Port. v. India), 1960 I.C.J. 6 (Apr. 12); Haya de la Torre Case (Colo. v. Peru), 1951 I.C.J. 71 (June 13). The former established that "constant and uniform usage" practiced by the states in question, along with express agreement (as opposed to tacit assent inferred from lack of opposition) is required for the recognition of a regional norm of customary international law, thus setting a higher threshold that is difficult to meet, albeit not impossible. Right of Passage Over Indian Territory (Port. v. India), 1960 I.C.J. 6, 99 (Apr. 12).

Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Paraguay, and Peru.<sup>7</sup> In addition, the constitutions of most states and provinces of Mexico and Argentina have also recognized a right to life of the unborn child, as illustrated below.

It is worth noting that other national and state constitutions may protect unborn life implicitly, by recognizing a universal right to life with no categorical exceptions, where authoritative interpretations to the contrary have not been made. For instance, although the Constitution of Mexico does not contain specific provisions on the right to life beginning at conception, its Article 123 establishes that an employer shall be required to ensure the greatest possible guarantees for the health and life of their workers *and of the product of conception* when pregnant women are involved.<sup>8</sup> The Mexican Supreme Court has read this provision in conjunction with Article 4 of the federal Constitution (on equality before the law) and has held that the federal Constitution protects the right to life from the moment of conception, regardless of his or her stage of development, in consistency with the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights (“ICCPR”), as well as federal and state laws.<sup>9</sup> This jurisprudence remains effective today

---

7. Constitutional provisions recognizing a right to life from conception were adopted in 1980 in Chile (signed the American Convention in 1969, ratified it in 1990), 1982 in Honduras (signed the American Convention in 1969, ratified it in 1977), 1983 in El Salvador (signed the American Convention in 1969, ratified it in 1978), 1985 in Guatemala (signed the American Convention in 1969, ratified it in 1978), 1992 in Paraguay (signed the American Convention in 1969, ratified it in 1989), 1993 in Peru (signed the American Convention in 1977, ratified it in 1978), 2008 in Ecuador (signed the American Convention in 1969, ratified it in 1977) and 2010 in Dominican Republic (signed the American Convention in 1977, ratified it in 1978). See *Derecho de Familia y Niñez (“la Red”)*, ORGANIZACIÓN DE LOS ESTADOS AMERICANOS (February 25, 2014), [http://www.oas.org/dil/esp/derecho\\_de\\_familia.htm](http://www.oas.org/dil/esp/derecho_de_familia.htm); see also *American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32), Signatories and Ratifications*, ORGANIZATION OF AMERICAN STATES (February 21, 2014), [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm).

8. See *Constitución Política de los Estados Unidos Mexicanos [C.P.]*, as amended 2007, art. 123, *Diario Oficial de la Federación [DO]*, 5 de Febrero de 1917 (Mex.) (emphasis added), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>.

9. Jurisprudencia identificada como P.J. 13/2002, Pleno de la Suprema Corte de Justicia de la Nación [SCJN] [Supreme Court], *Semanario Judicial de la Federación y Gaceta*, tomo XV, Febrero de 2002, Página 589; Jurisprudencia identificada como P.J. 14/2002, Pleno de la Suprema Corte de Justicia de la Nación [SCJN] [Supreme Court], *Semanario Judicial de la Federación y Gaceta*, tomo XV, Febrero de 2002, Página 588 (Mex.) (as cited in *Voto de Minoría en la Acción de inconstitucionalidad 146/2007 y su acumulada 147/2007*, Suprema

and was not overruled by the Court's Chief Justice Opinion in the decision upholding Mexico City's abortion law, as indicated by other Supreme Court judges and commentators.<sup>10</sup>

States have mirrored the American Convention's language in articulating a "right to life from conception" belonging to every "person" or "human being,"<sup>11</sup> thus attributing humanity and personhood to the unborn. For instance, the Constitution of El Salvador, Article 1, recognizes every human being as a person from the moment of conception,<sup>12</sup> using both terms interchangeably and stating that El Salvador recognizes the human person as the origin and the end of the activity of the State. Likewise, the Guatemalan Constitution declares, in Article 3, that the state guarantees and protects human life from conception, as well as the integrity and security of the person.<sup>13</sup> The Dominican Republic's Constitution, Article 37, establishes that the right to life is inviolable from conception until death.<sup>14</sup> The Constitution of Paraguay, Article 4, states that the right to life is inherent to the human person, and that life is protected, in general, from

---

Corte de Justicia de la Nación [SCJN], pp. 11–33), *available at* <http://www.equidad.scjn.gob.mx/IMG/pdf/ENGROSECOSSxcdO-146-07.pdf>.

10. *See* Voto de Minoría en la Acción de inconstitucionalidad 146/2007 y su acumulada 147/2007, Suprema Corte de Justicia de la Nación [SCJN] [Supreme Court], Página 11–32 (Mex.), *available at* <http://www.equidad.scjn.gob.mx/IMG/pdf/ENGROSECOSSxcdO-146-07.pdf> (pointing out the court's lack of consensus on the abrogation of previous jurisprudence and the non-binding nature of the Chief Justice's opinion); *see also* Piero Tozzi, *Mexican Supreme Court Issues Final, Limited Ruling on Abortion*, C-FAM, (Mar. 5, 2009, 02:53 PM), <http://c-fam.org/en/2009/6792-mexican-supreme-court-issues-final-limited-ruling-on-abortion> (indicating that the lack of unified reasoning in the majority concurrences means the ruling cannot be interpreted broadly to overrule other laws).

11. *See* RITA JOSEPH, HUMAN RIGHTS AND THE UNBORN CHILD, 213–17 (2009) (indicating that Article 1(2) of the Convention states that the terms "person" and "human being" have identical meaning, thus preempting the use of the concept of "personhood" as an exclusionary tool).

12. *See* CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE EL SALVADOR, art. 1, (El Sal.), *available at* [http://www.oas.org/dil/esp/Constitucion\\_de\\_la\\_Republica\\_del\\_Salvador\\_1983.pdf](http://www.oas.org/dil/esp/Constitucion_de_la_Republica_del_Salvador_1983.pdf); *see also* Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Second Periodic Reports of the States Parties Due in 1997: El Salvador*, ¶ 9, U.N. Doc. CRC/C/65/Add.25 (Oct. 22, 2003), *available at* <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/65/Add.25>.

13. *See* CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA, art. 3 (Guat.), *available at* [http://www.oas.org/juridico/MLA/sp/gtm/sp\\_gtm-int-text-const.pdf](http://www.oas.org/juridico/MLA/sp/gtm/sp_gtm-int-text-const.pdf).

14. *See* CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DOMINICANA, art. 37 (Dom. Rep.), *available at* <http://www.oas.org/dil/esp/Constituci%C3%B3n%20de%20la%20Rep%C3%B3blica%20Dominicana,%20Proclamada%20el%2026%20de%20enero%20del%202010%20Gaceta%20Oficial%20No.%2010561.pdf>.

conception.<sup>15</sup> The Paraguayan Supreme Court has held that the life of a pregnant mother and her unborn child deserve equal protection.<sup>16</sup>

Chile's Constitution does not specifically speak of a "right to life from conception," but the Chilean Constitutional Court has found an implicit constitutional right to life of the unborn in Article 19(1) of the Constitution of Chile, which declares that the Constitution guarantees to all persons the right to life and to the physical and psychological integrity of the person, and that the law protects the life of the one that is to be born.<sup>17</sup> The Chilean Constitutional Court found that legislators had left a record of their interpretation of this Article, which stated that the *nasciturus*, from conception, is a person in the constitutional sense and, therefore, entitled to the right to life.<sup>18</sup> It also found that the rights of gestating mothers and those of unborn children deserved equal protection under the Chilean Constitution.<sup>19</sup>

Some constitutions include the right to life from conception within children's rights. For instance, the Ecuadorian Constitution Article 45 provides that (1) children and adolescents shall enjoy the rights common to all human beings, in addition to those specific to their age; (2) the State shall recognize and ensure their right to life, care, and protection from conception; and (3) their other rights shall be protected—including their right to a family, their right to full health and nutrition, to social security, and to respect for their dignity.<sup>20</sup>

---

15. See CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA PARAGUAY, art. 4 (Para.), available at [http://www.oas.org/dil/esp/Constitucion\\_de\\_Paraguay.pdf](http://www.oas.org/dil/esp/Constitucion_de_Paraguay.pdf). For an English translation, see Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Third Periodic Reports of States Parties Due in 2002: Paraguay*, ¶ 288, U.N. Doc. CRC/C/PRY/3 (Mar. 7, 2008), available at [http://www.ecoi.net/file\\_upload/470\\_1264174952\\_crc-c-pry-3.pdf](http://www.ecoi.net/file_upload/470_1264174952_crc-c-pry-3.pdf).

16. Carlos Agustín Cáceres Sarubbi & Carmen Viviana Chavez de Talavera, *Paraguay*, in *DEFENDING THE HUMAN RIGHT TO LIFE IN LATIN AMERICA* 99, 107 (M. Laura Farfán Bertrán et al. eds., Noelia Estefanía Marchetti trans., Americans United for Life 2012) (citing "Remedying habeas corpus filed in favor of Ms. Liliana Verón," Supreme Court of Justice of Paraguay, Criminal Chamber. Agreement and Ruling No. 4, January 8, 2010), available at <http://www.aul.org/wp-content/uploads/2013/02/defending-life-latin-america.pdf>.

17. See CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE [C.P.] art. 19(1) (Chile), available at [http://www.oas.org/dil/esp/Constitucion\\_Chile.pdf](http://www.oas.org/dil/esp/Constitucion_Chile.pdf).

18. See Tribunal Constitucional [T.C.] [Constitutional Court], 18 de Abril de 2008, *Requerimiento de inconstitucionalidad deducido en contra de algunas disposiciones de las "Normas Nacionales sobre Regulación de la Fertilidad," aprobadas por el Decreto Supremo No. 48, de 2007, del Ministerio de Salud, Rol de la causa: No. 740-07, p. 128 (Chile)*, available at [http://www.tribunalconstitucional.cl/wp/descargar\\_expediente.php?id=34407](http://www.tribunalconstitucional.cl/wp/descargar_expediente.php?id=34407).

19. *Id.* at ¶ 15, 17.

20. See CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DEL ECUADOR, art. 45 (Ecuador), available at <http://www.asambleanacional.gov.ec/documentos/Constitucion-2008.pdf>.

Likewise, although the Argentine Constitution does not contain an express provision on the right to life from conception, Article 75(23) states that Congress shall have the power to enact a special and integral social security system that protects *needy children, from gestation* through the end of elementary schooling, and that protects the mother during pregnancy and nursing.<sup>21</sup>

Some states have codified or expressly applied the *pro homine* or *pro personae* principle in favor of the unborn child, beginning at conception.<sup>22</sup> This principle, when applied to the unborn child, is usually articulated as a presumption of entitlement in virtue of which, when a law or statute allows more than one interpretation, the one that favors the unborn should be chosen.<sup>23</sup> The Constitution of Peru, Article 2(1), for instance, declares that every person has a right to life, identity, mental and physical integrity, unrestricted development, and well-being, and that, from conception, the unborn shall be a subject of rights in everything that favors him.<sup>24</sup> The Honduran Constitution contains a similar principle in Article 67, which provides that the unborn shall be considered as born for all rights accorded within the limits established by law.<sup>25</sup> Mexico's Constitution, in its transitory provision, holds that laws adopted before the reform's entry into force shall be effective only as long as they favor or benefit the unborn.<sup>26</sup> In addition, the Constitutional Court of Chile found that this principle was included in the Chilean Constitution by holding that, when in doubt, the

---

21. Art. 75(23), CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.) (emphasis added), available at [http://www.oas.org/dil/esp/Constitucion\\_de\\_la\\_Nacion\\_Argentina.pdf](http://www.oas.org/dil/esp/Constitucion_de_la_Nacion_Argentina.pdf).

22. See Peruvian Constitutional Court's application of this principle to the human embryo in Tribunal Constitucional [T.C.] [Constitutional Court], 16 de Octubre 2009, ONG "Acción de Lucha Anticorrupcion" Sentencia del Tribunal Constitucional, EXP. No. 02005-2009-PA/TC, § 3.2 ¶ 12 (Peru), available at <http://www.tc.gob.pe/jurisprudencia/2009/02005-2009-AA.html>.

23. See, e.g., CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE HONDURAS, art. 67 (Hond.), available at [http://www.oas.org/dil/esp/Constitucion\\_de\\_Honduras.pdf](http://www.oas.org/dil/esp/Constitucion_de_Honduras.pdf).

24. CONSTITUCIÓN POLÍTICA DEL PERÚ, art. 2(1) (Peru), available at [http://www.oas.org/dil/esp/Constitucion\\_Peru.pdf](http://www.oas.org/dil/esp/Constitucion_Peru.pdf).

25. See CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE HONDURAS, art. 67 (Hond.), available at [http://www.oas.org/dil/esp/Constitucion\\_de\\_Honduras.pdf](http://www.oas.org/dil/esp/Constitucion_de_Honduras.pdf).

26. See Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended to 2007, Transitorios art. Tercero, Diario Oficial de la Federacion [D.O.], 5 de Febrero de 1917 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>.

*pro homine* principle should apply to the *nasciturus* or unborn child, given that the Chilean Constitution's purpose was to serve the human person.<sup>27</sup>

Most state constitutions also recognize the unborn child's right to life from conception in federal states like Mexico, Argentina, and Brazil. Between the years of 1994 and 2011, most Mexican states (20 out of 31) amended their state Constitutions to protect the right to life from conception,<sup>28</sup> including Baja California,<sup>29</sup> Campeche,<sup>30</sup> Chiapas,<sup>31</sup> Chihuahua,<sup>32</sup> Coahuila,<sup>33</sup> Colima,<sup>34</sup> Durango,<sup>35</sup> Guanajuato,<sup>36</sup> Jalisco,<sup>37</sup> Morelos,<sup>38</sup> Nayarit,<sup>39</sup> Oaxaca,<sup>40</sup> Puebla,<sup>41</sup> Querétaro,<sup>42</sup>

---

27. Tribunal Constitucional [T.C.] [Constitutional Tribunal], 18 de Abril del 2008, Requerimiento de inconstitucionalidad deducido en contra de algunas disposiciones de las "Normas Nacionales sobre Regulación de la Fertilidad", aprobadas por el Decreto Supremo No 48, de 2007, del Ministerio de Salud, Rol de la causa, p.141 (Chile).

28. Chihuahua and Jalisco in 1994; Yucatán in 2007; Baja California and Morelos in 2008; Campeche, Colima, Durango, Guanajuato, Oaxaca, Puebla, Querétaro, San Luis Potosí and Veracruz in 2009; Nayarit, Quintana Roo, Sonora and Tamaulipas in 2010 and Chiapas in 2011. Mexico ratified the Convention in 1981.

29. Constitución Política del Estado Libre y Soberano de Baja California, art. 7, 16 de Agosto de 1953 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Baja%20California/wo19505.pdf>.

30. Constitución Política del Estado Libre y Soberano de Campeche, art. 6, 29 de Mayo de 1965 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=4>.

31. Constitución Política del Estado de Chiapas, art. 4, 16 de Agosto de 2013 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=7>.

32. Constitución Política de Chihuahua, art. 5, 25 de Mayo de 1921 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Chihuahua/wo22558.pdf>.

33. Constitución Política del Estado de Coahuila de Zaragoza, art. 173, 19 de Febrero de 1918 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=25467&ambito=ESTATAL>.

34. Constitución Política del Estado Libre y Soberano De Colima, art. 1 (I), 20 de Octubre de 1917 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=23728&ambito=ESTATAL>.

35. Constitución Política del Estado Libre y Soberano de Durango, art. 1, 01 de Noviembre de 1917 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=24655&ambito=ESTATAL>.

36. Constitución Política del Estado de Guanajuato, art. 1, 03 de Septiembre de 1917 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=38871&ambito=ESTATAL>.

37. Constitución Política del Estado de Jalisco, art. 4, 21 de Julio de 1917 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=34151&ambito=ESTATAL>.



Quintana Roo,<sup>43</sup> San Luis Potosí,<sup>44</sup> Sonora,<sup>45</sup> Tamaulipas,<sup>46</sup> Veracruz,<sup>47</sup> and Yucatán.<sup>48</sup>

The amendments have survived constitutional scrutiny in repeated instances of constitutional challenge, where the Mexican Supreme Court has relied on principles of federalism and legislative deference.<sup>49</sup> The

38. Constitución Política del Estado Libre y Soberano de Morelos, art. 2, 20 de Noviembre de 1930 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=767&ambito=ESTATAL>.

39. Constitución Política del Estado de Nayarit, art. 7 (XIII) (1), 17 de Febrero de 1918 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=23501&ambito=ESTATAL>.

40. Constitución Política del Estado Libre y Soberano de Oaxaca, art. 12, 04 de Abril de 1922 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=24326&ambito=ESTATAL>.

41. Constitución Política del Estado Libre y Soberano de Puebla, art. 26 (III) (IV), 02 de Octubre de 1917 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=11456&ambito=ESTATAL>.

42. Constitución Política del Estado de Queretaro, art. 2, 31 de Marzo de 2008 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=8486&ambito=ESTATAL>.

43. Constitución Política del Estado Libre y Soberano de Quintana Roo, art. 13 (Mex.), 12 de Enero de 1975, available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=23>.

44. Constitución Política del Estado Libre y Soberano de San Luis Potosí, art. 16, 20 de Noviembre de 1996 (Mex.), available at <http://www.stjslp.gob.mx/transp/cont/marco%20juridico/pdf-zip/constitucion/CPELSSLP/CPELSSLP.pdf>.

45. Constitución Política del Estado de Sonora, art. 1, 29 de Septiembre de 1917 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=2765&ambito=ESTATAL>.

46. Constitución Política del Estado de Tamaulipas, art. 16, 05 de Febrero de 1921 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=37775&ambito=ESTATAL>.

47. Constitución Política del Estado de Veracruz de Ignacio de la Llave, art. 4, 25 de Septiembre de 1917 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=30>.

48. Constitución Política del Estado de Yucatán, *as amended* 01 de Abril del 2014, art. 1, 14 Enero 1918 (Mex.), available at <http://www.congresoyucatan.gob.mx/legislacion/constitucion-politica>.

49. For more on constitutional challenges to state amendments on the right to life, see Diana Ortiz Trujillo & Santiago Maqueda, *United Mexican States*, in *DEFENDING THE HUMAN RIGHT TO LIFE IN LATIN AMERICA* 35, 55–58 (M. Laura Farfán Bertrán et al. eds., Noelia Estefanía Marchetti trans., Americans United for Life 2012), available at <http://www.aul.org/wp-content/uploads/2013/02/defending-life-latin-america.pdf>.

Federal Mexican Supreme Court upheld the amendments in San Luis Potosí and Baja California in 2011, ruling that neither conflicted with Mexico's federal Constitution;<sup>50</sup> it upheld the amendments in Oaxaca and Guanajuato in 2013,<sup>51</sup> rejecting the proposition that right to life amendments violated reproductive rights or separation of Church and state.<sup>52</sup> The court partially struck down the Querétaro Amendment on narrow, non-substantive, procedural grounds.<sup>53</sup> However, "[s]everal justices commented that the State was free to revisit the issue and follow the proper procedure in passing the amendment."<sup>54</sup>

The Constitutions of Chiapas,<sup>55</sup> Chihuahua,<sup>56</sup> Colima,<sup>57</sup> Durango,<sup>58</sup> Guanajuato,<sup>59</sup> Jalisco,<sup>60</sup> Morelos,<sup>61</sup> Nayarit,<sup>62</sup> Oaxaca,<sup>63</sup> Querétaro,<sup>64</sup> San Luis

50. See *Mexico: Supreme Court Upholds State ProLife Protections*, PARLIAMENTARY NETWORK FOR CRITICAL ISSUES (Sept. 2011), <http://www.pncius.org/newsletter.aspx?id=52>; see also Piero Tozzi, *Analysis: Unborn in Mexico dodge bullet - for now*, C-FAM (Oct. 6, 2011), <http://c-fam.org/en/2011/6821-analysis-unborn-in-mexico-dodge-bullet-for-now>.

51. Matthew Hoffman, *Turn-around victory: Mexican Supreme Court upholds state pro-life laws*, LifeSiteNews (May 3, 2013, 01:54 PM), <http://www.lifesitenews.com/news/turn-around-victory-mexican-supreme-court-upholds-state-pro-life-laws/>.

52. *México: Suprema Corte ratifica blindaje de vida ante aborto en 18 estados*, ACIPRENSA (May 3, 2013, 03:34 PM), <http://www.aciprensa.com/noticias/mexico-suprema-corte-ratifica-blindaje-de-vida-ante-aborto-en-18-estados-53077/#.UZpmmWzD8dU>; *Mexican Supreme Court strikes down state pro-life constitutional amendment*, LIFESITENEWS (April 30, 2013, 05:09 PM), <http://www.lifesitenews.com/news/mexican-supreme-court-strikes-down-state-pro-life-constitutional-amendment/>.

53. Piero Tozzi, *This Week's Pro-Life Victories in Mexico*, TURTLE BAY AND BEYOND (May 3, 2013), available at <http://www.turtlebayandbeyond.org/2013/abortion/this-weeks-pro-life-victories-in-mexico/>.

54. *Id.*

55. Constitución Política del Estado de Chiapas, art. 14, 16 de Agosto de 2013 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Chiapas/wo21023.doc>.

56. Constitución Política de Chihuahua, art. 5º, 25 de Mayo de 1921 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Chihuahua/wo22558.pdf>.

57. Constitución Política del Estado Libre y Soberano De Colima, art. 1 (I), 20 de Octubre de 1917 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=23728&ambito=ESTATAL>.

58. Constitución Política del Estado Libre y Soberano de Durango, art. 1, 01 de Noviembre de 1917 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=24655&ambito=ESTATAL>.

59. Constitución Política del Estado de Guanajuato, art. 1, 03 de Septiembre de 1917 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=38871&ambito=ESTATAL>.

60. Constitución Política del Estado de Jalisco, art. 4, 21 de Julio de 1917 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=34151&ambito=ESTATAL>.

Potosí,<sup>65</sup> Tamaulipas,<sup>66</sup> and Yucatán<sup>67</sup> designate the unborn as a “human being,” who is entitled to human rights, in particular, the right to life from conception. The Constitution of Campeche designates the unborn as a “person.”<sup>68</sup> The Constitution of Guanajuato expressly rejects any distinction between the terms “person” and “human being,” as in the American Convention, by affirming that “a person is any human being from conception until natural death.”<sup>69</sup> Furthermore, the state of Coahuila refers to the unborn as “children” and provides that they should be protected by law from conception.<sup>70</sup>

The constitutions of several Mexican states provide for a right to life from conception to “natural death,” which may preempt abortion or fetal homicide, where the death of a human fetus or embryo is intentionally

---

61. Constitución Política del Estado Libre y Soberano de Morelos, art. 2, 20 de Noviembre de 1930 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=767&ambito=ESTATAL>.

62. Constitución Política del Estado de Nayarit, art. 7 (XIII) (1), 17 de Febrero de 1918 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=23501&ambito=ESTATAL>.

63. Constitución Política del Estado Libre y Soberano de Oaxaca, art. 12, 04 de Abril de 1922 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=24326&ambito=ESTATAL>.

64. Constitución Política del Estado de Queretaro, art. 2, 31 de Marzo de 2008 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=8486&ambito=ESTATAL>.

65. Constitución Política del Estado Libre y Soberano de San Luis Potosí, art. 16, 06 de Noviembre de 2010 (Mex.), available at <http://www.stjslp.gob.mx/transp/cont/marco%20juridico/pdf-zip/constitucion/CPeLSSLP/CPeLSSLP.pdf>.

66. Constitución Política del Estado de Tamaulipas, art. 16, 05 de Febrero de 1921 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=37775&ambito=ESTATAL>.

67. Constitución Política del Estado de Yucatán, art. 1, 14 Enero 1918 (Mex.), available at <http://www.congresoyucatan.gob.mx/legislacion/constitucion-politica>.

