



# Procreative autonomy, gender equality and right to life: the decision of the Inter-American Court of Human Rights in *Artavia Murillo v. Costa Rica*

AUTONOMIA PROCRATIVA, IGUALDADE DE GÊNERO E DIREITO À VIDA: A DECISÃO DA CORTE INTERAMERICANA DE DIREITOS HUMANOS NO CASO ARTAVIA MURILLO V. COSTA RICA

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## Resumo

The trial and the reasons adopted by Inter-American Court of Human Rights (IACtHR) in *Artavia Murillo v. Costa Rica* represent significant progress in protecting women's procreative autonomy. The decision of the IACtHR revoked a decision of the Constitutional Chamber of Costa Rica that banned the use of In Vitro Fertilization (IVF) in the country. With this decision, the IACtHR not only clearly linked universal rights of freedom with procreative autonomy for women and men; the IACtHR also strongly reinforced an interpretation on the "right to life" that favors procreative autonomy. Moreover, the decision is remarkable to include a standard of equality in matters of procreative autonomy insofar as the IACtHR has held that women, because of negative gender stereotypes in society, have been greatly undermined by the decision of the Chamber of Costa Rica to ban IVF. Finally, as will be argued, courts may, in similar future cases, introduce the Convention of Belém do Pará in the analysis, considering that the elimination of IVF services (or other limitation of women's procreative autonomy) can be seen as a form of violence against women's moral integrity.

## Palavras-chave

Procreative autonomy; gender equality; gender stereotypes; fundamental freedoms; right to life.

## Abstract

*O julgamento e as razões adotadas pela Corte Interamericana de Direitos Humanos (Corte IDH) no caso Artavia Murillo v. Costa Rica representam importante progresso na proteção da autonomia procriativa das mulheres. A decisão da Corte IDH revogou uma decisão da Corte Constitucional de Costa Rica que proibiu o uso da Fertilização in Vitro (FIV) no país. Com essa decisão, a Corte IDH não apenas vinculou, claramente, os direitos universais de liberdade à autonomia procriativa das mulheres e homens; a Corte IDH também reforçou uma interpretação sobre o "direito à vida" que favorece a autonomia procriativa. Além disso, a decisão é notável no sentido de incluir o padrão da igualdade em matéria de autonomia procriativa na medida em que a Corte IDH afirmou que as mulheres, devido os estereótipos de gênero negativos existentes na sociedade, foram fortemente prejudicadas pela decisão da Corte de Costa Rica de banir a FIV. Finalmente, como será arguido, as cortes poderão, em casos futuros similares, introduzir na análise a Convenção do Belém do Pará, considerando que a eliminação dos serviços de FIV (ou outra limitação da autonomia procriativa das mulheres) pode ser vista como uma forma de violência contra a integridade moral das mulheres.*

## Keywords

*Autonomia procriativa; igualdade de gênero; estereótipos de gênero; liberdades fundamentais; direito à vida.*

## INTRODUCTION

In 2012, the Inter-American Court of Human Rights (IACtHR) reaches a decision in the case of *Artavia Murillo et al v. Costa Rica* (hereafter, *Artavia Murillo*). The IACtHR's decision ends a decade-long ban on IVF in Costa Rica and represents important progress in the protection of women's procreative autonomy held by the courts.<sup>1</sup> This article presents an analysis of the standards applied by IACtHR and the reasons for the judgement, in order to demonstrate and capture the progress made by the *Artavia Murillo* decision. Our goal is to clearly establish a connection between procreative autonomy for women and men and the universal right to freedom, as instituted by the American Convention of Human Rights (OAS, 1969). We also aim to introduce the concept of gender equality and discrimination to the procreative autonomy question, while referring to the gender stereotype concept.<sup>2</sup> Furthermore, we wish to strength the understanding of the "right to life" in favor of women's procreative autonomy, by delimiting the interests of the unborn. In addition, the article will describe *Artavia Murillo* in the context of the international jurisprudence, as well as the guidance role of IACtHR, concerning national legislation on Human Rights protection.

The findings described in this article are the author's interpretation based on the statements made in the *Artavia Murillo* decision. As such, the article is not a literature review, but an analysis – in the context of other cases and selected literature – of the *Artavia Murillo* case itself. Overall, the article intends to show the importance of this case for a broader understanding of the meaning of procreative autonomy, especially in relation to the concept of gender discrimination, and for an improved comprehension of "right to life." By focusing on the evolution of the international Human Rights framework and standards, the here presented interpretation of the case also aims to reveal the IACtHR's contribution to Human Rights protection – in this case, IACtHR has granted the practice of freedom and equality in the sense of procreative autonomy. Besides, the article also points out other concepts and principles related to the protection of women's rights that could have been added

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1 Procreative autonomy is defined as the right to decide to have or to not have children, as well as when and how to have them (available at: <[https://msu.edu/course/phl/344/phl344/fall97/yoder\\_34/lec16/slide2.html](https://msu.edu/course/phl/344/phl344/fall97/yoder_34/lec16/slide2.html)>; accessed: Oct. 10, 2017).

2 As described by Rebecca Cook, gender stereotype "is an overarching concept that encompasses sex, sexual, sex role and compounded stereotypes [...]. It will be recalled that a 'sex stereotype' refers to a generalized view or preconception concerning the physical, including biological, attributes or characteristics possessed by men or women. A 'sexual stereotype' is a generalized view or preconceptions concerning sexual characteristics or qualities possessed by men or women. A 'sex role stereotype' describes a normative view or preconception regarding appropriate roles or behavior for men and women. It will be recalled, also, that the term 'compounded stereotype' refers to a gender stereotype that coincides with another type of stereotype, for example, one that relates to race, age, and/or disability." (COOK, 2010, p. 45.)

to IACtHR decision, especially the concept of violence as affirmed by the Convention of Belém do Pará.

After a brief introduction to the case itself in Section I, Section II will analyze the two main standards of the decision: the right to freedom and the right to gender equality, paying specific attention to the gender stereotypes brought out by the IACtHR. Afterwards, Section III will address the reasons for overturning the argument of the “right to life”, invoked by Costa Rica Constitutional Chamber’s to ban IVF – thus moving forward the interpretation of this concept, while also noting the contributions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (UNITED NATIONS, 1979) to the case. Section IV will focus on the contribution of the decision to the international jurisprudence, on the role and functioning of the Inter-American Court System, as demonstrated by the case, as well as on the potential connection with the concept of violence under the Convention of Belém do Pará. This later assumption is because the denial of IVF services can be seen as moral and psychological violence against women. An overall conclusion summarizes the key observations of this article.

