

# Defending the Human Right to Life in Latin America

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**ABSTRACT:** Latin America, a “continent-plus,” is strongly pro-life. Efforts, however, are being made by anti-life forces to “liberalize” laws there to permit abortion. A team of Latin American lawyers has produced a major study of Latin America’s laws in order to demonstrate the pro-life commitment that exists there and to document the threats to life that exist, while suggesting revisions to national laws to strengthen pro-life protection. The study notes the fact that, despite dire predictions to the contrary, maternal mortality does not increase when abortion is prohibited, as studies within Latin America have shown. This essay reviews the results of the study by Latin American legal professionals and discusses why any durable conception of human rights must be based upon the inviolable right to life of all human beings.

**A** POLITICAL EARTHQUAKE occurred in Uruguay in October 2012, one that has as much potential to end human life throughout Latin America as does any natural earthquake. Yet I doubt you heard about it. What happened and why? I will return to this point near the end of this essay.

Americans United for Life (AUL) has recently completed a study entitled *Defending the Human Right to Life in Latin America (“DLLA”)*. The inspiration for this study came from human rights lawyers in Latin America. Recognizing the unity of human rights as well as the threat that anti-life forces pose to that ideal in Latin America, they believed that an in-depth study was needed to rebut the lies being told within Latin America, including the scandalous claim that “human rights” laws and principles necessitate the abandonment of pro-life principles. Further, they wanted to dispute the claim that there is a “trend” within Latin America against pro-life laws.

Convinced of the need for such a study, AUL produced *Defending the Human Right to Life in Latin America*. Since Latin America mainly

speaks Spanish, the original version is in Spanish,<sup>1</sup> but we have also prepared an English-translation. The electronic versions are available, as is information on how to order an e-book of it, at [www.aul.org](http://www.aul.org).

About “human rights” let me say this: unless you are alive, there is no practical way in which to claim any *other* right. If you no longer exist, you cannot speak or protest or file a lawsuit. Thus, the right to life *by logical necessity* is the foundation of every other right. There can be nothing recognized and respected as a human right in society or in the courts unless the most basic human right, the right to life, is respected. Otherwise, the idea of “human rights” contains a contradiction at its core.

To see the contradiction here, consider this question: if “human rights” are not the inherent rights of all human beings, which human beings are *excluded*? In other words, which of us within the class of human beings is left *unprotected* from those who would do us harm? And consider this corollary question: who *decides* who is to be excluded?

When we stand back and consider the matter, the underlying principle is clear: one qualifies for recognition – and protection – as a “human being” *simply by being one*. Here we need to reject other proposed alternatives – race, sex, national origin – as incidental to the question of humanity. They do distinguish one human from another, in endless combinations, but no one of them and no particular combination of them is necessary to being a human being.

Further, it does not make sense to say that *some* human beings are protected by having a human right while others are not, or to say that *some* may appropriately (in both a moral and a legal sense) be subjected to destruction or abuse while others may not. To permit such distinctions would privilege some human beings over others. To hold such views would grant the right to inflict lethal violence on some, at the expense of others. But such a situation is by definition unjust since “justice” has nothing to do with the arbitrary imposition of lethal force. The ability to impose lethal force arbitrarily on others has nothing to do with justice but only with power, and the temptation of those with power to exercise

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<sup>1</sup> The chief exception, of course, is Brazil where Portuguese is spoken. We hope the second edition of DLLA will also be available in Portuguese.

it as they will.

Furthermore, if one considers the corollary question posed above, it must logically be the case that *no one* is entitled to define the circle of legal protection afforded by human rights so as to exclude another human being. The reason is that to permit such exclusions would simply be to make the weak vulnerable to the powerful, who will never define themselves outside the circle of protection. In an abstract way, we can say a genuine human rights claim involves “the equality principle.” More simply and poetically, we might want to use the words of the Declaration of Independence: “all men are created equal.” Either claims about “human rights” apply to *all* human beings or they are not genuinely human rights. Either *human* rights are for all human beings or they are arbitrary legal constructs, applied to some but not all. Consequently, to be “pro-life” is to be “pro-human rights.” The reverse is true as well: to be “pro-human rights” means that one must be “pro-life.”