68. Constitución Política del Estado Libre y Soberano de Campeche, art. 6, 29 de Mayo de 1965 (Mex.), available at <http://www2.scjn.gob.mx/AccesoInformacion/Archivos/16238083.doc>.

69. Constitución Política del Estado de Guanajuato, art. 1, 03 de Septiembre de 1917 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=38871&ambito=ESTATAL>.

70. Constitución Política del Estado de Coahuila de Zaragoza, art. 173, 19 de Febrero de 1918 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=25467&ambito=ESTATAL>.

provoked, including Campeche,<sup>71</sup> Baja California,<sup>72</sup> Chiapas,<sup>73</sup> Durango,<sup>74</sup> Guanajuato,<sup>75</sup> Jalisco,<sup>76</sup> Nayarit,<sup>77</sup> Oaxaca,<sup>78</sup> Puebla,<sup>79</sup> Sonora,<sup>80</sup> Tamaulipas,<sup>81</sup> Veracruz,<sup>82</sup> and Yucatán.<sup>83</sup> The Constitution of Baja California is perhaps

---

71. Constitución Política del Estado Libre y Soberano de Campeche, art. 6, 29 de Mayo de 1965 (Mex.), *available at* <http://www2.scjn.gob.mx/AccesoInformacion/Archivos/16238083.doc>.

72. Constitución Política del Estado Libre y Soberano de Baja California, art. 7, 16 de Agosto de 1953 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Baja%20California/wo19505.pdf>.

73. Constitución Política del Estado de Chiapas, art. 4, 16 de Agosto de 2013 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=21023&ambito=ESTATAL>.

74. Constitución Política del Estado Libre y Soberano de Durango, art. 1, 01 de Noviembre de 1917 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=24655&ambito=ESTATAL>.

75. Constitución Política del Estado de Guanajuato, art. 1, 03 de Septiembre de 1917 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=38871&ambito=ESTATAL>.

76. Constitución Política del Estado de Jalisco, art. 4, 21 de Julio de 1917 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=34151&ambito=ESTATAL>.

77. Constitución Política del Estado de Nayarit, art. 7 (XIII) (1), 17 de Febrero de 1918 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=23501&ambito=ESTATAL>.

78. Constitución Política del Estado Libre y Soberano de Oaxaca, art. 12, 04 de Abril de 1922 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=24326&ambito=ESTATAL>.

79. Constitución Política del Estado Libre y Soberano de Puebla, art. 26 (III) (IV), 02 de Octubre de 1917 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=11456&ambito=ESTATAL>.

80. Constitución Política del Estado de Sonora, art. 1, 29 de Septiembre de 1917 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=2765&ambito=ESTATAL>.

81. Constitución Política del Estado de Tamaulipas, art. 16, 05 de Febrero de 1921 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=37775&ambito=ESTATAL>.

82. Constitución Política del Estado de Veracruz de Ignacio de la Llave, art. 4, 17 de Noviembre de 2009 (Mex.), *available at* <http://www.legisver.gob.mx/boletines/boletinesLXI/BOLETIN365.pdf>.

83. Constitución Política del Estado de Yucatán, art. 1, 14 de Enero de 1918 (Mex.), *available at* <http://www.congresoyucatan.gob.mx/legislacion/constitucion-politica>.

most explicit in this sense by recognizing the unborn's right to life from conception until "natural or non-induced death."<sup>84</sup>

Some Mexican state constitutions (Campeche,<sup>85</sup> Chiapas,<sup>86</sup> Puebla,<sup>87</sup> Querétaro,<sup>88</sup> Quintana Roo,<sup>89</sup> Sonora,<sup>90</sup> San Luis Potosí,<sup>91</sup> Tamaulipas,<sup>92</sup> Veracruz,<sup>93</sup> and Yucatán<sup>94</sup>) do make specific exceptions to the right to life from conception, but only two states include elective abortion, albeit under very limited circumstances. The language in the constitutions of Campeche, Chiapas, Puebla, Quintana Roo, Tamaulipas, Veracruz, and Yucatán generally refers to exceptions established by criminal law, without specifying whether those would include elective abortion, fetal homicide, or involuntary miscarriage. The Querétaro Constitution indicates that the right to life from conception provision does not derogate "absolatory

84. Constitución Política del Estado Libre y Soberano de Baja California, art. 7, 16 de Agosto de 1953 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=19505&ambito=ESTATAL>.

85. Constitución Política del Estado Libre y Soberano de Campeche, art. 6, 29 de Mayo de 1965 (Mex.), available at <http://www2.scjn.gob.mx/AccesoInformacion/Archivos/16238083.doc>.

86. Constitución Política del Estado de Chiapas, art. 4, 16 de Agosto de 2013 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=7>.

87. Constitución Política del Estado Libre y Soberano de Puebla, art. 26 (III) (IV), 02 de Octubre de 1917 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=11456&ambito=ESTATAL>.

88. Constitución Política del Estado de Querétaro, art. 2, 31 de Marzo de 2008 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=8486&ambito=ESTATAL>.

89. Constitución Política del Estado Libre y Soberano de Quintana Roo, art. 13, 12 de Enero de 1975 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=23>.

90. Constitución Política del Estado de Sonora, art. 1, 29 de Septiembre de 1917 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=2765&ambito=ESTATAL>.

91. Constitución Política del Estado Libre y Soberano de San Luis Potosí, art. 16, 20 de Noviembre de 1996 (Mex.), available at <http://www.stjslp.gob.mx/transp/cont/marco%20juridico/pdf-zip/constitucion/CPPELSSLP/CPPELSSLP.pdf>.

92. Constitución Política del Estado de Tamaulipas, art. 16, 05 de Febrero de 1921 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=37775&ambito=ESTATAL>.

93. Constitución Política del Estado de Veracruz de Ignacio de la Llave, art. 4, 25 de Septiembre de 1917 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=30>.

94. Constitución Política del Estado de Yucatán, as amended 01 de Abril del 2014, art. 1, 14 Enero 1918 (Mex.), available at <http://www.congresoyucatan.gob.mx/legislacion/constitucion-politica>.

excuses” established by criminal law, probably referring to non-punishable abortion or involuntary fetal homicide.<sup>95</sup> San Luis Potosí and Sonora specifically include “life of the mother” exceptions and an exception for the abortion of children conceived by rape.<sup>96</sup>

Several Mexican states have codified the *in dubio pro nasciturus* principle in their state constitutions, including Baja California,<sup>97</sup> Chiapas,<sup>98</sup> Durango,<sup>99</sup> Jalisco,<sup>100</sup> Nayarit,<sup>101</sup> Oaxaca,<sup>102</sup> Querétaro,<sup>103</sup> Quintana Roo,<sup>104</sup> Sonora,<sup>105</sup> and Yucatán.<sup>106</sup> The State of Baja California’s amendment, for instance, declares that from the moment an individual is conceived, he comes under the protection of the law and is understood as one who is born

---

95. Constitución Política del Estado de Querétaro, art. 2, 31 de Marzo de 2008 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=8486&ambito=ESTATAL>.

96. Constitución Política del Estado Libre y Soberano de San Luis Potosí, art. 16, 20 de Noviembre de 1996 (Mex.), available at <http://www.stjslp.gob.mx/transp/cont/marco%20juridico/pdf-zip/constitucion/CPPELSSLP/CPPELSSLP.pdf>; Constitución Política del Estado de Sonora, art. 1, 10 de Noviembre 1872 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=si&edo=26>.

97. Constitución Política del Estado Libre y Soberano de Baja California, art. 7, 16 de Agosto de 1953 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=2&mun=no>.

98. Constitución Política del Estado de Chiapas, art. 4, 16 de Agosto de 2013 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=7>.

99. Constitución Política del Estado Libre y Soberano de Durango, art. 1, 14 de Marzo de 1918 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=10>.

100. Constitución Política del Estado de Jalisco, art. 4, 13 de Julio de 1994 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=14>.

101. Constitución Política del Estado de Nayarit, art. 7 (XIII) (1), 17 de Febrero de 1918 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=si&edo=18>.

102. Constitución Política del Estado Libre y Soberano de Oaxaca, art. 12, 15 de Abril de 2011 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=20>.

103. Constitución Política del Estado de Querétaro, art. 2, 31 de Marzo de 2008 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=si&edo=22>.

104. Constitución Política del Estado Libre y Soberano de Quintana Roo, art. 13, 12 de Enero de 1975 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=23>.

105. Constitución Política del Estado de Sonora, art. 1, 10 de Noviembre de 1872 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=si&edo=26>.

106. Constitución Política del Estado de Yucatán, art. 1, 31 de Agosto de 2012 (Mex.), available at <http://www.congresoyucatan.gob.mx/legislacion/constitucion-politica>.

for all corresponding legal effects.<sup>107</sup> The constitutions of Chiapas, Durango, Jalisco, Nayarit, Oaxaca, Querétaro, and Sonora contain virtually identical language. The Constitution of Quintana Roo uses the expression *one who is entitled to rights*, instead of *one who is born*.<sup>108</sup>

Similarly, after Argentina's adoption or ratification of the American Convention,<sup>109</sup> over half of all Argentinian provinces—namely Buenos Aires, Catamarca, Córdoba, Chaco, Chubut, Entre Ríos, Formosa, Salta, San Luis, Santiago del Estero, Tierra del Fuego, Antártida e Islas del Atlántico Sur, and Tucumán—adopted constitutional provisions explicitly recognizing a right to life from the moment of conception.<sup>110</sup> The constitutions of Salta, Chubut, Catamarca, San Luis, Tucumán, and Córdoba, for instance, state that life is protected from conception and that everyone, particularly public authorities, has a duty to respect and protect it.<sup>111</sup> The Constitution of Entre Ríos adds *arbitrary deprivation* of life as a

---

107. Constitución Política del Estado Libre y Soberano de Baja California, art. 7, 16 de Agosto de 1953 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Baja%20California/wo19505.pdf>.

108. Constitución Política del Estado de Quintana Roo, art. 13 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=23>.

109. Argentina signed and ratified the American Convention in 1984. See *American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32), Signatories and Ratifications*, ORGANIZATION OF AMERICAN STATES (February 21, 2014), [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm). All of the Argentinian provincial constitutions referenced here were adopted after 1986, except for the Formosa Constitution, which was adopted in 1957. For the dates of Argentinian provincial constitutions, see <http://infoleg.gov.ar/basehome/constituciones.htm>.

110. The Argentinian provincial constitutions are available at <http://infoleg.gov.ar/basehome/constituciones.htm>.

111. Art. 10, CONSTITUCIÓN DE LA PROVINCIA DE SALTA (Arg.), available at <http://argentina.justia.com/provinciales/salta/constitucion-provincial-de-salta/>; Art. 18, CONSTITUCIÓN DE LA PROVINCIAL DE CHUBUT (Arg.), available at <http://www.sup-trib-delsur.gov.ar/sup-trib-delsur/cbconst.htm>; Art. 65 (III)(1), CONSTITUCIÓN DE LA PROVINCIA DE CATAMARCA (Arg.), available at <http://www.catamarca.gov.ar/lp/Constitucion.pdf>; Art. 13, CONSTITUCIÓN DE LA PROVINCIA DE SAN LUIS (Arg.), available at [http://www.hcdcorrientes.gov.ar/Constituciones-Pciales/constituci%F3n\\_provincia\\_sanluis.htm](http://www.hcdcorrientes.gov.ar/Constituciones-Pciales/constituci%F3n_provincia_sanluis.htm); Art. 4, CONSTITUCIÓN DE LA PROVINCIA DE CÓRDOBA (Arg.), available at <http://web2.cba.gov.ar/web/leyes.nsf/%28vLeyesxNro%29/CP00?OpenDocument>; Art. 40, 125, CONSTITUCIÓN DE LA PROVINCIA DE TUCUMÁN (Arg.), available at <http://hlt.gov.ar/constitucion2006.htm>.

constitutional violation.<sup>112</sup> In addition, the constitutions of Entre Ríos and Buenos Aires specifically protect life from conception until natural death.<sup>113</sup>

The constitutions of Entre Ríos, Tucumán, Chaco, San Luis, Córdoba, Tierra del Fuego, Antártida, and Islas del Atlántico Sur recognize the unborn child's personhood, by providing that *every person* in the province is entitled to a right to life from conception.<sup>114</sup> The Formosa Constitution states that *every human being* shall have a right to life from conception as well as a right to personal integrity.<sup>115</sup> The Constitution of Santiago del Estero uses language similar to that of the American Convention by stating that every person shall be entitled to the right to life, in general, from the moment of conception.<sup>116</sup>

Some state constitutions, such as the constitutions of Chubut, Chaco, San Luis, and Córdoba, recognize both the unborn's right to life and to personal integrity—defined as physical and moral integrity—from conception.<sup>117</sup> In addition, the constitutions of Tucumán, Chaco, San Luis, and Córdoba

---

112. Art. 16, CONSTITUCIÓN DE LA PROVINCIA DE ENTRE RÍOS (Arg.), available at <http://www.hcder.gov.ar/constitucion.php>.

113. Art. 12, CONSTITUCIÓN DE LA PROVINCIA DE BUENOS AIRES (Arg.); Art. 16, CONSTITUCIÓN DE LA PROVINCIA DE ENTRE RÍOS (Arg.). Each of the constitutions cited in this footnote are available at <http://infoleg.gov.ar/basehome/constituciones.htm>.

114. Art. 14, CONSTITUCIÓN DE LA PROVINCIA DE TIERRA DEL FUEGO, ANTARTIDA E ISLAS DEL ATLANTICO SUR (Arg.), available at <http://www.legistdf.gov.ar/documentos/conspro/>; Art. 16, CONSTITUCIÓN DE LA PROVINCIA DE ENTRE RÍOS (Arg.), available at <http://www.hcder.gov.ar/constitucion.php>; Art. 40, 125, CONSTITUCIÓN DE LA PROVINCIA DE TUCUMÁN (Arg.), available at <http://hlt.gov.ar/constitucion2006.htm>; Art. 15, CONSTITUCIÓN DE LA PROVINCIA DE CHACO (Arg.), available at <http://argentina.justia.com/provinciales/chaco/constitucion-de-la-provincia-de-chaco/>; Art. 13, CONSTITUCIÓN DE LA PROVINCIA DE SAN LUIS (Arg.), available at [http://www.hcdcorrientes.gov.ar/Constituciones-Pciales/constituci%F3n\\_provincia\\_sanluis.htm](http://www.hcdcorrientes.gov.ar/Constituciones-Pciales/constituci%F3n_provincia_sanluis.htm); Art. 4, CONSTITUCIÓN DE LA PROVINCIA DE CÓRDOBA (Arg.), available at <http://web2.cba.gov.ar/web/leyes.nsf/%28vLeyesxNro%29/CP00?OpenDocument>.

115. Art. 5, CONSTITUCIÓN DE LA PROVINCIA DE FORMOSA (Arg.), available at <http://www.legislaturaformosa.gob.ar/?seccion=constitucion>.

116. Art. 16, CONSTITUCIÓN DE LA PROVINCIA DE SANTIAGO DEL ESTERO (Arg.), available at <http://www.sde.gov.ar/educacion/SpemNuevo/NORMATIVAS/constitu.html>.

117. Art. 18, CONSTITUCIÓN DE LA PROVINCIA DE CHUBUT (Arg.), available at <http://www.sup-trib-delsur.gov.ar/sup-trib-delsur/cbconst.htm>; Art. 15, CONSTITUCIÓN DE LA PROVINCIA DE CHACO (Arg.), available at <http://argentina.justia.com/provinciales/chaco/constitucion-de-la-provincia-de-chaco/>; Art. 13, CONSTITUCIÓN DE LA PROVINCIA DE SAN LUIS (Arg.), available at [http://www.hcdcorrientes.gov.ar/Constituciones-Pciales/constituci%F3n\\_provincia\\_sanluis.htm](http://www.hcdcorrientes.gov.ar/Constituciones-Pciales/constituci%F3n_provincia_sanluis.htm); Art. 4, 19, CONSTITUCIÓN DE LA PROVINCIA DE CÓRDOBA (Arg.), available at <http://web2.cba.gov.ar/web/leyes.nsf/%28vLeyesxNro%29/CP00?OpenDocument>.



recognize the unborn's right to a "dignified existence" from conception.<sup>118</sup> Moreover, the Formosa Constitution establishes the state government's obligation to raise awareness on the responsibilities of procreation, and the Catamarca Constitution suggests the unborn child is also entitled to social rights.<sup>119</sup>

### III. THE RIGHT TO LIFE FROM CONCEPTION AND OTHER PRENATAL RIGHTS IN LATIN AMERICAN AND CARIBBEAN DOMESTIC LAW

This Section focuses on laws containing explicit, textual references to the unborn, even though other national and state laws may protect unborn life implicitly, or effectively grant unborn children the legal protections recognized for all persons or human beings.

#### A. *The Right to Life from Conception*

The children's codes<sup>120</sup> and other primary laws of over half of all Latin American and Caribbean countries have mirrored the American Convention's right to life provision by explicitly establishing the unborn's right to life from conception. The children's codes of Bolivia,<sup>121</sup> Colombia,<sup>122</sup> Costa Rica,<sup>123</sup> Ecuador,<sup>124</sup> El Salvador,<sup>125</sup> Guatemala,<sup>126</sup> Honduras,<sup>127</sup>

118. Art 40, 125, CONSTITUCIÓN DE LA PROVINCIA DE TUCUMÁN (Arg.), *available at* <http://hlt.gov.ar/constitucion2006.htm>; Art. 15, CONSTITUCIÓN DE LA PROVINCIA DE CHACO (Arg.), *available at* <http://argentina.justia.com/provinciales/chaco/constitucion-de-la-provincia-de-chaco/>; Art. 13, CONSTITUCIÓN DE LA PROVINCIA DE SAN LUIS (Arg.), *available at* [http://www.hcdcorrientes.gov.ar/Constituciones-Pciales/constituci%F3n\\_provincia\\_sanluis.htm](http://www.hcdcorrientes.gov.ar/Constituciones-Pciales/constituci%F3n_provincia_sanluis.htm); Art. 4, CONSTITUCIÓN DE LA PROVINCIA DE CÓRDOBA (Arg.), *available at* <http://web2.cba.gov.ar/web/leyes.nsf/%28vLeyesxNro%29/CP00?OpenDocument>.

119. Art. 65, CONSTITUCIÓN DE LA PROVINCIA DE CATAMARCA (Arg.), *available at* <http://www.catamarca.gov.ar/lp/Constitucion.pdf>; Art. 5, CONSTITUCIÓN DE LA PROVINCIA DE FORMOSA (Arg.), *available at* <http://www.legislaturaformosa.gob.ar/?seccion=constitucion>.

120. All Latin American and Caribbean children's codes or children's acts have been adopted after signature or ratification of the American Convention. The earliest Children's Codes were adopted in 1990 in Brazil and Honduras. El Salvador was the latest in 2010. *See infra* notes 125-44.

121. LEY DEL CÓDIGO DEL NIÑO, NIÑA Y ADOLESCENTE, art. 2, 13 (Bol.), *available at* <http://www.unhcr.org/refworld/publisher,NATLEGBOD,,BOL,3db925ca2,0.html>.

122. CÓDIGO DEL MENOR, art. 3, 4 (Colom.), *available at* <http://www.relaf.org/legislaciones2.htm>.

123. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 12 (Costa Rica), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Costa_Rica.pdf).

124. CODIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 20 (Ecuador), *available at* [http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador\\_Code.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador_Code.htm).

Nicaragua,<sup>128</sup> Paraguay,<sup>129</sup> and Peru,<sup>130</sup> adopted by these countries after signing or ratifying the American Convention,<sup>131</sup> specifically recognize a right to life of children from the moment of conception. Venezuela, in its Child Protection Act, recognizes that children are entitled to legal rights from the moment of conception, which may include, at the very least, the right to life.<sup>132</sup>

Likewise, the child protection acts of the Argentinian provinces of Jujuy,<sup>133</sup> Salta,<sup>134</sup> Tierra del Fuego, Antártida, Islas del Atlántico Sur,<sup>135</sup> and Entre Ríos<sup>136</sup> recognize a child's right to life and development from conception. In addition, the acts on sexual and reproductive health of the

---

125. LEY DE PROTECCIÓN DE LA NIÑEZ Y ADOLESCENCIA, art. 16 (El Sal.), *available at* <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-proteccion-integral-de-la-ninez-y-adolescencia>.

126. LEY DE PROTECCION INTEGRAL DE LA NIÑEZ Y ADOLESCENCIA, art. 9 (Guat.), *available at* [http://www.oas.org/dil/esp/Ley\\_de\\_Proteccion\\_Integral\\_de\\_la\\_Ninez\\_y\\_Adolescencia\\_Guatemala.pdf](http://www.oas.org/dil/esp/Ley_de_Proteccion_Integral_de_la_Ninez_y_Adolescencia_Guatemala.pdf).

127. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 12 (Hond.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Honduras.pdf).

128. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 12 (Nicar.), *available at* [http://www.oas.org/dil/esp/Codigo\\_de\\_la\\_Ninez\\_y\\_la\\_Adolescencia\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_de_la_Ninez_y_la_Adolescencia_Nicaragua.pdf).

129. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 9 (Para.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Paraguay.pdf).

130. CÓDIGO DE LOS NIÑOS Y ADOLESCENTES, art. 1 (Peru), *available at* [http://www.oas.org/dil/esp/Codigo\\_de\\_la\\_Ninez\\_y\\_la\\_Adolescencia\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_de_la_Ninez_y_la_Adolescencia_Peru.pdf).

131. The American Convention was ratified by Honduras in 1990, by Costa Rica and Nicaragua in 1998, by Peru in 2000, by Guatemala and Ecuador in 2003, and by El Salvador in 2010. *See American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32), Signatories and Ratifications*, ORGANIZATION OF AMERICAN STATES (February 21, 2014), [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm).

132. LEY ORGÁNICA DE PROTECCIÓN DEL NIÑO Y EL ADOLESCENTE, art. 1 (Venez.), *available at* [http://www.oas.org/juridico/spanish/cyb\\_ven\\_LEY\\_ORG\\_PARA\\_PROTEC\\_NINO\\_ADOLE.pdf](http://www.oas.org/juridico/spanish/cyb_ven_LEY_ORG_PARA_PROTEC_NINO_ADOLE.pdf).

133. LEY NO 5288: DE PROTECCION INTEGRAL DE LA NIÑEZ, ADOLESCENCIA Y FAMILIA, art. 1, 8–9 (Arg.), *available at* <http://www.defensorjujuy.gov.ar/leyes/5288.pdf>.

134. LEY 7.039: PROTECCIÓN INTEGRAL A LOS NIÑOS DESDE LA CONCEPCIÓN, art. 1 (Arg.), *available at* <http://www.diputadosalta.gov.ar/leyes/7039-htm.pdf>.

135. LEY NO 521: LEY DE PROTECCIÓN INTEGRAL DE LOS DERECHOS DE NIÑOS, NIÑAS, ADOLESCENTES Y SUS FAMILIAS, art. 8 (Arg.), *available at* <http://www.justierradelfuego.gov.ar/leyesusules/LEY%20N%20%20521.htm>.

136. LEY NO 9861: PROTECCIÓN INTEGRAL DE LOS DERECHOS DEL NIÑO, EL ADOLESCENTE Y LA FAMILIA, art. 3 (Arg.), *available at* <http://www.senadoer.gov.ar/galeria/ley/9861.pdf>.

provinces of Salta<sup>137</sup> and Santa Fe<sup>138</sup> state that one of their purposes is to promote and protect a person's right to life from conception.