## I CASE OVERVIEW

The case *Artavia Murillo et al v. Costa Rica* has begun on February 3, 1995, when Costa Rica’s Minister of Health issued an Executive Decree (No. 24029-S) in order to regulate the practice of IVF procedures in the country. On March 15, 2000, the Constitutional Chamber of Costa Rica overturned this decree, declaring its unconstitutionality. The Chamber based its decision on the concept of “right to life,” arguing that the protection of life must be guaranteed from the moment of conception, in accordance with the Articles 1(2) and 4(1) of the American Convention of Human Rights (OAS, 1969). The Chamber’s decision to overturn the decree thus led to a ban on the IVF procedures in Costa Rica.

On July 29, 2011 – more than a decade later – the Inter-American Commission of Human Rights (IACHR) presented the case to the IACtHR, asking the Court to examine the decision of the Constitutional Chamber of Costa Rica. In November 2012, the IACtHR rejected the Constitutional Chamber’s decision and ordered the renewed approval of IVF procedures in Costa Rica (COSTA RICA, 2012a).<sup>3</sup> The standards behind this decision and the implications for the protection of procreative autonomy are the subject of this article.

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<sup>3</sup> As described on the website of the International Justice Resource Center, “The Inter-American System for the protection of human rights is responsible for monitoring and ensuring implementation of human rights guarantees in the 35 independent countries of the Americas that are members of the Organization of American States (OAS). The Inter-American System is composed of two entities: a Commission and a Court. Both bodies can decide individual complaints concerning alleged human rights violations” (available

## 2 MAIN STANDARDS FOR THE JUDGEMENT: FUNDAMENTAL FREEDOM, GENDER EQUALITY, AND THE ROLE OF GENDER STEREOTYPES

As will be described and analyzed in the sections below, the judgement in the *Artavia Murillo* case (COSTA RICA, 2012a) relies on two key standards: (i) the right to freedom, as established in the American Convention on Human Rights, and (ii) gender equality, with protections for women offered under CEDAW.

### 2.1 FIRST DECISION STANDARD: UNIVERSAL FREEDOM AND REPRODUCTIVE RIGHTS

The IACtHR appraised that forbidding couples that are unable to conceive – either naturally or with the help of assisted techniques – to benefit from IVF violates the principles of “personal integrity,” “personal freedom,” and “family life,” established respectively in Articles 5(1), 7(1) and 11(2) of the American Convention on Human Rights. In particular, the principle of personal freedom received an interpretation broad enough to involve the right to self-determination in the procreative sphere, establishing the right to procreative autonomy.<sup>4</sup> With its decision, the IACtHR clearly established a connection between universal rights of freedom and procreative autonomy for women and men. In addition, as described below, the IACtHR uses the standard of freedom in combination with the standard of equality to protect women’s rights to the free development of personality uses.

### 2.2 SECOND DECISION STANDARD: EQUALITY AND THE USE OF GENDER STEREOTYPES

As a second standard, but closely connected to the principle of freedom, the IACtHR also brought into its decision the concept of equality; the IACtHR added here a gender perspective by considering both gender equality and stereotype. This standard in fact draws on an intersection, in the procreative context, between the right to fundamental freedoms, as established in the American Convention on Human Rights Article 1(1), and the concept of

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at: <<http://www.ijrcenter.org/regional/inter-american-system>>; accessed: Oct. 10, 2017). Importantly, when a country enters an international agreement, this is incorporated to its domestic legal system and the country is committed to follow the rules of the treaty. In this case, Costa Rica is a Member State of both the American Convention of Human Rights and The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

4 As emphasized by IACtHR: “The pertinent part of Article 5 of the American Convention (Right to Humane Treatment) indicates: 1. Every person has the right to have his physical, mental, and moral integrity respected. [...] The pertinent part of Article 7 of the American Convention (Right to Personal Liberty) indicates: 1. Every person has the right to personal liberty and security. The pertinent part of Article 11 of the American Convention (Right to Privacy) states: [...] 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. [...]” (COSTA RICA, 2012a, paras 137 and 142, and notes 220-222).



discrimination established by CEDAW. This particular intersection is embodied in an assertion of the right to the free development of personality, which asserts that autonomous identities must be built without constraints of any nature, legal, cultural, social, or religious. As highlighted in the IACtHR's decision, the option for motherhood represents a component of a woman's personality building, which includes the decision to conceive through assisted reproduction techniques (COSTA RICA, 2012a, paras 143 and 272).

In its decision, the IACtHR pointed to three significant gender stereotypes that affect the family life of women, namely sex, sex role, and compounded stereotypes.<sup>5</sup> This perspective was presented as analytical assumptions of the majority position and refers to the formation of women personality.

#### *SEX AND SEX ROLE STEREOTYPES*

The first gender stereotype drawn out by the IACtHR, the “sex stereotype,” is related to women's biological reproductive attributes and reduces female sexuality to its procreative function, thus disconnecting sexuality from the perspective of women's autonomous will. The IACtHR emphasized the existence of this sex stereotype, which states the essentiality of motherhood for women.<sup>6</sup> Considering that this stereotype affects all women, a ban on IVF would impose a great burden on women, rather than on men, in the sense that it violates women's rights more than men's rights. The IACtHR then invokes this sex stereotype as a reason to bring out the standard of gender discrimination. The IACtHR does not endorse the existence or use of gender stereotypes; the Court just argues that its existence represents a greater burden for women, especially in the context of IVF prohibition.<sup>7</sup>

A second stereotype highlighted by the IACtHR is the one of “sex roles” – men should occupy the position of “breadwinners” while women should play the role of mothers and “homemakers” (as described by Cook, 2010, p. 28). When considering that “femininity is often defined by motherhood,” the IACtHR identifies this kind of stereotype. Although emphasizing that women's “role and status” in society should not be reduced to their “reproductive capacity,” the IACtHR recognizes that the sex role stereotypes produce an “exacerbated” pain

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5 These concepts are explained in the footnote n. 2.

6 The IACtHR makes this understanding clear when affirming that infertility disproportionately affects women because of the existence of a persistent gender stereotype, in many societies, defining them by their procreative ability. That is the reason why the ban of IVF affects women's life with a greater impact (COSTA RICA, 2012a, paras 294-295).

7 As pointed out by the Court: “these gender stereotypes are incompatible with international human rights law and measures must be taken to eliminate them. The Court is not validating these stereotypes and only recognizes them and defines them in order to describe the disproportionate impact of the interference caused by the Constitutional Chamber's judgment” (COSTA RICA, 2012a, para 302).

for infertile women. This, in the words of the IACtHR, “can lead to unstable marriage, domestic violence, stigmatization and even ostracism” (COSTA RICA, 2012a, para 296).