In general, the nations in Latin America understand this fact better than do those in North America, where Canada and the United States are two of the four most pro-abortion regimes in the world.<sup>2</sup> Latin American nations tend to penalize abortion and to regulate its exceptions strictly.<sup>3</sup> This report provides a good picture of the prevailing reality throughout the entirety of Central and South America. For instance, two countries that this report profiles in depth, Chile and Honduras, are two of the countries that forbid all kinds of abortion. Two of the others that are here given an in-depth treatment, Argentina and Paraguay, provide for very

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2 The other two are China and North Korea. See <http://www.aul.org/united-states-abortion-policy-in-the-international-context>.

3 Chile, Honduras, El Salvador, Nicaragua and the Dominican Republic, for example, do not provide for any case of “allowed” abortion, while most of the countries provide for very few exceptions. The exceptions usually provided are those based on the threat to the mother’s life or health or the case of pregnancy resulting from rape or incest. The list of these countries includes Antigua and Barbuda, Argentina, Belize, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Granada, Guatemala, Haiti, Jamaica, Mexico, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela. Cuba and Puerto Rico are the only two places that had legalized abortion by legislation before October 2012.

restrictive exceptions. Mexico, which is unique in having a federal system of government, has legalized abortion only in the Federal District; the rest of the Mexican Federal States permit abortion only in limited cases. This study records and analyzes their national and international laws and obligations as well as the most relevant judicial and administrative decisions.

Also included in the AUL study is an analysis of two special cases: (1) the impact of abortion in the recent presidential elections in Brazil, the largest nation in Latin America, and (2) the 2006/2010 judicial activist decisions by the Constitutional Court of Colombia that recognize a “fundamental right” to abortion. These are quite exceptional rulings, out of line with the rest of Latin America, and probably illegitimate under the Columbian constitution.

Thus, although this study does not examine abortion laws in *all* Latin American countries, the analysis of those chosen for examination illustrates why Latin America is defined as a pro-life “continent-plus,”<sup>4</sup> that is, a continent-plus where most nation’s laws forbid most kinds of abortion. Despite the widespread promotion of the myth that access to “safe” abortions is a human right and the key to female equality,<sup>5</sup> these countries realize that unfettered abortion access is ultimately destructive of maternal health, for it represents a counterfeit liberation for women.

The experience of countries like Honduras and Chile provides testimony on this point. In those nations the rates of maternal mortality have been significantly reduced even while laws against abortion have been strengthened. Honduras has seen a forty percent decrease in maternal mortality since increasing restrictions on access to abortion (and while increasing access to basic health care).<sup>6</sup>

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4 Central America as well as South America.

5 See for instance, the argument in “Death and Denial: Unsafe Abortion and Poverty” from International Planned Parenthood: “millions of women have no access to reproductive health services; many more have little or no control in choosing whether to become pregnant. As a result, every year, some 19 million women have no other choice than to have an unsafe abortion.... Nearly all the women who die or are injured are poor and live in poor countries.” [http://www.ippfwhr.org/sites/default/files/files/Death\\_Denial\\_Sp\\_0.pdf](http://www.ippfwhr.org/sites/default/files/files/Death_Denial_Sp_0.pdf)

6 Marjorie A. Koblinsky, ed., *Reducing Maternal Mortality* (Washington, D.C.: The World Bank, 2003), pp. 51-62, for these statistics.

Chile, which has completely prohibited abortion since 1989, has the highest standard of maternal health in Latin America and ranks second in the world for the lowest maternal mortality rate. The lack of correlation between prohibition of abortion and maternal mortality was confirmed in a recent study by Dr. Elard Koch of the University of Chile. The study examined maternal mortality data in Chile over the past fifty years and found that even as abortion laws were restricted, the maternal mortality rate dropped significantly. Dr. Koch found increasing education levels appeared to have the greatest impact on decreasing maternal mortality, along with access to maternal health facilities and their utilization.<sup>7</sup> This is reliable evidence that women's lives are not put at risk when abortion is outlawed.

The examples of these countries demonstrate the answer to providing for women's health lies not in the legalization of abortion but in guaranteeing greater access to basic services: health care, clean water, medical assistance during birth.<sup>8</sup> Honduras and Chile represent models of what we all may hope the world will become – countries where abortion is prohibited, maternal mortality is declining, and health care is being extended to those who need it.

In order to resist the forces bent upon advancing abortion, it is essential that the countries of Latin America continue upon their pro-life path by progressively improving legislation in force, adapting it to new

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7 Dr. Elard Koch et al., "Women's Education Level, Maternal Health Facilities, Abortion Legislation and Maternal Deaths: A Natural Experiment in Chile from 1957 to 2007," PLoS ONE (7 May 2012), <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0036613>.