Similarly, the children's codes of several Mexican states recognize that children have a right to life from conception. The Coahuila Civil Code, for instance, establishes a right to life from conception, understood as fertilization, whether natural or artificial.<sup>139</sup> The Codes of Campeche and Jalisco add that the government has a duty to prevent the endangerment of the right to life, which begins at conception, and to promote a culture of respect for life.<sup>140</sup>

Many national civil codes also recognize the unborn's entitlement to life and enable the judiciary to protect it. The Chilean,<sup>141</sup> Colombian,<sup>142</sup> Honduran,<sup>143</sup> Nicaraguan,<sup>144</sup> Peruvian,<sup>145</sup> and Salvadorian<sup>146</sup> civil codes, using virtually identical language, protect the life of the unborn by allowing judges to take any measure they find suitable, such as imposing penalties on the mother. They may take these measures when they believe that the life of the unborn may be at risk, as long as they do not themselves endanger the child's life or health. The above Colombian Civil Code provision was

137. LEY 7.311: SEXUALIDAD RESPONSABLE, art. 2 (Arg.), available at <http://www.diputadosalta.gov.ar/leyes/7311-htm.pdf>.

138. LEY 11.888: SALUD REPRODUCTIVA Y PROCREACIÓN RESPONSABLE, art. 2 (Arg.), available at [http://gobierno.santafe.gov.ar/sin/mitemplate.php?tiponorma=ley&anio\\_norma=2001&nro\\_ley=11888&fecha\\_norma=31/05/2001](http://gobierno.santafe.gov.ar/sin/mitemplate.php?tiponorma=ley&anio_norma=2001&nro_ley=11888&fecha_norma=31/05/2001).

139. Código Civil para Estado de Coahuila de Zaragoza [Civil Code of the State of Coahuila de Zaragoza], art. 95, 25 de Junio de 1999 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=25448&ambito=estatal>.

140. See Ley de los Derechos de la Niñez y la Adolescencia del Estado de Campeche, art. 9 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Campeche/wo20171.doc>; see also Ley de los Derechos de las Niñas, los Niños y Adolescentes en el Estado de Jalisco, art. 7 (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=14>.

141. CÓDIGO CIVIL [Civil Code] [CÓD. CIV.], art. 75 (Chile), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Chile.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Chile.pdf).

142. CÓDIGO CIVIL [Civil Code] [C.C.], art. 91 (Colom.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Colombia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Colombia.pdf).

143. CÓDIGO CIVIL, art. 52 (Hond.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Honduras.pdf).

144. CÓDIGO CIVIL, art. 13 (Nicar.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Nicaragua.pdf).

145. CÓDIGO CIVIL, art. 1 (Peru), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf).

146. CÓDIGO CIVIL, art. 73 (El Sal.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_Civil_El_Salvador.pdf).

upheld by the Constitutional Court in Judgment C-591 of 1995.<sup>147</sup> The Brazilian Civil Code contains a provision that protects the unborn child's rights from conception<sup>148</sup>—a provision that was interpreted by Federal Supreme Court Justice Lewandowski as protecting the right to life from conception.<sup>149</sup> Likewise, Brazil's Act on Children and Adolescents provides that children have a right to life that should be protected through the implementation of social policies that promote births.<sup>150</sup>

National family codes and other primary laws also protect unborn life beginning at conception. For instance, Panama's Family Code states that every minor shall have a right to protection of his prenatal life.<sup>151</sup> El Salvador's Family Code states that the life and health of the child shall be protected by a range of legal, social, and support measures from conception until majority.<sup>152</sup> In addition, Paraguay's Health Code, Title I relating to the health of persons, states that unborn persons' lives and health shall be protected "from their conception."<sup>153</sup> Likewise, Peru's Act on National Population Policy establishes that every human person is entitled to the right to life from conception.<sup>154</sup>

Several Mexican states have specifically defined conception as fertilization in their constitutions and state laws. In 2010, for instance, the Nayarit Constitution was amended to specifically recognize and protect the

---

147. See CÓDIGO CIVIL [Civil Code] [C.C.], art. 91 (Colom.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Colombia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Colombia.pdf).

148. Lei 10.406, 10 de Janeiro de 2002, CÓDIGO CIVIL [C.C.] art. 2 (Braz.), *available at* [http://www.planalto.gov.br/ccivil\\_03/Leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/Leis/2002/L10406.htm).

149. S.T.F., Explicação Ministro Ricardo Lewandowski, Arguição de Descumprimento de Preceito Fundamental Distrito Federal 54-8, Relator: Marco Aurélio, p. 248, 31.07.2008 (Braz.), *available at* <http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=3707334>.

150. LEI 8.069, DE 13/07/1990, ESTATUTO DA CRIANÇA E DO ADOLESCENTE, art. 7 (Braz.), *available at* [http://www.planalto.gov.br/ccivil\\_03/leis/L8069.htm](http://www.planalto.gov.br/ccivil_03/leis/L8069.htm).

151. LEY NO. 3: POR LA CUAL SE APRUEBA EL CÓDIGO DE FAMILIA, art. 489(1) (Pan.), *available at* <http://www.organojudicial.gob.pa/cendoj/wp-content/blogs.dir/cendoj/codigo-de-la-familia-94.pdf>.

152. CÓDIGO DE FAMILIA, art. 353 (El Sal.), *available at* [http://www.oas.org/dil/esp/Codigo\\_de\\_Familia\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_de_Familia_El_Salvador.pdf).

153. CÓDIGO SANITARIO, art. 15 (Para.), *available at* [http://www.cird.org.py/salud/docs/codigo\\_sanitario.pdf](http://www.cird.org.py/salud/docs/codigo_sanitario.pdf).

154. LEY DE POLÍTICA NACIONAL DE POBLACIÓN, art. IV(1) (Peru), *available at* <http://www.unfpa.org.pe/Legislacion/PDF/Decreto-Legislativo-346-Ley-Poblacion.pdf>.

right to life from fertilization, whether natural or artificial.<sup>155</sup> The constitutions of Campeche,<sup>156</sup> Durango,<sup>157</sup> Jalisco,<sup>158</sup> Nayarit,<sup>159</sup> Oaxaca,<sup>160</sup> Sonora,<sup>161</sup> Querétaro,<sup>162</sup> Tamaulipas,<sup>163</sup> and Yucatán<sup>164</sup> expressly recognize conception as the moment of fertilization. This prevents potential claims that human embryos are not entitled to constitutional rights before implantation, i.e., when artificially conceived *in vitro* or when unable to implant in the uterus lining due to abortifacient drugs.

The Coahuila Civil Code is most comprehensive in its protection of unborn children by designating the unborn as “conceived persons” and establishing that the human embryo or “fertilized ovum,” whether naturally or artificially conceived, has a right to life and personal integrity and is entitled to legal protection under the Code.<sup>165</sup> Accordingly, the Code

---

155. See Constitución Política Del Estado De Nayarit, *as amended* by Decreto de 16 de Diciembre de 2010, art. 7(XIII)(1), 17 de Febrero de 1918 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=23501&ambito=ESTATAL>.

156. Constitución Política del Estado Libre y Soberano de Campeche, art. 6, 29 de Mayo de 1965 (Mex.), available at <http://www2.scjn.gob.mx/AccesoInformacion/Archivos/16238083.doc>.

157. Constitución Política del Estado Libre y Soberano De Durango, art. 1, 01 de Noviembre de 1917 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=24655&ambito=ESTATAL>.

158. Constitución Política del Estado de Jalisco, art. 4, 21 de Julio de 1917 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=34151&ambito=ESTATAL>.

159. Constitución Política del Estado de Nayarit, art. 7 (XIII)(1), 17 de Febrero de 1918 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=23501&ambito=ESTATAL>.

160. Constitución Política del Estado Libre y Soberano de Oaxaca, art. 12, 04 de Abril de 1922, (Mex.), available at <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=20>.

161. Constitución Política del Estado de Sonora, art. 1, 29 de Septiembre de 1917 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=2765&ambito=ESTATAL>.

162. Constitución Política del Estado de Querétaro, art. 2, 31 de Marzo de 2008 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=8486&ambito=ESTATAL>.

163. Constitución Política del Estado de Tamaulipas, art. 16, 05 de Febrero de 1921 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=37775&ambito=ESTATAL>.

164. Constitución Política del Estado de Yucatán, art. 1, 14 de Enero de 1918 (Mex.), available at <http://www.congresoyucatan.gob.mx/legislacion/constitucion-politica>.

165. Código Civil del Estado de Coahuila de Zaragoza [Civil Code of the State of Coahuila de Zaragoza], art. 95, 25 de Junio de 1999 (Mex.), available at

prohibits human cloning, eugenic selection of human embryos, embryo research, embryo freezing, and in vitro fertilization for the purposes of research, testing, and sale or commercialization, among others.<sup>166</sup> Likewise, the Civil Code of Querétaro specifies that conception equals fertilization, whether natural or artificial.<sup>167</sup> Furthermore, the Tabasco Civil Code, which states that the unborn shall be protected by law, extends this protection to human embryos created through artificial reproductive technologies, even when outside of the mother's womb, which would protect them from destruction before insemination.<sup>168</sup>

The fact that most constitutions and domestic laws of Latin American and Caribbean states refer to the unborn as a "person," a "human being," or a "child" may demonstrate that states' parties interpret the Convention to include the unborn child, particularly Article 4(1) (on every person's right to life) and Article 19 (on the rights of the child). For instance, the Guatemalan Constitution refers to the unborn child's life as a *human life* from the moment of conception and recognizes the unborn's personhood and entitlement to life, personal integrity, and security.<sup>169</sup> The Argentinian Constitution grants social protection for children beginning at pregnancy, thus implying that unborn children are children.<sup>170</sup> The Argentinian Civil Code uses the term *unborn persons* and defines it as those who have been not yet been born but have been conceived in the womb.<sup>171</sup> In addition, the Code recognizes the unborn child's personhood by stating that human existence begins from conception in the womb; and a person may acquire certain antenatal rights, as if he had already been born.<sup>172</sup>

---

<http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=25448&ambito=ESTATAL>.

166. *Id.* at art. 94–95.

167. Código Civil del Estado de Querétaro [Civil Code of the State of Querétaro], art. 22, 21 de Octubre de 2009 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=21713&ambito=>.

168. Código Civil para el Estado Libre y Soberano de Tabasco [Civil Code for the Free and Sovereign State of Tabasco], art. 31, 09 de Abril de 1997 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=17547&ambito=>.

169. See Constitución Política de la República de Guatemala, art. 3 (Guat.), available at [http://www.oas.org/dil/esp/Constitucion\\_Guatemala.pdf](http://www.oas.org/dil/esp/Constitucion_Guatemala.pdf).

170. See Art. 75 (23), CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.), available at [http://www.oas.org/dil/esp/Constitucion\\_de\\_la\\_Nacion\\_Argentina.pdf](http://www.oas.org/dil/esp/Constitucion_de_la_Nacion_Argentina.pdf).

171. CÓDIGO CIVIL [CÓD.CIV.] [CIVIL CODE] art. 63 (Arg.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_de\\_la\\_Republica\\_Argentina.pdf](http://www.oas.org/dil/esp/Codigo_Civil_de_la_Republica_Argentina.pdf).

172. *Id.* at art. 70, available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_de\\_la\\_Republica\\_Argentina.pdf](http://www.oas.org/dil/esp/Codigo_Civil_de_la_Republica_Argentina.pdf). In addition, the Presidential regulations on Argentina's Child

Children's codes of Costa Rica,<sup>173</sup> El Salvador,<sup>174</sup> Honduras,<sup>175</sup> Ecuador,<sup>176</sup> Guatemala,<sup>177</sup> Nicaragua,<sup>178</sup> and Panama<sup>179</sup> refer to the unborn child as a *person* or a *human being* who is entitled to legal rights, including the right to life. The Children and Adolescents Code of Nicaragua refers to the unborn as children, and as human persons—with special characteristics—in the process of development, and states that they are entitled to constitutional rights and human dignity.<sup>180</sup> The Nicaraguan Civil Code designates *unborn persons* as having a natural existence that should be protected, even if they do not yet possess all legal rights.<sup>181</sup> Peru's Act on National Population Policy establishes that every human person is entitled to the right to life from conception.<sup>182</sup> Paraguay's current Code of Childhood and Adolescence, Article 9, states that "unborn persons" shall be protected from conception.<sup>183</sup> On the other hand, Honduras's Children's Code establishes that, for the Code's purposes, childhood begins upon

---

Protection Act refer to the unborn as children. *See generally* Reglamentación de la Ley No. 26061 [Regulation of Act No. 26061], April 18, 2006, B.O. 30.887 (Arg.).

173. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 2, 12 (Costa Rica), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Costa_Rica.pdf).

174. LEY DE PROTECCIÓN DE LA NIÑEZ Y ADOLESCENCIA, art. 3 (El Sal.), *available at* <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-proteccion-integral-de-la-ninez-y-adolescencia>.

175. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 12 (Hond.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Honduras.pdf).

176. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 2 (Ecuador), *available at* [http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador\\_Code.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador_Code.htm).

177. LEY DE PROTECCION INTEGRAL DE LA NIÑEZ Y ADOLESCENCIA, art. 2, 9 (Guat.), *available at* [http://www.oas.org/dil/esp/Ley\\_de\\_Proteccion\\_Integral\\_de\\_la\\_Ninez\\_y\\_Adolescencia\\_Guatemala.pdf](http://www.oas.org/dil/esp/Ley_de_Proteccion_Integral_de_la_Ninez_y_Adolescencia_Guatemala.pdf).

178. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 12 (Nicar.), *available at* [http://www.oas.org/dil/esp/Codigo\\_de\\_la\\_Ninez\\_y\\_la\\_Adolescencia\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_de_la_Ninez_y_la_Adolescencia_Nicaragua.pdf).

179. LEY 14: QUE CREA LA SECRETARÍA NACIONAL DE NIÑEZ, ADOLESCENCIA Y FAMILIA, art. 2(3) (Pan.), *available at* <http://www.gacetaoficial.gob.pa/pdfTemp/26211/15846.pdf>.

180. *See* CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 12 (Nicar.), *available at* [http://www.oas.org/dil/esp/Codigo\\_de\\_la\\_Ninez\\_y\\_la\\_Adolescencia\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_de_la_Ninez_y_la_Adolescencia_Nicaragua.pdf).

181. CÓDIGO CIVIL DE LA REPÚBLICA DE NICARAGUA, art. 11, 19 (Nicar.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Nicaragua.pdf).

182. LEY DE POLÍTICA NACIONAL DE POBLACIÓN, DECRETO LEGISLATIVO NO. 346, art. IV(1) (Peru), *available at* <http://www.unfpa.org.pe/Legislacion/PDF/Decreto-Legislativo-346-Ley-Poblacion.pdf>.

183. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 9 (Para.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Paraguay.pdf).

birth,<sup>184</sup> but refers to the unborn as a human being and a person, and recognizes his or her right to life from conception as well as a right to be born in conditions compatible with “human dignity.”<sup>185</sup>

Furthermore, many Latin American and Caribbean children’s codes and other primary laws explicitly include unborn children in their definition of “children.” For instance, El Salvador’s Act on Comprehensive Protection of Children and Adolescents repeatedly uses the terms “person” and “child” interchangeably when referring to the unborn, and specifically defines the term child as any person from the moment of conception until eighteen years of age.<sup>186</sup> The Code declares *all* children, including unborn children, to be human rights subjects from the moment of conception, and to be entitled, in particular, to the right to life and the right to be born in conditions compatible with human dignity.<sup>187</sup> El Salvador’s Family Code also refers to the unborn as a minor, and states that he is entitled to rights from the moment of conception.<sup>188</sup> Its Health Code also refers to the unborn as a child, existing as such from conception onward.<sup>189</sup>

Likewise, the Bolivian Code of Children and Adolescents defines children as all human beings from conception up to the age of eighteen.<sup>190</sup> Children’s codes of Costa Rica<sup>191</sup> and Guatemala<sup>192</sup> define a child as any person from conception to the age of twelve and an adolescent to be any person between twelve and eighteen years of age. Panama’s Act 14, which created the National Ministry for Children, Adolescents, and the Family, defines children as “every person from conception up to the age of 14,” and

---

184. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 1 (Hond.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Honduras.pdf).

185. *Id.* at art. 12.

186. LEY DE PROTECCIÓN DE LA NIÑEZ Y ADOLESCENCIA, art. 3, 5, 16–17 (El Sal.), *available at* <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-proteccion-integral-de-la-ninez-y-adolescencia>.

187. *Id.* at art. 5, 16.

188. CÓDIGO DE FAMILIA, art. 344 (El Sal.), *available at* [http://www.oas.org/dil/esp/Codigo\\_de\\_Familia\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_de_Familia_El_Salvador.pdf).

189. CÓDIGO DE SALUD, art. 48 (El Sal.), *available at* <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/codigo-de-saulud>.

190. CÓDIGO DEL NIÑO, NIÑA Y ADOLESCENTE, art. 2 (Bol.), *available at* [http://www.unicef.org/bolivia/bo\\_legislation\\_codigotexto.pdf](http://www.unicef.org/bolivia/bo_legislation_codigotexto.pdf).

191. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 2 (Costa Rica), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Costa_Rica.pdf).

192. LEY DE PROTECCION INTEGRAL DE LA NIÑEZ Y ADOLESCENCIA, art. 2 (Guat.), *available at* [http://www.oas.org/dil/esp/Ley\\_de\\_Proteccion\\_Integral\\_de\\_la\\_Ninez\\_y\\_Adolescencia\\_Guatemala.pdf](http://www.oas.org/dil/esp/Ley_de_Proteccion_Integral_de_la_Ninez_y_Adolescencia_Guatemala.pdf).



adolescents as those between fourteen and eighteen years of age.<sup>193</sup> Panama's Family Code defines "minor" as any human being from conception until the age of eighteen.<sup>194</sup> The Paraguayan Act 2169 Establishing the Age of Majority<sup>195</sup> and the Paraguayan Health Code<sup>196</sup> define children as any human person from conception until eighteen years of age. Paraguay's former Juvenile Code defined the term child in a similar manner but did not explicitly refer to the unborn as a person; the amended Code includes this recognition.<sup>197</sup>

Peru's Code of Children and Adolescents defines children as "every human being from the moment of conception up to 12 years of age" and adolescents as those aged twelve to eighteen.<sup>198</sup> Venezuela, in its Child and Adolescent Protection Act recognizes the unborn as children and entitles them to protection from the state, society, and the family from the moment of conception.<sup>199</sup> Paraguay<sup>200</sup> and Ecuador's Children and Adolescents Codes designate the miscarried fetus as a "child", and Ecuador's Code also uses the word "boy" or "girl" when referring to the child *in utero*.<sup>201</sup> The Trinidad & Tobago Family Law Act refers to the unborn as "minors" from conception onwards.<sup>202</sup> In addition, March 25 has been declared by

---

193. LEY 14: QUE CREA LA SECRETARÍA NACIONAL DE NIÑEZ, ADOLESCENCIA Y FAMILIA, art. 2(3) (Pan.), available at <http://www.gacetaoficial.gob.pa/pdfTemp/26211/15846.pdf>.

194. LEY NO. 3: POR LA CUAL SE APRUEBA EL CÓDIGO DE FAMILIA, art. 484 (Pan.), available at <http://www.organosjudicial.gob.pa/cendoj/wp-content/blogs.dir/cendoj/codigo-de-la-familia-94.pdf>.

195. LEY NO. 2169: QUE ESTABLECE LA MAYORÍA DE EDAD, art. 3(a) (Para.), available at [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Paraguay.pdf).

196. LEY NO. 836/30: CÓDIGO SANITARIO, art. 22 (Para.), available at [http://www.cird.org.py/salud/docs/codigo\\_sanitario.pdf](http://www.cird.org.py/salud/docs/codigo_sanitario.pdf).

197. See Ley No. 903/81, art. 1 (Para.) (as cited in CRC/C/65/Add.12 ¶72 at 33), available at <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/65/Add.12>; see also CRC/C/PRY/3 ¶ 289 at 53, available at <http://www2.ohchr.org/english/bodies/crc/crcs53.htm>.

198. CÓDIGO DE LOS NIÑOS Y ADOLESCENTES, art. 1 (Peru), available at [http://www.oas.org/dil/esp/Codigo\\_de\\_la\\_Ninez\\_y\\_la\\_Adolescencia\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_de_la_Ninez_y_la_Adolescencia_Peru.pdf).

199. LEY ORGÁNICA DE PROTECCIÓN DEL NIÑO Y EL ADOLESCENTE, art. 1 (Venez.), available at [http://www.oas.org/juridico/spanish/cyb\\_ven\\_LEY\\_ORG\\_PARA\\_PROTEC\\_NINO\\_ADOLE.pdf](http://www.oas.org/juridico/spanish/cyb_ven_LEY_ORG_PARA_PROTEC_NINO_ADOLE.pdf).

200. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 10 (Para.), available at [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Paraguay.pdf).

201. CODIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 148 (Ecuador), available at [http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador\\_Code.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador_Code.htm).

202. FAMILY LAW (GUARDIANSHIP OF MINORS, DOMICILE AND MAINTENANCE) ACT, § 2 (Trin. & Tobago), available at [http://www.oas.org/dil/Family\\_Law\\_Act\\_Trinidad\\_and\\_Tobago.pdf](http://www.oas.org/dil/Family_Law_Act_Trinidad_and_Tobago.pdf).

legislative or executive decree as the “Day of the Unborn Child” in Argentina, Bolivia, Chile, Costa Rica, Dominican Republic, Guatemala, Honduras, Nicaragua, and Peru.<sup>203</sup>

The laws of several Argentinian provinces define the term child as including the unborn. Buenos Aires,<sup>204</sup> Jujuy,<sup>205</sup> San Juan,<sup>206</sup> and Entre Ríos<sup>207</sup> define a *child* as every person or human being from conception until the age of eighteen. The Buenos Aires Children’s Act specifically states that this definition of children, which includes the unborn, corresponds to the CRC definition of children.<sup>208</sup> Córdoba’s Child Protection Act<sup>209</sup> specifically uses the term “unborn children.” The Province of Salta adopted an Act entitled Comprehensive Child Protection since Conception also defining children as including the unborn from conception.<sup>210</sup> Salta’s law on sexual and reproductive health refers to the unborn as persons having a right to life from conception.<sup>211</sup>

---

203. See Decreto Numero 267-2005, La Gaceta 30, 832, September 28, 2005 (Hond).

204. LEY NO. 13298: DE LA PROMOCIÓN Y PROTECCIÓN INTEGRAL DE LOS DERECHOS DE LOS NIÑOS, art. 2, 29 de Diciembre de 2004 (Arg.), available at <http://www.gob.gba.gov.ar/legislacion/legislacion/l-13298.html>.

205. LEY NO. 5288: DE PROTECCION INTEGRAL DE LA NIÑEZ, ADOLESCENCIA Y FAMILIA, art. 1, 26 de Septiembre de 2005 (Arg.), available at <http://www.mapalegislativo.org.ar/index.php/legislacion/por-territorio/jujuy/72-persona-por-nacer/206-ley-5288-ley-de-proteccion-integral-de-la-ninez-adolescencia-y-familia>.

206. LEY NO. 7.338: PROTECCIÓN INTEGRAL A LOS NIÑOS Y ADOLESCENTES, art. 2, 05 de Diciembre de 2002 (Arg.), available at <http://www.legsanjuan.gov.ar/indexley/leyes/2002/ley7338.doc>.

207. LEY NO. 9861: PROTECCIÓN INTEGRAL DE LOS DERECHOS DEL NIÑO, EL ADOLESCENTE Y LA FAMILIA, art. 3, 29 de Julio de 2008 (Arg.), <http://www.senadoer.gov.ar/galeria/ley/9861.pdf>.

208. LEY NO. 13298: DE LA PROMOCIÓN Y PROTECCIÓN INTEGRAL DE LOS DERECHOS DE LOS NIÑOS, art. 2, 29 de Diciembre de 2004 (Arg.), available at <http://www.gob.gba.gov.ar/legislacion/legislacion/l-13298.html>.

209. LEY NO. 9944: PROMOCIÓN Y PROTECCIÓN INTEGRAL DE LOS DERECHOS DE LAS NIÑAS, NIÑOS Y ADOLESCENTES EN LA PROVINCIA DE CÓRDOBA, art. 30, 03 de Marzo de 2011 (Arg.), available at <http://web2.cba.gov.ar/web/leyes.nsf/0/30D3D607469A7195032578A800729695?OpenDocument&Highlight=0,9944>.