Reva Siegel also emphasizes the influence of sex role stereotypes on procreative autonomy, by stating that this kind of stereotype, in her view, has minimized women’s equality (SIEGEL, 2013, p. 65-66). The sex role stereotype is damaging to women since it affects their access to the job market, and is largely responsible for the violation of their procreative autonomy. This negative effect of the stereotype can be noted both in relation to women’s control over the reproductive process by natural means (for example, use of birth control or abortion) and in relation to their access to IVF in the event of proven infertility. This difference between sex roles, as it is incorporated in social practices, was another basis for the IACtHR to invoke the equality clause and the guarantee of non-discrimination against women in *Artavia v. Murillo* case.

#### INDIRECT DISCRIMINATION DUE TO GENDER STEREOTYPES

It is remarkable that the IACtHR expresses its understanding of the situation as indirect discrimination, by pointing out the two gender stereotypes (sex and sex role) to involve the equal protection clause.<sup>8</sup> Within its decision, the IACtHR demonstrates that the prohibition of IVF implicates indirect discrimination against women, once it enhances the impact and the actual damages in their lives caused by the impossibility of accomplish their settled role as mothers and wives. Theoretically thinking, the prohibition of IVF does not impose a direct burden on women, since the decree of the Constitutional Chamber was not particularly addressed to women and thus it was apparently neutral. Nevertheless, the disproportionate negative effect of the decision on the interests of women evinces its discriminatory character (COSTA RICA, 2012a, paras 287 and 299).

This determination of the IACtHR underscores that in the event of a law or decision that is apparently neutral (i. e. it does not contain discriminatory components in itself), it is necessary to verify if it does not generate gender inequality. In fact, a standard may involve gender discrimination by not considering determining factors in women’s family and sexual experiences, which are distinct from the men’s experiences (COOK, 2010, p. 115-117). This was indeed the conclusion reached by the IACtHR in the *Artavia Murillo* case.

Similarly, in addition to the concept of discrimination already expressed in Article 1 of CEDAW, the General Recommendation No. 28 of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) emphasizes, in paragraph 5:

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<sup>8</sup> Indirect discrimination is a kind of discrimination that does not come directly from the text of the law, but from the effects it produces in different groups of people. The IACtHR explains it as follows: “This concept implies that a law or practice that appears to be neutral has particularly negative repercussions on a person or group with specific characteristics” (COSTA RICA, 2012a, para 286).

[...] an identical or neutral treatment of women and men might constitute discrimination against women if such treatment resulted in or had the effect of women being denied the exercise of a right because there was no recognition of the pre-existing gender-based disadvantage and inequality that women face. (UNITED NATIONS, 2010).

It is paradoxical of course that the IACtHR appeals to the existence of two negative gender stereotypes – of sex and sex role – to argue specifically for the protection of women’s procreative autonomy. It could be said that this rationale in some way reinforces the rigid definition of the sex role conferred to women as well as the social stigma placed on women who choose not to have children – a matter much discussed in the analysis of the right to abortion (TRIBE, 1990, p. 33-34). Nevertheless, the effects of the admission that these stereotypes do exist and that they disadvantage women are positive rather than negative. In fact, the way that gender discrimination is characterized in the decision is based on the idea that the inability to bear children implies inexorable emotional and psychological damages to women.

However, this kind of argumentative ambivalence is natural when it comes to identifying a context of indirect gender discrimination, as the recognition of female disadvantage developed by cultural patterns of behavior is essential for acknowledging the excessive impact on women of certain restrictive measures. It is important to point up that when the Court *admits that motherhood is an important value to women* it is not assuming that *being a mother is a mandatory goal*. Therefore, admitting the existence of the stereotype is a positive action towards a special consideration of women’s interests concerning their procreative rights.

Furthermore, the approach of Paul Lauritzen is an example of criticism on the allowance of new reproductive technologies. He argues that it perpetuates the idea of motherhood as representative of women’s identity. This idea, in his opinion, coerces women to seek for any available medical resources in order to conceive and achieve such an essential experience (LAURITZEN, 1990, p. 38-46). Although the new technologies may impose some pressure on women unable to conceive, that kind of radical argument should not be taken as a reason to ban IVF. It would be much more harmful to women’s interests if they were deprived of the right to have access to assisted reproductive techniques – even knowing that they may fail.

#### COMPOUNDED STEREOTYPE: GENDER AND DISABILITY

Finally, the IACtHR also nominated a “compounded stereotype,” which, as explained in footnote 2, means that the gender stereotype coincides with another stereotypes such as age, race or ethnicity, ability or disability, sexual orientation, and class or group status, that results in discrimination (COOK, 2010, p. 29).

In the case of *Artavia Murillo*, this compounded stereotype involves the inability of infertile women to grow a family. According to the IACtHR, the disproportionate effect and indirect

discrimination of women, as applied to the case, include two kinds of discrimination: one related to gender and the other to the condition of disability. The infertility itself is considered a disease, a disability to procreate and, in this sense, the failure to grow a traditional family, as meant by modern societies (COSTA RICA, 2012a, p. 287-288). Thus, there is a compounded stereotype coming up from the coincidence of gender and disability stereotypes. Prohibiting the IVF procedures implies discrimination against women in both aspects: as gender discrimination, due to the disproportionate impact on their lives, and as a discrimination against their rights to procreate and grow a family using medical techniques of assisted reproduction to address their infertility condition.

Judges Arguedas Calzada and Miranda Ramirez, both from the Constitutional Chamber of Costa Rica, manifested a dissenting opinion, by arguing that infertility is recognizable as a kind of disease that prevents the legitimate exercise of the right to procreation. Therefore, they claim that IVF provides medical and reproductive care to infertile couples, offering the possibility to solve a physiological problem (COSTA RICA, 2012a, para 77). The dissenting judges highlighted that the right to procreation, although not explicitly mentioned in Costa Rica's Constitution, is implied in the "right to freedom and to self-determination, the right to privacy and family life, and the freedom to found a family." Following the same argument, the IACtHR reasoned that the right to grow a family involves the ability to procreate, right that is guaranteed in Articles 11(2) and 17 of the American Convention on Human Rights. Furthermore, the IACtHR stressed that "reproductive autonomy" and "access to reproductive health services," which includes the use of medical-scientific technologies, are both enshrined in Article 16 of CEDAW (COSTA RICA, 2012a, paras 145-146).

