Case of Beatriz and others v. El Salvador
Inter-American Court of Human Rights
Opening statement of expert witness Prof. Paolo Carozza
March 22, 2023

Mr. President and honorable members of the Court, it is very appropriate for our exchange today to begin with the central importance of human dignity. International human rights law confirms without exception that the recognition and protection of the equal dignity of every human being is the cornerstone of all universal human rights. As the guarantor of human dignity in the Inter-American human rights system, this Court has affirmed many times that the equal rights of all human beings flow from their equal dignity. Without this stable ground, human rights would become illusory and arbitrary, belonging only to those whose value is acknowledged, and not to those – especially the vulnerable and the marginalized – whose value is ignored and rejected.

The status and principle of human dignity on which all international human rights law rests can be understood to have four essential qualities.

First, it is *universal*. It belongs to every single human being solely by virtue of being biologically and genetically a member of the human species. This is an objective scientific basis, not one based on any ideological, philosophical, or religious category of who "counts" fully as a human being, or when. For example, it cannot be based on any theory that the worth of a human being depends on having a sufficient rationality or consciousness or autonomy, or on a moment of "ensoulment."

Second, human dignity is *equal*. This court has affirmed many times, in its seminal judgments on nondiscrimination, the intimate relationship between human dignity and the *jus cogens* principle of nondiscrimination. Human dignity does not come in degrees, with some human beings more dignified than others. Nothing could be more antithetical to the idea of human rights.

Third, human dignity is also *inherent*. That is, it is not conferred by any power or by the State or the law, nor by majoritarian social conventions, or by the will and choice of any other person.

And for the same reason, fourth, human dignity is *inalienable*. No one can lose or be stripped of their inherent human dignity by anyone or anything else. No condition of weakness, vulnerability, illness, disability or incapacity, or failure to be recognized as a person in the law, can deprive a human being of their dignity.

These four dimensions of human dignity have clear implications for the rights at stake in this case. They entail that a mother and her child, born or unborn, including both Beatriz and her daughter, are equal bearers of human dignity. That cannot change because one of them is ill or disabled or less developed or more vulnerable, any more than it could change because one human being is of a different gender or race or sexual orientation or social class than another. That equal human dignity in turn requires States to respect and protect the equal human rights of every human being.

The right to life, as noted frequently in this Court's jurisprudence, is the first of those rights because without it all other rights are rendered null and meaningless. The text of Article 4.1 of the American Convention on Human Rights places it beyond any reasonable dispute that in Inter-American human rights law, human beings are holders of the right to life even before birth, from the moment of conception. The explicitness of the application of the right to life prior to birth necessarily makes Inter-American human rights law distinctive. In accordance with the international law of treaties, that language must be interpreted in a way that will give it meaning and effect (*effet utile*).

In addition, the Inter-American Court of Human Rights has repeatedly and consistently held that the right to life must be interpreted in an extensive way, allowing no restrictive interpretations, consistently with the broader *pro persona* principle. It has held that the State has a broad range of duties to protect the right to life, including against violence by other private parties. And it has held there may never be any discrimination among the subjects of the right to life.

In sum, under the American Convention as interpreted by this Court, both a pregnant woman and her child *in utero* are entitled to the affirmative, simultaneous, and equal protection of the right to life by the State.

Article 4.1 also specifies that the right to life must be protected "in general" from the moment of conception. How must that language be interpreted? The expression "in general" cannot be understood to mean "partially," "incrementally," "subject to exceptions," or dependent on the will and choice or any other person. That would effectively empty the right of any meaningful content – the exact opposite of *effet utile*. It would contradict the object and purpose of both Article 4 and of the treaty as a whole. And it would be manifestly incompatible with the principle of equality and nondiscrimination. In short, it would constitute the very definition of "arbitrariness."

Instead, more consistently with both the object and purpose of the Convention and with its *travaux préparatoires*, we must understand the expression "in general" to grant an important degree of discretion to States to adapt the exact forms and methods for exercising their duties to protect life prior to birth. That includes discretion regarding whether and in what circumstances to employ criminal penalties, or instead to use alternative means that protect the human lives of both the mother and child that are present.

In other circumstances this Court has always required criminal penalties as the necessary, paradigmatic method for protecting the right to life, and not recognized any degree of state discretion in that regard. However, the expression "in general" affects that obligation, allowing the states – permissively, not mandatorily – to employ other measures, so long as they are "in general" oriented toward protecting unborn human life adequately.

But in whatever way the State may specify and carry out its affirmative obligations to protect the right to life, those duties pertain simultaneously to both the mother and her unborn child from

the moment of conception. Any other conclusion can only result in deep and unsustainable contradictions in the human rights law of the Inter-American system. A moment's reflection on the alternatives now before the Court makes this evident.

It is hard to imagine that this Court would ever be willing to take a position that among human beings who hold the right to life, the State may choose to protect some more than others. Or to prefer the life of one over the life of another. Or to declare that the "life plan" or "dignified life" of someone who, for example, has a mental disability or is in the final stages of her life, is of less importance than that of any other human being.

Nor could this Court set aside its commitment to the *jus cogens* principle of nondiscrimination, in order to accept arbitrary differentiations in the protection of human dignity and human life based on a human being's age or stage of life, illness, or physical or mental capacity.

The Court cannot uniquely restrict in this case its extensive interpretation of the right to life in the case of prenatal human life, without introducing exceptions to the *pro persona* principle that would result in human rights law being *pro persona* for some human beings but *anti-persona* for others.

This Court has always been the champion of the human rights of the most vulnerable and marginalized members of our societies. How could it accept that some human beings' vulnerabilities could ever be a justification for granting them *less* human rights protection?

Each of these positions contradicts in fundamental ways the most cherished building blocks of this Court's *corpus juris* of human rights law over the past 40 years.

The alternative is to affirm unequivocally that the duty of States is to protect equally the human rights of both women and children, born and unborn. That path is the most coherent with the promise of universal human rights. It is the most consistent with the explicit, distinctive text and requirements of the American Convention. And it is the only approach that takes seriously the obligations of nondiscrimination, the expansive *pro persona* interpretation of the right to life, the affirmative duties of the states with respect to those rights, and the interdependence and indivisibility of all human rights.

Such a judgment, by this Court, would be bold and transformative. It would set our societies on a radically new path, on which the promise of universal human rights will finally be capable of overcoming the polarizing divisions that have plagued this area of law for so long.