210. LEY NO. 7.039: PROTECCIÓN INTEGRAL A LOS NIÑOS DESDE LA CONCEPCIÓN, art. 1, 10 de Agosto de 1999 (Arg.), available at <http://www.diputadosalta.gov.ar/leyes/7039-htm.pdf>.

211. LEY NO. 7.311: SEXUALIDAD RESPONSABLE, art. 2, 08 de Septiembre de 2004 (Arg.), available at <http://www.diputadosalta.gov.ar/leyes/7311-htm.pdf>.

Furthermore, virtually all Mexican states recognize the unborn's personhood and humanity. The civil codes of Aguascalientes,<sup>212</sup> Baja California,<sup>213</sup> Baja California Sur,<sup>214</sup> Campeche,<sup>215</sup> Chiapas,<sup>216</sup> Chihuahua,<sup>217</sup> Coahuila,<sup>218</sup> Colima,<sup>219</sup> Durango,<sup>220</sup> the Federal District,<sup>221</sup> Guanajuato,<sup>222</sup> Guerrero,<sup>223</sup> Hidalgo,<sup>224</sup> Jalisco,<sup>225</sup> Michoacán,<sup>226</sup> Morelos,<sup>227</sup> Nayarit,<sup>228</sup>

---

212. Código Civil del Estado De Aguascalientes [Civil Code of the State of Aguascalientes], art. 19, 07 de Diciembre de 1999 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/despliegaedo2.php?ordenar=&edo=1&idi=&catTipo=5>.

213. Código Civil del Estado De Baja California [Civil Code of the State of Baja California], art. 22, 31 de Enero de 1974 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Baja%20California/wo19493.pdf>.

214. Código Civil para el Estado Libre y Soberano de Baja California Sur [Civil Code for the Free and Sovereign State of Baja California Sur], art. 22, 19 de Julio de 1996 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/estatal.php?liberado=si&edo=3>.

215. Código Civil del Estado de Campeche [Civil Code of the State of Campeche], art. 26, 17 de Octubre de 1942 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Campeche/wo20300.doc>.

216. Código Civil del Estado de Chiapas [Civil Code of the State of Chiapas], art. 20, 02 de Febrero de 1938 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Chiapas/wo20998.doc>.

217. Código Civil del Estado de Chihuahua [Civil Code of the State of Chihuahua], art. 22, 24 de Marzo de 1974 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Chihuahua/wo22642.pdf>.

218. Código Civil para el Estado de Coahuila de Zaragoza [Civil Code for the State of Coahuila de Zaragoza], art. 31, 25 de Junio de 1999 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=25448&ambito=ESTATAL>.

219. Código Civil para del Estado de Colima [Civil Code of the State of Colima], art. 22, 18 de Julio de 2009 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/estatal.php?liberado=si&edo=6>.

220. Código Civil del Estado de Durango [Civil Code of the State of Durango], art. 22, 21 de Abril de 2013 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Durango/wo24466.doc>.

221. Código Civil para el Distrito Federal [Civil Code for the Federal District], art. 22, 08 de Agosto de 2013 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Distrito%20Federal/wo29081.doc>.

222. Código Civil para el Estado de Guanajuato [Civil Code for the State of Guanajuato], art. 21, 14 de Mayo de 1967 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=38863&ambito=estatal>.

223. Código Civil del Estado Libre y Soberano de Guerrero [Civil Code of the Free and Sovereign State of Guerrero], Número 358, art. 25, 02 de Marzo de 1993 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=16167&ambito=estatal>.

224. Código Civil para el Estado de Hidalgo [Civil Code for the State of Hidalgo], art. 22, 08 de Octubre de 1940 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=23547&ambito=estatal>.

Nuevo León,<sup>229</sup> Oaxaca,<sup>230</sup> Puebla,<sup>231</sup> Querétaro,<sup>232</sup> Quintana Roo,<sup>233</sup> San Luis Potosí,<sup>234</sup> Sinaloa,<sup>235</sup> Tabasco,<sup>236</sup> Tamaulipas,<sup>237</sup> Tlaxcala,<sup>238</sup> Veracruz,<sup>239</sup> and

---

225. Código Civil del Estado de Jalisco [Civil Code for the State of Jalisco], art. 19, 25 de Febrero de 1995 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=77043&ambito=estatal>.

226. Código Civil para el Estado de Michoacán de Ocampo [Civil Code for the State of Michoacán de Ocampo], art. 20, 11 de Febrero del 2008 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=23635&ambito=estatal>.

227. Código Familiar para el Estado Libre y Soberano de Morelos [Family Code for the Free and Sovereign State of Morelos], art. 3, 06 de Septiembre de 2006 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=2336&ambito=estatal>.

228. Código Civil del Estado de Nayarit [Civil Code for the State of Nayarit], art. 22, 22 de Agosto de 1981 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/estatal.php?liberado=si&edo=18>.

229. Código Civil del Estado de Nuevo Leon [Civil Code of the State of Nuevo Leon], art. 23, 06 de Julio de 1935 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/estatal.php?liberado=si&edo=19>.

230. Código Civil del Estado de Oaxaca [Civil Code for the State of Oaxaca], art. 21, 25 de Noviembre de 1944 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/estatal.php?liberado=no&edo=20>.

231. Código Civil para el Estado Libre y Soberano de Puebla [Civil Code for the Free and Sovereign State of Puebla], art. 37, 25 de Enero de 2005 (Mex.), <http://www.ordenjuridico.gob.mx/estatal.php?liberado=si&edo=21>.

232. Código Civil del Estado de Querétaro [Civil Code of the State of Querétaro], art. 22, 21 de Octubre de 2009 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=21713&ambito=>

233. Código Civil para el Estado de Quintana Roo [Civil Code for the State of Quintana Roo], art. 428, 08 de Octubre de 1980 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=86967&ambito=ESTATAL>.

234. Código Civil para el Estado de San Luis Potosí [Civil Code for the State of San Luis Potosí], art. 17, 18 de Abril de 1946 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/San%20Luis%20Potosi/wo62366.pdf>.

235. Código Civil del Estado de Sinaloa [Civil Code of the State of Sinaloa], art. 22, 25 de Julio de 1940 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Sinaloa/wo78889.pdf>.

236. Código Civil para el Estado de Tabasco [Civil Code for the State of Tabasco], art. 29, 31, 09 de Abril de 1997 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=17547&ambito=>

237. Código Civil para el Estado de Tamaulipas [Civil Code for the State of Tamaulipas], art. 18, 10 de Enero de 1987 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=35202&ambito=>

238. Código Civil del Estado de Tlaxcala [Civil Code of the State of Tlaxcala], art. 32, 20 de Octubre de 1976 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=38477&ambito=>

Yucatán<sup>240</sup> refer to the unborn as a physical person or human being who does not yet enjoy legal capacity for civil purposes but is entitled to protection by the law from the moment of conception. The State of Mexico obviates the term *physical* and simply designates the unborn as a person.<sup>241</sup> In addition, the Civil Code of Tlaxcala<sup>242</sup> and the Civil Code of Puebla<sup>243</sup> both refer to the unborn as a human being. The children's codes of Campeche,<sup>244</sup> Mexico City,<sup>245</sup> Hidalgo,<sup>246</sup> Jalisco,<sup>247</sup> the State of Mexico,<sup>248</sup> and Tlaxcala<sup>249</sup> designate the unborn as a child, a minor, or a person entitled to legal protections. Some family laws, such as Tamaulipas' Family

239. Código Civil del Estado de Veracruz [Civil Code of the State of Veracruz], art. 26, 28, 15 de Septiembre de 1932 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Veracruz/wo77127.pdf>.

240. Código Civil del Estado de Yucatán [Civil Code of the State of Yucatán], art. 16, 31 de Diciembre de 1993 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=9005&ambito=>.

241. Código Civil del Estado de México [Civil Code of the State of México], art. 2(1), 09 de Julio de 2002 (Mex.), <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=35129&ambito=>.

242. Código Civil del Estado de Tlaxcala [Civil Code of the State of Tlaxcala], art. 248, 20 de Octubre de 1976 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=38477&ambito=>.

243. Código Civil para el Estado Libre y Soberano de Puebla [Civil Code for the Free and Sovereign State of Puebla], art. 37, 25 de Enero de 2005 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=10202&ambito=>.

244. Ley de los Derechos de la Niñez y la Adolescencia del Estado de Campeche, art. 9, 05 de Julio de 2004 (Mex.), available at <http://info4.juridicas.unam.mx/adprojus/leg/5/140/10.htm?s=>.

245. Ley de los Derechos de las Niñas y Niños en el Distrito Federal, art. 3, 31 de Enero de 2000 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=27394&ambito=estatal>.

246. Ley Para la Protección de los Derechos de las Niñas, Niños y Adolescentes en el Estado de Hidalgo, art. 24, 20 de Octubre de 2003 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=23624&ambito=estatal>.

247. Ley de los Derechos de las Niñas, los Niños y Adolescentes en el Estado de Jalisco, art. 7, 25 de Octubre de 2003 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=82047&ambito=estatal>.

248. Ley de los Derechos de los Niños y Adolescentes Para el Estado de México, Exposición de Motivos § VI, 06 de Marzo de 2010 (Mex.), available at [http://portal2.edomex.gob.mx/deprim/acerca\\_subdireccion/marco\\_juridico/groups/public/documentos/edomex\\_archivo/deprim\\_pdf\\_d75\\_leyprotninas.pdf](http://portal2.edomex.gob.mx/deprim/acerca_subdireccion/marco_juridico/groups/public/documentos/edomex_archivo/deprim_pdf_d75_leyprotninas.pdf).

249. Ley de Protección de los Derechos de las Niñas y Niños del Estado de Tlaxcala, art. 23, 10 de Junio de 2004 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=38971&ambito=ESTATAL>.

Development Act, also include the unborn in their definitions of person.<sup>250</sup> The Morelos Family Code, which previously did not explicitly include the unborn in its definition of “person,” was reformed in 2011 to define legal individual persons as all human beings from the moment of conception until natural death.<sup>251</sup>

B. *The Right of Unborn Children to Health, Social Protection, and Equal Protection Before Birth*

After signature or ratification of the American Convention, most Latin American and Caribbean states have recognized and protected the unborn child’s right to health, survival, and development through children’s codes, family codes, health codes and national constitutions, as illustrated below. These acts may be a sign of a regional consensus on economic and social rights extending to unborn children. The unborn child’s right to health, survival, and development is usually framed in Latin American and Caribbean laws as a social right that entails a positive state duty to provide, subsidize, or ensure access to prenatal health services and to enact and implement related social policy. In addition, prenatal health is not merely perceived as a right belonging to mothers, but as a right of unborn children, entitling both to equal protection.

National constitutions that recognize the unborn child’s right to health, social protection, and equal protection include the Honduran Constitution, which establishes a child’s right to prenatal health and development—the fulfillment of which is found in the state’s assurance of access to prenatal health for both the child and his mother.<sup>252</sup> Likewise, the Argentinian Constitution mandates a social security system that grants special and comprehensive protection to both children and their mothers throughout pregnancy.<sup>253</sup> The Brazilian Constitution provides for the protection of

---

250. Ley para el Desarrollo Familiar del Estado de Tamaulipas, art. 13–14, 31(1), 28 de Diciembre de 2004 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=10650&ambito=ESTATAL>.

251. See Código Familiar para el Estado Libre y Soberano de Morelos, art. 1, 06 de Septiembre de 2006 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=2336&ambito=ESTATAL>.

252. Constitución Política de la Republica de Honduras de 1982, art. 123 (Hond.), available at [http://www.oas.org/dil/esp/Constitucion\\_de\\_Honduras.pdf](http://www.oas.org/dil/esp/Constitucion_de_Honduras.pdf).

253. See Art. 75(23), CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.), available at [http://www.oas.org/dil/esp/Constitucion\\_de\\_la\\_Nacion\\_Argentina.pdf](http://www.oas.org/dil/esp/Constitucion_de_la_Nacion_Argentina.pdf).

maternity and childhood, granting special social rights to pregnant women.<sup>254</sup>

The majority of Latin American and Caribbean countries recognize a right of unborn children to health, survival, and development. For instance, El Salvador's Act on Comprehensive Protection of Children and Adolescents specifically recognizes the unborn child's right to life, prenatal health, survival, growth, and birth in circumstances that promote his biological, psychological, and social development.<sup>255</sup> Similarly, El Salvador's Family Code expressly recognizes the child's fundamental right to life, health, and development from conception until the age of majority, which shall be safeguarded by means of a wide range of legal protections and social policies including pre-natal health services.<sup>256</sup> Honduras' Code of Children and Adolescents establishes that every human being has a right to development before birth and that the state shall adopt all measures necessary to ensure that gestation, birth, and development take place in conditions compatible with human dignity.<sup>257</sup> The Guatemalan Act on Comprehensive Protection of Children and Adolescents recognizes a right to care, protection, and development (including physical, mental and social development) from conception.<sup>258</sup>

Likewise, Ecuador's Code of Childhood and Adolescence also establishes a state duty to ensure children's survival and development from conception through gestation.<sup>259</sup> The Nicaraguan Children and Adolescents Code states that the state shall promote public policies that ensure prenatal care, safe births, survival, and comprehensive development from gestation onwards.<sup>260</sup> Peru's Code of Children and Adolescents establishes a state

---

254. CONSTITUIÇÃO FEDERAL [C.F.] [Constitution] art. 201, 203 (Braz.), available at <http://bd.camara.gov.br>.

255. LEY DE PROTECCIÓN DE LA NIÑEZ Y ADOLESCENCIA, art. 16, 20 (El Sal.), available at <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-proteccion-integral-de-la-ninez-y-adolescencia>.

256. CODIGO DE FAMILIA, art. 346, 353-54 (El Sal.), available at [http://www.oas.org/dil/esp/Codigo\\_de\\_Familia\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_de_Familia_El_Salvador.pdf).

257. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 12 (Hond.), available at [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Honduras.pdf).

258. LEY DE PROTECCION INTEGRAL DE LA NIÑEZ Y ADOLESCENCIA, art. 9 (Guat.), available at [http://www.oas.org/dil/esp/Ley\\_de\\_Proteccion\\_Integral\\_de\\_la\\_Ninez\\_y\\_Adolescencia\\_Guatemala.pdf](http://www.oas.org/dil/esp/Ley_de_Proteccion_Integral_de_la_Ninez_y_Adolescencia_Guatemala.pdf).

259. CODIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 20, 25 (Ecuador), available at [http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador\\_Code.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador_Code.htm).

260. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 12, 34 (Nicar.), available at [http://www.oas.org/dil/esp/Codigo\\_de\\_la\\_Ninez\\_y\\_la\\_Adolescencia\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_de_la_Ninez_y_la_Adolescencia_Nicaragua.pdf).

duty to provide access to prenatal health care throughout pregnancy for teenage mothers.<sup>261</sup>

El Salvador's Act on Comprehensive Protection of Children and Adolescents is perhaps the most far-reaching domestic law in the region in terms of recognition of a prenatal right to health as a social and economic right. The Act establishes a state duty to protect the unborn child's life by ensuring prenatal health care and psychological assistance for mothers from conception to birth.<sup>262</sup> It recognizes a state duty to provide free, government-funded health services, treatment, medication, food, and nutritional counseling for pregnant women and girls facing disability or poverty.<sup>263</sup> Remarkably, the Act establishes a legal duty of both public and private health care institutions to provide emergency obstetric care for pregnant women or teenagers. The Act also prohibits the government from using scarcity of resources as a defense for refusing to provide care.<sup>264</sup> The Act specifies that the prenatal right to development includes appropriate nutrition, secure and hygienic housing, drinking water, sewage, and electricity, among others. It also asserts that the state shall have a subsidiary responsibility to ensure that parents and the family can provide for these needs in accordance with their financial means and resources.<sup>265</sup>

Similarly, the Panama Family Code recognizes a child's right to health and survival before birth and mandates that the state offer free medical and health services to poor pregnant mothers as well as food subsidies for unemployed mothers.<sup>266</sup> The Paraguay Children and Adolescent Code contains similar provisions and establishes that such assistance shall be

---

261. CÓDIGO DE LOS NIÑOS Y LA ADOLESCENTES, art. 2 (Peru), *available at* [http://www.oas.org/dil/esp/Codigo\\_de\\_la\\_Ninez\\_y\\_la\\_Adolescencia\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_de_la_Ninez_y_la_Adolescencia_Peru.pdf).

262. LEY DE PROTECCIÓN DE LA NIÑEZ Y ADOLESCENCIA, art. 17 (El Sal.), *available at* <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-proteccion-integral-de-la-ninez-y-adolescencia>.

263. LEY DE PROTECCIÓN DE LA NIÑEZ Y ADOLESCENCIA, art. 17 (El Sal.), *available at* <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-proteccion-integral-de-la-ninez-y-adolescencia>.

264. LEY DE PROTECCIÓN DE LA NIÑEZ Y ADOLESCENCIA, art. 23 (El Sal.), *available at* <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-proteccion-integral-de-la-ninez-y-adolescencia>.

265. LEY DE PROTECCIÓN DE LA NIÑEZ Y ADOLESCENCIA, art. 20 (El Sal.), *available at* <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/ley-de-proteccion-integral-de-la-ninez-y-adolescencia>.

266. LEY NO. 3: POR LA CUAL SE APRUEBA EL CÓDIGO DE FAMILIA, art. 698-99 (Pan.), *available at* <http://www.organojudicial.gob.pa/cendoj/wp-content/blogs.dir/cendoj/codigo-de-la-familia-94.pdf>.



provided even if the child dies before birth.<sup>267</sup> The Costa Rica Children's Code affirms a prenatal right to life and development, as well as a right to economic and social protection by mandating that the state ensure and protect that right through economic and social policies that promote dignified conditions for gestation, birth, and overall development.<sup>268</sup> For this purpose, the Costa Rican Code of Children and Adolescents establishes a public health subsidy for poor pregnant women consisting of cash assistance, equivalent to minimum wage, to be paid by the Social Assistance Bureau during gestation and lactation.<sup>269</sup> Beneficiaries are required to attend related courses promoted by the state agency.<sup>270</sup>

Likewise, the Bolivian Children's Code provides that the state should ensure and protect the right to life and health by implementing social policies that ensure dignified conditions for the unborn child's gestation, birth, and comprehensive development.<sup>271</sup> It also mandates the state to offer free health services and food assistance to pregnant mothers, particularly teenage mothers and pregnant inmates.<sup>272</sup> Article 9 of the Code's regulations reiterates this duty and specifies that the Ministry of Health will be responsible for enacting and implementing these policies at both the national and local level.<sup>273</sup> Similar language recognizing a child's right to health care can be found in the Brazilian Children's Act, which states that these health services should be rendered through public policies that enable healthy births and development.<sup>274</sup> It provides for a state duty in ensuring pre-natal care and food assistance for pregnant women in need.<sup>275</sup> Colombia's Code on Children and Adolescents also mandates the

---

267. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 10 (Para.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Paraguay.pdf).

268. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 12 (Costa Rica), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Costa_Rica.pdf).

269. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 38, 51 (Costa Rica), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Costa_Rica.pdf).

270. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 51 (Costa Rica), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Costa_Rica.pdf).

271. LEY DEL CÓDIGO DEL NIÑO, NIÑA Y ADOLESCENTE, art. 13 (Bol.), *available at* <http://www.unhcr.org/refworld/publisher,NATLEGBOD,,BOL,3db925ca2,0.html>.

272. LEY DEL CÓDIGO DEL NIÑO, NIÑA Y ADOLESCENTE, art. 15 (Bol.), *available at* <http://www.unhcr.org/refworld/publisher,NATLEGBOD,,BOL,3db925ca2,0.html>.

273. DECRETO SUPREMO NO. 26086: REGLAMENTO DEL CÓDIGO DEL NIÑO, NIÑA Y ADOLESCENTE, art. 9 (Bol.), *available at* [http://www.oas.org/dil/esp/Reglamento\\_del\\_Codigo\\_Nino\\_Nina\\_Adolescente\\_Bolivia.pdf](http://www.oas.org/dil/esp/Reglamento_del_Codigo_Nino_Nina_Adolescente_Bolivia.pdf).

274. Lei 8.069, 13 de Julho de 1990, ESTATUTO DA CRIANÇA E DO ADOLESCENTE, art. 7 (Braz.), *available at* [http://www.planalto.gov.br/ccivil\\_03/leis/L8069.htm](http://www.planalto.gov.br/ccivil_03/leis/L8069.htm).

275. *Id.* at art. 8.

development of public policies that ensure the right to life, care, and protection, as well as the right to survival, health, and development from conception.<sup>276</sup>

Venezuela's Child Protection Act also establishes a state duty to ensure free prenatal health services, particularly for pregnant girls and teenagers.<sup>277</sup> The Peruvian Public Health Act declares an inherent right to health from conception and creates a state duty to protect it jointly with individuals and society at large.<sup>278</sup> Paraguay's current Code of Childhood and Adolescence states that unborn persons shall be protected through the provision of health care for pregnant women, from conception until 45 days after delivery, and that the state has only subsidiary, not primary responsibility to provide it.<sup>279</sup> The Dominican Republic's Children's Code provides for a state duty to ensure pre-natal health, including free health services.<sup>280</sup>

Likewise, the Mexican Federal Act for the Protection of Children and Adolescents recognizes a right to health for unborn children by establishing that federal, state, and local authorities shall offer access to prenatal care.<sup>281</sup> In addition, the Mexican Federal Constitution provides that employers shall ensure that working conditions do not harm the health or life of pregnant women and their unborn children.<sup>282</sup>

276. CÓDIGO DEL MENOR, art. 3–4 (Colom.), available at <http://www.relaf.org/legislaciones2.htm>; see also LEY 1098 DE 2006, CÓDIGO DE LA INFANCIA Y LA ADOLESCENCIA, art. 17 (Colom.), available at <http://www.icbf.gov.co/portal/page/portal/PortalICBF/Bienestar/LeyInfanciaAdolescencia/SobreLaLey/CODIGOINFANCIALey1098.pdf>.

277. LEY ORGÁNICA DE PROTECCIÓN DEL NIÑO Y EL ADOLESCENTE, art. 44 (Venez.), available at [http://www.oas.org/juridico/spanish/cyb\\_ven\\_LEY\\_ORG\\_PARA\\_PROTECCION\\_NINO\\_ADOLE.pdf](http://www.oas.org/juridico/spanish/cyb_ven_LEY_ORG_PARA_PROTECCION_NINO_ADOLE.pdf).

278. LEY GENERAL DE SALUD, art. III (Peru), available at [http://essalud.gob.pe/transparencia/pdf/informacion/ley\\_general\\_salud\\_26842.pdf](http://essalud.gob.pe/transparencia/pdf/informacion/ley_general_salud_26842.pdf).

279. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 9 (Para.), available at [http://www.oas.org/dil/esp/Ley\\_de\\_Adopcion\\_Paraguay.pdf](http://www.oas.org/dil/esp/Ley_de_Adopcion_Paraguay.pdf).

280. CÓDIGO PARA EL SISTEMA DE PROTECCIÓN Y LOS DERECHOS FUNDAMENTALES DE NIÑOS, NIÑAS Y ADOLESCENTES, art. 30 (Dom. Rep.), available at <http://www.oas.org/dil/esp/LEY%20136-03%20-%20Codigo%20para%20el%20Sistema%20de%20Protecci%C3%B3n%20y%20los%20Derechos%20Fundamentales%20de%20Ni%C3%B1os%20Ni%C3%B1as%20y%20Adolescentes%20Republica%20Dominicana.pdf>.

281. Ley para la protección de los Derechos de Niñas, Niños y Adolescentes, art. 28(F), 29 de Mayo de 2000 (Mex.), available at <http://www.unhcr.org/refworld/type,LEGISLATION,,MEX,3e5224d67,0.html>.