### 2.3 TWO STANDARDS PROTECTING PROCREATIVE RIGHTS

By invoking these two standards, the IACtHR clearly establishes a link between universal rights of freedom and procreative autonomy, and brings out the concept of indirect discrimination to especially protect women's procreative autonomy. It could be argued that the need for IVF legalization is also based on the procreative autonomy of men with regard to equal protection before the law, as adopted by the *American Declaration of the Rights and Duties of Man*, Article II (OAS, 1948). Nevertheless, the IACtHR's decree reveals that the absolute prohibition of the procedure must be analyzed in the light of gender stereotypes responsible for a discriminatory social reality against women.

With the application of these standards, the IACtHR significantly enhances the protection of women's procreative autonomy. In addition, as will be described in the next section, the IACtHR also gives a significant contribution to the understanding of the concept of "right to life," again in favor of women's procreative autonomy.



### 3 THE RIGHT TO LIFE AND PROCREATIVE AUTONOMY: BALANCING THE INTERESTS OF THE UNBORN AND WOMEN'S RIGHTS

When the Constitutional Chamber of Costa Rica overturned the Minister of Health's executive decree on IVF, it did so based on the position that the use of the IVF procedure violates the right to life. The Chamber understood that the protection of life must be guaranteed already from the moment of conception. As described below, the IACtHR disagreement furthers the understanding of the "right to life" concept by delimiting the rights of the embryo. The decision in fact incorporated several patterns of analysis introduced by CEDAW, which support this delimitation of the interests of embryonic life in favor of a balance between these rights and women's procreative autonomy.

#### 3.1 BALANCING WOMEN'S RIGHT WITH THE INTERESTS OF THE UNBORN

As described above, in its decision to ban IVF, the Costa Rica Constitutional Chamber embraced the understanding that the protection of the right to life must be guaranteed from the moment of conception, relying here on Articles 1(2) and 4(1) of the American Convention of Human Rights. The IACtHR, however, in its decision, points out that this protection of the right to life (in the way that it is interpreted by the Constitutional Chamber) would apply, in equitable parameters, to both the child and the "unborn life" (COSTA RICA, 2012a, paras 74-75 and 168). The IACtHR's interpretation, in fact, differs from the Constitutional Chamber's. The International Court states that the claim that the embryo is a human being from the moment of ovum fertilization comes from metaphysical values. Hence, this claim is not appropriate to define the content of legal concepts in the relevant articles of the Convention because it would imply the imposition of particular beliefs to people who do not profess them (COSTA RICA, 2012a, paras 188-189).

Most important, also, is the disagreement between the two Courts on the understanding of the term "in general," as used in the referenced Article 4(1) of the American Convention of Human Rights.<sup>9</sup> According to the understanding adopted by *Artavia Murillo* decision, this expression was included in the document to enable the establishment of exceptions to the supremacy of the right to life, justified by other conflicting rights, and to lay out a model of "gradual" protection of life according to the phase of its "development." The State of Costa Rica, however, claimed that "in general" refers only to well-defined exceptions, such as in case of risk to a woman's life (COSTA RICA, 2012a, paras 244, 262-264 and 168). In its judgement, however, the IACtHR expressed its opposition to this interpretation,

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<sup>9</sup> Article 4(1) of the American Convention of Human Rights 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."

supporting a different understanding. The international Court explains that the term “in general” leads to the idea that respect for life, if applicable to the embryo, allows the overlap of several exceptions based on individual circumstances and human rights protected by international documents.

The IACtHR’s interpretation evinces the known tension between the “right to life” of the unborn and the women’s right to procreative autonomy. Mackinnon (1991a) also referred to this issue in her studies on the tension between the rights of unborn life and the guarantee of sexual equality between men and women. In her opinion, it is necessary to delimit the protection of the child’s right to life from the moment of birth in order to combat sex discrimination (MACKINNON, 1991a, p. 1308-1309, 1313-1316).

In *Artavia Murillo*, the IACtHR contributes to the delimitation of those rights of the unborn, sustaining the procreative autonomy of women on the principles of equality and non-discrimination, according to the assumptions adopted by CEDAW. In the IACtHR’s view, these principles require that the protection of a (pregnant) woman’s autonomy precede the protection of potential life still “in formation.” Thereby, a State could not reasonably interfere in women’s procreative decision (COSTA RICA, 2012a, paras 227 and 161).

According to a recommendation issued by the CEDAW Committee, the right to life, if guaranteed in absolute terms (as was the interpretation of Costa Rica’s Constitutional Chamber), would have damaging implications for the regulation of the right to abortion, which cannot be prohibited in all circumstances, as that would violate rights prescribed in the Convention. On the other hand, IACtHR judge Eduardo Vio Grossi dissents, by arguing that the Court decision leads to an understanding that embryonic life is not worthy of protection – not only before its implantation in the womb, in the context of IVF, but also in the later stages (COSTA RICA, 2012a, para 228, and II, B, “d”, page 17). While this observation by the judge is correct, MacKinnon (1991a) points out that the achievement of a reasonable balance between women’s procreative autonomy and the interests of prenatal life does not violate the spirit of Article 4(1) of the Convention. On the contrary, it establishes appropriate criteria for the necessary accommodation of procreative autonomy by defining the right to life in light of the more developed and updated interpretation of the term “in general” as used in the article.

Although the IACtHR’s finding is relevant for the interpretation of the “right to life” concept, it would have been better if the IACtHR had not expressly assumed the argument that life begins at the moment of implantation in the woman’s womb (COSTA RICA, 2012a, paras 186-187 and 189).<sup>10</sup> The IACtHR embraced this view because it was enough to grant

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10 The IACtHR assumes that when delimiting its interpretation of Article 4(1) of the American Convention: “the scientific evidence agrees in making a difference between two complementary and essential moments of embryonic development: fertilization and implantation. The Court observes that it is only after completion

the right to use the reproductive technologies, but its assumption can create future difficulties, as a precedent, on granting women's right to interrupt their pregnancy in the abortion debate. In this particular case, the IACtHR did not have to develop further reasons to demonstrate the fundamentality of the right to procreate through IVF procedure, as it was sufficient to conclude that the protection of unborn life could not be granted absolutely since the moment of fertilization. There was no need to advance the analysis of the right moment life begins, if in the moment of the embryo's implantation in the womb, as the frozen embryos used in the IVF procedure exist before this stage. In the case of abortion, the IACtHR would have to take into account other considerations about the development of unborn life in the context of the international rules related to the right to life.