8 The Inter-American Commission on Human rights found that in Peru, 74% of women in rural areas give birth at home without qualified professional care, as do 90% of women in indigenous communities. In Bolivia, a country with the highest maternal mortality rate in the Andean region, the rate of maternal mortality varies significantly depending on the geographic region and place of residence. The World Bank has calculated that if every woman had access to medical services to address complications during pregnancy, especially access to obstetric emergency care, the lives of 74% of these women could be saved. A. Wagstaff and M. Claeson, *The Millennium Development Goals for Health: Rising to the Challenges* (Washington, D.C.: The World Bank, 2004), cited by the Inter-American Commission of Human Rights, *Access to Maternal Health Care from a Human Rights Perspective* (Washington, D.C.: Organization of American States, p. 3).

realities and necessities, and improving the conditions necessary to ensure the effective enjoyment of the right to life. This report contains suggestions for legislatures to strengthen pro-life protections, in tune with the cultural norms of that part of the world.

There is little doubt that the national constitutions of Latin America have effectively protected the right to life, even though they do not mention – with few exceptions – the moment when such protection begins. Accordingly, one of the first steps that legislators should consider is amending their national constitutions so that the right to life is explicitly and categorically acknowledged at the moment of conception. Legislators may also want to consider additional guidelines, as discussed in this report, for advancing the cause of life, such as the prohibition of hormonal “emergency contraception,” the comprehensive protection of pregnant women and unborn children, providing an ombudsman for unborn children, ensuring the protection of women with problematic pregnancies, defending the right of pregnant women to information, mounting public education campaigns, the regulation of informed consent, and the burial of the unborn.<sup>9</sup>

The strengthening of pro-life protections is made increasingly important since national and international organizations routinely pressure Latin American states to legalize abortion on the grounds that pro-life laws violate international treaties on human rights. Perhaps the most egregious example is the United Nation’s treaty-monitoring committee for the Convention on the Elimination of Discrimination against Women (CEDAW). Although CEDAW contains several provisions that protect pregnant women and the unborn, its Committee frequently targets countries such as Chile, Paraguay, and Mexico by pressuring these countries to legalize abortion, which they argue to be required under international treaties and declarations.<sup>10</sup>

Pro-abortion groups such as the Center for Reproductive Rights and

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<sup>9</sup> *Defending the Human Right to Life in Latin America*, ed. M. Laura Farfán Betrán et al., translated by Noelia Estanía Marchetti (Washington, D.C.: Americans United for Life, 2012), hereafter, “*Defending*,” pp. 21-34.

<sup>10</sup> See the respective discussion of each country in *Defending*.

even Amnesty International<sup>11</sup> contend there is a human right to abortion found within various sources of customary international law. These abortion advocates claim an international consensus exists that abortion should be regarded as a necessary component of women's "reproductive health."

The *San Jose Articles*, which I discussed at last year's UFL convention, provide expert testimony that no United Nations treaty or customary international law makes abortion an international human right. Prepared by a group of thirty-one law professors, philosophers, parliamentarians, ambassadors, human rights lawyers, and former delegates to the UN General Assembly, the *Articles* reaffirm the fundamental bioethical fact of when life begins – namely, at conception, with the creation of a unique "human being" – and proceed to demonstrate that international treaties and declarations actually *protect* the unborn child.<sup>12</sup>

The Latin American lawyers and professors with whom I worked to produce this report have a similarly robust pro-life understanding of international documents and treaties. Since Latin American laws and constitutions had protected the unborn long before the basic human rights documents were even written, these lawyers and professors argue it was always assumed in Latin America that the right to life for all human beings was included within the set of basic human rights and was confirmed by the ratification of international treaties.

In order to ensure a pro-life understanding of international treaties, this study proposes that governments issue express pro-life understandings of CEDAW and its Optional Protocol.<sup>13</sup> The need for each nation to issue such a declaration cannot be overestimated. Some courts in Latin America have acted in a way that is reminiscent of *Roe v. Wade* to create (recognize) a "right to abortion" despite the absence of authorizing language in the fundamental law of the country. Each court has cited the recommendations from international treaty bodies in

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11 For instance, it has stated that the prohibition of abortion in Nicaragua is a "serious deviation from the government's commitment to improve social equality, and has serious consequences on the protection of women's and girl's human rights." <http://www.amnestyusa.org/pdfs/amr430012009spa.pdf>.