282. Constitución Política de los Estados Unidos Mexicanos [C.P.] art. 123 (A) (XV), 05 de Febrero de 1917 (Mex.), available at <http://www.oas.org/dil/esp/Constituci%C3%B3n%20Pol%C3%ADtica%20de%20los%20Estados%20Unidos%20Mexicanos.pdf>.

Mexican states also recognize an unborn child's entitlement to prenatal care and maintain corresponding state duties of social protection. The state of Hidalgo's Child Protection Act, for instance, specifically states that, from the moment of conception, children are entitled to health and development.<sup>283</sup> The state of Mexico's Children's Rights Act declares children, from the moment of conception, are entitled to comprehensive social protection by the family, society, and the state.<sup>284</sup> Nuevo León's equivalent act states that children are entitled to health care and nutrition even before birth and that pregnant mothers shall receive prenatal care accordingly.<sup>285</sup> The Tamaulipas Act for Family Development states that child protection should be comprehensive throughout the child's life, including the prenatal stage, which begins at the moment of conception and stresses parental duties of care for children from conception.<sup>286</sup>

The Child Protection Acts of Quintana Roo and Tabasco also provide for a right to prenatal health and nutrition during pregnancy in order to support the unborn's proper growth and development.<sup>287</sup> Oaxaca's Child Protection Act establishes a state obligation to ensure prenatal health for the purpose of promoting healthy and appropriate child development from gestation.<sup>288</sup> The state of Guerrero defines prenatal care as health measures and precautions taken by parents and health personnel for the benefit of the

---

283. Ley para la Protección de los Derechos de Las Niñas, Niños y Adolescentes en el Estado de Hidalgo, art. 24, 20 de Octubre de 2003 (Mex.), available at <http://docs.mexico.justia.com.s3.amazonaws.com/estatales/hidalgo/ley-para-la-proteccion-de-los-derechos-de-las-ninas-ninos-y-adolescentes-en-el-estado-de-hidalgo.pdf>.

284. Ley de los Derechos de Los Niños y Adolescentes para el Estado de México, Exposición de Motivos § VI, 24 de Septiembre de 2004 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=35208&ambito=>.

285. Ley de Protección de los Derechos de las Niñas, Niños y Adolescentes para el Estado de Nuevo León, art. 19, 17 de Febrero de 2006 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=6147&ambito=>.

286. Ley para el Desarrollo Familiar del Estado de Tamaulipas, art. 14, 31(1), 28 de Diciembre de 2004 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=10650&ambito=ESTATAL>.

287. Ley para la Protección de los Derechos de las Niñas, Niños y Adolescentes del Estado de Quintana Roo, art. IV (2), 04 de Mayo de 2004 (Mex.), available at <http://www.ordenjuridico.gob.mx/Estatal/QUINTANA%20ROO/Leyes/QROOLEY70.pdf>; see also Ley para la Protección de los Derechos de Niñas, Niños y Adolescentes del Estado de Tabasco, art. 34 (VIII), 03 de Enero de 2007 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=17730&ambito=ESTATAL>.

288. Ley de Protección de los Derechos de los Niños, Niñas y Adolescentes para el Estado de Oaxaca, art. 29, 103, 23 de Septiembre de 2006 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Oaxaca/wo65283.pdf>.

unborn child's health until birth.<sup>289</sup> Yucatán's Child Protection Act entitles pregnant women to medical and nutritional assistance for the purpose of protecting both their own health as well as their unborn child's.<sup>290</sup> In addition, the Civil Code of Tlaxcala<sup>291</sup> recognizes a public state interest in the unborn child's health during gestation.

In addition, the laws of many Latin American countries recognize equal protection of mothers and their unborn children. For instance, the Paraguayan Health Code, Title I relating to the health of persons, declares that the unborn enjoy a right to have their life and health protected from conception and that, during pregnancy, the mother and unborn child shall be protected as a biological unit.<sup>292</sup> El Salvador's Health Code mandates preventive and therapeutic health services for the pregnant woman and the child, from conception onward.<sup>293</sup> The Panama Family Code establishes preferential treatment for pregnant women in public health and social services, and, in general, when necessary to protect her life and that of the unborn, such as in alimony actions.<sup>294</sup> Barbados grants pregnant women preferential status in nutrition programs.<sup>295</sup> The Costa Rica Children's Code establishes that pregnant children and teenagers shall be given free prenatal health services for both themselves and their unborn children; it also establishes that they shall be given preferential treatment in public health facilities, particularly in situations of risk to their own health and the health

---

289. Ley para la Protección y Desarrollo de los Menores en el Estado de Guerrero, art. 10(I), 15 de Enero de 2002 (Mex.), available at <http://i.guerrero.gob.mx/uploads/2012/08/Ley-para-la-proteccion-y-desarrollo-de-los-menores.pdf>.

290. Ley para la Protección de los Derechos de Niños, Niñas y Adolescentes del Estado de Yucatán, art. 29, 08 de Agosto de 2008 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=9779&ambito=ESTATAL>.

291. Código Civil del Estado de Tlaxcala [Civil Code of the State of Tlaxcala], art. 248–49, 31 de Mayo de 2013 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=51964&ambito=ESTATAL>.

292. CÓDIGO SANITARIO, art. 15–16 (Para.), available at [http://www.cird.org.py/salud/docs/codigo\\_sanitario.pdf](http://www.cird.org.py/salud/docs/codigo_sanitario.pdf).

293. CÓDIGO DE SALUD, art. 48 (El Sal.), available at [http://www.transparenciafiscal.gob.sv/portal/page/portal/PCC/SO\\_Administracion\\_Aduanera/Leyes/C%F3digo%20de%20Salud.pdf](http://www.transparenciafiscal.gob.sv/portal/page/portal/PCC/SO_Administracion_Aduanera/Leyes/C%F3digo%20de%20Salud.pdf).

294. LEY NO. 3: POR LA CUAL SE APRUEBA EL CÓDIGO DE FAMILIA, art. 493 (Pan.), available at <http://www.organojudicial.gob.pa/cendoj/wp-content/blogs.dir/cendoj/codigo-de-la-familia-94.pdf>.

295. Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1992: Barbados, Addendum*, ¶ 158, U.N. Doc. CRC/C/3/Add.45 (1997), <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/3/Add.45>.

of their unborn children.<sup>296</sup> The Code also grants equal protection to the pregnant mother and child by establishing a state duty to provide medical treatment to pregnant mothers infected with HIV or AIDS for the purpose of avoiding transmission to the *nasciturus* child.<sup>297</sup> Likewise, child protection laws of the Argentinian provinces of Chubut,<sup>298</sup> Córdoba,<sup>299</sup> Jujuy,<sup>300</sup> Tierra del Fuego, Antártida, and Islas del Atlántico Sur<sup>301</sup> recognize a right to prenatal health that extends to both the unborn child and the pregnant mother.

Similarly, the Chilean Health Code provides for equal protection of mother and child during pregnancy by establishing a state duty to protect the child and to ensure that the mother has access to prenatal healthcare; this healthcare is provided free of charge for indigent women and children.<sup>302</sup> Ecuador's Code of Childhood and Adolescence establishes that a child's right to health includes pre-natal health services for his or her mother by recognizing a state duty to ensure access to prenatal health care for both the mother and the child, particularly for pregnant teenagers.<sup>303</sup> Specifically, the Code states a child's right to health includes maternal health and prenatal care.<sup>304</sup> The Honduran Code of Children and Adolescents establishes a state duty provide both the mother and the child

---

296. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 50 (Costa Rica), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Costa_Rica.pdf).

297. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 53 (Costa Rica), *available at* [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Costa_Rica.pdf).

298. LEY NO 4347: LEY DE PROTECCION INTEGRAL DE LA NIÑEZ, LA ADOLESCENCIA Y LA FAMILIA, art. 10(d) (Arg.), *available at* <http://www.defensorjujuy.gov.ar/leyes/5288.pdf>.

299. LEY 9944: PROMOCIÓN Y PROTECCIÓN INTEGRAL DE LOS DERECHOS DE LAS NIÑAS, NIÑOS Y ADOLESCENTES, art. 21 (Arg.), *available at* <http://senaf.cba.gov.ar/wp-content/uploads/Ley9944.pdf>.

300. LEY No 5288: DE PROTECCION INTEGRAL DE LA NIÑEZ, ADOLESCENCIA Y FAMILIA, art. 9 (Arg.), *available at* <http://observatoriojovenes.com.ar/nueva/wp-content/uploads/Jujuy-ley.pdf>.

301. LEY 521: LEY DE PROTECCIÓN INTEGRAL DE LOS DERECHOS DE NIÑOS, NIÑAS, ADOLESCENTES Y SUS FAMILIAS, art. 8–9 (Arg.), *available at* <http://www.justierradelfuego.gov.ar/leyesusules/LEY%20N%20%20521.htm>.

302. CÓDIGO SANITARIO [CÓD SANIT.] [HEALTH CODE], art. 16–17 (Chile), *available at* [http://www.supersalud.gob.cl/normativa/571/articles-4825\\_recurso\\_1.pdf](http://www.supersalud.gob.cl/normativa/571/articles-4825_recurso_1.pdf).

303. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 25, 27 (Ecuador), *available at* [http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador\\_Code.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador_Code.htm).

304. *Id.* at art. 27.

with prenatal health care, through public health agencies, and food when necessary.<sup>305</sup>

### 1. Parental Rights and Duties Toward the Unborn

Most Latin American and Caribbean states have recognized a legal parent-child relationship between biological parents and their unborn children that involves parental rights and duties; this reinforces other evidence that these states treat unborn children as children for human rights protection purposes. The right of a father to establish paternity over his unborn child as well as the duty of a father to pay prenatal alimony or prenatal child support has been codified in most Latin American and Caribbean jurisdictions. In several countries, courts may allow a child's life, health or best interests to prevail over parental wishes in cases of substance abuse or artificial reproduction, as explained in Section C *infra*.

Many civil laws in the region recognize parental authority over unborn children or parental duties towards them, treating the unborn equally for legal purposes. The Argentinian Civil Code<sup>306</sup> recognizes biological parents' *patria potestad*, or parental authority, over their children from the time of their conception and continuing for as long as they are under legal age.<sup>307</sup> Parental authority is defined here as the body of duties and rights incumbent on parents in respect of the person and assets of their children for their protection and upbringing.<sup>308</sup> Chile's Civil Code also recognizes biological parents' authority, particularly over their children's property, including the future property or assets of unborn children.<sup>309</sup> Venezuela's Civil Code grants parents of unborn children similar authority, as well as the ability to legally represent the child for civil purposes.<sup>310</sup> Brazil's Civil Procedure Code recognizes only a biological mother's parental authority

---

305. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 13 (Hond.), available at [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Honduras.pdf).

306. CÓDIGO CIVIL [CÓD. CIV.] [CIVIL CODE] art. 264 (Arg.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_de\\_la\\_Republica\\_Argentina.pdf](http://www.oas.org/dil/esp/Codigo_Civil_de_la_Republica_Argentina.pdf).

307. See *Comm. on the Rights of the Child*, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial Reports of States Parties Due in 1994: Argentina ¶38 at 19, ¶43 at 20, U.N. Doc. CRC/C/8/Add.17 (Dec. 22, 1994), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G94/705/31/PDF/G9470531.pdf?OpenElement>.

308. *Id.*

309. CÓDIGO CIVIL [CÓD. CIV.] [CIVIL CODE], art. 243, §2 (Chile), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Chile.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Chile.pdf).

310. CÓDIGO CIVIL [CÓD. CIV.] [CIVIL CODE], art. 267 (Venez.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Venezuela.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Venezuela.pdf).

over her unborn child.<sup>311</sup> Paraguay's Health Code establishes parents' obligation and right to care for their children's health from gestation onward.<sup>312</sup> El Salvador's Family Code emphasizes a parental duty of care towards children from their conception onward.<sup>313</sup> Some Mexican states, such as Tamaulipas, contemplate this parental duty of care over unborn children as well.<sup>314</sup>

a. Paternity recognition before birth

Most Latin American states authorize voluntary or involuntary establishment of paternity before birth. Domestic laws of Bolivia,<sup>315</sup> Brazil,<sup>316</sup> Costa Rica,<sup>317</sup> El Salvador,<sup>318</sup> Panama,<sup>319</sup> and Trinidad & Tobago<sup>320</sup> allow for voluntary or involuntary paternity recognition by fathers and the filing of paternity actions by mothers against fathers before a child's birth. Costa Rica's Family Code also provides that paternity recognition of children born within marriage, i.e., legitimation, shall apply retroactively to the time of the

---

311. CÓDIGO DE PROCESO CIVIL [C.P.C.] [CODE OF CIVIL PROCESS], art. 877 (Braz.), available at [http://www.planalto.gov.br/ccivil\\_03/Leis/L5869.htm](http://www.planalto.gov.br/ccivil_03/Leis/L5869.htm).

312. CÓDIGO SANITARIO [CÓD. SANIT.] [HEALTH CODE], art. 21 (Para.), available at [http://www.cird.org.py/salud/docs/codigo\\_sanitario.pdf](http://www.cird.org.py/salud/docs/codigo_sanitario.pdf).

313. CÓDIGO DE FAMILIA, art. 211 (El Sal.), available at [http://www.oas.org/dil/esp/Codigo\\_de\\_Familia\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_de_Familia_El_Salvador.pdf).

314. Ley para el Desarrollo Familiar del Estado de Tamaulipas, art. 31, 28 de Diciembre de 2004 (Mex.), available at <http://docs.mexico.justia.com.s3.amazonaws.com/estatales/tamaulipas/ley-para-el-desarrollo-familiar-del-estado-de-tamaulipas.pdf>.

315. CÓDIGO CIVIL, art. 1527 (Bol.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Bolivia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Bolivia.pdf).

316. Lei 8.069, 13 de Julho de 1990, ESTATUTO DA CRIANÇA E DO ADOLESCENTE [E.C.A.] [STATUTE OF CHILDREN AND ADOLESCENTS] art. 26 (Braz.), available at [http://www.planalto.gov.br/ccivil\\_03/leis/L8069.htm](http://www.planalto.gov.br/ccivil_03/leis/L8069.htm); see also LEI 10.406, 10 de Janeiro de 2002, CÓDIGO CIVIL [CÓD. CIV.] [CIVIL CODE] art. 1.609 (Braz.), available at [http://www.planalto.gov.br/ccivil\\_03/Leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/Leis/2002/L10406.htm).

317. CÓDIGO DE FAMILIA, art. 84–85, 94 (Costa Rica), available at [http://www.oas.org/dil/esp/Codigo\\_de\\_Familia\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_de_Familia_Costa_Rica.pdf).

318. CÓDIGO DE FAMILIA, art. 144, 146 (El Sal.), available at [http://www.oas.org/dil/esp/Codigo\\_de\\_Familia\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_de_Familia_El_Salvador.pdf).

319. LEY No. 3: POR LA CUAL SE APRUEBA EL CÓDIGO DE FAMILIA, art. 272, 17 de mayo de 1994 (Pan.), available at <http://www.organojudicial.gob.pa/cendoj/wp-content/blogs.dir/cendoj/codigo-de-la-familia-94.pdf>.

320. FAMILY LAW ACT (GUARDIANSHIP OF MINORS, DOMICILE AND MAINTENANCE) ACT, § 2 (Trin. & Tobago), available at [http://www.oas.org/dil/Family\\_Law\\_Act\\_Trinidad\\_and\\_Tobago.pdf](http://www.oas.org/dil/Family_Law_Act_Trinidad_and_Tobago.pdf).

child's conception.<sup>321</sup> Argentina,<sup>322</sup> Colombia,<sup>323</sup> Dominican Republic,<sup>324</sup> Honduras,<sup>325</sup> Mexico,<sup>326</sup> Nicaragua,<sup>327</sup> Paraguay,<sup>328</sup> Peru,<sup>329</sup> and Venezuela<sup>330</sup> allow for voluntary paternity recognition only before birth or allow a father to contest paternity claims before the child's birth. The Honduran Family Code requires notarization and registration of voluntary paternity recognition and states that paternity will become effective upon the child's birth.<sup>331</sup> Paraguay<sup>332</sup> and Peru<sup>333</sup> preempt fathers from disputing paternity before the child's birth. Argentina only allows disputing paternity on a temporary basis, subject to paternity testing upon the child's birth.<sup>334</sup>

Similar dispositions can be found in Mexican state law, since the great majority of Mexican states allow for voluntary paternity recognition of

321. CÓDIGO DE FAMILIA, art. 83 (Costa Rica), *available at* [http://www.oas.org/dil/esp/Codigo\\_de\\_Familia\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_de_Familia_Costa_Rica.pdf).

322. CÓDIGO CIVIL [CÓD. CIV.] [CIVIL CODE] art. 65, 258 (Arg.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_de\\_la\\_Republica\\_Argentina.pdf](http://www.oas.org/dil/esp/Codigo_Civil_de_la_Republica_Argentina.pdf).

323. LEY 1098 DE 2006, CÓDIGO DE LA INFANCIA Y LA ADOLESCENCIA, art. 82 (Colom.), *available at* <http://www.icbf.gov.co/portal/page/portal/PortalICBF/Bienestar/LeyInfanciaAdolescencia/SobreLaLey/CODIGOINFANCIALey1098.pdf>.

324. CÓDIGO PARA EL SISTEMA DE PROTECCIÓN Y LOS DERECHOS FUNDAMENTALES DE NIÑOS, NIÑAS Y ADOLESCENTES, art. 63 (Dom. Rep.), *available at* <http://www.oas.org/dil/esp/LEY%20136-03%20-%20Codigo%20para%20el%20Sistema%20de%20Protecci%C3%B3n%20y%20los%20Derechos%20Fundamentales%20de%20Ni%C3%B1os%20Ni%C3%B1as%20y%20Adolescentes%20Republica%20Dominicana.pdf>.

325. CÓDIGO DE FAMILIA, art. 96 (Hond.), *available at* [http://www.oas.org/dil/esp/Codigo\\_de\\_Familia\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_de_Familia_Honduras.pdf).

326. Código Civil Federal [CC] [Federal Civil Code] art. 359, Diario Oficial de la Federación [DO], 28 de Enero de 2010 (Mex.), *available at* <http://www.diputados.gob.mx/LeyesBiblio/pdf/2.pdf>.

327. CÓDIGO CIVIL, art. 16 (Nicar.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Nicaragua.pdf).

328. CÓDIGO CIVIL DEL PARAGUAY, art. 30 (Para.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Paraguay.pdf).

329. CÓDIGO CIVIL, art. 365, 405 (Peru), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf).

330. CÓDIGO CIVIL, art. 209, 223, 225 (Venez.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Venezuela.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Venezuela.pdf).

331. CÓDIGO DE FAMILIA, art. 96 (Hond.), *available at* [http://www.oas.org/dil/esp/Codigo\\_de\\_Familia\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_de_Familia_Honduras.pdf).

332. CÓDIGO CIVIL DEL PARAGUAY, art. 30 (Para.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Paraguay.pdf).

333. CÓDIGO CIVIL, art. 365 (Peru), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf).

334. CÓDIGO CIVIL [CÓD. CIV.] [CIVIL CODE] art. 67, 258, 260 (Arg.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_de\\_la\\_Republica\\_Argentina.pdf](http://www.oas.org/dil/esp/Codigo_Civil_de_la_Republica_Argentina.pdf).



unborn children, namely Aguascalientes,<sup>335</sup> Baja California,<sup>336</sup> Baja California Sur,<sup>337</sup> Campeche,<sup>338</sup> Chiapas,<sup>339</sup> Colima,<sup>340</sup> Durango,<sup>341</sup> Federal District,<sup>342</sup> Guanajuato,<sup>343</sup> Jalisco,<sup>344</sup> Michoacán,<sup>345</sup> Nayarit,<sup>346</sup> Nuevo Leon,<sup>347</sup>

---

335. Código Civil del Estado de Aguascalientes [Civil Code of the State of Aguascalientes], art. 383, 23 de Septiembre de 2013 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Aguascalientes/wo18757.doc>.

336. Código Civil del Estado de Baja California [Civil Code of the State of Baja California], art. 356, 31 de Enero de 1974 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Baja%20California/wo19493.pdf>.

337. Código Civil para el Estado Libre y Soberano de Baja California-Sur [Civil Code Of The Free And Sovereign State Of Baja California-Sur], art. 373, 19 de Julio de 1996 (Mex.), *available at* <http://201.159.134.38/obtenerdoc.php?path=/Documentos/ESTADO/BAJA%20CALIFORNIA%20SUR/o540021.doc&nombreclave=o540021.doc>.

338. Código Civil del Estado de Campeche [Civil Code of the State of Campeche], art. 377, 07 de Diciembre de 2012 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Campeche/wo20300.doc>.

339. Código Civil del Estado de Chiapas [Civil Code of the State of Chiapas], art. 354, 02 de Febrero de 1938 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Chiapas/wo20998.doc>.

340. Nuevo Código Civil para el Estado de Colima [New Civil Code for the State of Colima], art. 359, 18 de Julio de 2009 (Mex.), *available at* <http://201.159.134.38/obtenerdoc.php?path=/Documentos/ESTADO/COLIMA/o525732.doc&nombreclave=o525732.doc>.

341. Código Civil del Estado de Durango [Civil Code of the State of Durango], art. 354, 21 de Abril de 2013 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Durango/wo24466.doc>.

342. Código Civil para el Distrito Federal [Civil Code for the Federal District], art. 353, 08 de Agosto de 2013 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Distrito%20Federal/wo29081.doc>.

343. Código Civil para el Estado de Guanajuato [Civil Code for the State of Guanajuato], art. 415, 21 de Mayo de 2013 (Mex.), *available at* <http://201.159.134.38/obtenerdoc.php?path=/Documentos/ESTADO/GUANAJUATO/o538863.doc&nombreclave=o538863.doc>.

344. Código Civil del Estado de Jalisco [Civil Code of the State of Jalisco], art. 490, 26 de Diciembre de 2013 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Jalisco/wo77043.doc>.

345. Código Familiar para el Estado de Michoacán de Ocampo [Family Code for the State of Michoacan de Ocampo], art. 344, 30 de Abril de 2013 (Mex.), *available at* <http://info4.juridicas.unam.mx/adprojus/leg/17/677/345.htm?s=>.

346. Código Civil para el Estado de Nayarit [Civil Code for the State of Nayarit], art. 352, 22 de Agosto de 1981 (Mex.), *available at* <http://201.159.134.38/obtenerdoc.php?path=/Documentos/ESTADO/NAYARIT/o522101.doc&nombreclave=o522101.doc>.

347. Código Civil para el Estado de Nuevo Leon [Civil Code for the State of Nuevo Leon], art. 359, 05 de Febrero de 2014 (Mex.), *available at* <http://201.159.134.38/obtenerdoc.php?path=/Documentos/ESTADO/NUEVO%20LEON/o46152.doc>.

Oaxaca,<sup>348</sup> Querétaro,<sup>349</sup> San Luis Potosí,<sup>350</sup> Sinaloa,<sup>351</sup> Sonora,<sup>352</sup> State of Mexico,<sup>353</sup> Tabasco,<sup>354</sup> Veracruz,<sup>355</sup> and Yucatán.<sup>356</sup>

Laws of many Mexican states specify that children conceived through artificial reproduction shall also have a right to paternity recognition. Codes of San Luis Potosí,<sup>357</sup> Tabasco,<sup>358</sup> and Tamaulipas,<sup>359</sup> for instance, specify that children conceived through artificial reproduction technologies shall

348. Código Civil para el Estado de Oaxaca [Civil Code for the State of Oaxaca], art. 372, 18 de Mayo de 2013 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Oaxaca/wo85840.doc>.

349. Código Civil del Estado de Querétaro [Civil Code of the State of Querétaro], art. 347, 20 de Octubre de 2009 (Mex.), available at <http://201.159.134.38/obtenerdoc.php?path=/Documentos/ESTADO/QUERETARO/o521713.doc&nombreclave=o521713.doc>.

350. Código Familiar para el Estado de San Luis Potosí [Family Code for the State of San Luis Potosí], art. 188, 18 de Diciembre de 2008 (Mex.), available at <http://info4.juridicas.unam.mx/adprojus/leg/25/1015/188.htm?s=>.