The IACtHR thus lost an opportunity to develop, in a more progressive form, balanced patterns for the delimitation of the mandatory protection of potential life in accordance with the scheme of international Human Rights. Nonetheless, the interpretation of the IACtHR was an important step to advance the discussion of women's freedom to interrupt pregnancies according to their will and convenience (as mentioned by the dissenting opinion of judge Grossi).

### 3.2 THE ROLE OF CEDAW IN THE TRIAL

The *Artavia Murillo* decision incorporated various patterns of analysis introduced by CEDAW. Concerning gender equality, the IACtHR adopted CEDAW pattern as an argument for women's procreative autonomy. When it comes to the analysis and interpretation of the right to life, CEDAW provided relevant reasons to delimit the right of the unborn in order to balance those rights with women's procreative autonomy, right to freedom and equality.

The considerable inclusion of CEDAW in the trial means that the grounds for the decision in *Artavia Murillo* went beyond the traditional standards of the platform of rights established in the American Convention of Human Rights, which does not address gender. In particular, the need to delimit the interests of embryonic life (as it collides with the procreative autonomy of women) has its roots in Article 1 of CEDAW. According to this article, any restriction to the exercise of a fundamental freedom that entails a disproportionate effect on women's life (even when this was not the purpose of the rule or policy), implies discrimination and therefore violates the equal protection clause. Based on this article, one can argue for reasonableness in balancing the protection of potential life in accordance with the stage of development of the embryo.

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of the second moment that the cycle is concluded, and that conception can be understood to have occurred" (COSTA RICA, 2012a, para 186). And a little further: "Thus, the Court considers that the term "conception" cannot be understood as a moment or process exclusive of a woman's body, given that an embryo has no chance of survival if implantation does not occur" (COSTA RICA, 2012a, para 187).

As the *Artavia Murillo* decision makes very clear, all arguments in defense of the *absolute* right to life do not take into account women's right to procreative autonomy. Such arguments are influenced by discriminatory stereotypes (such as that ones pointed out by the IACtHR in this case), and reflect broad contextual components perpetuated by historical, cultural, and religious factors, institutionalized by legal systems and embedded in social practices. From the perspective of the intersection of culture and religion, for example, stereotypes traditionally prescribed by religious doctrines damage women with regard to preserving their individual identity (COOK, 2010, p. 32-35). To counter these broad contextual components, Article 5(a) of CEDAW requires Member States to modify, through laws and policies, the social patterns that generate preconceived views regarding gender roles.

As described by Cook (2010), laws and legal and social practices that impose restrictions to the effectiveness of procreative autonomy rely on “wrongful gender stereotyping” that rejects women's ability to make an autonomous decision regarding whether to have or not to have children, thus legitimating “sex based classifications.” These classifications prevent women from exercising their moral capacities of choice, including in relation to medical procedures, and their fundamental freedoms, directly affecting their dignity (COOK, 2010, p. 40-41, 59, 65). This disregard of the equal protection of female autonomy directly violates Articles 5(1) and 12(1) of the American Convention of Human Rights.<sup>11</sup> In the context of reproduction, the nullification of the integrity of women's consciousness, both in psychological and intellectual terms, also fits into the concept of discrimination expressed in Articles 1, 2, 12(1) and 16(1)(e) of CEDAW.

Finally, the inclusion of CEDAW Committee recommendations in *Artavia Murillo* also relates to the specific use of medical reproductive technologies, as the exercise of procreative autonomy extends to the use of these technologies that are effective in solving cases of infertility. In accordance with the provisions of Recommendation No. 24 (12) of the CEDAW Committee, women's rights to health must be secured from the perspective of the characteristics that distinguish them from men. These differences include the biological-reproductive ones, taking into view that they give rise to needs and rights specifically directed towards female reality (COSTA RICA, 2012a, paras 150 and 300).

#### 4 CONTRIBUTION TO INTERNATIONAL JURISPRUDENCE AND FUTURE OPTION TO LINK TO THE CONVENTION OF BELÉM DO PARÁ

As noted in previous sections, the decision in *Artavia Murillo* featured a significant progress in women's procreative autonomy. Moreover, the judgement contributed also in a broader

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11 Article 5. Right to Humane Treatment: (1) Every person has the right to have his physical, mental and moral integrity respected” [...]; Article 12. Freedom of Conscience and Religion: (1) Everyone has the right to freedom of conscience and of religion.



sense to international jurisprudence by recognizing women's rights to non-discrimination. This section provides some context to the IACtHR's decision in this case, while also noting an opportunity for future cases before the IACtHR to further strengthen their case by bringing out the Convention of Belém do Pará. A last section describes the case in the context of earlier cases before the IACtHR, and the general functioning of the Inter-American Court System in terms of its mechanisms to require Member States to change national laws when in violation of Human Rights.

#### 4.1 CONTRIBUTION TO INTERNATIONAL JURISPRUDENCE

In addition to clearly acknowledging women's procreative autonomy – as explained in Section I –, the decision of the IACtHR in *Artavia Murillo* also broadly contributed towards women's right to non-discrimination before legal and political institutions. In this sense, the IACtHR's recognition that the denial of procreative autonomy within the scope of IVF involves gender discrimination (considering the existence of gender stereotypes), it becomes possible to articulate, at least in the field of reproductive rights, the connection between the concept of discrimination, the description of the damage it can produce in women's life, and the guarantee of the exercise of their fundamental freedoms.

Furthermore, the IACtHR's explicit recognition of the gender stereotypes also can promote an improved development and use of methodological guidelines for specifying the obligations of States and others in terms of actions to create gender equality, particularly in the judicial sphere (COOK, 2010, p. 177). In the concluding part of its decision in *Artavia Murillo*, the IACtHR pointed out that the gender stereotypes are incompatible with international legal requirements with regard to human rights. This argument allowed outlining the disproportionate effects of the judgment of Costa Rica's Constitutional Chamber on the life experiences of women. In addition, the IACtHR declared that the decision of the Constitutional Chamber of Costa Rica gave rise to harmful and discriminatory effects on women's lives, since failed to weigh other rights that compete with the right to life. Furthermore, it violated their rights to personal integrity, privacy, freedom, and family formation, listed in the American Convention of Human Rights (COSTA RICA, 2012a, paras 302 and 316).

According to MacKinnon (1991b, p. 159-160, 163), existing laws that downgrade women to a secondary status in their citizenship and rights must be changed, in order to achieve gender equality in a substantive sense. MacKinnon argues that some laws embody in their development the rigid cultural stereotypes that give cause to women's subordination in the political arena. In such a system, any discriminatory component added to domestic legislation, including judicial decisions, must be submitted to treaties whose purpose is to stop all kinds of unequal treatment, such as the American Convention of Human Rights and CEDAW. In the case of *Artavia Murillo*, this is exactly what happened when the IACtHR decided against the national ruling.