12 [http://www.sanjosearticles.com/?page\\_id=2](http://www.sanjosearticles.com/?page_id=2).

13 See *Defending*, p. 19.

support of the holding.<sup>14</sup>

An example where such “liberalization” has taken place is Argentina, which has a law permitting abortion only when a mentally handicapped woman is raped. The language and legislative history are clear the legislators intended only to permit abortion-due-to-rape in this circumstance. In March 2012, however, the Argentine Supreme Court “interpreted” the law more broadly as legalizing abortion in all cases of rape, whether the woman is mentally handicapped or not.<sup>15</sup> Doubtless, this is the first step in an even broader “understanding” by the court that will permit even more abortion liberalization.

Another example is Columbia. In 2006 the Constitutional Court held that a law that criminalized abortion was unconstitutional regarding certain situations, e.g., where there was a rape or where the unborn suffered severe abnormalities. Four years later the same court interpreted its prior decision, which really concerned only the constitutionality of *portions of a statute*, to have created a “fundamental constitutional right” to abortion. In the next two years the same court held that abortion was available at any time during pregnancy whenever a woman “desired” it.<sup>16</sup>

Sadly, there is a threat in addition to the courts, as exemplified by

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14 For Columbia, see *Defending*, pp. 88-89 (emphasis in original): “[T]he Court weighted rights based on selected foreign jurisprudence that supported the decriminalization of abortion (not even referring to any opposing precedents), and it granted legal value to the *suggestions* made by international Human Rights surveillance and monitoring bodies (such as CEDAW Committee) and *non-jurisdictional* pronouncements made by entities like the Inter-American Commission on Human Rights. They are, of course, *non-binding reasons* but, in the majority judges’ opinion, become the most conclusive reasoning necessary to reach the final result in exercising the weighing of rights: the prevalence of women’s rights and the consequent sacrifice of the unborn’s life.”

15 On 13 March 2012 the Supreme Court of Argentina confirmed the ruling by the Provincial Court of Chubut in the case *F.A.L. s/ Medida autosatisfactiva*, which had authorized an abortion for a fourteen-year-old girl who had been raped. See *Defending*, p. 150: “The Court held that this was a case of ‘non-punishable abortion’ regulated by Section 86, Par. 2 of the Criminal Code. In other words, the Court held that said section exempted from punishment abortions practiced not only on disabled women who had been raped, but on any woman who has been raped.”

16 See *Defending*, pp. 81-93.



the Uruguayan political earthquake that I mentioned at the beginning. In October 2012 the Senate of Uruguay approved a measure (previously approved by their lower house) to legalize abortion throughout the first twelve weeks of pregnancy.<sup>17</sup> This is a very rare case in Latin America (where most people are pro-life) of the legislature acceding to pro-abortion demands.<sup>18</sup> The passage of the law was engineered by the political Left, which controlled both houses of Congress and the Presidency, but still it passed by only a few votes.<sup>19</sup>

The second edition of *Defending the Human Right to Life in Latin America*, due out in spring 2014, will add Uruguay to those covered by an in-depth country-study, and it may propose the adoption of laws protecting conscientious objection for doctors and informed consent for women. Although our highly critical essay on the decisions of the Columbian Constitutional Court is one of the most important (see the comment of the Attorney General of Columbia on our web page), we will also provide a fuller, in-depth study of Columbia in the second edition. Further, we will add an Andean nation (e.g., Ecuador, Peru, Bolivia), another Central American country (Guatemala), and probably Venezuela as well.<sup>20</sup>

In summary, a culture of life is a culture that recognizes and respects true human rights. It does not pit one human being against another but comes to the assistance of all. In its laws Latin America is closer to that ideal than any other continent. It is in the hope that the nations of Latin America will move ever closer – and never retreat – that this study has been commissioned and published.

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17 [http://www.nytimes.com/2012/10/18/world/americas/uruguay-senate-approves-first-trimester-abortions.html?\\_r=0](http://www.nytimes.com/2012/10/18/world/americas/uruguay-senate-approves-first-trimester-abortions.html?_r=0). Also <http://jurist.org/paperchase/2012/10/uruguay-senate-approves-bill-decriminalizing-first-trimester-abortions.php> and <http://www.bbc.co.uk/news/world-latin-america-19986107>.

18 See n2 above.

19 By a vote of 17 to 14.

20 Our second edition, which will also include up-dates on the nations covered in the first edition, will likely be published exclusively electronically. We think this is the best way to ensure wide distribution.