351. Código Civil para el Estado de Sinaloa [Civil Code for the State of Sinaloa], art. 360, 25 de Abril de 2012 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Sinaloa/wo78889.pdf>.

352. Código de Familia para el Estado de Sonora [Family Code for the State of Sonora], art. 215, 233, 240, 15 de Octubre de 2009 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=21739&ambito=ESTATAL>.

353. Código Civil del Estado de México [Civil Code of the State of Mexico], art. 4.165, 29 de Abril de 2002 (Mex.), available at <http://201.159.134.38/obtenerdoc.php?path=/Documentos/ESTADO/ESTADO%20DE%20MEXICO/o535129.doc&nombreclave=o535129.doc>.

354. Código Civil para el Estado Libre y Soberano de Tabasco [Civil Code for the Free and Sovereign State of Tabasco], art. 365, 13 de Diciembre de 2008 (Mex.), available at <http://201.159.134.38/obtenerdoc.php?path=/Documentos/ESTADO/TABASCO/o517547.doc&nombreclave=o517547.doc>.

355. Código Civil para el Estado de Veracruz Ignacio de la Llave [Civil Code for the State of Veracruz], art. 289(II), 28 de Junio de 2012 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Veracruz/wo77127.pdf>.

356. Código de Familia del Estado de Yucatán [Family Code of the State of Yucatán], art. 260, 30 de Abril de 2013 (Mex.), available at <http://info4.juridicas.unam.mx/adprojus/leg/32/1308/261.htm?s=>.

357. Código Familiar para el Estado de San Luis Potosí [Family Code for the State of San Luis Potosí], art. 244, 18 de Diciembre de 2008 (Mex.), available at <http://info4.juridicas.unam.mx/adprojus/leg/25/1015/244.htm?s=>.

358. Código Civil para el Estado Libre y Soberano de Tabasco [Civil Code for the Free and Sovereign State of Tabasco], art. 365, 13 de Diciembre de 2008 (Mex.), available at <http://201.159.134.38/obtenerdoc.php?path=/Documentos/ESTADO/TABASCO/o517547.doc&nombreclave=o517547.doc>.

359. Código Civil para el Estado de Tamaulipas [Civil Code for the State of Tamaulipas], art. 302, 10 de Enero de 1987 (Mex.), available at <http://201.159.134.38/obtenerdoc.php?path=/Documentos/ESTADO/TAMAULIPAS/o535202.doc&nombreclave=o535202.doc>.

have a right to paternity recognition as long as the father has given informed consent to the procedure, and prevent fathers from disputing paternity when such consent has been given. The Tabasco Civil Code extends this right to unborn children conceived artificially, remarkably, even before implantation in the maternal uterus, which would allow frozen human embryos to be legally claimed as children, a very progressive measure in terms of recognition of the parent-child relationship between biological parents and human embryos created through artificial procreation.<sup>360</sup>

b. Prenatal alimony

Over half of all Latin American and Caribbean civil codes, family codes, and children's codes recognize prenatal alimony rights to which both the unborn child and the mother are entitled. For instance, Brazil's 2008 statute n. 11.804 allows a pregnant woman to collect prenatal alimony (*alimentos gravíticos*) from the potential father of her unborn child throughout pregnancy, from the child's conception to his birth.<sup>361</sup> This "supplementary financial aid throughout pregnancy,"<sup>362</sup> would account for half of a pregnant woman's expenses for food or health care costs. Upon the child's birth, the financial aid is automatically transformed into child support, unless paternity is successfully contested.<sup>363</sup>

In Paraguay, juvenile courts—rather than family courts—hold jurisdiction to hear prenatal alimony complaints, evincing a view of prenatal alimony primarily as a right of children.<sup>364</sup> Mexican states like

---

360. Código Civil para el Estado Libre y Soberano de Tabasco [Civil Code for the Free and Sovereign State of Tabasco], art. 349, 13 de Diciembre de 2008 (Mex.), available at <http://201.159.134.38/obtenerdoc.php?path=/Documentos/ESTADO/TABASCO/o517547.doc&nombreclave=o517547.doc>.

361. LEI NO. 11.804, art. 2, (Braz.), available at [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2008/lei/l11804.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/lei/l11804.htm).

362. See *Lei dos alimentos gravídicos garante "pensão" durante a gestação* [Prenatal alimony law ensures "pension" during gestation], DOURADO NEWS (2013), <http://www.douradosnews.com.br/brasil-mundo/lei-dos-alimentos-gravidicos-garante-pensao-durante-a-gestacao> (explaining that Luciana Branco, president of the Associação Brasileira de Mulheres de Carreira Jurídica (ABMCJ/MS) and member of the Comissão da Mulher Advogada da Ordem dos Advogados, Seccional Mato Grosso do Sul (OAB/MS) states that this law guarantees that the future father will pay the pregnant woman a supplementary financial aid, during the period of her pregnancy).

363. LEI NO 11.804, art. 6, 05 de Novembro de 2008 (Braz.), available at [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2008/lei/l11804.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/lei/l11804.htm).

364. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 161 (Para.), available at [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Paraguay.pdf).

Michoacán,<sup>365</sup> Morelos,<sup>366</sup> Tamaulipas,<sup>367</sup> and San Luis Potosí<sup>368</sup> also recognize a parental duty to pay prenatal alimony. The state of Hidalgo provides this duty shall exist from the moment of the child's conception.<sup>369</sup> In addition, the right to prenatal alimony may survive the death of a child's father in states like Mexico<sup>370</sup> and Yucatán.<sup>371</sup>

Prenatal alimony normally covers the mother's health care expenses during gestation, delivery, and post-partum, under the codes of Colombia,<sup>372</sup> Costa Rica,<sup>373</sup> Chile,<sup>374</sup> Dominican Republic,<sup>375</sup> Ecuador,<sup>376</sup> El

365. Código Familiar para el Estado de Michoacán de Ocampo [Family Code for the State of Michoacán de Ocampo], art. 453, 02 de Noviembre de 2008 (Mex.), available at <http://info4.juridicas.unam.mx/adprojus/leg/17/677/455.htm?s=>.

366. Código Familiar para el Estado Libre y Soberano de Morelos [Family Code for the Free and Sovereign State of Morelos], art. 172, 28 de Marzo de 2013 (Mex.), available at <http://info4.juridicas.unam.mx/adprojus/leg/18/718/176.htm?s=>.

367. Código Civil para el Estado de Tamaulipas [Civil Code for the State of Tamaulipas], art. 277, 11 de Diciembre de 1986 (Mex.), available at <http://201.159.134.38/obtenerdoc.php?path=/Documentos/ESTADO/TAMAULIPAS/o535202.doc&nombrec clave=o535202.doc>.

368. Código Familiar para el Estado de San Luis Potosí [Family Code for the State of San Luis Potosí], art. 150 (I), 18 de Diciembre de 2008 (Mex.), available at <http://docs.mexico.justia.com.s3.amazonaws.com/estatales/san-luis-potosi/codigo-familiar-para-el-estado-de-san-luis-potosi.pdf>.

369. Ley para la Familia del Estado de Hidalgo [Family Law of the State of Hidalgo], art. 129, 09 de Abril de 2007 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=86599&ambito=ESTATAL>.

370. Código Civil del Estado de México [Civil Code of the State of México] art. 6.178, 07 de Julio de 2002 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=35129&ambito=ESTATAL>.

371. Código de Familia del Estado de Yucatán [Family Code of the State of Yucatán] art. 24, 804, 30 de Abril de 2012 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=44767&ambito=>.

372. LEY 1098 DE 2006, CÓDIGO DE LA INFANCIA Y LA ADOLESCENCIA, art. 24, 111 (Colom.), available at <http://www.icbf.gov.co/portal/page/portal/PortalICBF/Bienestar/LeyInfanciaAdolescencia/SobreLaLey/CODIGOINFANCIALey1098.pdf>.

373. CÓDIGO DE FAMILIA, art. 96 (Costa Rica), available at [http://www.oas.org/dil/esp/Codigo\\_de\\_Familia\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_de_Familia_Costa_Rica.pdf).

374. Ley No. 14.908, art. 1, Septiembre 1, 2007 Diario Oficial [D.O.] (Chile), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Chile.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Chile.pdf).

375. CÓDIGO PARA EL SISTEMA DE PROTECCIÓN Y LOS DERECHOS FUNDAMENTALES DE NIÑOS, NIÑAS Y ADOLESCENTES, art. 173 (Dom. Rep.), available at <http://www.oas.org/dil/esp/LEY%20136-03%20-%20Codigo%20para%20el%20Sistema%20de%20Protecci%C3%B3n%20y%20los%20Derechos%20Fundamentales%20de%20Ni%C3%B1os%20Ni%C3%B1as%20y%20Adolescentes%20Republica%20Dominicana.pdf>.

376. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 148 (Ecuador), available at [http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador\\_Code.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador_Code.htm).

Salvador,<sup>377</sup> Honduras,<sup>378</sup> Panama,<sup>379</sup> Paraguay,<sup>380</sup> Peru,<sup>381</sup> and Uruguay.<sup>382</sup> According to Ecuador's Code of Childhood and Adolescence, in addition to maternity and prenatal health care expenses, prenatal alimony may cover the pregnant mother's food, clothing, shelter expenses, and may apply even in the event of miscarriage or unintended fetal death.<sup>383</sup> The Civil Code of Peru also mandates coverage of food expenses—limiting them to sixty days before and after delivery<sup>384</sup>—as well as shelter, clothing, and even education or employment training costs.<sup>385</sup>

Generally, alimony is not gender-neutral in Latin America—prenatal alimony obligations usually belong to fathers. Costa Rican courts may order a father to reimburse the mother of his child for pregnancy and prenatal care expenses as long as his paternity is established within twelve months of the child's birth.<sup>386</sup> Panama's Family Code provides that fathers shall be subject to prenatal alimony obligations to be paid to the child's mother during pregnancy and lactation.<sup>387</sup> This obligation can be binding on the

---

377. CÓDIGO DE FAMILIA, art. 249 (El Sal.), available at [http://www.oas.org/dil/esp/Codigo\\_de\\_Familia\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_de_Familia_El_Salvador.pdf).

378. CÓDIGO CIVIL, art. 52 (Hond.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Honduras.pdf); see also CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 73-74 (Hond.), available at [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Honduras.pdf).

379. LEY NO. 3: POR LA CUAL SE APRUEBA EL CÓDIGO DE FAMILIA, art. 377(4), 493 (Pan.), available at <http://www.organojudicial.gob.pa/cendoj/wp-content/blogs.dir/cendoj/codigo-de-la-familia-94.pdf>.

380. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 97, 161 (Para.), available at [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Paraguay.pdf).

381. CÓDIGO CIVIL, art. 46, 414 (Peru), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf); see also CÓDIGO DE LOS NIÑOS Y ADOLESCENTES, art. 92 (Peru), available at [http://www.oas.org/dil/esp/Codigo\\_de\\_la\\_Ninez\\_y\\_la\\_Adolescencia\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_de_la_Ninez_y_la_Adolescencia_Peru.pdf).

382. CÓDIGO DE LA NIÑEZ Y LA ADOLESCENCIA, art. 46 (Uru.), available at <http://archivo.presidencia.gub.uy/ley/2004090801.htm>.

383. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 148 (Ecuador), available at [http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador\\_Code.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador_Code.htm).

384. CÓDIGO CIVIL, art. 46, 414 (Peru), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf).

385. CÓDIGO DE LOS NIÑOS Y ADOLESCENTES, art. 92 (Peru), available at [http://www.oas.org/dil/esp/Codigo\\_de\\_la\\_Ninez\\_y\\_la\\_Adolescencia\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_de_la_Ninez_y_la_Adolescencia_Peru.pdf).

386. CÓDIGO DE FAMILIA, art. 96 (Costa Rica), available at [http://www.oas.org/dil/esp/Codigo\\_de\\_Familia\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_de_Familia_Costa_Rica.pdf).

387. LEY NO. 3: POR LA CUAL SE APRUEBA EL CÓDIGO DE FAMILIA, art. 377(4), 493 (Pan.), available at <http://www.organojudicial.gob.pa/cendoj/wp-content/blogs.dir/cendoj/codigo-de-la-familia-94.pdf>.

father's estate in countries like Peru and Panama,<sup>388</sup> where, if the child should die before birth, the mother would have no obligation to reimburse any payment made to her under this obligation.<sup>389</sup> In addition, the Honduran Family Code provides that perpetrators of sexual assault may be ordered to pay prenatal and postnatal alimony to any children conceived in rape.<sup>390</sup>

c. Balance of parental rights v. prenatal rights

Some Latin America and Caribbean Codes protect the unborn child's best interests over parental rights or wishes under certain circumstances. For instance, Panama's Family Code mandates state action, for the sake of the unborn children, to combat improper use of drugs, alcohol, or medication by pregnant women.<sup>391</sup> Ecuador's Children's Code, which defines children as any human being from conception to the age of eighteen, establishes that the best interests of the child should apply to unborn children by stating that, when in conflict with other rights, children's rights shall have absolute priority.<sup>392</sup>

Mexican states like Tlaxcala<sup>393</sup> and Puebla<sup>394</sup> enable judges to take any measures they deem appropriate to protect the unborn child's health and integrity during divorce proceedings. The Family Code of Morelos specifies

---

388. CÓDIGO CIVIL, art. 46, 414 (Peru), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf); *see also* LEY NO. 3: POR LA CUAL SE APRUEBA EL CÓDIGO DE FAMILIA, art. 287–89 (Pan.), *available at* <http://www.organojudicial.gob.pa/cendoj/wp-content/blogs.dir/cendoj/codigo-de-la-familia-94.pdf>.

389. LEY NO. 3: POR LA CUAL SE APRUEBA EL CÓDIGO DE FAMILIA, art. 289 (Pan.), *available at* <http://www.organojudicial.gob.pa/cendoj/wp-content/blogs.dir/cendoj/codigo-de-la-familia-94.pdf>.

390. CÓDIGO DE FAMILIA, art. 214 (Hond.), *available at* [http://www.oas.org/dil/esp/Codigo\\_de\\_Familia\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_de_Familia_Honduras.pdf).

391. LEY NO. 3: POR LA CUAL SE APRUEBA EL CÓDIGO DE FAMILIA, art. 697 (Pan.), *available at* <http://www.organojudicial.gob.pa/cendoj/wp-content/blogs.dir/cendoj/codigo-de-la-familia-94.pdf>.

392. CODIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 2, 12 (Ecuador), *available at* [http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador\\_Code.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador_Code.htm).

393. CÓDIGO CIVIL DEL ESTADO DE TLAXCALA [Civil Code of the State of Tlaxcala], art. 113, 20 de Octubre de 1976 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=38477&ambito=ESTATAL>.

394. Código Civil para el Estado Libre y Soberano de Puebla [Civil Code for the Free and Sovereign State of Puebla], art. 434, 25 de Enero de 2005 (Mex.), <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=10202&ambito=ESTATAL>.

that, in cases of matrimonial annulment, such measures may protect an unborn child's right to paternity recognition and alimony.<sup>395</sup>

In the realm of family planning, the Constitution of Venezuela mandates state protection and assistance to mothers from the child's conception throughout pregnancy; furthermore, it states that family planning methods should be based on ethical and scientific considerations, which may eventually be interpreted to preempt abortifacients or abortion.<sup>396</sup> Likewise, Paraguay's Health Code states that reproductive health services shall be supervised by health authorities that shall oversee respect for the fundamental rights of human beings and the dignity of the family.<sup>397</sup>

Regarding artificial procreation, Peru's Health Act prohibits in vitro fertilization for non-reproductive purposes as well as for human cloning.<sup>398</sup> Furthermore, Colombia,<sup>399</sup> Honduras,<sup>400</sup> and Ecuador<sup>401</sup> categorically prohibit prenatal adoptions perhaps for the purpose of preventing surrogacy arrangements or baby trafficking. The Honduran Children's Code categorically prohibits artificial procreation involving the use of sperm donation in artificial insemination, probably to prevent a child from having more than two (either biological or legal) parents.<sup>402</sup> The Argentinian province of Neuquén prohibits cloning, the creation of hybrid embryos, and the creation of embryo storage banks.<sup>403</sup> In addition, the

---

395. Código Familiar para el Estado Libre y Soberano de Morelos [Family Code for the Free and Sovereign State of Morelos], art. 172, 193, 06 de Septiembre de 2006 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=2336&ambito=ESTATAL>.

396. VENEZ. CONST. art. 76 (Venez.), available at [http://www.oas.org/dil/esp/Constitucion\\_Venezuela.pdf](http://www.oas.org/dil/esp/Constitucion_Venezuela.pdf).

397. CÓDIGO SANITARIO, art. 19 (Para.), available at [http://www.cird.org.py/salud/docs/codigo\\_sanitario.pdf](http://www.cird.org.py/salud/docs/codigo_sanitario.pdf).

398. LEY GENERAL DE SALUD LEY NO. 26842, art. 7 (Peru) available at [http://essalud.gob.pe/transparencia/pdf/informacion/ley\\_general\\_salud\\_26842.pdf](http://essalud.gob.pe/transparencia/pdf/informacion/ley_general_salud_26842.pdf).

399. LEY 1098 DE 2006, CÓDIGO DE LA INFANCIA Y LA ADOLESCENCIA, art. 64 (Colom.), available at <http://www.icbf.gov.co/portal/page/portal/PortalICBF/Bienestar/LeyInfanciaAdolescencia/SobreLaLey/CODIGOINFANCIALey1098.pdf>.

400. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 64 (Hond.), available at [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Honduras.pdf).

401. CODIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 163 (Ecuador), available at [http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador\\_Code.htm](http://www.law.yale.edu/rcw/rcw/jurisdictions/ams/ecuador/Ecuador_Code.htm).

402. CÓDIGO DE LA NIÑEZ Y ADOLESCENCIA, art. 64 (Hond.), available at [http://www.oas.org/dil/esp/Codigo\\_Ninez\\_Adolescencia\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Ninez_Adolescencia_Honduras.pdf).

403. LEY 2258, art. 4, 5 (Arg.), available at <http://test.e-legisar.msal.gov.ar/leisref/public/showAct.php?id=5833&word=fecundacion>.

Mexican states of Sonora<sup>404</sup> and Querétaro<sup>405</sup> establish that children conceived through artificial reproduction shall be entitled to disclosure of identifying information of their biological parents when their conception involved sperm or egg donation, while specifying that disclosure shall not entail paternity obligations.

2. Civil Inabilities, Legal Protection, Succession and Property Rights of Unborn Children

a. Unborn child's entitlement to life and protection under the law despite his legal incapacity

Most Latin American and Caribbean civil codes state that the life of the unborn is protected by law even though he may not enjoy legal capacity or legal personhood for civil law purposes.<sup>406</sup> This fact reinforces other evidence that states parties to the Convention understand the term *person* to include unborn children, despite age-related limitations in the civil codes. The civil codes of Bolivia,<sup>407</sup> Brazil,<sup>408</sup> Chile,<sup>409</sup> Colombia,<sup>410</sup> Ecuador,<sup>411</sup> El Salvador,<sup>412</sup> Honduras,<sup>413</sup> Mexico,<sup>414</sup> Nicaragua,<sup>415</sup> Panama,<sup>416</sup>

404. Código de Familia para el Estado de Sonora [Family Code for the State of Sonora], art. 207, 15 de Octubre de 2009 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=21739&ambito=ESTATAL>.

405. Código Civil del Estado de Querétaro [Civil Code of the State of Querétaro], art. 22, 21 de Octubre de 2009 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=21713&ambito=ESTATAL>.

406. Civil Codes of Bolivia (1975), Ecuador (1982), Venezuela (1982), Paraguay (1988), Peru (1991), Chile (2000), Brazil (2002), and El Salvador (2004) were adopted after the adoption of the American Convention. Civil Codes of Argentina (1871), Colombia (1873), Panama (1916), Mexico (1928), Nicaragua (1929), and Honduras (1906) precede the signature or adoption of the American Convention, nevertheless their provisions regarding unborn children are still in force, that is, have not been derogated or substantially modified.

407. CÓDIGO CIVIL, art. 1, 663, 1008 (Bol.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Bolivia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Bolivia.pdf).

408. Lei 10.406, 10 de Janeiro de 2002, art. 2 (Braz.), *available at* [http://www.planalto.gov.br/ccivil\\_03/Leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/Leis/2002/L10406.htm).

409. CÓDIGO CIVIL, art. 74–75 (Chile), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Chile.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Chile.pdf).

410. CÓDIGO CIVIL, art. 90 (Colom.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Colombia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Colombia.pdf).

411. CÓDIGO CIVIL, art. 60–61 (Ecuador), *available at* [http://www.iberred.org/sites/default/files/codigo\\_civil\\_ecuador.pdf](http://www.iberred.org/sites/default/files/codigo_civil_ecuador.pdf).

412. CÓDIGO CIVIL, art. 72–73 (El Sal.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_Civil_El_Salvador.pdf).



Paraguay,<sup>417</sup> and Peru<sup>418</sup> specifically state that the law protects the life of the unborn despite his or her lack of legal personhood or civil capacity, which begins at birth. The Mexican Federal Civil Code states that while legal capacity is acquired at birth, an individual is protected by law from the moment he is conceived.<sup>419</sup> The Peruvian Civil Code states that human life begins at conception, the unborn are subject to all rights that may benefit them and that and that only property rights that can be made contingent on birth.<sup>420</sup>

Particularly deserving of legal protection, according to Latin American civil codes, is the unborn child's right to life, which may be judicially protected in some jurisdictions. Civil Codes of Chile,<sup>421</sup> Colombia,<sup>422</sup> Ecuador,<sup>423</sup> El Salvador,<sup>424</sup> Honduras,<sup>425</sup> Nicaragua<sup>426</sup> and Panama<sup>427</sup>

413. CÓDIGO CIVIL, art. 51–52 (Hond.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Honduras.pdf).

414. Código Civil Federal [CC] [Federal Civil Code], art. 22, Diario Oficial de la Federación [DO], 28 de Enero de 2010 (Mex.), *available at* <http://www.oas.org/dil/esp/C%C3%B3digo%20Civil%20Federal%20Mexico.pdf>.

415. CÓDIGO CIVIL, art. 7, 13 (Nicar.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Nicaragua.pdf).

416. CÓDIGO CIVIL, art. 41–43 (Pan.), *available at* <http://docs.panama.justia.com/federales/codigos/codigo-civil.pdf>.

417. CÓDIGO CIVIL, art. 28, 37 (Para.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Paraguay.pdf).

418. CÓDIGO CIVIL, art. 1 (Peru), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf).

419. Código Civil Federal [CC] [Federal Civil Code], art. 22, Diario Oficial de la Federación [DO], 28 de enero de 2010, *available at* <http://www.oas.org/dil/esp/C%C3%B3digo%20Civil%20Federal%20Mexico.pdf>.

420. CÓDIGO CIVIL, art. 1 (Peru), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf).

421. CÓDIGO CIVIL, art. 75 (Chile), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Chile.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Chile.pdf).

422. CÓDIGO CIVIL, art. 93 (Colom.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Colombia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Colombia.pdf).

423. CÓDIGO CIVIL, art. 61 (Ecuador), *available at* [http://www.iberred.org/sites/default/files/codigo\\_civil\\_ecuador.pdf](http://www.iberred.org/sites/default/files/codigo_civil_ecuador.pdf).