#### 4.2 ARTAVIA MURILLO AND VIOLENCE AGAINST WOMEN – A LINK TO THE CONVENTION OF BELÉM DO PARÁ

In *Artavia Murillo*, the IACtHR clearly makes a case that the condition of infertility takes women to an excessive load of emotional and psychological distress that is capable of producing disproportionate harm and may even generate domestic violence and family instability, as well as exacerbate the social stigma of male superiority and female inferiority (COSTA RICA, 2012a, paras 294-296).

In this context, it would have been appropriate for the IACtHR to introduce the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (or, Convention of Belém do Pará) as well. The definition of violence stated by this Convention is broad and certainly comprehends violence against the moral/psychological integrity of women generated by the prohibition of IVF, as described in the IACtHR decision.

The Convention of Belém do Pará, in its Articles 2 and 3, expressly includes in its concept of violence any act, public or private, that results in physical, sexual, or psychological oppression. In its Articles 4(b), (e) and (f), the same Convention reaffirms the right of women to mental and moral integrity, dignity and “equal protection before the law” and, in its Article 6(a) and (b), their right to be free from discrimination and “stereotyped patterns of behavior”. Furthermore, in its Article 7(c) and (e), the Convention prescribes the obligation of States to undertake legislative rules, including in the administrative sphere, to eradicate situations of violence against women. Finally, in its Article 8 (b), it is determined that the Government has the obligation to dismantle cultural models based on “stereotyped roles for men and women” (OAS, 1994). As can be seen in these articles, in addition to extending the concept of violence to comprehend all restrictions to the exercise of fundamental freedoms, this Convention also specifically relates the situation of violence against women to the historical discrimination based on gender.

In the context of the Convention of Belém do Pará, it is clear that the impact of the decision of the Constitutional Chamber in Costa Rica on women’s life can be seen as a form of moral and psychological violence against women. Had the IACtHR included this Convention in its judgement, it would have certainly contributed to its jurisprudence related to procreative autonomy. Definitely, it would have made a stronger case for including the concept of violence (in the sense of moral and psychological violence against women) into future cases involving the protection of women’s procreative autonomy.

The IACtHR’s consideration of this Convention would have been even more crucial because, in general, the development of an international system to protect women against violence (associated with the reality of gender discrimination) adds prominence and strength to all measures to secure Human Rights. The rules protecting women against acts of violence increase the possibility of eliminating all forms of discrimination in a comprehensive approach, in which violence is understood not as an isolated incident, but as a part of female sexual subordination.

The IACtHR clearly had the option to bring out the Convention of Belém do Pará, which can be seen in earlier cases and actions taken respectively by the Inter-American Commission on Human Rights (IACHR) and the IACtHR. In 2007, for example, an IACHR document outlined several recommendations to States for actions to eliminate “social cultural patterns” that promote discrimination and prevent women’s access to justice, mainly the ones who are victims of violence (IACHR, 2007a, paras 18-19, at 8). In a larger context, as far back as 1999, the IACHR had released a report that investigated the need to implement affirmative actions to increase women’s political participation, understanding that the deprivation of their right violates their equal citizenship *status*, which implies an act of moral violence. In this report, the Commission emphasized that affirmative action is an effective mechanism to ensure the right to non-discrimination based on gender. This right, accordingly to the document, must be assumed as one of the main pillars of the international system of protection of Human Rights, so that the laws of States cannot contradict the principle of equality in a substantive sense (IACHR, 1999, introduction and III.B, at 1 and 4).

The famous Brazilian case of domestic violence, named after the victim *Maria da Penha Maia Fernandez*, is an example of an earlier IACtHR ruling with relevance to *Artavia Murillo*. The case disclosed the failure of authorities to conduct in “reasonable time” a criminal investigation and the punishment of those responsible for the violent acts, which consist on continuous violations of several provisions of both the American Convention of Human Rights and the Convention of Belém do Pará (IACHR, 2001b, paras 2 and 38). In its judgment, the IACHR demanded the Brazilian government to take urgent measures, which clearly showed the extent of the normative legitimacy of the Inter-American judicial system (which includes the IACtHR and the IACHR) to compel States to acting, in the evidence of prolonged tolerance of violence against women within their families. Following these recommendations, in 2006 Brazilian government issued the Law 11.340, known as the *Maria da Penha Law*, which strongly improved the investigation and criminal punishment of domestic violence cases against women.<sup>12</sup>

The example demonstrates a coherent development in IACtHR jurisprudence and IACHR policies – mostly in the area of domestic violence – focusing on the protection of women against discrimination. Likewise, they warn about the need of mechanisms to intervene in national legislation when it clearly violates important fundamental freedoms. Although *Artavia Murillo* had not specifically brought out the concept of violence using the Convention of Belém do Pará, it has significantly contributed in terms of demonstrating such a mechanism by demanding Costa Rica to reinstate IVF procedures, as its prohibition was in

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12 See, in this sense, an article available at: <<http://www.unwomen.org/en/news/stories/2011/8/maria-da-penha-law-a-name-that-changed-society>>; accessed: 13 June, 2014.

violation of international standards. The role of the case in this context is further described in the next and final section.

#### 4.3 ARTAVIA MURILLO IN THE CONTEXT OF OTHER CASES AND THE INTER AMERICAN COURT SYSTEM

As the previous section already pointed to, *Artavia Murillo* demonstrates how the Inter-American Court System can ensure that the application of authority by individual States conforms with requirements of the American Convention of Human Rights, not through an illegitimate international interference, but rather as a way to assist those States in building a democratic society. As will be shown in this section, *Artavia Murillo* builds on various previous judgements by the IACtHR in terms of the concept of *due diligence* as a requirement for the States, the use of agreements to demand legislative changes, and the impact of some cases in the combat of gender discrimination and involving the equal protection clause.

An emblematic decision involves the case of *Velasquez Rodriguez v. Honduras* (COSTA RICA, 1988), which emphasized the responsibility of States to undertake “due diligence” in preventing any kind of violation of human rights, whether by public authorities or by a third party. On the concept of “due diligence,” the IACHR states:

International jurisprudence has established the duty of the State to act with due diligence to protect human rights. This obligation entails four components: prevention, investigation, sanction and reparation of human rights violation.<sup>13</sup>

It is the essence of the concept of Human Rights to protect the interests of individuals against losses arising from actions or omissions of the State, and this is the greatest scope of the international law rules (COSTA RICA, 1988, merits decision, Sr. C N° 4, extracts, paras 172 and 134).

A notable case in Peru – of a woman that died because of a forced sterilization procedure – serves as an example of the requirement of actions concerning States. In this case, the IACHR

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<sup>13</sup> Violence and Discrimination against Women in the Armed Conflict in Colombia, OEA/Ser.L/V/II.18 October 2006, doc. 67, para 24, p. 7. On the application of this concept to cases submitted to the IACHR, and its recommendations in the scope of crimes involving violence against women, see also (i) IACHR, The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination, OEA/Ser.L/V/II.117, Doc., 7 March 2003, paras 131-133; and (ii) IACHR, Case of Jessica (Lenahan) Gonzales et al (United States), paras 5 and 122-136. In both cases, the IACHR concluded that the State failed to take effective measures for the prevention of acts of domestic violence against victims, and to conduct the specific criminal procedures, failing to fulfill its obligations in relation to the elimination of discrimination and the guarantee of equal protection under the law. In the case of the United States, which is not a Member State of the American Convention of Human Rights, the Commission applied in its analyses the American Declaration, ratified by the country (*Jessica Gonzales*, para 115).



reached an agreement with the State to undertake legislative and policies reforms to secure the rights to reproductive health and “family planning.” The reforms meant to ban discrimination against women and respecting their autonomy (IACHR, 2003b, para 14, 1st and 11th, p. 137, 140.) In another case, with Mexico, the IACHR obliged the State to compensate the victim for damages. The 14-year-old girl had been raped and got pregnant. Even though the law of the country permitted an abortion in this case, she was hindered to have it done (IACHR, 2007b, paras 11-14 and 16).

Some earlier international decisions were relevant for *Artavia Murillo* as well because of their impact in fighting gender discrimination and their interactions with the freedoms emphasized in *Artavia Murillo*. In one of these cases, the IACtHR restored custody to a mother in a court case that centered on the mother’s sexual orientation. Here, the State of Chile was found responsible for violation of Article 24 of the American Convention of Human Rights (the equal protection clause), in relation to its Article (1), and for infringing the right to private and family life (COSTA RICA, 2012b, paras. 54, 72, and 78-79). Importantly, this requirement of respect and humane treatment (on equal terms, regardless of sexual orientation) is essential for ensuring intellectual and moral individual integrity, and therefore the rights of conscience, which are all principles discussed in the context of *Artavia Murillo*. The concept of psychological integrity is expanded through the intertwining of gender-based discrimination and discrimination based on sexual orientation.

Another decision related to the application of the equal protection clause was issued in the *María Eugenia Morales de Sierra* case, in Guatemala, which involved a certain civil law that defined, in a discriminatory manner, distinct roles to be exercised by husband and wife. In this case, similar to the situation in *Artavia Murillo*, the identification of gender stereotypes represented an efficient strategy to present the need for institutional reforms to protect individual rights. Even though in *Artavia Murillo* this identification was more complex, as the decision of Costa Rica’s Constitutional Chamber did not imply differential treatment based on gender, the case of *María Eugenia* constituted an important precedent that has strengthened the legal grounds used in *Artavia Murillo* regarding the implementation of the standards of analysis put forward in CEDAW.

Together, these listed cases, as well as other cases before the IACtHR, have built up a framework for the judgement in *Artavia Murillo*, a judgement that requires the State of Costa Rica to take measures to annul the decision of its Constitutional Chamber and restore the right of the use of IVF procedures. Here, the IACtHR weighed that there were no legal remedies within the “domestic jurisdiction” that could reverse the situation of the victims, in the matters involved in the case, regarding the disrespect of the exercise of their fundamental freedoms (COSTA RICA, 2012a, para 21).

The judgement in *Artavia Murillo* clearly demonstrated the effectiveness of the Inter-American Court System on imposing responsibilities to the States, based on standards of international law. According to those standards, the political and juridical institutions of the

Member States must give an integrated response, whether in the administrative, legislative or judicial sphere, to grant the recognition of Human Rights. In the case of *Artavia Murillo*, the State's arguments regarding the protection of the right to life were not accepted in the broader context of the essential principles of the international Human Rights system. For procreative purposes, these principles, taken together, delimit an important space for the assertion of autonomy, and moral and psychological integrity within the area of reproduction, improving the mechanisms of identification and deconstruction of sexual stereotypes that cause discrimination and harm to women.

By imposing to the Costa Rica's State the duty of annulling the decision that prohibited IVF (COSTA RICA, 2012a, para 336), invoking the requirements of treaties that protect individual freedoms and gender equality, the IACtHR has improved the effectiveness of international standards, regarding judicial remedies applicable to the States for the realization of Human Rights. In addition, the IACtHR advanced the parameters of its operation, complementarily, in national legislatures, to increase the commitment of the States to ensure the exercise of procreative autonomy in general. Particularly, the IACtHR extended its mechanisms and specific principles developed in its system, in favor of respecting the procreative and family autonomy of women.

## CONCLUSION

The IACtHR's decision in the case *Artavia Murillo* clearly establishes a link between the procreative autonomy and the universal right to freedom. Also, it brings out gender stereotypes to the discussion of gender equality. In addition, the IACtHR adopts a restrictive understanding about the "right to life", by tying down the meaning of the phrase "in general" as used in Article 4(1) of the American Convention of Human Rights. Those restrictions on the protection of the "right to life" were necessary in order to balance the interests of the unborn with women's procreative rights. Thus, as defended in this paper, the *Artavia Murillo* case represents a significant progress regarding the protection of women's procreative autonomy.

As pointed out in the final section, the decision in *Artavia Murillo* builds on previous actions by the IACHR or cases before the IACtHR, which had already introduced recommendations to eliminate social cultural patterns that promote discrimination and prevent women's access to justice. The *Artavia Murillo* case, however, is more explicit in exposing the idea of indirect discrimination. Moreover, it broadly contributes towards women's rights to non-discrimination before legal and political institutions, by allowing the connection between discrimination, the description of the damage it can produce in women's life, and the guarantee of the exercise of their fundamental freedoms. With the inclusion of CEDAW, the decision also makes clear that it is not possible to talk about procreative autonomy without mentioning gender equality: the violation of the right of procreation, in the case, implies gender discriminations, as stated in the decision.