424. CÓDIGO CIVIL, art. 73 (El Sal.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_Civil_El_Salvador.pdf).

425. CÓDIGO CIVIL, art. 52 (Hond.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Honduras.pdf).

426. CÓDIGO CIVIL, art. 13 (Nicar.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Nicaragua.pdf).

427. CÓDIGO CIVIL, art. 43 (Pan.), *available at* <http://docs.panama.justia.com/federales/codigos/codigo-civil.pdf>.

authorize judges to order any measures they may deem convenient “to protect the unborn’s life ” whenever judges believe that life may be endangered, either at their own initiative or upon a third party’s request. The Chilean Supreme Court, for instance, invoked this provision<sup>428</sup> when banning emergency contraception in 2001 and 2008.<sup>429</sup> Judicial measures may include legal sanctions on the mother who seeks to end her child’s life, but punishments that may endanger her unborn child’s life or health can be deferred until after birth.<sup>430</sup>

Some civil codes identify the unborn as “natural persons”—recognizing their natural existence and entitlement to life, health, and personal integrity—distinct from the designation of “legal persons,” which is often characterized as legal capacity to enter contracts, or to be the subject of property and succession rights. For instance, Venezuela’s Civil Code states that legal persons are those born alive, but that every member of the human species, including the fetus, is considered a natural person where it may be in his favor.<sup>431</sup>

Similarly, the Argentinian Civil Code states that, even though the unborn are civilly incapacitated, human existence begins from conception in the maternal womb and persons may acquire some rights before they are born.<sup>432</sup> The Argentinian Supreme Court affirmed the textual interpretation of this civil code article in *Sánchez Elvira Berta v. the National Ministry of Justice and Human Rights*; where a grandmother sought victim compensation for the forced disappearance of her daughter, nine months pregnant at the time of her execution, and compensation for her unborn grandchild.<sup>433</sup> Her claim had been rejected in lower courts based on the

428. CÓDIGO CIVIL, art. 75 (Chile), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Chile.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Chile.pdf).

429. 14 C.S.R.C., Sala Constitucional Tercera, Sentencia No 2.186.2001 ¶ 19; see also Tribunal Constitucional [T.C.] [Constitutional Court], 18 Abril 2008, Requerimiento de inconstitucionalidad deducido en contra de algunas disposiciones de las “Normas Nacionales sobre Regulación de la Fertilidad,” aprobadas por el Decreto Supremo N 48, de 2007, del Ministerio de Salud, Rol de la causa: 740-07, (Chile), available at [http://www.tribunalconstitucional.cl/wp/descargar\\_expediente.php?id=34407](http://www.tribunalconstitucional.cl/wp/descargar_expediente.php?id=34407).

430. See CÓDIGO CIVIL, art. 75 (Chile), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Chile.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Chile.pdf); see also CÓDIGO CIVIL, art. 61 (Ecuador), available at [http://www.iberred.org/sites/default/files/codigo\\_civil\\_ecuador.pdf](http://www.iberred.org/sites/default/files/codigo_civil_ecuador.pdf).

431. CÓDIGO CIVIL, art. 16–17 (Venez.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Venezuela.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Venezuela.pdf).

432. CÓDIGO CIVIL [CÓD. CIV.] [CIVIL CODE] art. 54, 70, 3290 (Arg.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_de\\_la\\_Republica\\_Argentina.pdf](http://www.oas.org/dil/esp/Codigo_Civil_de_la_Republica_Argentina.pdf).

433. See María Laura Farfán Bertrán, *The Protection of the Human Right to Life in the Republic of Argentina—The Guarantee of the Enforceability of the Whole System of Human*

argument that, according to the Argentinian Civil Code, the unborn child did not acquire rights that could be transferred to his heirs. The Supreme Court, however, rejected that reasoning on the basis that hers was not a claim for a hereditary right that depended on the child's live birth but one depending on his existence. The court thus acknowledged the existence of the unborn child as a human person and allowed compensation for his grandmother.<sup>434</sup>

Virtually all Mexican states and Mexico City<sup>435</sup> distinguish between legal and physical persons, finding that the unborn fit into the latter category, even though the unborn—like minors—lack civil capacity to enter contracts, they are entitled to a minimum set of basic rights, including the right to life. For instance, the Civil Code of Guerrero states that “legal personhood” starts at birth, but the unborn are “natural or physical persons” and human beings who are entitled to legal protection from their conception.<sup>436</sup> Likewise, the states of Aguascalientes,<sup>437</sup> Baja California,<sup>438</sup> Baja California Sur,<sup>439</sup> Campeche,<sup>440</sup> Chiapas,<sup>441</sup> Chihuahua,<sup>442</sup> Coahuila,<sup>443</sup>

*Rights*, AMERICANS UNITED FOR LIFE, DEFENDING THE HUMAN RIGHT TO LIFE IN LATIN AMERICA, 132–33 (2012) (citing Supreme Court judgment 330: 2304), <http://www.aul.org/wp-content/uploads/2012/07/argentina-la.pdf>.

434. *Id.*

435. Código Civil del Distrito Federal [Civil Code for the Federal District], art. 22, 26 de Mayo de 1928 (Mex.), available at <http://www.idconline.com.mx/media/2012/10/10/cdigo-civil-para-el-distrito-federal.pdf>.

436. Código Civil del Estado Libre y Soberano de Guerrero [Civil Code for the Free and Sovereign State of Guerrero] Número 358, art. 25, 2 de Febrero de 1993 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=16167&ambito=ESTATAL>.

437. Código Civil del Estado de Aguascalientes [Civil Code of the State of Aguascalientes], art. 19, 07 de Diciembre de 1947 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=18757&ambito=estat> al.

438. Código Civil del Estado de Baja California [Civil Code of the State of Baja California], art. 22, 31 de Enero de 1974 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Baja%20California/wo19493.pdf>.

439. Código Civil para el Estado Libre y Soberano de Baja California Sur [Civil Code for Free and Sovereign State of Baja California], art. 22, 1201, 2231, 19 de Julio de 1996 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=40021&ambito=ESTATAL>.

440. Código Civil del Estado de Campeche [Civil Code of the State of Campeche], art. 26, 17 de Octubre de 1942 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Campeche/wo20300.doc>.

441. Código Civil del Estado de Chiapas [Civil Code of the State of Chiapas], art. 20, 2 de Febrero de 1938 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Chiapas/wo20998.doc>.

Colima,<sup>444</sup> Durango,<sup>445</sup> Guanajuato,<sup>446</sup> Guerrero,<sup>447</sup> Hidalgo,<sup>448</sup> Jalisco,<sup>449</sup> Michoacán,<sup>450</sup> Morelos,<sup>451</sup> Nayarit,<sup>452</sup> Nuevo León,<sup>453</sup> Oaxaca,<sup>454</sup> Puebla,<sup>455</sup>

---

442. Código Civil del Estado de Chihuahua [Civil Code of the State of Chihuahua], art. 22, 23 de Marzo de 1974 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Chihuahua/wo22642.pdf>.

443. Código Civil para el Estado de Coahuila de Zaragoza [Civil Code for the State of Coahuila de Zaragoza], art. 31, 25 de Junio de 1999 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=25448&ambito=ESTATAL>.

444. Código Civil del Estado de Colima [New Civil Code of the State of Colima], art. 22, 25 de Septiembre de 1954 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=25732&ambito=ESTATAL>.

445. Código Civil del Estado de Durango [Civil Code of the State of Durango], art. 22, 21 de Abril de 2013 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Durango/wo24466.doc>.

446. Código Civil del Estado de Guanajuato [Civil Code of the State of Guanajuato], art. 21, 14 de Mayo de 1967 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=38863&ambito=ESTATAL>.

447. Código Civil del Estado Libre y Soberano de Guerrero [Civil Code Free and Sovereign State of Guerrero], Número 358, art. 25, 2 de Febrero de 1993 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=16167&ambito=ESTATAL>.

448. Código Civil para el Estado de Hidalgo [Civil Code for the State of Hidalgo], art. 22, 08 de Octubre de 1940 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=23547&ambito=ESTATAL>.

449. Código Civil del Estado de Jalisco [Civil Code of the State of Jalisco], art. 19, 25 de Febrero de 1995 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=77043&ambito=ESTATAL>.

450. Código Civil para el Estado de Michoacán [Civil Code for the State of Michoacán], art. 16, 30 de Julio de 1936 (1936 Code), art. 20 (2008 Code) (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=563&ambito=estatal>.

451. Código Familiar para el Estado Libre y Soberano de Morelos [Family Code for Free and Sovereign State of Morelos], art. 3, 06 de Septiembre de 2006 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=2336&ambito=ESTATAL>.

452. Código Civil del Estado de Nayarit [Civil Code of the State of Nayarit], art. 22, 22 de Agosto de 1981 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=22101&ambito=ESTATAL>.

453. Código Civil para el Estado de Nuevo Leon [Civil Code of the State of Nuevo Leon], art. 23, 06 de Julio de 1935 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=6152&ambito=ESTATAL>.

454. Código Civil para del Estado de Oaxaca [Civil Code for the State of Oaxaca], art. 21, 25 de Noviembre de 1944 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=85840&ambito=ESTATAL>.

455. Código Civil para el Estado Libre y Soberano de Puebla [Civil Code for Free and Sovereign State of Puebla], art. 37, 25 de Enero de 2005 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=10202&ambito=ESTATAL>.

Querétaro,<sup>456</sup> Quintana Roo,<sup>457</sup> San Luis Potosí,<sup>458</sup> Sinaloa,<sup>459</sup> Tabasco,<sup>460</sup> Tamaulipas,<sup>461</sup> Tlaxcala,<sup>462</sup> Veracruz,<sup>463</sup> and Yucatán<sup>464</sup> use nearly identical language when essentially stating that a natural person's "legal capacity is acquired at birth," but that "from the moment an individual is conceived, he is entitled to legal protection."

b. The unborn's conditional entitlement to property and succession rights

National laws of most Latin American and Caribbean nations generally allow unborn children to be entitled to property and succession rights as well as other benefits, evincing their recognition of unborn children as subjects of legal rights. For instance, Suriname's civil law generally affords unborn children the legal capacity to inherit, to receive gifts and to be granted some property rights.<sup>465</sup> Chilean tax law allows for the creation of

456. Código Civil del Estado de Querétaro [Civil Code of the State of Querétaro], art. 22, 21 de Octubre de 2009 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=21713&ambito=ESTATAL>.

457. Código Civil para el Estado de Quintana Roo [Civil Code for the State of Quintana Roo], art. 428, 08 de Octubre de 1980 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=86967&ambito=ESTATAL>.

458. Código Civil para el Estado de San Luis Potosí [Civil Code for the State of San Luis Potosí], art. 17, 18 de Abril de 1946 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/San%20Luis%20Potosi/wo62366.pdf>.

459. Código Civil del Estado de Sinaloa [Civil Code of the State of Sinaloa], art. 22, 25 de Julio de 1940 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Sinaloa/wo78889.pdf>.

460. Código Civil para el Estado de Tabasco [Civil Code for the State of Tabasco], art. 29, 31, 09 de Abril de 1997 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=17547&ambito=ESTATAL>.

461. Código Civil para el Estado de Tamaulipas [Civil Code for the State of Tamaulipas], art. 18, 10 de Enero de 1987 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=35202&ambito=ESTATAL>.

462. Código Civil para del Estado Libre y Soberano de Tlaxcala [Civil Code for the Free and Sovereign State of Tlaxcala], art. 32, 20 de Octubre de 1976 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=38477&ambito=ESTATAL>.

463. Código Civil del Estado de Veracruz [Civil Code of the State of Veracruz], art. 26, 28, 15 de Septiembre de 1932 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Veracruz/wo77127.pdf>.

464. Código Civil del Estado de Yucatán [Civil Code of the State of Yucatan], art. 16, 31 de Diciembre de 1993 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=9005&ambito=ESTATAL>.

465. See Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Second Periodic Report: Suriname*, ¶ 43, U.N. Doc. CRC/C/SUR/2 (Nov. 24, 2005), available at <http://tb.ohchr.org/default.aspx?Symbol=>

trusts in the name of unborn children.<sup>466</sup> Paraguay's Civil Code provides that, for the purposes of life insurance, the term "child" shall include unborn children as beneficiaries and enables individuals to recover in tort suits for prenatal injuries.<sup>467</sup>

Entitlement of unborn children to property and succession rights is usually conditioned on their live birth, in which case the corresponding legal effects become retroactive to the time of the gift, bequest or death of the testator, e.g., in Brazil,<sup>468</sup> Ecuador,<sup>469</sup> El Salvador,<sup>470</sup> Mexico<sup>471</sup> and Honduras.<sup>472</sup> In Argentina<sup>473</sup> and Paraguay,<sup>474</sup> those rights become irrevocable upon the child's live birth, no matter how brief his or her survival. Many national civil codes refer to the unborn child's rights as deferred or suspended until live birth, such as the civil codes of *Bolivia*,<sup>475</sup> *Colombia*,<sup>476</sup> *Costa Rica*,<sup>477</sup> *Ecuador*,<sup>478</sup> *El Salvador*,<sup>479</sup> *Honduras*,<sup>480</sup>

CRC/C/SUR/2; see also Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial reports of states parties due in 1995: Addendum, Suriname*, ¶28, U.N. Doc. CRC/C/28/Add.11 (Feb. 13, 1998), available at <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/28/Add.11> (indicating that, according to the country's Civil Code, an unborn child may be named as an heir (art. 865, 927), may be granted usufruct (art. 791) and may receive gifts (art. 1689)).

466. Ley No. 824, 31 de Diciembre de 1974, Diario Oficial [D.O.] (Chile), available at <http://www.sii.cl/pagina/jurisprudencia/legislacion/basica/basica.htm>.

467. CÓDIGO CIVIL DEL PARAGUAY, art. 1680, 1861 (Para.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Paraguay.pdf).

468. Lei 10.406, 10 de Janeiro de 2002, CÓDIGO CIVIL, art. 542 (Braz.), available at [http://www.planalto.gov.br/ccivil\\_03/Leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/Leis/2002/L10406.htm).

469. CÓDIGO CIVIL, art. 63 (Ecuador), available at [http://www.iberred.org/sites/default/files/codigo\\_civil\\_ecuador.pdf](http://www.iberred.org/sites/default/files/codigo_civil_ecuador.pdf).

470. CÓDIGO CIVIL, art. 75 (El Sal.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_Civil_El_Salvador.pdf).

471. Código Civil Federal [CC] [Federal Civil Code], art. 2357, Diario Oficial de la Federación [D.O.], 28 de Enero de 2010 (Mex.), available at <http://www.oas.org/dil/esp/C%C3%B3digo%20Civil%20Federal%20Mexico.pdf>.

472. CÓDIGO CIVIL, art. 54 (Hond.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Honduras.pdf).

473. CÓDIGO CIVIL DE LA REPUBLICA ARGENTINA [CÓD. CIV.] [CIVIL CODE OF THE ARGENTINE REPUBLIC] art. 70, 72 (Arg.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_de\\_la\\_Republica\\_Argentina.pdf](http://www.oas.org/dil/esp/Codigo_Civil_de_la_Republica_Argentina.pdf).

474. CÓDIGO CIVIL DEL PARAGUAY, art. 28 (Para.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Paraguay.pdf).

475. CÓDIGO CIVIL, art. 1122, 1235 (Bol.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Bolivia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Bolivia.pdf).

476. CÓDIGO CIVIL COLOMBIANO, art. 93 (Colom.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Colombia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Colombia.pdf).

Panama,<sup>481</sup> and Peru.<sup>482</sup> Other codes, like the Nicaraguan Civil Code, refer to the unborn child's "eventual" property rights that become effective upon the child's live birth.<sup>483</sup>

Likewise, virtually all Mexican states, i.e., Aguascalientes,<sup>484</sup> Baja California,<sup>485</sup> Baja California Sur,<sup>486</sup> Campeche,<sup>487</sup> Chiapas,<sup>488</sup> Chihuahua,<sup>489</sup> Coahuila,<sup>490</sup> Colima,<sup>491</sup> Durango,<sup>492</sup> the Federal District,<sup>493</sup> Guanajuato,<sup>494</sup>

---

477. CÓDIGO CIVIL, art. 31, 605 (Costa Rica), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Costa_Rica.pdf).

478. CÓDIGO CIVIL, art. 63 (Ecuador), *available at* [http://www.iberred.org/sites/default/files/codigo\\_civil\\_ecuador.pdf](http://www.iberred.org/sites/default/files/codigo_civil_ecuador.pdf).

479. CÓDIGO CIVIL, art. 75 (El Sal.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_Civil_El_Salvador.pdf).

480. CÓDIGO CIVIL, art. 54, 1298 (Hond.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Honduras.pdf).

481. CÓDIGO CIVIL DE LA REPÚBLICA DE PANAMA, art. 44 (Pan.), *available at* <http://docs.panama.justia.com/federales/codigos/codigo-civil.pdf>.

482. CÓDIGO CIVIL, art. 856 (Peru), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf).

483. CÓDIGO CIVIL, art. 12, 15, 19 (Nicar.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Nicaragua.pdf).

484. Código Civil del Estado de Aguascalientes [Civil Code of the State of Aguascalientes], art. 1226, 2228, 07 de Diciembre de 1947 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Aguascalientes/wo18757.doc>.

485. Código Civil del Estado de Baja California [Civil Code of the State of Baja California], art. 1201, 2231, 31 de Enero de 1974 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Baja%20California/wo19493.pdf>.

486. Código Civil para el Estado Libre y Soberano de Baja California Sur [Civil Code for the Free and Sovereign State of Baja California Sur], art. 1219, 2262, 19 de Julio de 1996 (Mex.), *available at* [http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=40021&ambito=.](http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=40021&ambito=)

487. Código Civil del Estado de Campeche [Civil Code of the State of Campeche], art. 1223, 2255, 17 de Octubre de 1942 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Campeche/wo20300.doc>.

488. Código Civil del Estado de Chiapas [Civil Code of the State of Chiapas], art. 1299, 2331, 02 de Febrero de 1938 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Chiapas/wo20998.doc>.

489. Código Civil del Estado de Chihuahua [Civil Code of the State of Chihuahua], art. 1217, 2249, 23 de Marzo de 1974 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Chihuahua/wo22642.pdf>.

490. Código Civil para el Estado de Coahuila de Zaragoza [Civil Code of the State of Coahuila de Zaragoza], art. 789, 2769, 25 de Junio de 1999 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=25448&ambito=ESTATAL>.

Guerrero,<sup>495</sup> Hidalgo,<sup>496</sup> Jalisco,<sup>497</sup> Michoacán,<sup>498</sup> State of Mexico,<sup>499</sup> Morelos,<sup>500</sup> Nayarit,<sup>501</sup> Nuevo León,<sup>502</sup> Oaxaca,<sup>503</sup> Puebla,<sup>504</sup> Querétaro,<sup>505</sup>

---

491. Código Civil del Estado de Colima [Civil Code of the State of Colima], art. 1210, 2247, 25 de Septiembre de 1954 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=25732&ambito=ESTATAL>.

492. Código Civil del Estado de Durango [Civil Code of the State of Durango], art. 1200, 2238, 21 de Abril de 2013 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Durango/wo24466.doc>.

493. Código Civil para el Distrito Federal [Civil Code for the Federal District], art. 1314, 2357, 08 de Agosto de 2013 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Distrito%20Federal/wo29081.doc>.

494. Código Civil Del Estado De Guanajuato [Civil Code of the State of Guanajuato], art. 1853, 2570, 14 de Mayo de 1967 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=38863&ambito=ESTATAL>.

495. Código Civil del Estado Libre y Soberano de Guerrero Número [Civil Code of the Free and Sovereign State of Guerrero Número], 358 art. 1114–15, 2278, 02 de Febrero de 1993 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=16167&ambito=>.

496. Código Civil para el Estado de Hidalgo [Civil Code for the State of Hidalgo], art. 1295, 2339, 08 de Octubre de 1940 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=23547&ambito=ESTATAL>.

497. Código Civil del Estado de Jalisco [Civil Code of the State of Jalisco], art. 1941, 2810, 2955, 25 de Febrero de 1995 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=77043&ambito=ESTATAL>.

498. Código Civil para el Estado de Michoacán [Civil Code for the State of Michoacán], art. 1177, 2209 (1936 Code), art. 485, 1518 (2008 Code) (Mex.), *available at* <http://www.ordenjuridico.gob.mx/estatal.php?liberado=si&edo=16>.

499. Código Civil del Estado de México [Civil Code of the State of Mexico], art. 2.1., 6.21., 7.637, 07 de Julio de 2002 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=35129&ambito=ESTATAL>.

500. Código Civil para el Estado Libre y Soberano de Morelos [Civil Code for the Free and Sovereign State of Morelos], art. 1828, 13 de Octubre de 1993 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=765&ambito=ESTATAL>; *see also* Código Familiar para el Estado Libre y Soberano de Morelos [Family Code for the Free and Sovereign State of Morelos], art. 504, 06 de Septiembre de 2006 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=2336&ambito=ESTATAL>.

501. Código Civil del Estado de Nayarit [Civil Code of the State of Nayarit], art. 1729, 2449, 22 de Agosto de 1981 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=22101&ambito=ESTATAL>.

502. Código Civil del Estado de Nuevo Leon [Civil Code of the State of Nuevo Leon], art. 1211, 2251, 06 de Julio de 1935 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=6152&ambito=ESTATAL>.

503. Código Civil del Estado de Oaxaca [Civil Code of the State of Oaxaca], art. 1217, 2232, 25 de Noviembre de 1944 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=85840&ambito=ESTATAL>.



Quintana Roo,<sup>506</sup> San Luis Potosí,<sup>507</sup> Sinaloa,<sup>508</sup> Tabasco,<sup>509</sup> Tamaulipas,<sup>510</sup> Tlaxcala,<sup>511</sup> Veracruz,<sup>512</sup> Yucatán,<sup>513</sup> and Zacatecas<sup>514</sup> establish, in favor of the unborn, a presumption of entitlement to inherit or receive gifts,

---

504. Código Civil para el Estado Libre y Soberano de Puebla [Civil Code for the Free and Sovereign State of Puebla], art. 3077, 25 de Enero de 2005 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=10202&ambito=ESTATAL>.

505. Código Civil del Estado de Querétaro [Civil Code of the State of Querétaro], art. 1207, 2242, 21 de Octubre de 2009 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=21713&ambito=ESTATAL>.

506. Código Civil para el Estado de Quintana Roo [Civil Code for the State of Quintana Roo], art. 1260, 1261, 08 de Octubre de 1980 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=86967&ambito=ESTATAL>.

507. Código Civil para el Estado de San Luis Potosí [Civil Code for the State of San Luis Potosí], art. 1160, 2186, 18 de Abril de 1946 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/San%20Luis%20Potosi/wo62366.pdf>.

508. Código Civil del Estado de Sinaloa [Civil Code of the State of Sinaloa], art. 1213, 2239, 25 de Julio de 1940 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Sinaloa/wo78889.pdf>.

509. Código Civil para el Estado de Tabasco [Civil Code for the State of Tabasco], art. 1396, 2625, 09 de Abril de 1997 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=17547&ambito=>.

510. Código Civil para el Estado de Tamaulipas [Civil Code for the state of Tamaulipas], art. 1679, 2423, 10 de Enero de 1997 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=35202&ambito=>; *see also* Ley para el Desarrollo Familiar del Estado de Tamaulipas [Family Law for State Development Tamaulipas], art. 31(1), 28 de Diciembre de 2004 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=10650&ambito=>.

511. Código Civil para el Estado Libre y Soberano de Tlaxcala [Civil Code for Free and Sovereign State of Tlaxcala], art. 2651, 20 de Octubre de 1976 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=38477&ambito=>.

512. Código Civil para el Estado de Veracruz de Ignacio de la Llave [Civil Code of the State of Veracruz de Ignacio de la Llave], art. 1247, 2290, 15 de Septiembre de 1932 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=77127&ambito=estatal>.

513. Código Civil del Estado de Yucatán [Civil Code of the State of Yucatan], art. 1497, 2224, 31 de Diciembre de 1993 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=9005&ambito=>; *see also* Código de Familia del Estado de Yucatán [Family Code of the State of Yucatan] art. 610-11, 30 de Abril de 2012 (Mex.), *available at* <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=44767&ambito=>.

514. Código Civil del Estado de Zacatecas [Civil Code of the State of Zacatecas], art. 993, 1711, 24 de Mayo de 1986 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=84044&ambito=estatal>; *see also* Código Familiar del Estado de Zacatecas [Family Code of the State of Zacatecas], art. 302, 10 de Mayo de 1986 (Mex.), *available at* <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=84048&ambito=estatal>.

conditioned on the occurrence of the child's conception before the issuance of the gift or the execution of the will and contingent on the child's live birth.