The construction of an effective regulatory standard to ensure procreative autonomy requires the composition of the various principles laid down in international treaties, which structure the primacy of Human Rights and fundamental freedoms with regard to the legal-political domain of States. Through the consolidation of the concept of autonomy and its connection to the individual right to mental and moral integrity, as operationalized in *Artavia Murillo*, the Inter-American system perfected its principles and strategies for identifying and eliminating the discriminatory aspects incorporated into the laws and judicial decisions of the States.

Finally, notwithstanding its important contribution to the case of *Artavia Murillo*, the IACtHR could have further advanced in two particular areas, considering the protection of women's procreative autonomy and protection under the law. As described in Section III, the IACtHR could have refrained from assuming in their judgement that life begins at the moment of the embryo's implantation in the woman's womb. Although this assumption was sufficient for the reinstatement of IVF in this case, it may, however, complicate future court cases by setting a precedent, mainly in cases eventually dealing with the theme of abortion. In addition, in terms of broader protection of women's rights, the IACtHR could have brought out other relevant articles of the Convention of Belém do Pará. This could enhance the connection between this case and the protection against violence provided by this Convention – in this case, moral and psychological violence resulted of not having access to IVF.

Nevertheless, the analysis reveals the meaningful contribution of *Artavia Murillo* to the understanding of the International System on matters of procreative autonomy. Likewise, it illustrates the relevant assistance of the IACtHR to the States, in order to help them build a democratic society by protecting Human Rights, by providing a framework to balance Human Rights, and by guiding them to assume their responsibilities in providing the *due diligence* necessary to prevent any kind of violation against Human Rights. For all these reasons, the decision represents a critical precedent in building a strong international standard for the affirmation of procreative autonomy in light of the fundamental freedoms and gender equality before the law.

## REFERENCES

### Books and articles

BUTLER, Judith. *Gender trouble: feminism and the subversion of identity*. New York; London: Routledge, 1990.

COOK, Rebecca; CUSAK, Simone. *Gender stereotyping: transnational legal perspectives*. Philadelphia: University of Pennsylvania Press, 2010.

LAURITZEN, Paul. What price parenthood? *The Hastings Center Report*, v. 20, n. 2, p. 38-46, Mar.-Apr., 1990. Available at: <<http://www.jstor.org/stable/3562619>>. Accessed: June 13, 2015.

MACKINNON, Catharine A. Reflections on sex equality under law. *Yale Law Journal*, v. 100, p. 1281-1328, Mar. 1991a.

\_\_\_\_\_. *Toward a feminist theory of the state*. Cambridge; London: Harvard University Press, 1991b.

SIEGEL, Reva B. *What Roe v. Wade should have said: the Nation's top legal experts rewrite America's most controversial decision*. Edited by Jack M. Balkin. New York: New York University Press, 2005.

\_\_\_\_\_. Equality and choice: sex equality perspectives on reproductive rights in the work of Ruth Bader Ginsburg. *Columbia Journal of Gender and Law*, v. 25, n. 1, p. 63-80, 2013.

TRIBE, Laurence H. *Abortion: the clash of absolutes*. New York; London: W.W. Norton & Company, 1990.

### **International Court decisions**

COSTA RICA. Inter-American Court of Human Rights (IACtHR). *Velasquez Rodriguez v. Honduras*, judgement of July 29 1988.

\_\_\_\_\_. Constitutional Chamber of Costa Rica. Judgement n° 2000-022306, 03/15/2000.

\_\_\_\_\_. Inter-American Court of Human Rights (IACtHR). *Artavia Murillo et al v. Costa Rica*, judgement of November 2012a. Available at: <[http://www.corteidh.or.cr/docs/casos/articulus/seriec\\_257\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulus/seriec_257_ing.pdf)>. Accessed: June 20, 2015.

\_\_\_\_\_. Inter-American Court of Human Rights (IACtHR). *Atala Riffo and Daughters v. Chile*, judgement of February 24, 2012b.

### **International documents**

ORGANIZATION OF AMERICAN STATES. *American Declaration of the Rights and Duties of Man*, 1948. Available at: <[www.oas.org/dil/1948%20American%20Declaration%20of%20the%20Rights%20and%20Duties%20of%20Man](http://www.oas.org/dil/1948%20American%20Declaration%20of%20the%20Rights%20and%20Duties%20of%20Man)>.



20Duties%20of%20Man.pdf>. Accessed: Sept. 12, 2015.

\_\_\_\_\_. *American Convention on Human Rights* (Pacto of San José, Costa Rica), 1969. Available at: <[www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm)>. Accessed: July 2, 2015.

\_\_\_\_\_. *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (Convention of Belém do Pará), 1994. Available at: <<http://www.oas.org/juridico/english/treaties/a-61.html>>. Accessed: Sept. 12, 2015.

\_\_\_\_\_. Inter-American Commission on Human Rights (IACHR). Considerations regarding the compatibility of affirmative action measures designed to promote the political participation of women with the principles of equality and nondiscrimination, in *Annual Report*, OEA/Ser.L/V/II.106, Doc., April 13, 1999.

\_\_\_\_\_. Inter-American Commission on Human Rights (IACHR) Report n° 4/01, Merits, Case 11.625, María Eugenia Morales de Sierra, Guatemala, January 19, 2001a.

\_\_\_\_\_. Inter-American Commission on Human Rights (IACHR). Report n° 54/01, Merits, Case 12.051, Maria da Penha Maia Fernandez, 16 April, 2001b.

\_\_\_\_\_. Inter-American Commission on Human Rights (IACHR). *The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination*, OAS/Ser.L/V/II.117, Doc., 7 March 2003a.

\_\_\_\_\_. Inter-American Commission on Human Rights (IACHR). Report n° 71/03, Petition 12.191, Friendly Settlement, María Mestanza Mamérita Chavez, Peru, October 22, 2003b.

\_\_\_\_\_. Inter-American Commission on Human Rights (IACHR). *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OAS/Ser.L/V/II.18 October 2006, doc. 67.

\_\_\_\_\_. Inter-American Commission on Human Rights (IACHR). *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II., doc. 68, 20 January, 2007a.

\_\_\_\_\_. Inter-American Commission on Human Rights (IACHR). Report 21/07, Petition 161-02, Friendly Settlement, Paulina del Carmen Ramírez Jacinto, Mexico, March 9, 2007b.

UNITED NATIONS. *The Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW), 1979. Available at: <[www.un.org/womenwatch/daw/cedaw](http://www.un.org/womenwatch/daw/cedaw)>. Accessed: July 2, 2015.

UNITED NATIONS. Recommendation n° 28 of the Committee on the Elimination of Discrimination against Women, 2010. Available at: <<http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC2.pdf>>. Accessed: Sept. 12, 2015.

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