Civil Codes of Argentina,<sup>515</sup> Bolivia,<sup>516</sup> Costa Rica,<sup>517</sup> Chile,<sup>518</sup> the Dominican Republic,<sup>519</sup> Mexico,<sup>520</sup> Nicaragua,<sup>521</sup> Paraguay,<sup>522</sup> Peru,<sup>523</sup> and Venezuela,<sup>524</sup> among others, state, in similar terms, that the unborn may be entitled to inheritance and gifts only if they are born alive, and that children who die before birth will be reputed as having never existed for succession purposes—i.e., their parent(s) may not claim succession.

Criteria for what constitutes live birth have been codified in lesser or greater detail in different countries. Most countries, such as Colombia,<sup>525</sup> Ecuador,<sup>526</sup> El Salvador,<sup>527</sup> and Nicaragua<sup>528</sup> require that the child survive after complete separation from the mother. In Mexico, either complete

515. CÓDIGO CIVIL [CÓD. CIV.] [CIVIL CODE] art. 74, 3290 (Arg.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_de\\_la\\_Republica\\_Argentina.pdf](http://www.oas.org/dil/esp/Codigo_Civil_de_la_Republica_Argentina.pdf).

516. CÓDIGO CIVIL, art. 1, 663, 1008 (Bol.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Bolivia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Bolivia.pdf).

517. CÓDIGO CIVIL, art. 605 (Costa Rica), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Costa_Rica.pdf).

518. CÓDIGO CIVIL, art. 343, 356, 487 (Chile), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Chile.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Chile.pdf).

519. CÓDIGO CIVIL DE LA REPÚBLICA DOMINICANA, art. 906, 1049–50 (Dom. Rep.), *available at* <http://www.oas.org/dil/esp/Código%20Civil%20de%20la%20República%20Dominicana.pdf>.

520. CÓDIGO CIVIL FEDERAL [FEDERAL CIVIL CODE], art. 1314, 2357, Diario Oficial de la Federación [DO], 28 de enero de 2010, *available at* <http://www.oas.org/dil/esp/C%C3%B3digo%20Civil%20Federal%20Mexico.pdf>.

521. CÓDIGO CIVIL, art. 19 (Nicar.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Nicaragua.pdf).

522. CÓDIGO CIVIL DEL PARAGUAY, art. 28 (Para.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Paraguay.pdf).

523. CÓDIGO CIVIL, art. 805, 856 (Peru), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf).

524. CÓDIGO CIVIL, art. 202, 1.443 (Venez.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Venezuela.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Venezuela.pdf).

525. CÓDIGO CIVIL COLOMBIANO, art. 90 (Colom.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Colombia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Colombia.pdf).

526. CÓDIGO CIVIL, art. 60 (Ecuador), *available at* [http://www.iberred.org/sites/default/files/codigo\\_civil\\_ecuador.pdf](http://www.iberred.org/sites/default/files/codigo_civil_ecuador.pdf).

527. CÓDIGO CIVIL, art. 72 (El Sal.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_Civil_El_Salvador.pdf).

528. CÓDIGO CIVIL, art. 20 (Nicar.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Nicaragua.pdf).

separation from the mother and survival for a minimum of twenty-four hours or presentation of the live child before the Civil Registrar's office is required.<sup>529</sup> In Argentina<sup>530</sup> and Paraguay,<sup>531</sup> breathing or crying attested to by witnesses, no matter how brief, can constitute evidence of a live birth.

c. Legal representation and guardianship of unborn children in property and succession claims

Most Latin American and Caribbean states authorize the appointment of a legal representative or guardian for an unborn child in administrative or judicial proceedings involving property or inheritance rights; this appointment of a representative demonstrates such countries' recognition of the unborn child's entitlement to legal rights, despite his age. For instance, the civil codes of Argentina,<sup>532</sup> Brazil,<sup>533</sup> Costa Rica,<sup>534</sup> Ecuador,<sup>535</sup> El Salvador,<sup>536</sup> Honduras,<sup>537</sup> Nicaragua,<sup>538</sup> Panama,<sup>539</sup> Paraguay,<sup>540</sup> and Peru<sup>541</sup> allow for unborn children to be legally represented by either their

---

529. CÓDIGO CIVIL FEDERAL [FEDERAL CIVIL CODE], art. 337, Diario Oficial de la Federación [DO], 28 de enero de 2010, *available at* <http://www.oas.org/dil/esp/C%C3%B3digo%20Civil%20Federal%20Mexico.pdf>.

530. CÓDIGO CIVIL [CÓD. CIV.] [CIVIL CODE] art. 73 (Arg.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_de\\_la\\_Republica\\_Argentina.pdf](http://www.oas.org/dil/esp/Codigo_Civil_de_la_Republica_Argentina.pdf).

531. CÓDIGO CIVIL DEL PARAGUAY, art. 32 (Para.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Paraguay.pdf).

532. CÓDIGO CIVIL [CÓD. CIV.] [CIVIL CODE] art. 57, 64, 69 (Arg.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_de\\_la\\_Republica\\_Argentina.pdf](http://www.oas.org/dil/esp/Codigo_Civil_de_la_Republica_Argentina.pdf).

533. Lei 10.406, 10 de Janeiro de 2002, CÓDIGO CIVIL, art. 878, 1.779 (Braz.), *available at* [http://www.planalto.gov.br/ccivil\\_03/Leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/Leis/2002/L10406.htm).

534. CÓDIGO CIVIL, art. 31 (Costa Rica), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Costa_Rica.pdf).

535. CÓDIGO CIVIL, art. 390 (Ecuador), *available at* [http://www.iberred.org/sites/default/files/codigo\\_civil\\_ecuador.pdf](http://www.iberred.org/sites/default/files/codigo_civil_ecuador.pdf).

536. CÓDIGO CIVIL, art. 238, 486, 490 (El Sal.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_Civil_El_Salvador.pdf).

537. CÓDIGO CIVIL, art. 414, 429, 544 (Hond.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Honduras.pdf).

538. CÓDIGO CIVIL, art. 12, 18, 306, 321, 377, 380 (Nicar.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Nicaragua.pdf).

539. CÓDIGO CIVIL DE LA REPÚBLICA DE PANAMA, art. 948 (Pan.), *available at* <http://docs.panama.justia.com/federales/codigos/codigo-civil.pdf>.

540. CÓDIGO CIVIL DEL PARAGUAY, art. 31, 37 (Para.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Paraguay.pdf).

541. CÓDIGO CIVIL, art. 617 (Peru), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf).

parents or third parties. In addition, Chile,<sup>542</sup> Colombia,<sup>543</sup> Ecuador,<sup>544</sup> El Salvador,<sup>545</sup> Honduras,<sup>546</sup> Nicaragua,<sup>547</sup> and Peru<sup>548</sup> allow for the judicial appointment of a guardian. A parental preference applies in Brazil,<sup>549</sup> Bolivia,<sup>550</sup> El Salvador,<sup>551</sup> Paraguay,<sup>552</sup> and Venezuela,<sup>553</sup> a paternal preference applies in Peru. Interestingly, Peru specifically prohibits anyone convicted for abortion to serve as a guardian ad litem.<sup>554</sup>

Latin American countries usually designate children born after their biological father's death, but conceived during their lifetime, as posthumous children and grant succession rights for those children upon live birth—at which point their rights become retroactive to the time of conception. For instance, when an unborn child's father dies before his birth, Brazil, Panama, Honduras, and Suriname allow a pregnant woman to claim intestate succession on behalf of her unborn child.<sup>555</sup> The laws of

542. CÓDIGO CIVIL, art. 343, 356, 487 (Chile), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Chile.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Chile.pdf).

543. CÓDIGO CIVIL COLOMBIANO, art. 433–446, 575, 580 (Colom.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Colombia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Colombia.pdf).

544. CÓDIGO CIVIL, art. 390, 526 (Ecuador), *available at* [http://www.iberred.org/sites/default/files/codigo\\_civil\\_ecuador.pdf](http://www.iberred.org/sites/default/files/codigo_civil_ecuador.pdf).

545. CÓDIGO CIVIL, art. 486 (El Sal.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_Civil_El_Salvador.pdf).

546. CÓDIGO CIVIL, art. 544 (Hond.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Honduras.pdf).

547. CÓDIGO CIVIL, art. 306, 321 (Nicar.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Nicaragua.pdf).

548. CÓDIGO CIVIL, art. 617 (Peru), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf).

549. Lei 10.406, 10 de Janeiro de 2002, CÓDIGO CIVIL, art. 878 (Braz.), *available at* [http://www.planalto.gov.br/ccivil\\_03/Leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/Leis/2002/L10406.htm).

550. CÓDIGO CIVIL, art. 663 (Bol.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Bolivia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Bolivia.pdf).

551. CÓDIGO CIVIL, art. 484–85 (El Sal.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_El\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_Civil_El_Salvador.pdf).

552. CÓDIGO CIVIL DEL PARAGUAY, art. 40 (Para.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Paraguay.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Paraguay.pdf).

553. CÓDIGO CIVIL, art. 267–68, 925 (Venez.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Venezuela.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Venezuela.pdf).

554. CÓDIGO CIVIL, art. 365, 405 (Peru), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf).

555. Lei 10.406, 10 de Janeiro de 2002, CÓDIGO CIVIL, art. 1.798, 1.799 (Braz.), *available at* [http://www.planalto.gov.br/ccivil\\_03/Leis/2002/L10406.htm](http://www.planalto.gov.br/ccivil_03/Leis/2002/L10406.htm); LEY NO. 3: POR LA CUAL SE APRUEBA EL CÓDIGO DE FAMILIA, art. 287–88 (Pan.), *available at* <http://www.organojudicial.gob.pa/cendoj/wp-content/blogs.dir/cendoj/codigo-de-la-familia-94.pdf>; CÓDIGO CIVIL, art. 201 (Hond.), *available at* [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Honduras.pdf); Comm. on the

Colombia,<sup>556</sup> Chile,<sup>557</sup> Ecuador,<sup>558</sup> Honduras,<sup>559</sup> Nicaragua,<sup>560</sup> and Peru<sup>561</sup> allow a dying parent—usually the father—to appoint, through his will, a guardian ad litem to defend the unborn child's eventual rights. The laws of some Mexican states, such as the State of Mexico<sup>562</sup> and Querétaro,<sup>563</sup> contain similar provisions.

A few civil codes restrict the powers of the unborn child's representative or guardian to mere administrative functions. The civil codes of Chile,<sup>564</sup> Colombia,<sup>565</sup> Ecuador,<sup>566</sup> Nicaragua,<sup>567</sup> El Salvador,<sup>568</sup> and Venezuela<sup>569</sup> provide for the appointment of a guardian of the property for unborn

Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial reports of states parties due in 1995: Addendum, Suriname*, ¶28, U.N. Doc. CRC/C/28/Add.11 (Feb. 13, 1998), available at <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/28/Add.11>.

556. CÓDIGO CIVIL COLOMBIANO, art. 433–446, 575, 580 (Colom.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Colombia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Colombia.pdf).

557. CÓDIGO CIVIL, art. 343, 356, 487 (Chile), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Chile.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Chile.pdf).

558. CÓDIGO CIVIL, art. 402 (Ecuador), available at [http://www.iberred.org/sites/default/files/codigo\\_civil\\_ecuador.pdf](http://www.iberred.org/sites/default/files/codigo_civil_ecuador.pdf).

559. CÓDIGO CIVIL, art. 429 (Hond.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Honduras.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Honduras.pdf).

560. CÓDIGO CIVIL, art. 306 (Nicar.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Nicaragua.pdf).

561. CÓDIGO CIVIL, art. 598, 805 (Peru), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf).

562. Código Civil del Estado de México [Civil Code of the State of Mexico], art. 7.637, 29 de Abril de 2002 (Mex.), available at <http://201.159.134.38/obtenerdoc.php?path=/Documentos/ESTADO/ESTADO%20DE%20MEXICO/o535129.doc&nombreclave=o535129.doc>.

563. Código Civil del Estado de Querétaro [Civil Code of the State of Querétaro], art. 2244, 21 de Octubre de 2009 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=21713&ambito=ESTATAL>.

564. CÓDIGO CIVIL, art. 343, 356, 487 (Chile), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Chile.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Chile.pdf).

565. CÓDIGO CIVIL COLOMBIANO, art. 433–446, 575, 580 (Colom.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Colombia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Colombia.pdf).

566. CÓDIGO CIVIL, art. 390, 526 (Ecuador), available at [http://www.iberred.org/sites/default/files/codigo\\_civil\\_ecuador.pdf](http://www.iberred.org/sites/default/files/codigo_civil_ecuador.pdf).

567. CÓDIGO CIVIL, art. 377, 380 (Nicar.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Nicaragua.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Nicaragua.pdf).

568. CÓDIGO CIVIL, art. 486 (El Sal.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_EL\\_Salvador.pdf](http://www.oas.org/dil/esp/Codigo_Civil_EL_Salvador.pdf).

569. CÓDIGO CIVIL, art. 267 (Venez.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Venezuela.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Venezuela.pdf).

children (*curatela*, distinct from *tutela*, which usually implies a guardianship of both the property and the person), whose sole powers shall be to represent the child in property or inheritance administrative procedures. For powers exceeding administrative functions, a guardian in Venezuela should obtain special judicial approval.<sup>570</sup>

### 3. Application of the *Pro Homine* Principle to Unborn Children

An important indicator of these states' non-restrictive interpretation of the American Convention is the fact that several Latin American constitutions and primary laws codify the *pro homine* principle in favor of the unborn child, according to which a law should be given an interpretation that ensures—to the maximum extent—the unborn child's right to life and development. As mentioned *supra* in Section II.A., the national constitutions of Peru,<sup>571</sup> Honduras,<sup>572</sup> Chile,<sup>573</sup> and Mexico<sup>574</sup> have codified this principle in favor of the unborn child. Several Mexican states have also codified it in their state Constitutions, namely Baja California,<sup>575</sup> Chiapas,<sup>576</sup> Durango,<sup>577</sup> Jalisco,<sup>578</sup> Nayarit,<sup>579</sup> Oaxaca,<sup>580</sup> Querétaro,<sup>581</sup> Quintana Roo,<sup>582</sup> Sonora,<sup>583</sup> and Yucatán.<sup>584</sup>

---

570. CÓDIGO CIVIL, art. 268 (Venez.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Venezuela.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Venezuela.pdf).

571. See PERU CONST., art. 2 § 1 (Peru), available at [http://www.oas.org/dil/esp/Constitucion\\_Peru.pdf](http://www.oas.org/dil/esp/Constitucion_Peru.pdf).

572. See HOND CONST., art. 67 (Hond.), available at [http://www.oas.org/dil/esp/Constitucion\\_de\\_Honduras.pdf](http://www.oas.org/dil/esp/Constitucion_de_Honduras.pdf).

573. Tribunal Constitucional [T.C.] [Constitutional Court], 18 Abril 2008, Requerimiento de inconstitucionalidad deducido en contra de algunas disposiciones de las "Normas Nacionales sobre Regulación de la Fertilidad," aprobadas por el Decreto Supremo N 48, de 2007, del Ministerio de Salud, Rol de la causa: 740-07, (Chile), available at [http://www.tribunalconstitucional.cl/wp/descargar\\_expediente.php?id=34407](http://www.tribunalconstitucional.cl/wp/descargar_expediente.php?id=34407).

574. See Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended Decreto por el que se declaran reformados los artículos 30, 32 y 37 de la Constitución Política de los Estados Unidos Mexicanos, 20 de Marzo de 1997, Transitorios Artículo Tercero, Diario Oficial de la Federación [DO], 05 de Febrero de 1917 (Mex.), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/1.pdf>.

575. Constitución Política del Estado de Libre y Soberano de Baja California, art. 7, 16 de Agosto de 1953 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=19505&ambito=ESTATAL>.

576. Constitución Política del Estado de Chiapas, art. 14, 27 de Junio de 2011 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=21023&ambito=ESTATAL>.

577. Constitución Política del Estado de Libre y Soberano de Durango, art. 1, 29 de Agosto de 2013 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Durango/wo24655.doc>.

Primary laws of several Latin American states, like the civil codes of Bolivia<sup>585</sup> and Peru,<sup>586</sup> hold that “the unborn is considered to be born wherever it is in his or her interest” in virtually identical terms. Peru’s Criminal Code indicates that abortion prohibitions protect the unborn child’s right to life, which is constitutionally recognized, and that the unborn is deemed to have been born wherever his own benefits are concerned.<sup>587</sup> Peru’s Code of Children and Adolescents contains a similar provision and mandates a presumption of minority when in doubt regarding a child’s minority.<sup>588</sup> The Costa Rican Civil Code<sup>589</sup> states that the “physical person” is deemed born for legal purposes, in anything that favors him, starting 300 days before his birth. Venezuela’s Civil Code provides that the fetus will be treated as born when favorable to him.<sup>590</sup> The civil codes of

---

578. Constitución Política del Estado de Jalisco, art. 4, 01 de Agosto de 1917 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=34151&ambito=ESTATAL>.

579. Constitución Política del Estado de Nayarit, art. 7(XIII)(1), 17 de Febrero de 1918 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=23501&ambito=ESTATAL>.

580. Constitución Política del Estado de Libre y Soberano de Oaxaca, art. 12, 04 de Abril de 1922 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=24326&ambito=ESTATAL>.

581. Constitución Política del Estado de Queretaro, art. 2, 31 de Marzo de 2008 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=8486&ambito=ESTATAL>.

582. Constitución Política del Estado de Quintana Roo, art. 13, 12 de Enero de 1975 (Mex.), available at <http://www.ordenjuridico.gob.mx/fichaOrdenamiento.php?idArchivo=31514&ambito=ESTATAL>.

583. Constitución Política del Estado de Sonora, art. 1, 29 de Septiembre de 1917 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=2765&ambito=ESTATAL>.

584. Constitución Política del Estado de Yucatán, art. 1, 14 de Enero de 1918 (Mex.), available at <http://www.congresoyucatan.gob.mx/legislacion/constitucion-politica>.

585. CÓDIGO CIVIL, art. 1(II) (Bol.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Bolivia.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Bolivia.pdf).

586. CÓDIGO CIVIL, art. 1 (Peru), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Peru.pdf).

587. CODIGO PENAL, EXPOSICIÓN DE MOTIVOS, INNOVACIONES PROPUESTAS EN LA PARTE ESPECIAL(Peru), available at [http://www.oas.org/dil/esp/Codigo\\_Penal\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_Penal_Peru.pdf).

588. CÓDIGO DE LOS NIÑOS Y ADOLESCENTES, art. I (Peru), available at [http://www.oas.org/dil/esp/Codigo\\_de\\_la\\_Ninez\\_y\\_la\\_Adolescencia\\_Peru.pdf](http://www.oas.org/dil/esp/Codigo_de_la_Ninez_y_la_Adolescencia_Peru.pdf).

589. CÓDIGO CIVIL, art. 31 (Costa Rica), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Costa\\_Rica.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Costa_Rica.pdf).

590. CÓDIGO CIVIL, art. 17 (Venez.), available at [http://www.oas.org/dil/esp/Codigo\\_Civil\\_Venezuela.pdf](http://www.oas.org/dil/esp/Codigo_Civil_Venezuela.pdf).

Guatemala<sup>591</sup> and Panama<sup>592</sup> limit the application of this principle to viable unborn children. Suriname's civil law establishes that "the child of which a woman is pregnant must be considered already born as often as (its) self-interest requires this."<sup>593</sup>

Mexican state laws also recognize the *in dubio pro nasciturus* principle. For instance, the Civil Code of San Luis Potosí<sup>594</sup> states, "[F]rom the moment a human being is conceived, he is protected by law and is held to be born for all legal purposes." The Tamaulipas Act for Family Development, which defines "minor" as every person from conception until the age of eighteen, establishes a presumption of minority when in doubt regarding a child's minority.<sup>595</sup>

#### IV. CONCLUSION

An analysis of Latin American and Caribbean state practice following adoption and ratification of the American Convention on Human Rights reveals that states have overwhelmingly understood the American Convention to protect prenatal rights in a comprehensive manner.

Most states' parties have incorporated the American Convention's<sup>596</sup> recognition of a right to life of every person from the moment of conception—as well as related prenatal rights—in their domestic laws. At least eight Latin American and Caribbean states have adopted explicit constitutional provisions recognizing and protecting a right to life from

591. CÓDIGO CIVIL, art. 1 (Guat.), available at <http://biblio3.url.edu.gt/Libros/2011/codigo.pdf>.

592. CÓDIGO CIVIL DE LA REPÚBLICA DE PANAMA, art. 41 (Pan.), available at <http://docs.panama.justia.com/federales/codigos/codigo-civil.pdf>.

593. Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Second Periodic Report: Suriname*, ¶ 43, U.N. Doc. CRC/C/SUR/2 (November 24, 2005), available at <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/SUR/2>. See also Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Initial reports of states parties due in 1995: Addendum, Suriname*, ¶ 28, U.N. Doc. CRC/C/28/Add.11 (February 13, 1998), available at <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/28/Add.11>.

594. Código Civil para el Estado de San Luis Potosí [Civil Code for the State of San Luis Potosí], art. 17, 18 de Abril de 1946 (Mex.), available at <http://www.ordenjuridico.gob.mx/Documentos/Estatal/San%20Luis%20Potosi/wo62366.pdf>.

595. Ley para el Desarrollo Familiar del Estado de Tamaulipas, art. 13(1)–(2), 28 de Diciembre de 2004 (Mex.), available at <http://201.159.134.38/fichaOrdenamiento2.php?idArchivo=10650&ambito=ESTATAL>.

596. American Convention on Human Rights art. 4(1), Nov. 21, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 (July 18, 1978).



conception in their Constitutions, mirroring the American Convention's language in attributing humanity and personhood to the unborn child.

Most Latin American and Caribbean states have acknowledged the humanity and personhood of the unborn child in their national laws and grant unborn children most of the same legal rights granted all children—an important indicator of their understanding of the terms “person” and “child” in the Convention as including unborn children. Many Latin American and Caribbean children's codes explicitly include unborn children in their definition of “children,” and several Latin American constitutions and primary laws codify the best interests of the child principle, or the *pro homine* principle, in favor of the unborn child.

Most Latin American and Caribbean states have recognized and protected economic and social rights belonging to the unborn, such as the unborn child's right to health, survival, and development, in their children's codes, family codes, health codes, and national constitutions. Prenatal health has not merely been perceived as a right belonging to mothers, but also as a right of unborn children, and equal protection is granted to both. In addition, most Latin American and Caribbean states have recognized a legal parent-child relationship between biological parents and their unborn children, involving parental rights and duties, such as the right of fathers to establish paternity over unborn children and the duty of fathers to pay prenatal alimony or child support. Furthermore, most Latin American and Caribbean states authorize the appointment of a legal representative or guardian for an unborn child in administrative or judicial proceedings involving property or inheritance rights.

Most Latin American and Caribbean civil codes provide that the unborn is entitled to legal protection even though he may not enjoy legal capacity or legal personhood for civil law purposes, which may support a case against interpretations excluding the unborn from the category of persons.<sup>597</sup> Entitlement of unborn children to property and succession rights is usually conditioned upon live birth; however, Latin American and Caribbean civil codes largely allow unborn children to be generally entitled to property and succession rights as well as other benefits. Some codes enable the judiciary to order any measures a judge may deem convenient “to protect the unborn's life” when he or she believes it may be endangered.

---

597. See, e.g., *Artavia Murillo et al. v. Costa Rica*, Preliminary objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257 (Nov. 28, 2012), available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_257\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_257_esp.pdf).

The consistent recognition of prenatal rights, particularly the right to life from conception, throughout Latin America and the Caribbean after ratification of the American Convention on Human Rights, indicates that these states have interpreted the American Convention's protection of the right to life from conception in a non-restrictive manner. Such a recognition includes positive state obligations to secure prenatal rights to life, health, and development for all unborn children through law and public policy.